Finality of Settlement – that which preserves the World™
Part II – Volume I

Memorandum of Law, Economic Principles, and Justice

And

A Declaration of Trust and Passport of the Trustees

I am only one, but I am one. I cannot do everything, but I can do something. What I can do, I should do and, with the help of God, I will do!

Everett Hale

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Notice of Fees

Please notice that any party that places an *order* with or without coercive force is liable for a *bill* in lawful money. The minimum hourly rate for orders placed with the aid coercive force or duress of any sort is 100 Globals (10 grams of 0.999 fine gold) per hour with all rights reserved to prosecute to the fullest extent of *the law*.

PUBLIC NOTICE

The Global Settlement Foundation and its trustees are law abiding[2], neutral parties. We do not wish to cause harm or loss. Our duty is to return lawful trade and lawful money to the people of the land – the people of the Global Isles - by facilitating the return of the rule of the law, lawful money, and accountability.

Certain parties have, by their own actions, implicated themselves in crimes against humanity. Unfortunately this list of people includes practically every Head of State, legislator, government official, regulator, judge and law enforcement officer together with their partners in crime – the bankers to the world. The *People of the Land* will have to reign them in, and bring about justice via lawful grand juries. As a neutral party, our role is to provide the lawful alternative.

However, dear reader, by proceeding to read the material in this document, you will have to take action – or become party to the crime of ***Misprision of Felony***. If you are a government servant, that is, "an official", reading this – awaken, do your duty to return to your masters – the people – that which is theirs by right – and that which has been stolen by fraud. **If you take no action, hinder the efforts of the Global Settlement Foundation or the Sundarsson Trust, cause harm or loss, waste our time, spread malicious lies or rumours, you will be held liable, subject to lawful arrest, arrest of your bond, arraignment in a lawful court of record or grand jury, incarceration, bills in lawful money, &c.**

2 Abiding by the principles of Common Law - "*Thou shalt not cause harm or loss to another*". Common Law admits no statutes!

NOTICE OF DIPLOMATIC STATUS

Now comes Joseph Ray Sundarsson, a decent being, a conscious, living *Man of the Land*, a living freeman[3] upon these *Global Isles*[4], self sovereign[5], knower of *the law*[6], having expatriated[7] himself and his family from the jurisdiction of any other sovereign, having declared his intent to live in peace, bound by the common law as did King John of England in the *Magna Carta*[8], hereby claims his right of diplomatic immunity and protection for himself and his family and sets forth this Memorandum of Law.

Now comes Marie Jean Sundarsson, a decent being, a conscious, living *Woman of the Land*, a living free-woman upon these *Global Isles*, self sovereign, happily married under the common law to Joseph Ray Sundarsson, having expatriated herself and her family from the jurisdiction of any other sovereign, having declared her intent to live in peace, bound by the common law, hereby claims her right of diplomatic immunity and protection.

3 Living free on these *Global Isles* without having *registered* with any Government or State or taken up *residence* for the last few years in any State or jurisdiction, declaring by this document his unalienable rights to be so free and to be called by a name that so pleases him, sovereign upon that which is his by right.

4 The Global Isles are defined as wherever Man may live breathe and pursue his happiness – all the islands and continents of this earth, spacecraft, aircraft, ships, submarines, caves, mines &c.

5 See page 119 of this present Memorandum. "The very meaning of 'sovereignty' is that the decree of the sovereign makes law." American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.
The quality or state of being sovereign, or of being a sovereign; the exercise of, or right to exercise, supreme power; dominion; sway; supremacy; independence; also, that which is sovereign.

6 The natural and common law which admits no statutes yet results in justice; the law elucidated in the scriptures of mankind, the common law of the English speaking people, the paths of wisdom, reason and philosophy, the laws of the physics, science and the universe – which shall be summarized “we shalt not cause harm or loss to another”.

7 See Expatriation page 329

8 See page 380

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DEFINITIONS

Global Standard™

The Global Standard™ gives material shape to the principle of lawful money that men must deal with each other by lawful voluntary trade and give value for value. To trade by means of lawful money and lawful voluntary contract is the code of civilized men of good will. The Global Standard provides a fully functional worldwide monetary system.

ONE GLOBAL™ (Prefix: G, Currency code: GLO)

One gold Global™ shall be defined as 0.1 gram by mass of 0.999 fine or better pure gold.

ONE ISLE™ (Prefix: S, Currency code: SIL)

One silver Isle™ shall be defined as 0.1 gram by mass of 0.999 fine or better pure silver.

ONE AURIC™ (Currency code: AUR)

One AUric™ shall be defined as 0.1 gram by mass of 0.999 fine or better pure gold. The AUric is the pan-African gold currency for countries of the African Union.

ONE AGRIC™ (Currency code: AGR)

One AGric™ shall be defined as 0.1 gram by mass of 0.999 fine or better pure silver. The AGric is the pan-African silver currency for countries of the African Union.

GLOBAL ISLES

The Global Isles are defined as wherever Man may live, breathe and pursue his happiness – all the islands and continents of this earth, spacecraft, aircraft, ships, submarines, caves, mines &c.

GLOBAL SETTLEMENT FOUNDATION (GSF)

The Global Settlement Foundation (GSF) is an independent, international non-profit organization that provides finality of settlement for global trade. The GSF is registered as a Panama Private Interest Foundation on microfilm #26624, and is, by *claim of right* an international, free standing, non-profit organisation that exists for the good of mankind now an Express Trust under the Common Law of the Global Isles.

Declaration of Trust and Passport

Sundarsson Trust - Joseph Ray Sundarsson & Marie Jean Sundarsson

Greetings to those to whom these come as present;

"I, a decent individual declare that I am aware that my Being is grounded in Truth, and that I live, move and Become upon these Global Isles on the third planet from our lovely Sun. I hereby consciously claim my inherent right to exist, create and dispose of my creations without causing harm or loss to any other individual[9] or person and so do hereby proceed to unfold my life, liberties and happiness" - Joseph Ray Sundarsson, 3rd April 2010, living free on the Global Isles;

I, a decent being, a conscious, living *Man of the Land*, living free[10] upon these *Global Isles*[11], self sovereign[12], knower of *the law*[13], in order to provide for myself, my family, and our posterity, a lawful life, protect our inherent rights to exist, create and dispose of our creations in the pursuit of our life, our liberties and our happiness, to defend ourselves against those errant governments of the Republics[14] that do not follow the law and initiate force by fraud[15] and war upon the people, hereby create, ordain and establish the ***Sundarsson Trust*** also known as ***Joseph Ray Sundarsson*** when acting for myself, as an *Express Trust,* hereinafter "trust" under the *Common Law* - "*we shalt not cause harm or loss to another*";

I, a decent being, a conscious, living *Man of the Land*, living in matrimonial harmony under the *Common Law* with my wife, co-trustee of the Sundarsson Trust, who whilst living shall have the use and protection of this *trust* and do business using it as ***Marie Jean Sundarsson.*** Our children whilst living shall have the use and protection of this *trust* and shall use the names ***Michael Casey Raysson*** and ***Peter Nick Raysson*** with each living member of this trust free to use any name that is convenient including any prior statutory names absorbed into this trust, or given at birth, or nicknames used by friends in accordance with custom;

The trustees of this trust, in order to fulfil their parental duties and to protect the rights of their children who are beneficiaries of this trust reserve all rights to bring them up as we see

9 An individual is a self-sovereign *de jure* Man or Woman of the Land – free of any subject class citizenship created by any State yet free to use any such statutory creations as they see fit.
10 Living free on these *Global Isles* without having *registered* with any Government or State for the last few years.
11 The Global Isles are defined as wherever Man may live breathe and pursue his happiness – all the islands and continents of this earth, spacecraft, aircraft, ships, submarines, caves, mines &c.
12 See page 119 of this present Memorandum. "The very meaning of 'sovereignty' is that the decree of the sovereign makes law." American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.
The quality or state of being sovereign, or of being a sovereign; the exercise of, or right to exercise, supreme power; dominion; sway; supremacy; independence; also, that which is sovereign.
13 The natural and common law, *lex terrae,* which admits no statutes yet results in justice; the law elucidated in the scriptures of mankind, the common law of the English speaking people, the paths of wisdom, reason and philosophy, the laws of the physics, science and the universe.
14 A Republic is a form of government where the people are the sovereign's of the land. The errant governments of all Republics on the Global Isles have usurped the power and authority of the people and have enacted statutes beyond their legitimate, lawful, limited powers as detailed in this present memorandum.
15 Multi-tier circular fraud of legal tender with bank liabilities to pay legal tender created by fraudulent conversion, identity theft and human trafficking, &c., detailed in this memorandum.

fit – including but not limited to food, health care, education, religion and personal safety. We declare that our children were born at home, we paid the assisting midwife in gold, and chose not to use the insurance policy that was bought and paid for, as it was denominated in circular fraud money and provided dubious benefits with a potential loss of rights. Any decision made to accept the services of the local government of the time to provide a passport for travel was solely for our convenience. This trust reserves all rights to collect the original birth certificate, bonds, social security and any other statutory instruments created upon such birth certificate and declares *void ab initio* any powers claimed by the State over the children. The trust shall, at a time of its choosing, pursue charges against those State officials who have perpetrated these frauds against us;

I, a decent being, a conscious, living *Man of the Land*, do hereby declare that this trust shall not accept even a grain of salt that is not ours by right. This trust and its members shall not and will not accept any "benefit" programs, including but not limited to public schooling, health care, &c., and reserves the right to refuse such care or benefit especially when made mandatory upon the public in an area where we may be;

I, a decent being, a conscious, living *Man of the Land*, do hereby declare that this trust shall do business with national currencies, bank liabilities to pay national currencies, the credit system in vogue, the statutory bonding and warrant system of international administrative courts, &c., on an *as-is* basis;

I, a decent being, a conscious, living *Man of the Land*, do hereby recognize and accept that I and the trust shall live and act limited by the Common Law, and recognize the rights and powers of all other individuals to equal sovereignty over themselves and their properties. I recognize the principles, powers and way of life of the natural and common law as discovered and proclaimed in the Bible, the wisdom scriptures known as the Vedas, the writings of sages, the *Charter of Liberties* of Henry I of England [page 390], the *Magna Carta* of 15th June 1215 [page 110], the writings of Frederic Bastiat [page 30], the constitution of the united States of America circa 1776, the recent Declaration of the Free Republics of America and this present memorandum of law and declaration of trust. We recognize the rights of all individuals to self-sovereignty, to private property, to lawful money, to free speech, to self protection, to their children, to save their seeds, to grow and to produce goods with that which they own, to equal protection from the law, to privacy, to speedy justice and due process, to a common law court of record, to a trial by a jury of their peers, to freedom from fear, to freedom from fear of death by a death penalty, to freedom from violence, terrorism and war, to forgiveness and amnesty, to freedom in the choice of food, health care, education, to security in their papers and correspondence, to the use of cryptography, to acknowledge, plan for, and deal in probability and randomness of the universe, to create and dispose of their creations, to travel, to trade, to voluntary lawful contract, to reserve all rights without prejudice, &c., with this subject matter to be further elucidated upon in the Memorandum of Law on page 109;

I hereby settle this *trust* with lawful money in Gold, Silver and Platinum in my possession as detailed in a schedule maintained henceforth by this *trust*, which at the time of settling this trust is 3.5 ounces of Gold, 56 ounces of Silver and 0.20 ounces of Platinum, as well as computers, data, papers and other property, and with all statutory and lawful properties that are mine or my family's by right or held in trust for our benefit, held in whatsoever legal or

lawful name wherever in the world they may be;

I further settle this *trust* with all statutory titles, certificates, accounts and properties – including but not limited to – all birth certificate, "marriage license", bonds, bank accounts, passports, drivers licenses, identities and so forth - for all in my family – whether created by a State, corporations doing business as governments, or trusts – real or imagined, by fraudulent deception, or created by our own power. I further ordain and establish that this trust shall have the power to pursue and collect and take allodial ownership of such properties including real estate titles, bonds created by governments for the benefit of the living members of this trust, and all profit by generated on those bonds. I further ordain and establish that all statutory limitations and rights of third parties imposed by any contracting State such as imposed by the "marriage license", "birth certificate" and "passport" or "drivers license" upon any member of this trust are *void ab initio* and that this trust reserves *all rights without prejudice* in this matter to pursue and bring about justice and end the fraudulent deception and theft;

Whereas, we do not now, nor have we ever been, possessed of a desire to relinquish any of our inalienable Rights for the dubious benefits of limited liability or any other compelled, revocable, privileges of a subject-class citizenship of any state, I further ordain and establish that this trust shall have the power to rescind and declare *void ab initio* all past signatures obtained by fraud and coercion on statutory names of the beneficiaries of this trust by governments and other "institutions" for dubious benefits;

I further ordain and establish that this trust shall be our Passport to travel freely about the Global Isles and that all public servants of the *people of the land* of every Republic shall hereby take notice and all provide assistance necessary to re-establish the *rule of law* on these *Global Isles* in every Republic;

This trust provides public notice that Joseph Ray Sundarsson and his family shall travel[16] to Scotland, England, Europe, The Americas, Japan, India, China, Africa and around the world that is these *Global Isles* as did Gandhi, Vivekananda and Christ before him, to bring about a non-violent, peaceful remedy for those who are awake enough to receive it. For avoidance of doubt, we declare here that we do not seek publicity – we live a totally private, lawful life. We also claim our right to conduct private meetings without interference of any kind from any uninvited party;

I further ordain and establish that the trustees of this trust shall be empowered to carry instruments of self protection at all times to ensure the protection of the life and liberty[17] of the trustees and beneficiaries of this trust as well as to protect trust property. The use of such protection is only in accordance with the common law and custom;

I further ordain and establish that this trust shall have the power to serve as trustee on any trust, to protect the private property and rights of those who take refuge in it, to render justice, and shall have the power to settle and create Express Trusts;

I further ordain and establish and give notice that this trust and all sub trusts, corporations and such under it shall operate without recourse to trustee;

16 The right to travel freely unencumbered and unfettered is a basic right. See page 369. Any official who attempts to restrict the right to travel of the trustees will be prosecuted to the fullest extent of the law.

17 See "Your right to self defence against unlawful arrest" on page 371

I further ordain and establish that this trust shall use the English language as its principal language of contract with all other language contracts acceptable upon translation into English with the English being the definitive version of the contract. For avoidance of doubt, English and American spelling shall be acceptable, with the former preferred. We are well aware of the multi-tiered nature of the English language[18] and will not accept legal word games as a ploy to evade or avoid *the law*;

I further ordain and establish that this present trust shall settle, create, the following titles, positions, powers and trusts:

1. The *Global Isles Court of Record* as an *Express Trust* with Joseph Ray Sundarsson as trustee and with all positions including magistrate of the court, clerk of the court, special prosecutor, and attorney general *su juris* reserved by Joseph Ray Sundarsson until so delegated to competent individuals. This court is to serve as the court[19] of Joseph Ray Sundarsson to render fair justice under the natural common law for all individuals who seek such remedy from it, to have the power to arrest, fine and imprison those that violate the law or deny the rights, privileges and powers of man, the right to organize a jury of the *people of the land*, to have all rights and powers of a *court of record* [see page 122];

2. The *Global Settlement Foundation* as an *Express Trust* with Joseph Ray Sundarsson as trustee, with all positions and powers reserved by Joseph Ray Sundarsson until delegated, with the Global Settlement Foundation (Panama) appointed as statutory trustee, and the Global Settlement Corporation as statutory protector, to serve as a backup holding trust for the *lawful tender*[20] currencies established by Joseph Ray Sundarsson for the people of the Global Isles.

   For the avoidance of doubt, I further ordain that the statutory Global Settlement Foundation (Panama) and the Global Settlement Corporation (Panama) can take refuge in this Express Trust of the same name in the event that the government of the REPUBLIC OF PANAMA takes any steps, enacts or has enacted any statutes not in accordance with the Natural and Common Law to the detriment of its beneficiaries. This shall be determined by the *Global Isles Court of Record,* and that any reference to the statutory entity of Panama from this date onward shall include the word Panama in braces.

   The Global Settlement Foundation (Panama) and the Global Settlement Corporation (Panama) shall continue in its present form and continue to perform all its duties, functions and powers.

   If there is any attempt at statutory take over of the Global Settlement Foundation (Panama) or the Global Settlement Corporation, or any attempt to infringe upon the rights of the beneficiaries of the Global Settlement Foundation (Panama) by any means whatever, the Global Settlement Foundation as an Express Trust shall automatically take over the statutory entities and afford the beneficiaries the full protection of an

18 http://1215.org/lawnotes/lawnotes/language.htm
19 Court [see page 121 and 122 of this present document]:
20 Lawful Tender is deliverable in substance. See the Global Standard. See page

Express Trust under the Common Law with all rights and privileges so reserved without prejudice.

3. The *Global Isles Authority* as an *Express Trust* with Joseph Ray Sundarsson as trustee, with all positions and powers reserved by Joseph Ray Sundarsson until delegated, in order to create and maintain an office of public record for the people of the Global Isles, to provide an international, lawful venue of record for corporation, companies and trusts to re-domicile to with all contracts and resolutions intact, and to create and issue passports for those that wish to live under the common law upon these Global Isles, who, by carrying such passports shall give notice of their self-sovereign status, who shall be trustee of their respective trusts and that they thereby reserve all their rights, powers and privileges without prejudice.

I ordain and adopt the Global Standard that defines one Gold Global as 0.1 gram of fine gold deliverable as 0.999 fine or better one kilo bars marked 10,000.00 Globals and one Silver Isle as 0.1 gram of fine Silver deliverable as 0.999 file or better one kilo bar marked 10,000.00 Isles.

Joseph Ray Sundarsson hereby ordains and settles each of the above named express trusts with 100 Gold Globals and 100 Silver Isles each that they may be settled with real, lawful money, that they shall thus be *real* express trusts in accordance with the common law and custom.

I ordain that OpenPGP[21] keys shall be used to generate the mark, seal and signature of each of the above trusts and that OpenPGP signatures can serve as the equivalent of a wet signature and seal for any living individual;

The trusts shall use the following PGP keys as signature and seals:

1. The Signature and Seal of Joseph Ray Sundarsson “Ray”

   PGP Key ID: 0916F098

   Fingerprint: FAD5 B080 9F1B 57A8 0A9B 8C9B 721F E142 0916 F098

2. The Signature and Seal of Marie Jean Sundarsson “Jay”
   PGP Key ID: FC7BA23F

   Fingerprint: F0D2 C353 2FF5 2F2B B3BA 3776 C07C 90DD FC7B A23F

3. The Seal of the Sundarsson Trust
   PGP Key ID: 041828E9

   Fingerprint: 1525 5875 C1A0 4FFC 6FEC EE23 831A A109 0418 28E9

4. The Seal of the Global Isles Court of Record
   PGP Key ID: 7EFFE52F

   Fingerprint: D0D9 0ACD 05E2 B33B 787D 455C FF55 7EF1 7EFF E52F

5. The Seal of the Global Settlement Foundation Express Trust shall be identical with the seal established for the Global Settlement Foundation (Panama), viz.:
   PGP Key ID: F69CF5CF

   Fingerprint: B5DF E548 8B5D EF73 40B7 DD73 48D5 62BD F69C F5CF

21 OpenPGP is a standard for cryptographic signatures. See http://tools.ietf.org/html/rfc4880

6. The Seal of the Global Isles Authority
   PGP Key ID: CBA33075

   Fingerprint: 6588 1527 C7CA D42E 5C7B 6732 577F 78D7 CBA3 3075

I ordain that the following SSL Certificate, established by this trust, shall be used to sign, secure and seal the web pages and documents published by this trust, and this certificate has:

SHA1 Fingerprint=7C:4D:C8:26:CE:7F:E7:D7:C3:E3:D2:69:7F:F8:97:A7:74:E8:44:CE

I ordain that this trust shall establish physical seals, shields and flags for each trust outlined in this declaration of trust and published in due course;

I ordain that the following individuals are appointed advisers to this trust, viz.,:

MSS identified by PGP key ID: 38D14C2F

Fingerprint: 1664 596B 9EC0 BE52 E513 24E6 08B9 F0F3 38D1 4C2F

PTGH identified by PGP key ID: 4872FC0D

Fingerprint: 79BE CDBC D524 05BB 1EFF 4478 038F 7665 4872 FC0D

WPW identified by PGP key ID: B205E997

Fingerprint: F752 9181 2B4E 8767 477D DD3E E28D F2B9 B205 E997

UVS identified by PGP key ID: 525323F9

Fingerprint: B628 9B25 EDDB C3C5 0A33 D0B8 6473 3536 5253 23F9

DM identified by PGP key ID: 155A6622

Fingerprint: 17B1 232A 0707 A395 E975 4E82 9E34 C988 155A 6622

I ordain that in the absence or death of both Joseph Ray Sundarsson and Marie Jean Sundarsson, any two advisers identified above, acting together, shall have the power of attorney to maintain the affairs of this trust and the trusts created herein and any other trusts or statutory entities of ours in good standing and to protect the beneficiaries of such trusts as needed;

I ordain that upon attaining the age of sixteen our children shall have the power of being advisers to the trust and upon attaining the age of eighteen be a trustee of the Sundarsson Trust;

I ordain that the beneficiaries of this trust and its advisers or attorneys while acting for the trust shall enjoy diplomatic immunities in accordance with international custom;

I ordain that for the purposes of document authentication of this document, the original PDF[22] with detached PGP signatures published on the Sundarsson Trust website www.sundarsson.com shall be authoritative as if signed in wet ink and sealed with printed copies of such PDF being equivalent to wet signature, sealed originals;

I ordain that for the purposes of contract, PDF contracts sealed by PGP digital signatures shall provide the equivalent of wet signatures and seals, with printed copies of such PDF being

22 Portable Document Format. http://en.wikipedia.org/wiki/Portable_Document_Format

equivalent to wet signature, sealed originals;

I ordain that all electronic documents downloaded from these page secured by the SSL certificate of this trust are equivalent to certified copies of the original;

I ordain that for the purposes of notarized signatures, signing "True copy – I have verified the PGP digital signature and seal of the attached document" by three (3) competent adults shall serve as the equivalent of a notary public's verification of the said document;

I ordain that for the purposes of notarized signatures, signing "True copy – I have verified the PGP digital signature and seal of the attached document" by one (1) competent adult in the presence of a notary public shall serve as the equivalent of a notary public's verification of the said document;

I ordain that the above trusts and trustees shall have full power to use cryptographic techniques without limitation to maintain privacy and secrecy of all trust business, unlawful acts of any governments to the contrary notwithstanding;

I ordain that the above trusts and trustees shall have full power to render null and void any unlawful acts of any governments that violate the common law upon the affairs of these trusts;

I ordain and establish that this trust reserves all rights, powers and privileges without prejudice.

May you, to whom these have come as present, live in peace and in harmony with *the law*. Farewell.

Joseph Ray Sundarsson

Signed and Sealed by Joseph Ray Sundarsson using his PGP Key
Settlor & Trustee
15th April 2010
Living as a Freeman upon these Global Isles

Bond de Jure

-----BEGIN PGP SIGNED MESSAGE-----
Hash: SHA1

Bond de Jure

I, a decent being, a conscious, living Man of the Land, having established the Name, Joseph Ray Sundarsson for myself as an Express Trust by operation of the law, do hereby establish this public Bond de Jure as Public Indemnification towards all, that I, Joseph Ray Sundarsson and the Sundarsson Trust shall follow the Natural and Common Law - "We shall not cause harm or loss to another" towards all, per the signed and sealed Sundarsson Trust as amended.

My word shall be my bond, and one troy ounce of fine gold as one Krugerrand can be provided Joseph Ray Sundarsson at all times in the event that performance or surety on this bond is required.

An image and PDF of this bond, this text certified by the PGP seal of Joseph Ray Sundarsson, and secured by the duly adopted SSL certificate is placed on the website of the Sundarsson Trust at www.sundarsson.com

A photocopy, scan or printout of this bond shall be sufficient evidence of indemnification.

Signed and sealed by Joseph Ray Sundarsson on 14th April 2010
using the duly adopted and empowered PGP Key

Joseph Ray Sundarsson
FAD5 B080 9F1B 57A8 0A9B 8C9B 721F E142 0916 F098

-----BEGIN PGP SIGNATURE-----
Version: GnuPG v1.4.10 (GNU/Linux)

iQIcBAEBAgAGBQJLx2Y0AAoJEHIf4UIJFvCYa8QP/0I3IG8bY5+5AzslGLSCLsrO
2vJ66I9phlf6ZvfQ70TP2NQNLApT1/NmI/FKNMO+TBq0C/B87eOzM7c2m1yzITBx
la9FayOtKMoSJeR8+HzKXppTeKHQh5bJ23WlibuDP9SrNjmPMxI8vQGY9rsGh2c6
TdaKOHE1HVQHkHSgZJyzXGfEc/QBuSbXKqza/QphIPV9E94mrU6JcacfKTSm303M
MI21F9gkvSg0qmj6dTVBGV9+b99bgMBPfBdFLSBb+eMBVFcskqLdJMVM329Wkbzv
xR78sFKhrMfFVUdb72MHZ3r+rdKqYeGTCm5DgbVOW+LPWsKFr2pTc9boJovKi7c8
Mc3kanjZjGFo5N1wXrmrRyo0Dp/ejI3VxvA8IgFzKEgroDG8ZSzfSTMVfWuazfqm
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sCtW+jYLcKrYWUP9hQq31xyN4cEL1I2HhraQ0qwL9hfjZiC4KFqh5u1ySKsFAzFm
qX93qbJdAVOBQ/LrCGTHs9bdRdLn8EEMC97xr7EZEf6t6OAVNVa9fvArkY9lN3C6
Wg8Iez9SEj5/rF+QNPTDyPTGxT7hsqVLn8MfAe+y/u+fn6DyGHp4AASbnUCcC1HO
C9J1PcIpoTYa6c0zWWRt
=Z1HZ
-----END PGP SIGNATURE-----

Signed and PGP Sealed

Joseph Ray Sundarsson

Joseph Ray Sundarsson
Sundarsson Trust

Introduction

Today with a few generations of mandatory government schooling where all are taught the wonders of science and technology, civics, history, geography and so on, ask a grown adult to explain how and where the money in his bank account comes into creation, and you will get a blank stare, incomprehension as to why this may even be a question worthy of consideration, and even outright hostility.

The success of modern schooling[23] to deny the grown adult any comprehension of what is the very yardstick of value itself is a remarkable achievement never before paralleled in the history of man.

If an adult with a Ph.D. cannot explain what the difference between a bank liability and a legal tender currency note is, what is the hope for a common man? What about the fraud of illicit corporations posing as legitimate government looting the "citizens" with the aid of fraudulent courts?

Before we begin, we shall review the classics on this matter by Fredrick Bastiat – a man whose writings could have, *if they had been heeded*, saved Europe and the world from the devastations of World War II, the Gulag in the former USSR, and the horrors of Hiroshima and Nagasaki amongst other things.

We believe that the tragedy is that World War II itself was a war of distraction to hide the gigantic fraud of the top crime against humanity – the theft of the people's gold by fraud followed by war.

The tragedy of common people, called by their so-called leaders to rush and slay each other in apparent defence of some concocted "*ism*", while the wealth of the people is stolen by fraud, and the soldiers are paid in money-out-of-thin-air written on the backs of the people is a staggering conception which leaves thinking decent beings aghast.

23 For an explanation see: http://www.johntaylorgatto.com/underground/toc1.htm

Review of Classics

1850

That Which is Seen, and that Which is Not Seen

by Frederick Bastiat

In the department of economy, an act, a habit, an institution, a law, gives birth not only to an effect, but to a series of effects. Of these effects, the first only is immediate; it manifests itself simultaneously with its cause -it is seen. The others unfold in succession -they are not seen: it is well for us, if they are foreseen. Between a good and a bad economist this constitutes the whole difference -the one takes account of the visible effect; the other takes account both of the effects which are seen, and also of those which it is necessary to foresee. Now this difference is enormous, for it almost always happens that when the immediate consequence is favourable, the ultimate consequences are fatal, and the converse. Hence it follows that the bad economist pursues a small present good, which will be followed by a great evil to come, while the true economist pursues a great good to come, -at the risk of a small present evil.

In fact, it is the same in the science of health, arts, and in that of morals. It often happens, that the sweeter the first fruit of a habit is, the more bitter are the consequences. Take, for example, debauchery, idleness, prodigality. When, therefore, a man absorbed in the effect which is seen has not yet learned to discern those which are not seen, he gives way to fatal habits, not only by inclination, but by calculation.

This explains the fatally grievous condition of mankind. Ignorance surrounds its cradle: then its actions are determined by their first consequences, the only ones which, in its first stage, it can see. It is only in the long run that it learns to take account of the others. It has to learn this lesson from two very different masters-experience and foresight. Experience teaches effectually, but brutally. It makes us acquainted with all the effects of an action, by causing us to feel them; and we cannot fail to finish by knowing that fire burns, if we have burned ourselves. For this rough teacher, I should like, if possible, to substitute a more gentle one. I mean Foresight. For this purpose I shall examine the consequences of certain economical phenomena, by placing in opposition to each other those which are seen, and those which are not seen.

I. The Broken Window

Have you ever witnessed the anger of the good shopkeeper, James B., when his careless son happened to break a square of glass? If you have been present at such a scene, you will most assuredly bear witness to the fact, that every one of the spectators, were there even thirty of them, by common consent apparently, offered the unfortunate owner this invariable consolation -"It is an ill wind that blows nobody good. Everybody must live, and what would

become of the glaziers if panes of glass were never broken?"

Now, this form of condolence contains an entire theory, which it will be well to show up in this simple case, seeing that it is precisely the same as that which, unhappily, regulates the greater part of our economical institutions.

Suppose it cost six francs to repair the damage, and you say that the accident brings six francs to the glazier's trade -that it encourages that trade to the amount of six francs -I grant it; I have not a word to say against it; you reason justly. The -lazier comes, performs his task, receives his six francs, rubs Ms hands, and, in his heart, blesses the careless child. All this is that which is seen.

But if, on the other hand, you come to the conclusion, as is too often the case, that it is a good thing to break windows, that it causes money to circulate, and that the encouragement of industry in general will be the result of it, you will oblige me to call out, "Stop there! your theory is confined to that which is seen; it takes no account of that which is not seen."

It is not seen that as our shopkeeper has spent six francs upon one thing, he cannot spend them upon another. It is not seen that if he had not had a window to replace, he would, perhaps, have replaced his old shoes, or added another book to his library. In short, he would have employed his six francs in some way, which this accident has prevented.

Let us take a view of industry in general, as affected by this circumstance. The window being broken, the glazier's trade is encouraged to the amount of six francs; this is that which is seen. If the window had not been broken, the shoemaker's trade (or some other) would have been encouraged to the amount of six francs; this is that which is not seen.

And if that which is -not seen is taken into consideration, because it is a negative fact, as well as that which is seen, because it is a positive fact, it will be understood that neither industry in general, nor the sum total of national labour, is affected, whether windows are broken or not.

Now let us consider James B. himself. In the former supposition, that of the window being broken, he spends six francs, and has neither more nor less than he had before, the enjoyment of a window.

In the second, where we suppose the window not to have been broken, he would have spent six francs on shoes, and would have had at the same time the enjoyment of a pair of shoes and of a window.

Now, as James B. forms a part of society, we must come to the conclusion, that, taking it altogether, and making an estimate of its enjoyments and its labours, it has lost the value of the broken window.

When we arrive at this unexpected conclusion: "Society loses the value of things which are uselessly destroyed;" and we must assent to a maxim which will make the hair of protectionists stand on end -To break, to spoil, to waste, is not to encourage national labour; nor, more briefly, "destruction is not profit."

What will you say, Monsieur Industriel —what will you say, disciples of good M. F. Chamans, who has calculated with so much precision how much trade would gain by the burning of Paris, from the number of houses it would be necessary to rebuild?

I am sorry to disturb these ingenious calculations, as far as their spirit has been introduced into our legislation; but I beg him to begin them again, by taking into the account that which is not seen, and placing it alongside of that which is seen. The reader must take care to remember that there are not two persons only, but three concerned in the little scene which I have submitted to his attention. One of them, James B., represents the consumer, reduced, by an act of destruction, to one enjoyment instead of two. Another under the title of the glazier, shows us the producer, whose trade is encouraged by the accident. The third is the shoemaker (or some other tradesman), whose labour suffers proportionably[24] by the same cause. It is this third person who is always kept in the shade, and who, impersonating that which is not seen, is a necessary element of the problem. It is he who shows us how absurd it is to think we see a profit in an act of destruction. It is he who will soon teach us that it is not less absurd to see a profit in a restriction, which is, after all, nothing else than a partial destruction. Therefore, if you will only go to the root of all the arguments which are adduced in its favour, all you will find will be the paraphrase of this vulgar saying -What would become of the glaziers, if nobody ever broke windows?

II. The Disbanding of Troops.

It is the same with a people as it is with a man. If it wishes to give itself some gratification, it naturally considers whether it is worth what it costs. To a nation, security is the greatest of advantages. If, in order to obtain it, it is necessary to have an -army of a hundred thousand men, I have nothing to say against it. It is an enjoyment bought by a sacrifice. Let me not be misunderstood upon the extent of my position. A member of the assembly proposes to disband a hundred thousand men, for the sake of relieving the tax-payers of a hundred millions.

If we confine ourselves to this answer -“The hundred millions of men, and these hundred millions of money, are indispensable to the national security: it is a sacrifice; but without this sacrifice, France would be torn by factions, or invaded by some foreign power,” -I have nothing to object to this argument, which may be true or false in fact, but which theoretically contains nothing which militates against economy. The error begins when the sacrifice itself is said to be an advantage because it profits somebody.

Now I am very much mistaken if, the moment the author of the proposal has taken his seat, some orator will not rise and say -“Disband a hundred thousand men! do you know what you are saying? What will become of them? Where will they get a living? Don't you know that work is scarce everywhere? That every field is overstocked? Would you turn them out of doors to increase competition, and weigh upon the rate of wages? Just now, when it is a hard matter to live at all, it would be a pretty thing if the State must find bread for a hundred thousand individuals? Consider, besides, that the army consumes wine, clothing, arms -that it promotes the activity of manufactures in garrison towns that it is, in short, the god-send of innumerable purveyors. Why, any one must tremble at the bare idea of doing away with this immense industrial movement.”

This discourse, it is evident, concludes by voting the maintenance of a hundred thousand

24 Proportionably Pro*por"tion*a*bly, adv.
Proportionally. --Locke.
[1913 Webster]

soldiers, for reasons drawn from the necessity of the service, and from economical considerations. It is these considerations only that I have to refute.

A hundred thousand men, costing the tax-payers a hundred millions of money, live and bring to the purveyors as much as a hundred millions can supply. This is that which is seen.

But, a hundred millions taken from the pockets of the tax-payers, cease to maintain these taxpayers and the purveyors, as far as a hundred minions reach. This is that which is not seen. Now make your calculations. Cast up, and tell me what profit there is for the masses?

I will tell you where the loss lies; and to simplify it, instead of speaking of a hundred thousand men and a million of money, it shall be of one man, and a thousand francs.

We will suppose that we are in the village of A. The recruiting sergeants go their round, and take off a man. The tax-gatherers go their round, and take off a thousand francs. The man and the sum of money are taken to Metz, and the latter is destined to support the former for a year without doing anything. If you consider Metz only, you are quite right; the measure is a very advantageous one: but if you look towards the village of A., you will judge very differently; for, unless you are very blind indeed, you will see that that village has lost a worker, and the thousand francs which would remunerate his labour, as well as the activity which, by the expenditure of those thousand francs, it would spread around it.

At first sight, there would seem to be some compensation. What took place at the village, now takes place at Metz, that is all. But the loss is to be estimated in this way: -At the village, a man dug and worked; he was a worker. At Metz, he turns to the right about, and to the left about; he is a soldier. The money and the circulation are the same in both cases; but in the one there were three hundred days of productive labour; in the other, there are three hundred days of unproductive labour, supposing, of course, that a part of the army is not indispensable to the public safety.

Now, suppose the disbanding to take place. You tell me there will be a surplus of a hundred thousand workers, that competition will be stimulated, and it will reduce the rate of wages. This is what you see.

But what you do not see is this. You do not see that to dismiss a hundred thousand soldiers is not to do away with a million of money, but to return it to the tax-payers. You do not see that to throw a hundred thousand workers on the market, is to throw into it, at the same moment, the hundred millions of money needed to pay for their labour; that, consequently, the same act which increases the supply of hands, increases also the demand; from which it follows, that your fear of a reduction of wages is unfounded. You do not see that, before the disbanding as well as after it, there are in the country a hundred millions of money corresponding with the hundred thousand men. That the whole difference consists in this: before the disbanding, the country gave the hundred millions to the hundred thousand men for doing nothing; and that after it, it pays them the same sum for working. You do not see, in short, that when a tax-payer gives his money either to a soldier in exchange for nothing, or to a worker in exchange for something, all the ultimate consequences of the circulation of this money are the same in the two cases; only, in the second case, the tax-payer receives something, in the former he receives nothing. The result is -a dead loss to the nation.

The sophism which I am here combating will not stand the test of progression, which is the touchstone of principles. If, when every compensation is made, and all interests are-satisfied, there is a national profit in increasing the army, why not enrol under its banners the entire male population of the country?

III Taxes

Have you ever chanced to hear it said “There is no better investment than taxes. Only see what a number of families it maintains, and consider how it reacts on industry; it is an inexhaustible stream, it is life itself.”

In order-to combat this doctrine, I must refer to my preceding refutation. Political economy knew well enough that its arguments were not so amusing that it could be said of them, repetitions please. It has, therefore, turned the proverb to its own use, well convinced that, in its mouth. repetitions teach.

The advantages which officials advocate are those which are seen. The benefit which accrues to the providers is still that which is seen. This blinds all eyes.

But the disadvantages which the tax-payers have to get rid of are those which are not seen. And the injury which results from it to the providers, is still that which is not seen, although this ought to be self-evident.

When an official spends for his own profit an extra hundred sous, it implies that a tax-payer spends for his profit a hundred sous less. But the expense of the official is seen, because the act is performed, while that of the tax-payer is not seen, because, alas! he is prevented from performing it.

You compare the nation, perhaps, to a parched tract of land, and the tax to a fertilizing rain. Be it so. But you ought also to ask yourself where are the sources of this rain and whether it is not the tax itself which draws away the moisture from the ground and dries it up?

Again, you ought to ask yourself whether it is possible that the soil can receive as much of this precious water by rain as it loses by evaporation?

There is one thing very certain, that when James B. counts out a hundred sous for the tax-gatherer, he receives nothing in return. Afterwards, when an official spends these hundred sous and returns them to James B., it is for an equal value of corn or labour. The final result is a loss to James B. of five francs.

It is very true that often, perhaps very often, the official performs for James B. an equivalent service. In this case there is no loss on either side; there is merely in exchange. Therefore, my arguments do not at all apply to useful functionaries. All I say is, -if you wish to create an office, prove its utility. Show that its value to James B., by the services which it performs for him, is equal to what it costs him. But, apart from this intrinsic utility, do not bring forward as an argument the benefit which it confers upon the official, his family, and his providers; do not assert that it encourages labour.

When James B. gives a hundred pence to a Government officer, for a really useful service, it is exactly the same as when he gives a hundred sous to a shoemaker for a pair of shoes.

But when James B. gives a hundred sous to a Government officer, and receives nothing for them unless it be annoyances, he might as well give them to a thief. It is nonsense to say that the Government officer will spend these hundred sous to the great profit of national labour; the thief would do the same; and so would James B., if he had not been stopped on the road by the extra -legal parasite, nor by the lawful sponger.

Let us accustom ourselves, then, to avoid judging of things by what is seen only, but to judge of them by that which is not seen.

Last year I was on the Committee of Finance, for under the constituency the members of the opposition were not systematically excluded from all the Commissions: in that the constituency acted wisely. We have heard M. Thiers say -"I have passed my life in opposing the legitimist party, and the priest party. Since the common danger has brought us together, now that I associate with them and know them, and now that we speak face to face, I have found out that they are not the monsters I used to imagine them."

Yes, distrust is exaggerated, hatred is fostered among parties who never mix; and if the majority would allow the minority to be present at the Commissions, it would perhaps be discovered that the ideas of the different sides are not so far removed from each other, and, above all, that their intentions are not so perverse as is supposed. However, last year I was on the Committee -of Finance. Every time that one of our colleagues spoke of fixing at a moderate figure the maintenance of the President of the Republic, that of the ministers, and of the ambassadors, it was answered-

"For the good of the service, it is necessary to surround certain offices with splendour and dignity, as a means of attracting men of merit to them. A vast number of unfortunate persons apply to the President of the Republic, and it would be placing him in a very painful position to oblige him to be constantly refusing them. A certain style in the ministerial saloons is a part of the machinery of constitutional Governments."

Although such arguments may be controverted, they certainly deserve a serious examination. They are based upon the public interest, whether rightly estimated or not; and as far as I am concerned, I have much more respect for them than many of our Catos have, who are actuated by a narrow spirit of parsimony or of jealousy.

But what revolts the economical part of my conscience, and makes me blush for the intellectual resources of my country, is when this absurd relic of feudalism is brought forward, which it constantly is, and it is favourably received too:-

"Besides, the luxury of great Government officers encourages the arts, industry, and labour. The head of the State and his ministers cannot give banquets and soirées without causing life to circulate through all the veins of the social body. To reduce their means, would starve Parisian industry, and consequently that of the whole nation."

I must beg you, gentlemen, to pay some little regard to arithmetic, at least; and not to say before the National Assembly in France, lest to its shame it should agree with you, that an addition gives a different sum, according to whether it is added up from the bottom to the top, or from the top to the bottom of the column.

For instance, I want to agree with a drainer to make a trench in my field for a hundred sous.

Just as we have concluded our arrangement, the tax-gatherer comes, takes my hundred sous, and sends them to the Minister of the Interior; my bargain is at end, but the Minister will have another dish added to his table. Upon what ground will you dare to affirm that this official expense helps the national industry? Do you not see, that in this there is only a reversing of satisfaction and labour? A Minister has his table better covered, it is true, but it is just as true that an agriculturist has his field worse drained. A Parisian tavern-keeper has gained a hundred sous,I grant you; but then you must grant me that a drainer has been prevented from gaining five francs. It all comes to this, -that the official and the tavern-keeper being satisfied, is that which is seen; the field undrained, and the drainer deprived of his job, is that which is not seen. Dear me! how much trouble there is in proving that two and two make four; and if you succeed in proving it, it is said, “the thing is so plain it is quite tiresome,” and they vote as if you had proved nothing at all.

IV. Theatres and Fine Arts

Ought the State to support the arts?

There is certainly much to be said on both sides of this question. It may be said, in favour of the system of voting supplies for this purpose, that the arts enlarge, elevate, and harmonize the soul of a nation; that they divert it from too great an absorption in material occupations, encourage in it a love for the beautiful, and thus act favourably on its manners, customs, morals, and even on its -industry. It may be asked, what would become of music in France without her Italian theatre and her Conservatory; of the dramatic art. without her Theatre-Francais; of painting and sculpture, without our collections, galleries, and museums? It might even be asked, whether, without centralization, and consequently the support of fine arts, that exquisite taste would be developed which is the noble appendage of French labour, and which introduces its productions to the whole world? In the face of such results, would it not be the height of imprudence to renounce this moderate contribution from all her citizens, which, in fact, in the eyes of Europe, realizes their superiority and their glory?

To these and many other reasons, whose force I do not dispute, arguments no less forcible may be opposed. It might, first of all, be said, that there is a question of distributive justice in it. Does the right of the legislator extend to abridging the wages of the artisan, for the sake of adding to the profits of the artist? M. Lamartine said, “If you cease to support the theatre, where will you stop? Will you not necessarily be led to withdraw your support from your colleges, your museums, your institutes, and your libraries?” It might be answered, if you desire to support everything which is good and useful, where will you stop? Will you not necessarily be led to form a civil list for agriculture, industry, commerce, benevolence, education? Then, is it certain that government aid favours the progress of art?

This question is far from being settled, and we see very well that the theatres which prosper are those which depend upon their own resources. Moreover, if we come to higher considerations, we may observe, that wants and desires arise, the one from the other, and originate in regions which are more and more refined in proportion as the public wealth allows of their being satisfied; that Government ought not to take part in this correspondence, because in a certain condition of present fortune it could not by taxation stimulate the arts of

necessity, without checking those of luxury, and thus interrupting the natural course of civilization. I may observe, that these artificial transpositions of wants, tastes, labour, and population, place the people in a precarious and dangerous position, without any solid basis.

These are some of the reasons alleged by the adversaries of State intervention in what concerns the order in which citizens think their wants and desires should be satisfied, and to which, consequently, their activity should be directed. I am, I confess, one of those who think that choice and impulse ought to come from below and not from above, from the citizen and not from the legislator; and the opposite doctrine appears to me to tend to the destruction of liberty and of human dignity.

But, by a deduction as false as it is unjust, do you know what economists are accused of? It is, that when we disapprove of Government support, we are supposed to disapprove of the thing itself whose support is discussed; and to be the enemies of every kind of activity, because we desire to see those activities, on the one hand free, and on the other seeking their own reward in themselves. Thus, if we think that the State should not interfere by taxation in religious affairs, we are atheists. If we think the State ought not to interfere by taxation in education, we are hostile to knowledge. If we say that the State ought not by taxation to give a fictitious value to land, or to any particular branch of industry, we are enemies to property and labour. If we think that the State ought not to support artists, we are barbarians who look upon the arts as useless.

Against such conclusions as these I protest with all my strength. Far from entertaining the absurd idea of doing away with religion, education, property, labour, and the arts, when we say that the State ought to protect the free development of all these kinds of human activity, without helping some of them at the expense of others, -we think, on the contrary, that all these living powers of society would develop themselves more harmoniously under the influence of liberty; and that, under such an influence no one of them would, as is now the case, be a source of trouble, of abuses, of tyranny, and disorder.

Our adversaries consider, that an activity which is neither aided by supplies, nor regulated by Government, is an activity destroyed. We think just the contrary. Their faith is in the legislator, not in mankind; ours is in mankind, not in the legislator.

Thus M. Lamartine said, “Upon this principle we must abolish the public exhibitions, which are the honour and the wealth of this country.” But I would say to M. Lamartine, -According to your way of thinking, not to support is to abolish; because, setting out upon the maxim that nothing exists independently of the will of the State, you conclude that nothing lives but what the State causes to live. But I oppose to this assertion the very example which you have chosen, and beg you to remark, that the grandest and noblest of exhibitions, one which has been conceived in the most liberal and universal spirit -and I might even make use of the term humanitary, for it is no exaggeration -is the exhibition now preparing in London; the only one in which no Government is taking any part, and which is being paid for by no tax.

To return to the fine arts: -there are, I repeat, many strong reasons to be brought, both for and against the system of Government assistance. The reader must see, that the especial object of this work leads me neither to explain these reasons, nor to decide in their favour, nor against them.

But M. Lamartine has advanced one argument which I cannot pass by in silence, for it is closely connected with this economic study. “The economical question, as regards theatres, is comprised in one word -labour. It matters little what is the nature of this labour; it is as fertile, as productive a labour as any other kind of labour in the nation. The theatres in France, you know, feed and salary no less than 80,000 workmen of different kinds; painters, masons, decorators, costumers, architects, &c., which constitute the very life and movement of several parts of this capital, and on this account they ought to have your sympathies.” Your sympathies! say, rather, your money.

And further on he says: “The pleasures of Paris are the labour and the consumption of the provinces, and the luxuries of the rich are the wages and bread of 200,000 workmen of every description, who live by the manifold industry of the theatres on the surface of the republic, and who receive from these noble pleasures, which render France illustrious, the sustenance of their lives and the necessaries of their families and children. It is to them that you will give 60,000 francs.” (Very well; very well. Great applause.) For my part I am constrained to say, “Very bad! Very bad!” Confining his opinion, of course, within the bounds of the economical question which we are discussing.

Yes, it is to the workmen of the theatres that a part, at least, of these 60,000 francs will go; a few bribes, perhaps, may be abstracted on the way. Perhaps, if we were to look a little more closely into the matter, we might find that the cake had gone another way, and that these workmen were fortunate who had come in for a few crumbs. But I will allow, for the sake of argument, that the entire sum does go to the painters, decorators, &e.

This is that which is seen. But whence does it come? This is the other side of the question, and quite as important as the former. Where do these 60, francs spring from? and where would they go if a vote of the Legislature did not direct them first towards the Rue Rivoli and thence towards the Rue Grenelle? This is what is not seen. Certainly, nobody will think of maintaining that the legislative vote has caused this sum to be hatched in a ballot urn; that it is a pure addition made to the national wealth; that but for this miraculous vote these 60,000 francs would have been for ever invisible and impalpable. It must be admitted that all that the majority can do, is to decide that they shall be taken from one place to be sent to another; and if they take one direction, it is only because they have been diverted from another.

This being the case, it is clear that the taxpayer, who has contributed one franc, will no longer have this franc at his own disposal. It is clear that he will be deprived of some gratification to the amount of one franc; and that the workman, whoever he may be, who would have received it from him, will be deprived of a benefit to that amount. Let us not, therefore, be led by a childish illusion into believing that the vote of the 60,000 francs may add any thing whatever to the well-being of the country, and to the national labour. It displaces enjoyments, it transposes wages -that is all.

Will it be said that for one kind of gratification, and one kind of labour, it substitutes more urgent, more moral, more reasonable gratifications and labour? I might dispute this; I might say, by taking 60,000 francs from the tax-payers, you diminish tile wages of labourers, drainers, carpenters, blacksmiths, and increase in proportion those of the singers.

There is nothing to prove that this latter class calls for more sympathy than the former. M.

Lamartine does not say that it is so. He himself says, that the labour of the theatres is as fertile, as productive as any other (not more so); and this may be doubted; for the best proof that the latter is not so fertile as the former lies in this, that the other is to be called upon to assist it.

But this comparison between the value and the intrinsic merit of different kinds of labour, forms no part of my present subject. All I have to do here is to show, that if M. Lamartine and those persons who commend his line of argument have seen on one side the salaries gained by the providers of the comedians, they ought on the other to have seen the salaries lost by the providers of the taxpayers; for want of this, they have exposed themselves to ridicule by mistaking a displacement for a gain. If they were true to their doctrine, there would be no limits to their demands for Government aid; for that which is true of one franc and of 60,000 is true, under parallel circumstances, of a hundred millions of francs.

When taxes are the subject of discussion, Gentlemen, you ought to prove their utility by reasons from the root of the matter, but not by this unlucky assertion -"The public expenses support the working classes." This assertion disguises the important fact, that public expenses always supersede private expenses, and that therefore we bring a livelihood to one workman instead of another, but add nothing to the share of the working class as a whole. Your arguments are fashionable enough, but they are too absurd to be justified by anything like reason.

V. Public Works

Nothing is more natural than that a nation, after having assured itself that an enterprise will benefit the community, should have it executed by means of a general assessment. But I lose patience, I confess, when I hear this economic blunder advanced in support of such a project. "Besides, it will be a means of creating labour for the workmen."

The State opens a road, builds a palace, straightens a street, cuts a canal; and so gives work to certain workmen -this is what is seen: but it deprives certain other workmen of work, and this is what is not seen.

The road is begun. A thousand workmen come every morning, leave every evening, and take their wages -this is certain. If the road had not been decreed, if the supplies had not been voted, these good people would have had neither work nor salary there; this also is certain.

But is this all? does not the operation, as a whole, contain something else? At the moment when M. Dupin pronounces the emphatic words, "The Assembly has adopted," do the millions descend miraculously on a moon-beam into the coffers of MM. Fould and Bineau? In order that the evolution may be complete, as it is said, must not the State organise the receipts as well as the expenditure? must it not set its tax-gatherers and tax-payers to work, the former to gather, and the latter to pay? Study the question, now, in both its elements. While you state the destination given by the State to the millions voted, do not neglect to state also the destination which the taxpayer would have given, but cannot now give, to the same. Then you will understand that a public enterprise is a coin with two sides. Upon one is engraved a labourer at work, with this device, that which is seen; on the other is a labourer out of work, with the device, that which is not seen.

The sophism which this work is intended to refute, is the more dangerous when applied to public works, inasmuch as it serves to justify the most wanton enterprises and extravagance. When a rail-road or a bridge are of real utility, it is sufficient to mention this utility. But if it does not exist, what do they do? Recourse is had to this mystification: “We must find work for the workmen.”

Accordingly, orders are given that the drains in the Champ-de-Mars be made and unmade. The great Napoleon, it is said, thought he was doing a very philanthropic work by causing ditches to be made and then filled up. He said, therefore, “What signifies the result? All we want is to see wealth spread among the labouring classes.”

But let us go to the root of the matter. We are deceived by money. To demand the cooperation of all the citizens in a common work, in the form of money, is in reality to demand a concurrence in kind; for every one procures, by his own labour, the sum to which he is taxed. Now, if all the citizens were to be called together, and made to execute, in conjunction, a work useful to all, this would be easily understood; their reward would be found in the results of the work itself.

But after having called them together, if you force them to make roads which no one will pass through, palaces which no one will inhabit, and this under the pretext of finding them work, it would be absurd, and they would have a right to argue, “With this labour we have nothing to do; we prefer working on our own account.”

A proceeding which consists in making the citizens cooperate in giving money but not labour, does not, in any way, alter the general results. The only thing is, that the loss would react upon all parties. By the former, those whom the State employs, escape their part of the loss, by adding it to that which their fellow-citizens have already suffered.

There is an article in our constitution which says: -“Society favours and encourages the development of labour -by the establishment of public works, by the State, the departments, and the parishes, as a means of employing persons who are in want of work.”

As a temporary measure, on any emergency, during a hard winter, this interference with the tax-payers may have its use. It acts in the same way as securities. It adds nothing either to labour or to wages, but it takes labour and wages from ordinary times to give them, at a loss it is true, to times of difficulty.

As a permanent, general, systematic measure, it is nothing else than a ruinous mystification, an impossibility, which shows a little excited labour which is seen, and bides a great deal of prevented labour which is not seen.

Society is the total of the forced or voluntary services which men perform for each other; that is to say, of public services and private services.

The former, imposed and regulated by the law, which it is not always easy to change, even when it is desirable, may survive with it their own usefulness, and still preserve the name of public services, even when they are no longer services at all, but rather public annoyances. The latter belong to the sphere of the will, of individual responsibility. Every one gives and receives what he wishes, and what he can, after a debate. They have always the presumption of real utility, in exact proportion to their comparative value.

This is the reason why the former description of services so often become stationary, while the latter obey the law of progress.

While the exaggerated development of public services, by the waste of strength which it involves, fastens upon society a fatal sycophancy, it is a singular thing that several modern sects, attributing this character to free and private services, are endeavouring to transform professions into functions.

These sects violently oppose what they call intermediates. They would gladly suppress the capitalist, the banker, the speculator, the projector, the merchant, and the trader, accusing them of interposing between production and consumption, to extort from both, without giving either anything in return. Or rather, they would transfer to the State the work which they accomplish, for this work cannot be suppressed.

The sophism of the Socialists on this point is showing to the public what it pays to the intermediates in exchange for their services, and concealing from it what is necessary to be paid to the State. Here is the usual conflict between what is before our eyes, and what is perceptible to the mind only, between what is seen, and what is not seen.

It was at the time of the scarcity, in 1847, that the Socialist schools attempted and succeeded in popularizing their fatal theory. They knew very well that the most absurd notions have always a chance with people who are suffering; malisunda fames.

Therefore, by the help of the fine words, “trafficking in men by men, speculation on hunger, monopoly,” they began to blacken commerce, and to cast a veil over its benefits.

“What can be the use,” they say, “of leaving to the merchants the care of importing food from the United States and the Crimea? Why do not the State, the departments, and the towns, organize a service for provisions, and a magazine for stores? They would sell at a return price, and the people, poor things, would be exempted from the tribute which they pay to free, that is, to egotistical, individual, and anarchical commerce.”

The tribute paid by the people to commerce, is that which is seen. The tribute which the people would pay to the State, or to its agents, in the Socialist system, is what is not seen.

In what does this pretended tribute, which the people pay to commerce, consist? In this: that two men render each other a mutual service, in all freedom, and under the pressure of competition and reduced prices.

When the hungry stomach is at Paris, and corn which can satisfy it is at Odessa, the suffering cannot cease till the corn is brought into contact with the stomach. There are three means by which this contact may be effected. 1st. The famished men may go themselves and fetch the corn. 2nd. They may leave this task to those to whose trade it belongs. 3rd. They may club together, and give the office in charge to public functionaries. Which of these three methods possesses the greatest advantages? In every time, in all countries, and the more free, enlightened, and experienced they are, men have voluntarily chosen the second. I confess that this is sufficient, in my opinion, to justify this choice. I cannot believe that mankind, as a whole, is deceiving itself upon a point which touches it so nearly. But let us consider the subject.

For thirty-six millions of citizens to go and fetch the corn they want from Odessa, is a manifest

impossibility. The first means, then, goes for nothing. The consumers cannot act for themselves. They must, of necessity, have recourse to intermediates, officials or agents.

But, observe, that the first of these three means would be the most natural. In reality, the hungry man has to fetch his corn. It is a task which concerns himself; a service due to himself. If another person, on whatever ground, performs this service for him, takes the task upon himself, this latter has a claim upon him for a compensation. I mean by this to say that intermediates contain in themselves the principle of remuneration.

However that may be, since we must refer to what the Socialists call a parasite, I would ask, which of the two is the most exacting parasite, the merchant or the official?

Commerce (free, of course, otherwise I could not reason upon it), commerce, I say, is led by its own interests to study the seasons, to give daily statements of the state of the crops, to receive information from every part of the globe, to foresee wants, to take precautions beforehand. It has vessels always ready, correspondents everywhere; and it is its immediate interest to buy at the lowest possible price, to economize in all the details of its operations, and to attain the greatest results by the smallest efforts. It is not the French merchants only who are occupied in procuring provisions for France in time of need, and if their interest leads them irresistibly to accomplish their task at the smallest possible cost, the competition which they create amongst each other leads them no less irresistibly to cause the consumers to partake of the profits of those realized savings. The corn arrives; it is to the interest of commerce to sell it as soon as possible, so as to avoid risks, to realize its funds, and begin again the first opportunity.

Directed by the comparison of prices, it distributes food over the whole surface of the country, beginning always at the highest price, that is, where the demand is the greatest. It is impossible to imagine an organization more completely calculated to meet the interest of those who are in want; and the beauty of this organization, unperceived as it is by the Socialists, results from the very fact that it is free. It is true, the consumer is obliged to reimburse commerce for the expenses of conveyance, freight, store-room, commission, &c.; but can any system be devised, in which he who eats corn is not obliged to defray the expenses, whatever they may be, of bringing it within his reach? The remuneration for the service performed has to be paid also: but as regards its amount, this is reduced to the small. est possible sum by competition; and as regards its justice, it would be very strange if the artisans of Paris would not work for the artisans of Marseilles, when the merchants of Marseilles work for the artisans of Paris.

If, according to the Socialist invention, the State were to stand in the stead of commerce, what would happen? I should like to be informed where' the saving would be to the public? Would it be in the price of purchase? Imagine the delegates of 40,000 parishes arriving at Odessa on a given day, and on the day of need; imagine the effect upon prices. Would the saving be in the expenses? Would fewer vessels be required, fewer sailors, fewer transports, fewer sloops, or would you be exempt from the payment of all these things? Would it be in the profits of the merchants? Would your officials go to Odessa for nothing? Would they travel and work on the principle of fraternity? Must they not live? must not they be paid for their time? And do you believe that these expenses would not exceed a thousand times the two or three per cent which the merchant gains, at the rate at which he is ready to treat?

And then consider the difficulty of levying so many taxes, and of dividing so much food. Think

of the injustice, of the abuses inseparable for such an enterprise. Think of the responsibility which would weigh upon the Government.

The Socialists who have invented these follies, and who, in the days of distress, have introduced them into the minds of the masses, take to themselves literally the title of advanced men; and it is not without some danger that custom, that tyrant of tongues, authorizes the term, and the sentiment which it involves. Advanced! This supposes that these gentlemen can see further than the common people; that their only fault is, that they are too much in advance of their age, and if the time is not yet come for suppressing certain free services, pretended parasites, the fault is to be attributed to the public, which is in the rear of socialism. I say, from my soul and my conscience, the reverse is the truth; and I know not to what barbarous age we should have to go back, if we would find the level of Socialist knowledge on this subject. These modern sectarians incessantly oppose association to actual society. They overlook the fact, that society, under a free regulation, is a true association, far superior to any of those which proceed from their fertile imaginations.

Let me illustrate this by an example. Before a man, when he gets up in the morning, can put on a coat, ground must have been enclosed, broken up, drained, tilled, and sown with a particular kind of plant; flocks must have been fed, and have given their wool; this wool must have been spun, woven, dyed, and converted into cloth; this cloth must have been cut, sewed, and made into a garment. And this series of operations implies a number of others; it supposes the employment of instruments for ploughing, &c., sheepfolds, sheds, coal, machines, carriages, &e.

If society were not a perfectly real association, a person who wanted a coat would be reduced to the necessity of working in solitude; that is, of performing for himself the innumerable parts of this series, from the first stroke of the pickaxe to the last stitch which concludes the work. But, thanks to the sociability which is the distinguishing character of our race, these operations are distributed amongst a multitude of workers; and they are further subdivided, for the common good, to an extent that, as the consumption becomes more active, one single operation is able to support a new trade.

Then comes the division of the profits, which operates according to the contingent value which each has brought to the entire work. If this is not association, I should like to know what is.

Observe, that as no one of these workers has obtained the smallest particle of matter from nothingness, they are confined to performing for each other mutual services, and to helping each other in a common object, and that all may be considered, with respect to others, intermediates. If, for instance, in the course of the operation, the conveyance becomes important enough to occupy one person, the spinning another, the weaving another, why should the first be considered a parasite more than the other two? The conveyance must be made, must it not? Does not be who performs it devote to it his time and trouble? and by so doing does he not spare that of his colleagues? Do these do more or other than this for him? Are they not equally dependent for remuneration, that is, for the division of the produce, upon the law of reduced price? Is it not in all liberty, for the common good, that these arrangements are entered into? What do we want with a Socialist then, who, under pretence of organizing for us, comes despotically to break up our voluntary arrangements, to check the division of labour, to substitute isolated efforts for combined ones, and to send civilization back? Is association, as

I describe it here, in itself less association, because every one enters and leaves it freely, chooses his place in it, judges and bargains for himself on his own responsibility, and brings with him the spring and warrant of personal interest? That it may deserve this name, is it necessary that a pretended reformer should come and impose upon us his plan and his will, and as it were, to concentrate mankind in himself?

The more we examine these advanced schools, the more do we become convinced that there is but one thing at the root of them: ignorance proclaiming itself infallible, and claiming despotism in the name of this infallibility.

I hope the reader will excuse this digression. It may not be altogether useless, at a time when declamations, springing from St. Simonian, Phalansterian, and Icarian books, are invoking the press and the tribune, and which seriously threaten the liberty of labour and commercial transactions.

VII. Restrictions

M. Prohibant (it was not I who gave him this name, but M. Charles Dupin) devoted his time and capital to converting the ore found on his land into iron. As nature had been more lavish towards the Belgians, they furnished the French with iron cheaper than M. Prohibant, which means, that all the French, or France, could obtain a given quantity of iron with less labour by buying it of the honest Flemings; therefore, guided by their own interest, they did not fail to do so, and every day there might be seen a multitude of nail-smiths, blacksmiths, cartwrights, machinists, farriers, and labourers, going themselves, or sending intermediates, to supply themselves in Belgium. This displeased M. Prohibant exceedingly.

At first, it occurred to him to put an end to this abuse by his own efforts; it was the least he could do, for he was the only sufferer. “I will take my carbine,” said he; “I will put four pistols into my belt; I will fill my cartridge box; I will gird on my sword, and go thus equipped to the frontier. There, the first blacksmith, nailsmith, farrier, machinist, or locksmith, who presents himself to do his own business and not mine, I will kill, to teach him how to live.” At the moment of starting, M. Prohibant made a few reflections which calmed down his warlike ardour a little. He said to himself, “In the first place, it is not absolutely impossible that the purchasers of iron, my countrymen and enemies, should take the thing ill, and, instead of letting me kill them, should kill me instead; and then, even were I to call out all my servants, we should not be able to defend the passages. In short, this proceeding would cost me very dear; much more so than the result would be worth.”

M. Prohibant was on the point of resigning himself to his sad fate, that of being only as free as the rest of the world, when a ray of light darted across his brain. He recollected that at Paris there is a great manufactory of laws. “What is a law?” said he to himself. “It is a measure to which, when once it is decreed, be it good or bad, everybody is bound to conform. For the execution of the same a public force is organized, and to constitute the said public force, men and money are drawn from the nation. If, then, I could only get the great Parisian manufactory to pass a little law, 'Belgian iron is prohibited,' I should obtain the following results: The Government would replace the few valets that I was going to send to the frontier by 20,000 of the sons of those refractory blacksmiths, farmers, artisans, machinists, locksmiths, nailsmiths,

and labourers. Then, to keep these 20,000 custom-house officers in health and good humour, it would distribute amongst them 25,000, 000 of francs, taken from these blacksmiths, nailsmiths, artisans, and labourers. They would guard the frontier much better; would cost me nothing; I should not be exposed to the brutality of the brokers, should sell the iron at my own price, and have the sweet satisfaction of seeing our great people shamefully mystified. That would teach them to proclaim themselves perpetually the harbingers and promoters of progress in Europe. Oh! it would be a capital joke, and deserves to be tried."

So M. Prohibant went to the law manufactory. Another time, perhaps, I shall relate the story of his underhand dealings, but now I shall merely mention his visible proceedings. He brought the following consideration before the view of the legislating gentlemen:-

"Belgian iron is sold in France at ten francs, which obliges me to sell mine at the same price. I should like to sell at fifteen, but cannot do so on account of this Belgian iron, which I wish was at the bottom of the Red Sea. I beg you will make a law that no more Belgian iron shall enter France. Immediately I raise my price five francs, and these are the consequences: For every hundred-weight of iron that I shall deliver to the public, I shall receive fifteen francs instead of ten; I shall grow rich more rapidly, extend my traffic, and employ more workmen. My workmen and I shall spend much more freely to the great advantage of our tradesmen for miles around. These latter, having more custom, will furnish more employment to trade, and activity on both sides will increase in the country. This fortunate piece of money, which you will drop into my strong-box, will, like a stone thrown into a lake, give birth to an infinite number of concentric circles."

Charmed with his discourse, delighted to learn that it is so easy to promote, by legislating, the prosperity of a people, the law-makers voted the restriction. "Talk of labour and economy," they said, "what is the use of these painful means of increasing the national wealth, when all that is wanted for this object is a Decree?"

And, in fact, the law produced all the consequences announced by M. Prohibant; the only thing was, it produced others which he had not foreseen. To do him justice, his reasoning was not false, but only incomplete. In endeavouring to obtain a privilege, he had taken cognizance of the effects which are seen, leaving in the background those which are not seen. He had pointed out only two personages, whereas there are three concerned in the affair. It is for us to supply this involuntary or premeditated omission.

It is true, the crown-piece, thus directed by law into M. Prohibant's strong-box, is advantageous to him and to those whose labour it would encourage; and if the Act had caused the crown-piece to descend from the moon, these good effects would not have been counterbalanced by any corresponding evils. Unfortunately, the mysterious piece of money does not come from the moon, but from the pocket of a blacksmith, or a nail-smith, or a cartwright, or a farrier, or a labourer, or a shipwright; in a word, from James B., who gives it now without receiving a grain more of iron than when he was paying ten francs. Thus, we can see at a glance that this very much alters the state of the case; for it is very evident that M. Prohibant's profit is compensated by James B.'s loss, and all that M. Prohibant can do with the crown-piece, for the encouragement of national labour, James B. might have done himself. The stone has only been thrown upon one part of the lake, because the law has prevented it from being thrown upon another.

Therefore, that which is not seen supersedes that which is seen, and at this point there remains, as the residue of the operation, a piece of injustice, and, sad to say, a piece of injustice perpetrated by the law!

This is not all. I have said that there is always a third person left in the back-ground. I must now bring him forward, that he may reveal to us a second loss of five francs. Then we shall have the entire results of the transaction.

James B. is the possessor of fifteen francs, the fruit of his labour. He is now free. What does he do with his fifteen francs? He purchases some article of fashion for ten francs, and with it he pays (or the intermediate pay for him) for the hundred-weight of Belgian iron. After this he has five francs left. He does not throw them into the river, but (and this is what is not seen) he gives them to some tradesman in exchange for some enjoyment; to a bookseller, for instance, for Bossuet's “Discourse on Universal History.”

Thus, as far as national labour is concerned, it is encouraged to the amount of fifteen francs, viz.: -ten francs for the Paris article; five francs to the book-selling trade.

As to James B., he obtains for his fifteen francs two gratifications, viz.:

1st. A hundred-weight of iron.

2nd. A book.

The Decree is put in force. How does it affect the condition of James B.? How does it affect the national labour?

James B. pays every centime of his five francs to M. Prohibant, and therefore is deprived of the pleasure of a book, or of some other thing of equal value. He loses five francs. This must be admitted; it cannot fail to be admitted, that when the restriction raises the price of things, the consumer loses the difference.

But, then, it is said, national labour is the gainer.

No, it is not the gainer; for, since the Act, it is no more encouraged than it was before, to the amount of fifteen francs.

The only thing is that, since the Act, the fifteen francs of James B. go to the metal trade, while, before it was put in force, they were divided between the milliner and the bookseller.

The violence used by M. Prohibant on the frontier, or that which he causes to be used by the law, may be judged very differently in a moral point of view. Some persons consider that plunder is perfectly justifiable, if only sanctioned by law. But, for myself, I cannot imagine anything more aggravating. However it may be, the economical results are the same in both cases.

Look at the thing as you will; but if you are impartial, you will see that no good can come of legal or illegal plunder. We do not deny that it affords M. Prohibant, or his trade, or, if you will, national industry, a profit of five francs. But we affirm that it causes two losses, one to James B., who pays fifteen francs where he otherwise would have paid ten; the other to national industry, which does not receive the difference. Take your choice of these two losses, and compensate with it the profit which we allow. The other will prove not the less a dead loss.

Here is the moral: To take by violence is not to produce, but to destroy. Truly, if taking by violence was producing, this country of ours would be a little richer than she is.

VIII. Machinery

“A curse on machines! Every year, their increasing power devotes millions of workmen to pauperism, by depriving them of work, and therefore of wages and bread. A curse on machines!”

This is the cry which is raised by vulgar prejudice, and echoed in the journals.

But to curse machines, is to curse the spirit of humanity!

It puzzles me to conceive how any man can feel any satisfaction in such a doctrine.

For, if true, what is its inevitable consequence? That there is no activity, prosperity, wealth, or happiness possible for any people, except for those who are stupid and inert, and to whom God has not granted the fatal gift of knowing how to think, to observe, to combine, to invent, and to obtain the greatest results with the smallest means. On the contrary, rags, mean huts, poverty, and inanition, are the inevitable lot of every nation which seeks and finds in iron, fire, wind, electricity, magnetism, the laws of chemistry and mechanics, in a word, in the powers of nature, an assistance to its natural powers. We might as well say with Rousseau -“Every man that thinks is a depraved animal.”

This is not all; if this doctrine is true, since all men think and invent, since all, from first to last, and at every moment of their existence, seek the cooperation of the powers of nature, and try to make the most of a little, by reducing either the work of their hands, or their expenses, so as to obtain the greatest possible amount of gratification with the smallest possible amount of labour, it must follow, as a matter of course, that the whole of mankind is rushing towards its decline, by the same mental aspiration towards progress, which torments each of its members.

Hence, it ought to be made known, by statistics, that the inhabitants of Lancashire, abandoning that land of machines, seek for work in Ireland, where they are unknown; and, by history, that barbarism darkens the epochs of civilization, and that civilization shaies in times of ignorance and barbarism.

There is evidently in this mass of contradictions something which revolts us, and which leads us to suspect that the problem contains within it an element of solution which has not been sufficiently disengaged.

Here is the whole mystery: behind that which is seen, lies something which is not seen. I will endeavour to bring it to light. The demonstration I shall give will only be a repetition of the preceding one, for the problems are one and the same.

Men have a natural propensity to make the best bargain they can, when not prevented by an opposing force; that is, they like to obtain as much as they possibly can for their labour, whether the advantage is obtained from a foreign producer, or a skilful mechanical producer.

The theoretical objection which is made to this propensity is the same in both cases. In each case it is reproached with the apparent inactivity which it causes to labour. Now, labour

rendered available, not inactive, is the very thing which determines it. And, therefore, in both cases, the same practical obstacle -force, is opposed to it also. The legislator prohibits foreign competition, and forbids mechanical competition. For what other means can exist for arresting a propensity which is natural to all men, but that of depriving them of their liberty?

In many countries, it is true, the legislator strikes at only one of these competitions, and confines himself to grumbling at the other. This only proves one thing, that is, that the legislator is inconsistent.

Harm Of False Premise

We need not be surprised at this. On a wrong road, inconsistency is inevitable; if it were not so, mankind would be sacrificed. A false principle never has been, and never will be, carried out to the end.

Now for our demonstration, which shall not be a long one.

James B. had two francs which he had gained by two workmen; but it occurs to him, that an arrangement of ropes and weights might be made which would diminish the labour by half. Thus he obtains the same advantage, saves a franc, and discharges a workman.

He discharges a workman: this is that which is seen.

And seeing this only, it is said, "See how misery attends civilization; this is the way that liberty is fatal to equality. The human mind has made a conquest, and immediately a workman is cast into the gulf of pauperism. James B. may possibly employ the two workmen, but then he will give them only half their wages for they will compete with each other, and offer themselves at the lowest price. Thus the rich are always growing richer, and the poor, poorer. Society wants remodelling." A very fine conclusion, and worthy of the preamble.

Happily, preamble and conclusion are both false, because, behind the half of the phenomenon which is seen, lies the other half which is not seen.

The franc saved by James B. is not seen, no more are the necessary effects of this saving.

Since, in consequence of his invention, James B. spends only one franc on hand labour in the pursuit of a determined advantage, another franc remains to him.

If, then, there is in the world a workman with unemployed arms, there is also in the world a capitalist with an unemployed franc. These two elements meet and combine, and it is as clear as daylight, that between the supply and demand of labour, and between the supply and demand of wages, the relation is in no way changed.

The invention and the workman paid with the first franc, now perform the work which was formerly accomplished by two workmen. The second workman, paid with the second franc, realizes a new kind of work.

What is the change, then, which has taken place? An additional national advantage has been gained; in other words, the invention is a gratuitous triumph -a gratuitous profit for mankind.

From the form which I have given to my demonstration, the following inference might be drawn: -"It is the capitalist who reaps all the advantage from machinery. The working class, if

it suffers only temporarily, never profits by it, since, by your own showing, they displace a portion of the national labour, without diminishing it, it is true, but also without increasing it."

I do not pretend, in this slight treatise, to answer every objection; the only end I have in view, is to combat a vulgar, widely spread, and dangerous prejudice. I want to prove, that a new machine only causes the discharge of a certain number of hands, when the remuneration which pays them as abstracted by force. These hands, and this remuneration, would combine to produce what it was impossible to produce before the invention; whence it follows that the final result is an increase of advantages for equal labour.

Who is the gainer by these additional advantages?

First, it is true, the capitalist, the inventor; the first who succeeds in using the machine; and this is the reward of his genius and his courage. In this case, as we have just seen, he effects a saving upon the expense of production, which, in whatever way it may be spent (and it always is spent), employs exactly as many hands as the machine caused to be dismissed.

But soon competition obliges him to lower his prices in proportion to the saving itself; and then it is no longer the inventor who reaps the benefit of the invention -it is the purchaser of what is produced, the consumer, the public, including the workmen; in a word, mankind.

And that which is not seen is, that the saving thus procured for all consumers creates a fund whence wages may be supplied, and which replaces that which the machine has exhausted.

Thus, to recur to the aforementioned example, James B. obtains a profit by spending two francs in wages. Thanks to his invention, the hand labour costs him only one franc. So long as he sells the thing produced at the same price, he employs one workman less in producing this particular thing, and that is what is seen; but there is an additional workman employed by the franc which James B. has saved. This is that which is not seen.

When, by the natural progress of things, James B. is obliged to lower the price of the thing produced by one franc, then he no longer realizes a saving; then he has no longer a franc to dispose of, to procure for the national labour a new production; but then another gainer takes his place, and this gainer is mankind. Whoever buys the thing he has produced, pays a franc less, and necessarily adds this saving to the fund of wages; and this, again, is what is not seen.

Another solution, founded upon facts, has been given of this problem of machinery.

It was said, machinery reduces the expense of production, and lowers the price of the thing produced. The reduction of the profit causes an increase of consumption, which necessitates an increase of production, and, finally, the introduction of as many workmen, or more, after the invention as were necessary before it. As a proof of this, printing, weaving, &c., are instanced.

This demonstration is not a scientific one. It would lead us to conclude, that if the consumption of the particular production of which we are speaking remains stationary, or nearly so, machinery must injure labour. This is not the case.

Suppose that in a certain country all the people wore hats; if, by machinery, the price could be reduced half, it would not necessarily follow that the consumption would be doubled.

Would you say, that in this case a portion of the national labour had been paralysed? Yes,

according to the vulgar demonstration; but, according to mine, No; for even if not a single hat more should be bought in the country, the entire fund of wages would not be the less secure. That which failed to go to the hat-making trade would be found to have gone to the economy realized by all the consumers, and would thence serve to pay for all the labour which the machine had rendered useless, and to excite a new development of all the trades. And thus it is that things go on. I have known newspapers to cost eighty francs, now we pay forty-eight: here is a saving of thirty-two francs to the subscribers. It is not certain, or, at least, necessary, that the thirty-two francs should take the direction of the journalist trade; but it is certain, and necessary too, that if they do not take this direction they will take another. One makes use of them for taking in more newspapers; another, to get better living; another, better clothes; another, better furniture. It is thus that the trades are bound together. They form a vast whole, whose different parts communicate by secret canals; what is saved by one, profits all. It is very important for us to understand, that savings never take place at the expense of labour and wares.

IX. Credit

In all times, but more especially of late years, attempts have been made to extend wealth by the extension of credit.

I believe it is no exaggeration to say, that since the revolution of February, the Parisian presses have issued more than 10,000 pamphlets, crying up this solution of the social problem. The only basis, alas! of this solution, is an optical delusion -if, indeed, an optical delusion can be called a basis at all.

The first thing done is to confuse cash with produce, then paper money with cash; and from these two confusions it is pretended that a reality can be drawn.

It is absolutely necessary in this question to forget money, coin, bills, and the other instruments by means of which productions pass from hand to hand; our business is with the productions themselves, which are the real objects of the loan; for when a farmer borrows fifty francs to buy a plough, it is not, in reality, the fifty francs which are lent to him, but the plough: and when a merchant borrows 20,000 francs to purchase a house, it is not the 20,000 francs which he owes, but the house. Money only appears for the sake of facilitating the arrangements between the parties.

Peter may not be disposed to lend his plough, but James may be willing to lend his money. What does William do in this case? He borrows money of James, and with this money he buys the plough of Peter.

But, in point of fact, no one borrows money for the sake of the money itself; money is only the medium by which to obtain possession of productions. Now, it is impossible in any country to transmit from one person to another more productions than that country contains.

Whatever may be the amount of cash and of paper which is in circulation, the whole of the borrowers cannot receive more ploughs, houses, tools, and supplies of raw material, than the lenders altogether can furnish; for we must take care not to forget, that every borrower supposes a lender, and that what is once borrowed implies a loan.

This granted, what advantage is there in institutions of credit? It is, that they facilitate, between borrowers and lenders, the means of finding and treating with each other; but it is not in their power to cause an instantaneous increase of the things to be borrowed and lent. And yet they ought to be able to do so, if the aim of the reformers is to be attained, since they aspire to nothing less than to place ploughs, houses, tools, and provisions in the hands of all those who desire them.

And how do they intend to effect this?

By making the State security for the loan.

Let us try and fathom the subject, for it contains something which is seen, and also something which is not seen. We must endeavour to look at both.

We will suppose that there is but one plough in the world, and that two farmers apply for it.

Peter is the possessor of the only plough which is to be had in France; John and James wish to borrow it. John, by his honesty, his property, and good reputation, offers security. He inspires confidence; he has credit. James inspires little or no confidence. It naturally happens that Peter lends his plough to John.

But now, according to the Socialist plan, the State interferes, and says to Peter, “Lend your plough to James, I will be security for its return, and this security will be better than that of John, for he has no one to be responsible for him -but himself; and I, although it is true that I have nothing, dispose of the fortune of the taxpayers, and it is with their money that, in case of need, I shall pay you the principal and interest.” Consequently, Peter lends his plough to James: this is what is seen.

And the Socialists rub their hands, and say, “See how well our plan has answered. Thanks to the intervention of the State, poor James has a plough. He will no longer be obliged to dig the ground; he is on the road to make a fortune. It is a good thing for him, and an advantage to the nation as a whole.”

Indeed, gentlemen, it is no such thing; it is no advantage to the nation, for there is something behind which is not seen.

It is not seen, that the plough is in the hands of James, only because it is not in those of John.

It is not seen, that if James farms instead of digging, John will be reduced to the necessity of digging instead of farming.

That, consequently, what was considered an increase of loan, is nothing but a displacement of loan. Besides, it is not seen that this displacement implies two acts of deep injustice.

It is an injustice to John, who, after having deserved and obtained credit by his honesty and activity, sees himself robbed of it.

It is an injustice to the tax-payers, who are made to pay a debt which is no concern of theirs.

Will any one say, that Government offers the same facilities to John as it does to James? But as there is only one plough to be had, two cannot be lent. The argument always maintains that, thanks to the intervention of the State, more will be borrowed than there are things to be lent; for the plough represents here the bulk of available capitals.

It is true, I have reduced the operation to the most simple expression of it, but if you submit the most complicated Government institutions of credit to the same test, you will be convinced that they can have but on result; viz., to displace credit, not to augment it. In one country, and in a given time, there is only a certain amount of capital available, and all are employed. In guaranteeing the non-payers, the State may, indeed, increase the number of borrowers, and thus raise the rate of interest (always to the prejudice of the tax-payer), but it has no power to increase the number of lenders, and the importance of the total of the loans.

There is one conclusion, however, which I would not for the world be suspected of drawing. I say, that the law ought not to favour, artificially, the power of borrowing, but I do not say that it ought not to restrain them artificially. If, in our system of mortgage, or in any other, there be obstacles to the diffusion of the application of credit, let them be got rid of; nothing can be better or more just than this. But this is all which is consistent with liberty, and it is all that any who are worthy s will ask.

of the name of reformer

X. Algeria

Here are four orators disputing for the platform. First, all the four speak at once; then they speak one after the other. What have they said? Some very fine things, certainly, about the power and the grandeur of France; about the necessity of sowing, if we would reap; about the brilliant future of our gigantic colony; about the advantage of diverting to a distance the surplus of our population, &e. &e. Magnificent pieces of eloquence, and always adorned with this conclusion: -"Vote fifty millions, more or less, for making ports and roads in Algeria; for sending emigrants thither; for building houses and breaking up land. By so doing, you will relieve the French workman, encourage African labour, and give a stimulus to the commerce of Marseilles. It would be profitable every way."

Yes, it is all very true, if you take no account of the fifty millions until the moment when the State begins to spend them; if you only see where they go, and not whence they come; if you look only at the good they are to do when they come out of the tax-gatherer's bag, and not at the harm which has been done, and the good which has been prevented, by putting them into it. Yes, at this limited point of view, all is profit. The house which is built in Barbary is that which is seen; the harbour made in Barbary is that which is seen; the work caused in Barbary is what is seen; a few less hands in France is what is seen; a great stir with goods at Marseilles is still that which is seen.

But, besides all this, there is something which is not seen. The fifty millions expended by the State cannot be spent, as they otherwise would have been, by the tax-payers. It is necessary to deduct, from all the good attributed to the public expenditure which has been effected, all the harm caused by the prevention of private expense, unless we say that James B. would have done nothing with the crown that he had gained, and of which the tax had deprived him; an absurd assertion, for if he took the trouble to earn it, it was because he expected the satisfaction of using it, He would have repaired the palings in his garden, which he cannot now do, and this is that which is not seen. He would have manured his field, which now he cannot do, and this is what is not seen. He would have added another story to his cottage, which he

cannot do now, and this is what is not seen. He might have increased the number of his tools, which he cannot do now, and this is what is not seen. He would have been better fed, better clothed, have given a better education to his children, and increased his daughter's marriage portion; this is that is not seen. He would have become a member of the Mutual Assistance Society, but now he cannot; this is what is not seen. On one hand, are the enjoyments of which he has been deprived, and the means of action which have been destroyed in his hands; on the other, are the labour of the drainer, the carpenter, the smith, the tailor, the village-schoolmaster, which he would have encouraged, and which are now prevented - all this is what is not seen.

Much is hoped from the future prosperity of Algeria; be it so. But the drain to which France is being subjected ought not to be kept entirely out of sight. The commerce of Marseilles is pointed out to me; but if this is to be brought about by means of taxation, I shall always show that an equal commerce is destroyed thereby in other parts of the country. It is said, “There is an emigrant transported into Barbary; this is a relief to the population which remains in the country.” I answer, “How can that be, if, in transporting this emigrant to Algiers, you also transport two or three times the capital which would have served to maintain him in France?”

The Minister of War has lately asserted, that every individual transported to Algeria has cost the State 8,000 francs. Now it is certain that these poor creatures could have lived very well in France on a capital of 4,000 francs. I ask, how the French population is relieved, when it is deprived of a man, and of the means of subsistence of two men?

The only object I have in view is to make it evident to the reader, that in every public expense, behind the apparent benefit, there is an evil which it is not so easy to discern. As far as in me 'lies, I would make him form a habit of seeing both, and taking account of both.

When a public expense is proposed, it ought to be examined in itself, separately from the pretended encouragement of labour which results from it, for this encouragement is a delusion. Whatever is done in this way at the public expense, private expense would have done all the same; therefore, the interest of labour is always out of the question.

It is not the object of this treatise to criticize the intrinsic merit of the public expenditure as applied to Algeria, but I cannot withhold a general observation. It is, that the presumption is always unfavourable to collective expenses by way of tax. Why? For this reason: -First, justice always suffers from it in some degree. Since James B. had laboured to gain his crown, in the hope -of receiving a gratification from it, it is to be regretted that the exchequer should interpose, and take from James B. this gratification, to bestow it upon another. Certainly, it behoves the exchequer, or those who regulate it, to give good reasons for this. It has been shown that the State gives a very provoking one, when it says, “With this crown I shall employ workmen”; for James B. (as soon as he sees it) will be sure to answer, “It is all very fine, but with this crown I might employ them myself.”

Apart from this reason, others present themselves without disguise, by which the debate between the exchequer and poor James becomes much simplified. If the State says to him, “I take your crown to pay the gendarme, who saves you the trouble of providing for your own personal safety; for paving the street which you are passing through every day; for paying the magistrate who causes your property and your liberty to be respected; to maintain the soldier

who maintains our frontiers," -James B., unless I am much mistaken, will pay for all this without hesitation. But if the State were to say to him, I take this crown that I may give you a little prize in case you cultivate your field well; or that I may teach your son something that you have no wish that he should learn; or that the Minister may add another to his score of dishes at dinner; I take it to build a cottage in Algeria, in which case I must take another crown every year to keep an emigrant in it, and another hundred to maintain a soldier to guard this emigrant, and another crown to maintain a general to guard this soldier," &c., &c., -I think I hear poor James exclaim, "This system of law is very much like a system of cheat!" The State foresees the objection, and what does it do? It jumbles all things together, and brings forward just that provoking reason which ought to have nothing whatever to do with the question. It talks of the effect of this crown upon labour; it points to the cook and purveyor of the Minister; it shows an emigrant, a soldier, and a general, living upon the crown; it shows, in fact, what is seen, and if James B. has not learned to take into the account what is not seen, James B. will be duped. And this is why I want to do all I can to impress it upon his mind, by repeating it over and over again.

As the public expenses displace labour without increasing it, a second serious presumption presents itself against them. To displace labour is to displace labourers, and to disturb the natural laws which regulate the distribution of the population over the country. If 50,000,000 fr. are allowed to remain in the possession of the taxpayers, since the tax-payers are everywhere, they encourage labour in the 40,000 parishes in France. They act like a natural tie, which keeps every one upon his native soil; they distribute themselves amongst all imaginable labourers and trades. If the State, by drawing off these 50,000,000 fr. from the citizens, accumulates them, and expends them on some given point, it attracts to this point a proportional quantity of displaced labour, a corresponding number of labourers, belonging to other parts; a fluctuating population, which is out of its place, and, I venture to say, dangerous when the fund is exhausted. Now here is the consequence (and this confirms all I have said): this feverish activity is, as it were, forced into a narrow space; it attracts the attention of all; it is what is seen. The people applaud; they are astonished at the beauty and facility of the plan, and expect to have it continued and extended. That which they do not see is, that an equal quantity of labour, which would probably be more valuable, has been paralysed over the rest of France.

XI. Frugality and Luxury

It is not only in the public expenditure that what is seen eclipses what is not seen. Setting aside what relates to political economy, this phenomenon leads to false reasoning. It causes nations to consider their moral and their material interests as contradictory to each other. What can be more discouraging, or more dismal?

For instance, there is not a father of a family who does not think it his duty to teach his children order, system, the habits of carefulness, of economy, and of moderation in spending money.

There is no religion which does not thunder against pomp and luxury. This is as it should be; but, on the other hand, how frequently do we hear the following remarks:-

“To hoard, is to drain the veins of the people.”

“The luxury of the great is the comfort of the little.”

“Prodigals ruin themselves, but they enrich the State.”

“It is the superfluity of the rich which makes bread for the poor.”

Here, certainly, is a striking contradiction between the moral and the social idea.

How many eminent spirits, after having made the assertion, repose in peace. It is a thing I never could understand, for it seems to me that nothing can be more distressing than to discover two opposite tendencies in mankind. Why, it comes to degradation at each of the extremes: economy brings it to misery; prodigality plunges it into moral degradation. Happily, these vulgar maxims exhibit economy and luxury in a false light, taking account, as they do, of those immediate consequences which are seen, and not of the remote ones, which are not seen. Let us see if we can rectify this incomplete view of the case.

Mondor and his brother Aristus, after dividing the paternal inheritance, have each an income of 50,000 francs. Mondor practises the fashionable philanthropy. He is what is called a squanderer of money. He renews his furniture several times a year; changes his equipages every month. People talk of his ingenious contrivances to bring them sooner to an end: in short, he surpasses the fast livers of Balzac and Alexander Dumas.

Thus, everybody is singing his praises. It is, “Tell us about Mondor? Mondor for ever! He is the benefactor of the workman; a blessing to the people. It is true, he revels in dissipation; he splashes the passers-by; his own dignity and that of human nature are lowered a little; but what of that? He does good with his fortune, if not with himself. He causes money to circulate; he always sends the tradespeople away satisfied. Is not money made round that it may roll?”

Aristus has adopted a very different plan of life. If he is not an egotist, he is, at any rate, an individualist, for he considers expense, seeks only moderate and reasonable enjoyments, thinks of his children's prospects, and, in fact, he economises.

And what do people say of him? “What is the good of a rich fellow like him? He is a skinflint. There is something imposing, perhaps, in the simplicity of his life; and he is humane, too, and benevolent, and generous, but he calculates. He does not spend his income; his house is neither brilliant nor bustling. What good does he do to the paper hangers, the carriage makers, the horse dealers, and the confectioners?”

These opinions, which are fatal to morality, are founded upon what strikes the eye: -the expenditure of the prodigal; and another, which is out of sight, the equal and even superior expenditure of the economist.

But things have been so admirably arranged by the Divine inventor of social order, that in this, as in everything else, political economy and morality, far from clashing, agree; and the wisdom of Aristus is not only more dignified, but still more profitable, than the folly of Mondor. And when I say profitable, I do not mean only profitable to Aristus, or even to society in general, but more profitable to the workmen themselves -to the trade of the time.

To prove it, it is only necessary to turn the mind's eye to those hidden consequences of human

actions, which the bodily eye does not see.

Yes, the prodigality of Mondor has visible effects in every point of view. Everybody can see his landaus, his phaetons, his berlins, the delicate paintings on his ceilings, his rich carpets, the brilliant effects of his house. Every one knows that his horses run upon the turf. The dinners which he gives at the Hotel de Paris attract the attention of the crowds on the Boulevards; and it is said, “That is a generous man; far from saving his income, he is very likely breaking into his capital.” This is what is seen.

It is not easy to see, with regard to the interest of workers, what becomes of the income of Aristus. If we were to trace it carefully, however, we should see that the whole of it, down to the last farthing, affords work to the labourers, as certainly as the fortune of Mondor. Only there is this difference: the wanton extravagance of Mondor is doomed to be constantly decreasing, and to come to an end without fail; whilst the wise expenditure of Aristus will go on increasing from year to year. And if this is the case, then, most assuredly, the public interest will be in unison with morality.

Aristus spends upon himself and his household 20,000 francs a year. If that is not sufficient to content him, he does not deserve to be called a wise man. He is touched by the miseries which oppress the poorer classes; he thinks he is bound in conscience to afford them some relief, and therefore he devotes 10, francs to acts of benevolence. Amongst the merchants, the manufacturers, and the agriculturists, he has friends who are suffering under temporary difficulties; he makes himself acquainted with their situation, that he may assist them with prudence and efficiency, and to this work he devotes 10,000 francs more. Then he does not forget that he has daughters to portion, and sons for whose prospects it is his duty to provide, and therefore he considers it a duty to lay by and put out to interest 10,000 francs every year.

The following is a list of his expenses: -

1st, Personal expenses..... 20,000 fr.

2nd, Benevolent objects..... 10,000

3rd, Offices of friendship..... 10,000

4th, Saving..... 10,000

Let us examine each of these items, and we shall see that not a single farthing escapes the national labour.

1st. Personal expenses. -These, as far as work-people and tradesmen are concerned, have precisely the same effect as an equal sum spent by Mondor. This is self-evident, therefore we shall say no more about it.

2nd. Benevolent objects. -The 10,000 francs devoted to this purpose benefit trade in an equal degree; they reach the butcher, the baker, the tailor, and the carpenter. The only thing is, that the bread, the meat, and the clothing are not used by Aristus, but by those whom he has made his substitutes. Now, this simple substitution of one consumer for another, in no way effects trade in general. It is all one, whether Aristus spends a crown, or desires some unfortunate person to spend it instead.

3rd. Offices of friendship. -The friend to whom Aristus lends or gives 10,000 francs, does not receive them to bury them; that would be against the hypothesis. He uses them to pay for goods, or to discharge debts. In the first case, trade is encouraged. Will any one pretend to say that it gains more by Mondor's purchase of a thorough-bred horse for 10,000 francs, than by the purchase of 10,000 francs' worth of stuffs by Aristus or his friend? For, if this sum serves to pay a debt, a third person appears, viz. the creditor, who will certainly employ them upon something in his trade, his household, or his farm. He forms another medium between Aristus and the workmen. The names only are changed, the expense remains, and also the encouragement to trade.

4th. Saving. -There remains now the 10,000 francs saved; and it is here, as regards the encouragement to the arts, to trade, labour, and the workmen, that Mondor appears far superior to Aristus, although, in a moral point of view, Aristus shows himself, in some degree, superior to Mondor.

I can never look at these apparent contradictions between the great laws of nature, without a feeling of physical uneasiness which amounts to suffering. Were mankind reduced to the necessity of choosing between two parties, one of whom injures his interest, and the other his conscience, we should have nothing to hope from the future. Happily, this is not the case; and to see Aristus regain his economical superiority, as well as his moral superiority, it is sufficient to understand this consoling maxim, which is no less true from having a paradoxical appearance, “To save, is to spend.”

What is Aristus' object in saving 10,000 francs? Is it to bury them in his garden? No, certainly; he intends to increase his capital and his income; consequently, this money, instead of being employed upon his own personal gratification, is used for buying land, a house, &c., or it is placed in the hands of a merchant or a banker. Follow the progress of this money in any one of these cases, and. you will be convinced, that through the medium of vendors or lenders, it is encouraging labour quite as certainly as if Aristus, following the example of his brother, had exchanged it for furniture, jewels, and horses.

For when Aristus buys lands or rents for 10,000 francs, he is determined by the consideration that he does not want to spend this money. This is why you complain of him.

But, at the same time, the man who sells the land or the rent, is determined by the consideration that he does want to spend the 10,000 francs in some way; so that the money is spent in any case, either by Aristus, or by others in his stead.

With respect to the working class, to the encouragement of labour, there is only one difference between the conduct of Aristus and that of Mondor. Mondor spends the money himself and therefore the effect is seen. Aristus, spending it partly through intermediate parties, and at a distance, the effect is not seen. But, in fact, those who know how to attribute effects to their proper causes, will perceive, that what is not seen is as certain as what is seen. This is proved by the fact, that in both cases the money circulates, and does not lie in the iron chest of the wise man, any more than it does in that of the spendthrift. It is, therefore, false to say that economy does actual harm to trade; as described above, it is equally beneficial with luxury.

But how far superior is it, if, instead of confining-our thoughts to the present moment, we let them embrace a longer period!

Ten years pass away. What is become of Mondor and his fortune, and his great popularity? Mondor is ruined. Instead of spending 60,000 francs every year in the social body, he is, perhaps, a burden to it. In any case, he is no longer the delight of shopkeepers; he is no longer the patron of the arts and of trade; he is no longer of any use to the workmen, nor are his successors, whom he has brought to want.

At the end of the same ten years, Aristus not only continues to throw his income into circulation, but he -adds an increasing sum from year to year to his expenses. He enlarges the national capital, that is, the fund which supplies wages, and as it is upon the extent of this fund that the demand for hands depends, he assists in progressively increasing the remuneration of the working class; and if he dies, he leaves children whom he has taught to succeed him in this work of progress and civilization.

In a moral point of view, the superiority of frugality over luxury is indisputable. It is consoling to think that it is so in political economy, to every one who, not confining his views to the immediate effects of phenomena, knows how to extend his investigations to their final effects.

XII. He who has a Right to Work, has a Right to Profit

“Brethren, you must club together to find me work at your own price.” This is the right to work; i.e., elementary socialism of the first degree.

“Brethren, you must club together to find me work at my own price.” This is the right to profit; i.e., refined socialism, or socialism of the second degree.

Both of these live upon such of their effects as are seen. They will die by means of those effects which are not seen.

That-which is seen, is the labour and the profit excited by social combination. That which is not seen, is the labour and the profit to which this same combination would give rise, if it were left to the tax-payers.

In 1848, the right to labour for a moment showed two faces. This was sufficient to ruin it in public opinion.

One of these faces was called national workshops. The other, forty-five centimes. Millions of francs went daily from the Rue Rivoli to the national workshops. This was the fair side of the medal.

And this is the reverse. If millions are taken out of a cash-box, they must first have been put into it. This is why the organizers of the right to public labour apply to the tax-payers.

Now, the peasants said, “I must pay forty-five centimes; then I must deprive myself of some clothing. I cannot manure my field; I cannot repair my house.”

And the country workmen said, “As our townsman deprives himself of same clothing, there will be less work for the tailor; as he does not improve his field, there will be less work for the drainer; as he does not repair his house, there will be less work for the carpenter and mason.”

It was then proved that two kinds of meal cannot come out of one sack, and that the work furnished by the Government was done at the expense of labour, paid for by the tax-payer. This

was the death of the right to labour, which showed itself as much a chimera as an injustice. And yet, the right to profit, which is only an exaggeration of the right to labour, is still alive and flourishing.

Ought not the protectionist to blush at the part he would make society play?

He says to it, “You must give me work, and, more than that, lucrative work. I have foolishly fixed upon a trade by which I lose ten per cent. If you impose a tax of twenty francs upon my countrymen, and give it to me, I shall be a gainer instead of a loser. Now, profit is my right; you owe it me.” Now, any society which would listen to this sophist, burden itself with taxes to satisfy him, and not perceive that the loss to which any trade is exposed is no less a loss when others are forced to make up for it, such a society, I say, would deserve the burden inflicted upon it.

Thus we learn, by the numerous subjects which I have treated, that, to be ignorant of political economy is to allow ourselves to be dazzled by the immediate effect of a phenomenon; to be acquainted with it is to embrace in thought and in forethought the whole compass of effects.

I might subject a host of other questions to the same test; but I shrink from the monotony of a constantly uniform demonstration, and I conclude by applying to political economy what Chateaubriand says of history:-

> “There are,” he says, “two consequences in history; an immediate one, which is instantly recognized, and one in the distance, which is not at first perceived. These consequences often contradict each other; the former are the results of our own limited wisdom, the latter, those of that wisdom which endures. The providential event appears after the human event. God rises up behind men. Deny, if you will, the supreme counsel; disown its action; dispute about words; designate, by the term, force of circumstances, or reason, what the vulgar call Providence; but look to the end of an accomplished fact, and you will see that it has always produced the contrary of what was expected from it, if it was not established at first upon morality and justice.”

Chateaubriand's Posthumous Memoirs.

The Law

by Frederick Bastiat

Preface

When a reviewer wishes to give special recognition to a book, he predicts that it will still be read "a hundred years from now." The Law, first published as a pamphlet in June, 1850, is already more than a hundred years old. And because its truths are eternal, it will still be read when another century has passed.

Frederic Bastiat (1801-1850) was a French economist, statesman, and author. He did most of his

writing during the years just before - and immediately following — the Revolution of February 1848. This was the period when France was rapidly turning to complete socialism. As a Deputy to the Legislative Assembly, Mr. Bastiat was studying and explaining each socialist fallacy as it appeared. And he explained how socialism must inevitably degenerate into communism. But most of his countrymen chose to ignore his logic.

The Law is here presented again because the same situation exists in America today as in the France of 1848. The same socialist-communist ideas and plans that were then adopted in France are now sweeping America. The explanations and arguments then advanced against socialism by Mr. Bastiat are — word for word — equally valid today. His ideas deserve a serious hearing.

The Law

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The law perverted! And the police powers of the state perverted along with it! The law, I say, not only turned from its proper purpose but made to follow an entirely contrary purpose! The law become the weapon of every kind of greed! Instead of checking crime, the law itself guilty of the evils it is supposed to punish!

If this is true, it is a serious fact, and moral duty requires me to call the attention of my fellow-citizens to it.

Life Is a Gift from God

We hold from God the gift which includes all others. This gift is life — physical, intellectual, and moral life.

But life cannot maintain itself alone. The Creator of life has entrusted us with the responsibility of preserving, developing, and perfecting it. In order that we may accomplish this, He has provided us with a collection of marvellous faculties. And He has put us in the midst of a variety of natural resources. By the application of our faculties to these natural resources we convert them into products, and use them. This process is necessary in order that life may run its appointed course.

Life, faculties, production — in other words, individuality, liberty, property — this is man. And in spite of the cunning of artful political leaders, these three gifts from God precede all human legislation, and are superior to it.

Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.

What Is Law ?

What, then, is law? It is the collective organization of the individual right to lawful defence

Each of us has a natural right — from God — to defend his person, his liberty, and his property.

These are the three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of the other two. For what are our faculties but the extension of our individuality? And what is property but an extension of our faculties?

If every person has the right to defend — even by force — his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right — its reason for existing, its lawfulness — is based on individual right. And the common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force — for the same reason — cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.

Such a perversion of force would be, in both cases, contrary to our premise. Force has been given to us to defend our own individual rights. Who will dare to say that force has been given to us to destroy the equal rights of our brothers? Since no individual acting separately can lawfully use force to destroy the rights of others, does it not logically follow that the same principle also applies to the common force that is nothing more than the organized combination of the individual forces?

If this is true, then nothing can be more evident than this: The law is the organization of the natural right of lawful defence It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all.

A Just and Enduring Government

If a nation were founded on this basis, it seems to me that order would prevail among the people, in thought as well as in deed. It seems to me that such a nation would have the most simple, easy to accept, economical, limited, non-oppressive, just, and enduring government imaginable — whatever its political form might be.

Under such an administration, everyone would understand that he possessed all the privileges as well as all the responsibilities of his existence. No one would have any argument with government, provided that his person was respected, his labour was free, and the fruits of his labour were protected against all unjust attack. When successful, we would not have to thank the state for our success. And, conversely, when unsuccessful, we would no more think of blaming the state for our misfortune than would the farmers blame the state because of hail or frost. The state would be felt only by the invaluable blessings of safety provided by this concept of government.

It can be further stated that, thanks to the non- intervention of the state in private affairs, our wants and their satisfactions would develop themselves in a logical manner. We would not see poor families seeking literary instruction before they have bread. We would not see cities populated at the expense of rural districts, nor rural districts at the expense of cities. We would not see the great displacements of capital, labour, and population that are caused by legislative

decisions.

The sources of our existence are made uncertain and precarious by these state-created displacements. And, furthermore, these acts burden the government with increased responsibilities.

The Complete Perversion of the Law

But, unfortunately, law by no means confines itself to its proper functions. And when it has exceeded its proper functions, it has not done so merely in some inconsequential and debatable matters. The law has gone further than this; it has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right, in order to protect plunder. And it has converted lawful defence into a crime, in order to punish lawful defence

How has this perversion of the law been accomplished? And what have been the results?

The law has been perverted by the influence of two entirely different causes: stupid greed and false philanthropy. Let us speak of the first.

A Fatal Tendency of Mankind

Self-preservation and self-development are common aspirations among all people. And if everyone enjoyed the unrestricted use of his faculties and the free disposition of the fruits of his labour, social progress would be ceaseless, uninterrupted, and unfailing.

But there is also another tendency that is common among people. When they can, they wish to live and prosper at the expense of others. This is no rash accusation. Nor does it come from a gloomy and uncharitable spirit. The annals of history bear witness to the truth of it: the incessant wars, mass migrations, religious persecutions, universal slavery, dishonesty in commerce, and monopolies. This fatal desire has its origin in the very nature of man — in that primitive, universal, and in-suppressible instinct that impels him to satisfy his desires with the least possible pain.

Property and Plunder

Man can live and satisfy his wants only by ceaseless labour; by the ceaseless application of his faculties to natural resources. This process is the origin of property.

But it is also true that a man may live and satisfy his wants by seizing and consuming the products of the labour of others. This process is the origin of plunder.

Now since man is naturally inclined to avoid pain — and since labour is pain in itself — it follows that men will resort to plunder whenever plunder is easier than work. History shows this quite clearly. And under these conditions, neither religion nor morality can stop it.

When, then, does plunder stop? It stops when it becomes more painful and more dangerous than labour.

It is evident, then, that the proper purpose of law is to use the power of its collective force to stop this fatal tendency to plunder instead of to work. All the measures of the law should protect property and punish plunder.

But, generally, the law is made by one man or one class of men. And since law cannot operate without the sanction and support of a dominating force, this force must be entrusted to those who make the laws.

This fact, combined with the fatal tendency that exists in the heart of man to satisfy his wants with the least possible effort, explains the almost universal perversion of the law. Thus it is easy to understand how law, instead of checking injustice, becomes the invincible weapon of injustice. It is easy to understand why the law is used by the legislator to destroy in varying degrees among the rest of the people, their personal independence by slavery, their liberty by oppression, and their property by plunder. This is done for the benefit of the person who makes the law, and in proportion to the power that he holds.

Victims of Lawful Plunder

Men naturally rebel against the injustice of which they are victims. Thus, when plunder is organized by law for the profit of those who make the law, all the plundered classes try somehow to enter — by peaceful or revolutionary means — into the making of laws. According to their degree of enlightenment, these plundered classes may propose one of two entirely different purposes when they attempt to attain political power: Either they may wish to stop lawful plunder, or they may wish to share in it.

Woe to the nation when this latter purpose prevails among the mass victims of lawful plunder when they, in turn, seize the power to make laws!

Until that happens, the few practice lawful plunder upon the many, a common practice where the right to participate in the making of law is limited to a few persons. But then, participation in the making of law becomes universal. And then, men seek to balance their conflicting interests by universal plunder. Instead of rooting out the injustices found in society, they make these injustices general. As soon as the plundered classes gain political power, they establish a system of reprisals against other classes. They do not abolish legal plunder. (This objective would demand more enlightenment than they possess.) Instead, they emulate their evil predecessors by participating in this legal plunder, even though it is against their own interests.

It is as if it were necessary, before a reign of justice appears, for everyone to suffer a cruel retribution — some for their evilness, and some for their lack of understanding.

The Results of Legal Plunder

It is impossible to introduce into society a greater change and a greater evil than this: the conversion of the law into an instrument of plunder.

What are the consequences of such a perversion? It would require volumes to describe them all. Thus we must content ourselves with pointing out the most striking.

In the first place, it erases from everyone's conscience the distinction between justice and injustice.

No society can exist unless the laws are respected to a certain degree. The safest way to make laws respected is to make them respectable. When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law. These two evils are of equal consequence, and it would be difficult for a person to choose between them. The nature of law is to maintain justice. This is so much the case that, in the minds of the people, law and justice are one and the same thing. There is in all of us a strong disposition to believe that anything lawful is also legitimate. This belief is so widespread that many persons have erroneously held that things are "just" because law makes them so. Thus, in order to make plunder appear just and sacred to many consciences, it is only necessary for the law to decree and sanction it. Slavery, restrictions, and monopoly find defenders not only among those who profit from them but also among those who suffer from them.

The Fate of Non-Conformists

If you suggest a doubt as to the morality of these institutions, it is boldly said that "You are a dangerous innovator, a utopian, a theorist, a subversive; you would shatter the foundation upon which society rests."

If you lecture upon morality or upon political science, there will be found official organizations petitioning the government in this vein of thought: "That science no longer be taught exclusively from the point of view of free trade (of liberty, of property, and of justice) as has been the case until now, but also, in the future, science is to be especially taught from the viewpoint of the facts and laws that regulate French industry (facts and laws which are contrary to liberty, to property, and to justice). That, in government-endowed teaching positions, the professor rigorously refrain from endangering in the slightest degree the respect due to the laws now in force."*

**General Council of Manufacturers, Agriculture, and Commerce, May 6, 1850.*

Thus, if there exists a law which sanctions slavery or monopoly, oppression or robbery, in any form whatever, it must not even be mentioned. For how can it be mentioned without damaging the respect which it inspires? Still further, morality and political economy must be taught from the point of view of this law; from the supposition that it must be a just law merely because it is a law.

Another effect of this tragic perversion of the law is that it gives an exaggerated importance to political passions and conflicts, and to politics in general.

I could prove this assertion in a thousand ways. But, by way of illustration, I shall limit myself to a subject that has lately occupied the minds of everyone: universal suffrage.

Who Shall Judge?

The followers of Rousseau's school of thought — who consider themselves far advanced, but whom I consider twenty centuries behind the times — will not agree with me on this. But universal suffrage — using the word in its strictest sense — is not one of those sacred dogmas which it is a crime to examine or doubt. In fact, serious objections may be made to universal suffrage.

In the first place, the word universal conceals a gross fallacy. For example, there are 36 million people in France. Thus, to make the right of suffrage universal, there should be 36 million voters. But the most extended system permits only 9 million people to vote. Three persons out of four are excluded. And more than this, they are excluded by the fourth. This fourth person advances the principle of incapacity as his reason for excluding the others.

Universal suffrage means, then, universal suffrage for those who are capable. But there remains this question of fact: Who is capable? Are minors, females, insane persons, and persons who have committed certain major crimes the only ones to be determined incapable?

The Reason Why Voting Is Restricted

A closer examination of the subject shows us the motive which causes the right of suffrage to be based upon the supposition of incapacity. The motive is that the elector or voter does not exercise this right for himself alone, but for everybody.

The most extended elective system and the most restricted elective system are alike in this respect. They differ only in respect to what constitutes incapacity. It is not a difference of principle, but merely a difference of degree.

If, as the republicans of our present-day Greek and Roman schools of thought pretend, the right of suffrage arrives with one's birth, it would be an injustice for adults to prevent women and children from voting. Why are they prevented? Because they are presumed to be incapable. And why is incapacity a motive for exclusion? Because it is not the voter alone who suffers the consequences of his vote; because each vote touches and affects everyone in the entire community; because the people in the community have a right to demand some safeguards concerning the acts upon which their welfare and existence depend.

The Answer Is to Restrict the Law

I know what might be said in answer to this; what the objections might be. But this is not the place to exhaust a controversy of this nature. I wish merely to observe here that this controversy over universal suffrage (as well as most other political questions) which agitates, excites, and overthrows nations, would lose nearly all of its importance if the law had always been what it ought to be.

In fact, if law were restricted to protecting all persons, all liberties, and all properties; if law were nothing more than the organized combination of the individual's right to self defence; if law were the obstacle, the check, the punisher of all oppression and plunder — is it likely that we citizens would then argue much about the extent of the franchise?

Under these circumstances, is it likely that the extent of the right to vote would endanger that supreme good, the public peace? Is it likely that the excluded classes would refuse to peaceably await the coming of their right to vote? Is it likely that those who had the right to vote would jealously defend their privilege?

If the law were confined to its proper functions, everyone's interest in the law would be the same. Is it not clear that, under these circumstances, those who voted could not inconvenience those who did not vote?

The Fatal Idea of Legal Plunder

But on the other hand, imagine that this fatal principle has been introduced: Under the pretence of organization, regulation, protection, or encouragement, the law takes property from one person and gives it to another; the law takes the wealth of all and gives it to a few — whether farmers, manufacturers, shipowners, artists, or comedians. Under these circumstances, then certainly every class will aspire to grasp the law, and logically so.

The excluded classes will furiously demand their right to vote — and will overthrow society rather than not to obtain it. Even beggars and vagabonds will then prove to you that they also have an incontestable title to vote. They will say to you:

"We cannot buy wine, tobacco, or salt without paying the tax. And a part of the tax that we pay is given by law — in privileges and subsidies — to men who are richer than we are. Others use the law to raise the prices of bread, meat, iron, or cloth. Thus, since everyone else uses the law for his own profit, we also would like to use the law for our own profit. We demand from the law the right to relief, which is the poor man's plunder. To obtain this right, we also should be voters and legislators in order that we may organize Beggary on a grand scale for our own class, as you have organized Protection on a grand scale for your class. Now don't tell us beggars that you will act for us, and then toss us, as Mr. Mimerel proposes, 600,000 francs to keep us quiet, like throwing us a bone to gnaw. We have other claims. And anyway, we wish to bargain for ourselves as other classes have bargained for themselves!"

And what can you say to answer that argument!

Perverted Law Causes Conflict

As long as it is admitted that the law may be diverted from its true purpose — that it may violate property instead of protecting it — then everyone will want to participate in making the law, either to protect himself against plunder or to use it for plunder. Political questions will always be prejudicial, dominant, and all-absorbing. There will be fighting at the door of the Legislative Palace, and the struggle within will be no less furious. To know this, it is hardly necessary to examine what transpires in the French and English legislatures; merely to understand the issue is to know the answer.

Is there any need to offer proof that this odious perversion of the law is a perpetual source of hatred and discord; that it tends to destroy society itself? If such proof is needed, look at the United States [in 1850]. There is no country in the world where the law is kept more within its proper domain: the protection of every person's liberty and property. As a consequence of this,

there appears to be no country in the world where the social order rests on a firmer foundation. But even in the United States, there are two issues — and only two — that have always endangered the public peace.

Slavery and Tariffs Are Plunder

What are these two issues? They are slavery and tariffs. These are the only two issues where, contrary to the general spirit of the republic of the United States, law has assumed the character of plunder.

Slavery is a violation, by law, of liberty. The protective tariff is a violation, by law, of property.

Its is a most remarkable fact that this double legal crime - a sorrowful inheritance of the Old World - should be the only issue which can, and perhaps will, lead to the ruin of the Union. It is indeed impossible to imagine, at the very heart of a society, a more astounding fact than this: The law has come to be an instrument of injustice. And if this fact brings terrible consequences to the United States - where only in the instance of slavery and tariffs - what must be the consequences in Europe, where the perversion of law is a principle; a system?

Two Kinds of Plunder

Mr. de Montalembert [politician and writer] adopting the thought contained in a famous proclamation by Mr. Carlier, has said: "We must make war against socialism." According to the definition of socialism advanced by Mr. Charles Dupin, he meant: "We must make war against plunder."

But of what plunder was he speaking? For there are two kinds of plunder: legal and illegal.

I do not think that illegal plunder, such as theft or swindling — which the penal code defines, anticipates, and punishes — can be called socialism. It is not this kind of plunder that systematically threatens the foundations of society. Anyway, the war against this kind of plunder has not waited for the command of these gentlemen. The war against illegal plunder has been fought since the beginning of the world. Long before the Revolution of February 1848 — long before the appearance even of socialism itself — France had provided police, judges, gendarmes, prisons, dungeons, and scaffolds for the purpose of fighting illegal plunder. The law itself conducts this war, and it is my wish and opinion that the law should always maintain this attitude toward plunder.

The Law Defends Plunder

But it does not always do this. Sometimes the law defends plunder and participates in it. Thus the beneficiaries are spared the shame, danger, and scruple which their acts would otherwise involve. Sometimes the law places the whole apparatus of judges, police, prisons, and gendarmes at the service of the plunderers, and treats the victim — when he defends himself — as a criminal. In short, there is a legal plunder, and it is of this, no doubt, that Mr. de Montalembert speaks.

This legal plunder may be only an isolated stain among the legislative measures of the people.

If so, it is best to wipe it out with a minimum of speeches and denunciations — and in spite of the uproar of the vested interests.

How to Identify Legal Plunder

But how is this legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime.

Then abolish this law without delay, for it is not only an evil itself, but also it is a fertile source for further evils because it invites reprisals. If such a law — which may be an isolated case — is not abolished immediately, it will spread, multiply, and develop into a system.

The person who profits from this law will complain bitterly, defending his acquired rights. He will claim that the state is obligated to protect and encourage his particular industry; that this procedure enriches the state because the protected industry is thus able to spend more and to pay higher wages to the poor working-men

Do not listen to this sophistry by vested interests. The acceptance of these arguments will build legal plunder into a whole system. In fact, this has already occurred. The present-day delusion is an attempt to enrich everyone at the expense of everyone else; to make plunder universal under the pretence of organizing it.

Legal Plunder Has Many Names

Now, legal plunder can be committed in an infinite number of ways. Thus we have an infinite number of plans for organizing it: tariffs, protection, benefits, subsidies, encouragements, progressive taxation, public schools, guaranteed jobs, guaranteed profits, minimum wages, a right to relief, a right to the tools of labour, free credit, and so on, and so on. All these plans as a whole —with their common aim of legal plunder — constitute socialism.

Now, since under this definition socialism is a body of doctrine, what attack can be made against it other than a war of doctrine? If you find this socialistic doctrine to be false, absurd, and evil, then refute it. And the more false, the more absurd, and the more evil it is, the easier it will be to refute. Above all, if you wish to be strong, begin by rooting out every particle of socialism that may have crept into your legislation. This will be no light task.

Socialism Is Legal Plunder

Mr. de Montalembert has been accused of desiring to fight socialism by the use of brute force. He ought to be exonerated from this accusation, for he has plainly said: "The war that we must fight against socialism must be in harmony with law, honour, and justice."

But why does not Mr. de Montalembert see that he has placed himself in a vicious circle? You would use the law to oppose socialism? But it is upon the law that socialism itself relies. Socialists desire to practice legal plunder, not illegal plunder. Socialists, like all other monopolists, desire to make the law their own weapon. And when once the law is on the side of

socialism, how can it be used against socialism? For when plunder is abetted by the law, it does not fear your courts, your gendarmes, and your prisons. Rather, it may call upon them for help.

To prevent this, you would exclude socialism from entering into the making of laws? You would prevent socialists from entering the Legislative Palace? You shall not succeed, I predict, so long as legal plunder continues to be the main business of the legislature. It is illogical — in fact, absurd — to assume otherwise.

The Choice Before Us

This question of legal plunder must be settled once and for all, and there are only three ways to settle it:

1. The few plunder the many.

2. Everybody plunders everybody.

3. Nobody plunders anybody.

We must make our choice among limited plunder, universal plunder, and no plunder. The law can follow only one of these three.

Limited legal plunder: This system prevailed when the right to vote was restricted. One would turn back to this system to prevent the invasion of socialism.

Universal legal plunder: We have been threatened with this system since the franchise was made universal. The newly enfranchised majority has decided to formulate law on the same principle of legal plunder that was used by their predecessors when the vote was limited.

No legal plunder: This is the principle of justice, peace, order, stability, harmony, and logic. Until the day of my death, I shall proclaim this principle with all the force of my lungs (which alas! is all too inadequate).*

**Translator's note: At the time this was written, Mr. Bastiat knew that he was dying of tuberculosis. Within a year, he was dead.*

The Proper Function of the Law

And, in all sincerity, can anything more than the absence of plunder be required of the law? Can the law — which necessarily requires the use of force — rationally be used for anything except protecting the rights of everyone? I defy anyone to extend it beyond this purpose without perverting it and, consequently, turning might against right. This is the most fatal and most illogical social perversion that can possibly be imagined. It must be admitted that the true solution — so long searched for in the area of social relationships — is contained in these simple words: Law is organized justice.

Now this must be said: When justice is organized by law — that is, by force — this excludes the idea of using law (force) to organize any human activity whatever, whether it be labour, charity, agriculture, commerce, industry, education, art, or religion. The organizing by law of any one of these would inevitably destroy the essential organization — justice. For truly, how can we imagine force being used against the liberty of citizens without it also being used

against justice, and thus acting against its proper purpose?

The Seductive Lure of Socialism

Here I encounter the most popular fallacy of our times. It is not considered sufficient that the law should be just; it must be philanthropic. Nor is it sufficient that the law should guarantee to every citizen the free and inoffensive use of his faculties for physical, intellectual, and moral self-improvement. Instead, it is demanded that the law should directly extend welfare, education, and morality throughout the nation.

This is the seductive lure of socialism. And I repeat again: These two uses of the law are in direct contradiction to each other. We must choose between them. A citizen cannot at the same time be free and not free.

Enforced Fraternity Destroys Liberty

Mr. de Lamartine once wrote to me thusly: "Your doctrine is only the half of my program. You have stopped at liberty; I go on to fraternity." I answered him: "The second half of your program will destroy the first."

In fact, it is impossible for me to separate the word fraternity from the word voluntary. I cannot possibly understand how fraternity can be legally enforced without liberty being legally destroyed, and thus justice being legally trampled underfoot.

Legal plunder has two roots: One of them, as I have said before, is in human greed; the other is in false philanthropy.

At this point, I think that I should explain exactly what I mean by the word plunder.*

**Translator's note: The French word used by Mr. Bastiat is spoliation.*

Plunder Violates Ownership

I do not, as is often done, use the word in any vague, uncertain, approximate, or metaphorical sense. I use it in its scientific acceptance — as expressing the idea opposite to that of property [wages, land, money, or whatever]. When a portion of wealth is transferred from the person who owns it — without his consent and without compensation, and whether by force or by fraud — to anyone who does not own it, then I say that property is violated; that an act of plunder is committed.

I say that this act is exactly what the law is supposed to suppress, always and everywhere. When the law itself commits this act that it is supposed to suppress, I say that plunder is still committed, and I add that from the point of view of society and welfare, this aggression against rights is even worse. In this case of legal plunder, however, the person who receives the benefits is not responsible for the act of plundering. The responsibility for this legal plunder rests with the law, the legislator, and society itself. Therein lies the political danger.

It is to be regretted that the word plunder is offensive. I have tried in vain to find an inoffensive word, for I would not at any time — especially now — wish to add an irritating word

to our dissensions. Thus, whether I am believed or not, I declare that I do not mean to attack the intentions or the morality of anyone. Rather, I am attacking an idea which I believe to be false; a system which appears to me to be unjust; an injustice so independent of personal intentions that each of us profits from it without wishing to do so, and suffers from it without knowing the cause of the suffering.

Three Systems of Plunder

The sincerity of those who advocate protectionism, socialism, and communism is not here questioned. Any writer who would do that must be influenced by a political spirit or a political fear. It is to be pointed out, however, that protectionism, socialism, and communism are basically the same plant in three different stages of its growth. All that can be said is that legal plunder is more visible in communism because it is complete plunder; and in protectionism because the plunder is limited to specific groups and industries.* Thus it follows that, of the three systems, socialism is the vaguest, the most indecisive, and, consequently, the most sincere stage of development.

**If the special privilege of government protection against competition — a monopoly — were granted only to one group in France, the iron workers, for instance, this act would so obviously be legal plunder that it could not last for long. It is for this reason that we see all the protected trades combined into a common cause. They even organize themselves in such a manner as to appear to represent all persons who labour. Instinctively, they feel that legal plunder is concealed by generalizing it.*

But sincere or insincere, the intentions of persons are not here under question. In fact, I have already said that legal plunder is based partially on philanthropy, even though it is a false philanthropy.

With this explanation, let us examine the value — the origin and the tendency — of this popular aspiration which claims to accomplish the general welfare by general plunder.

Law Is Force

Since the law organizes justice, the socialists ask why the law should not also organize labour, education, and religion.

Why should not law be used for these purposes? Because it could not organize labour, education, and religion without destroying justice. We must remember that law is force, and that, consequently, the proper functions of the law cannot lawfully extend beyond the proper functions of force.

When law and force keep a person within the bounds of justice, they impose nothing but a mere negation. They oblige him only to abstain from harming others. They violate neither his personality, his liberty, nor his property. They safeguard all of these. They are defensive; they defend equally the rights of all.

Law Is a Negative Concept

The harmlessness of the mission performed by law and lawful defence is self-evident; the

usefulness is obvious; and the legitimacy cannot be disputed.

As a friend of mine once remarked, this negative concept of law is so true that the statement, the purpose of the law is to cause justice to reign, is not a rigorously accurate statement. It ought to be stated that the purpose of the law is to prevent injustice from reigning. In fact, it is injustice, instead of justice, that has an existence of its own. Justice is achieved only when injustice is absent.

But when the law, by means of its necessary agent, force, imposes upon men a regulation of labour, a method or a subject of education, a religious faith or creed — then the law is no longer negative; it acts positively upon people. It substitutes the will of the legislator for their own wills; the initiative of the legislator for their own initiatives. When this happens, the people no longer need to discuss, to compare, to plan ahead; the law does all this for them. Intelligence becomes a useless prop for the people; they cease to be men; they lose their personality, their liberty, their property.

Try to imagine a regulation of labour imposed by force that is not a violation of liberty; a transfer of wealth imposed by force that is not a violation of property. If you cannot reconcile these contradictions, then you must conclude that the law cannot organize labour and industry without organizing injustice.

The Political Approach

When a politician views society from the seclusion of his office, he is struck by the spectacle of the inequality that he sees. He deplores the deprivations which are the lot of so many of our brothers, deprivations which appear to be even sadder when contrasted with luxury and wealth.

Perhaps the politician should ask himself whether this state of affairs has not been caused by old conquests and looting, and by more recent legal plunder. Perhaps he should consider this proposition: Since all persons seek well-being and perfection, would not a condition of justice be sufficient to cause the greatest efforts toward progress, and the greatest possible equality that is compatible with individual responsibility? Would not this be in accord with the concept of individual responsibility which God has willed in order that mankind may have the choice between vice and virtue, and the resulting punishment and reward?

But the politician never gives this a thought. His mind turns to organizations, combinations, and arrangements — legal or apparently legal. He attempts to remedy the evil by increasing and perpetuating the very thing that caused the evil in the first place: legal plunder. We have seen that justice is a negative concept. Is there even one of these positive legal actions that does not contain the principle of plunder?

The Law and Charity

You say: "There are persons who have no money," and you turn to the law. But the law is not a breast that fills itself with milk. Nor are the lacteal veins of the law supplied with milk from a source outside the society. Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been forced to send it in. If every

person draws from the treasury the amount that he has put in it, it is true that the law then plunders nobody. But this procedure does nothing for the persons who have no money. It does not promote equality of income. The law can be an instrument of equalization only as it takes from some persons and gives to other persons. When the law does this, it is an instrument of plunder.

With this in mind, examine the protective tariffs, subsidies, guaranteed profits, guaranteed jobs, relief and welfare schemes, public education, progressive taxation, free credit, and public works. You will find that they are always based on legal plunder, organized injustice.

The Law and Education

You say: "There are persons who lack education," and you turn to the law. But the law is not, in itself, a torch of learning which shines its light abroad. The law extends over a society where some persons have knowledge and others do not; where some citizens need to learn, and others can teach. In this matter of education, the law has only two alternatives: It can permit this transaction of teaching - and - learning to operate freely and without the use of force, or it can force human wills in this matter by taking from some of them enough to pay the teachers who are appointed by government to instruct others, without charge. But in this second case, the law commits legal plunder by violating liberty and property.

The Law and Morals

You say: "Here are persons who are lacking in morality or religion," and you turn to the law. But law is force. And need I point out what a violent and futile effort it is to use force in the matters of morality and religion?

It would seem that socialists, however self-complacent, could not avoid seeing this monstrous legal plunder that results from such systems and such efforts. But what do the socialists do? They cleverly disguise this legal plunder from others — and even from themselves — under the seductive names of fraternity, unity, organization, and association. Because we ask so little from the law — only justice — the socialists thereby assume that we reject fraternity, unity, organization, and association. The socialists brand us with the name individualist.

But we assure the socialists that we repudiate only forced organization, not natural organization. We repudiate the forms of association that are forced upon us, not free association. We repudiate forced fraternity, not true fraternity. We repudiate the artificial unity that does nothing more than deprive persons of individual responsibility. We do not repudiate the natural unity of mankind under Providence.

A Confusion of Terms

Socialism, like the ancient ideas from which it springs, confuses the distinction between government and society. As a result of this, every time we object to a thing being done by government, the socialists conclude that we object to its being done at all.

We disapprove of state education. Then the socialists say that we are opposed to any education. We object to a state religion. Then the socialists say that we want no religion at all. We object to a state-enforced equality. Then they say that we are against equality. And so on, and so on. It is as if the socialists were to accuse us of not wanting persons to eat because we do not want the state to raise grain.

The Influence of Socialist Writers

How did politicians ever come to believe this weird idea that the law could be made to produce what it does not contain — the wealth, science, and religion that, in a positive sense, constitute prosperity? Is it due to the influence of our modern writers on public affairs?

Present-day writers — especially those of the socialist school of thought — base their various theories upon one common hypothesis: They divide mankind into two parts. People in general — with the exception of the writer himself — from the first group. The writer, all alone, forms the second and most important group. Surely this is the weirdest and most conceited notion that ever entered a human brain!

In fact, these writers on public affairs begin by supposing that people have within themselves no means of discernment; no motivation to action. The writers assume that people are inert matter, passive particles, motionless atoms, at best a kind of vegetation indifferent to its own manner of existence. They assume that people are susceptible to being shaped — by the will and hand of another person — into an infinite variety of forms, more or less symmetrical, artistic, and perfected.

Moreover, not one of these writers on governmental affairs hesitates to imagine that he himself — under the title of organizer, discoverer, legislator, or founder — is this will and hand, this universal motivating force, this creative power whose sublime mission is to mould these scattered materials — persons — into a society.

These socialist writers look upon people in the same manner that the gardener views his trees. Just as the gardener capriciously shapes the trees into pyramids, parasols, cubes, vases, fans, and other forms, just so does the socialist writer whimsically shape human beings into groups, series, centres, sub-centers, honeycombs, labour corps, and other variations. And just as the gardener needs axes, pruning hooks, saws, and shears to shape his trees, just so does the socialist writer need the force that he can find only in law to shape human beings. For this purpose, he devises tariff laws, tax laws, relief laws, and school laws.

The Socialists Wish to Play God

Socialists look upon people as raw material to be formed into social combinations. This is so true that, if by chance, the socialists have any doubts about the success of these combinations, they will demand that a small portion of mankind be set aside to experiment upon. The popular idea of trying all systems is well known. And one socialist leader has been known seriously to demand that the Constituent Assembly give him a small district with all its inhabitants, to try his experiments upon.

In the same manner, an inventor makes a model before he constructs the full-sized machine;

the chemist wastes some chemicals — the farmer wastes some seeds and land — to try out an idea.

But what a difference there is between the gardener and his trees, between the inventor and his machine, between the chemist and his elements, between the farmer and his seeds! And in all sincerity, the socialist thinks that there is the same difference between him and mankind!

It is no wonder that the writers of the nineteenth century look upon society as an artificial creation of the legislator's genius. This idea — the fruit of classical education — has taken possession of all the intellectuals and famous writers of our country. To these intellectuals and writers, the relationship between persons and the legislator appears to be the same as the relationship between the clay and the potter.

Moreover, even where they have consented to recognize a principle of action in the heart of man — and a principle of discernment in man's intellect — they have considered these gifts from God to be fatal gifts. They have thought that persons, under the impulse of these two gifts, would fatally tend to ruin themselves. They assume that if the legislators left persons free to follow their own inclinations, they would arrive at atheism instead of religion, ignorance instead of knowledge, poverty instead of production and exchange.

The Socialists Despise Mankind

According to these writers, it is indeed fortunate that Heaven has bestowed upon certain men — governors and legislators — the exact opposite inclinations, not only for their own sake but also for the sake of the rest of the world! While mankind tends toward evil, the legislators yearn for good; while mankind advances toward darkness, the legislators aspire for enlightenment; while mankind is drawn toward vice, the legislators are attracted toward virtue. Since they have decided that this is the true state of affairs, they then demand the use of force in order to substitute their own inclinations for those of the human race.

Open at random any book on philosophy, politics, or history, and you will probably see how deeply rooted in our country is this idea — the child of classical studies, the mother of socialism. In all of them, you will probably find this idea that mankind is merely inert matter, receiving life, organization, morality, and prosperity from the power of the state. And even worse, it will be stated that mankind tends toward degeneration, and is stopped from this downward course only by the mysterious hand of the legislator. Conventional classical thought everywhere says that behind passive society there is a concealed power called law or legislator (or called by some other terminology that designates some unnamed person or persons of undisputed influence and authority) which moves, controls, benefits, and improves mankind.

A Defence of Compulsory Labour

Let us first consider a quotation from Bossuet [tutor to the Dauphin in the Court of Louis XIV]:*

"One of the things most strongly impressed (by whom?) upon the minds of the Egyptians was patriotism.... No one was permitted to be useless to the state. The law assigned to each one his work, which was handed down from father to son. No one was permitted to have two professions. Nor could a person change from one job to another.... But there was one task to which all were forced to conform: the

study of the laws and of wisdom. Ignorance of religion and of the political regulations of the country was not excused under any circumstances. Moreover, each occupation was assigned (by whom?) to a certain district.... Among the good laws, one of the best was that everyone was trained (by whom?) to obey them. As a result of this, Egypt was filled with wonderful inventions, and nothing was neglected that could make life easy and quiet"

**Translator's note: The parenthetical expressions and the italicized words throughout this book were supplied by Mr. Bastiat. All subheads and bracketed material were supplied by the translator.*

Thus, according to Bossuet, persons derive nothing from themselves. Patriotism, prosperity, inventions, husbandry, science — all of these are given to the people by the operation of the laws, the rulers. All that the people have to do is to bow to leadership.

A Defence of Paternal Government

Bossuet carries this idea of the state as the source of all progress even so far as to defend the Egyptians against the charge that they rejected wrestling and music. He said:

"How is that possible? These arts were invented by
Trismegistus [who was alleged to have been Chancellor to the Egyptian god Osiris]".

And again among the Persians, Bossuet claims that all comes from above:

"One of the first responsibilities of the prince was to encourage agriculture.... Just as there were offices established for the regulation of armies, just so were there offices for the direction of farm work.... The Persian people were inspired with an overwhelming respect for royal authority."

And according to Bossuet, the Greek people, although exceedingly intelligent, had no sense of personal responsibility; like dogs and horses, they themselves could not have invented the most simple games:

"The Greeks, naturally intelligent and courageous, had been early cultivated by the kings and settlers who had come from Egypt. From these Egyptian rulers, the Greek people had learned bodily exercises, foot races, and horse and chariot races.... But the best thing that the Egyptians had taught the Greeks was to become docile, and to permit themselves to be formed by the law for the public good."

The Idea of Passive Mankind

It cannot be disputed that these classical theories [advanced by these latter-day teachers, writers, legislators, economists, and philosophers] held that everything came to the people from a source outside themselves. As another example, take Fenelon [archbishop, author, and instructor to the Duke of Burgundy].

He was a witness to the power of Louis XIV. This, plus the fact that he was nurtured in the classical studies and the admiration of antiquity, naturally caused Fenelon to accept the idea that mankind should be passive; that the misfortunes and the prosperity — vices and virtues — of people are caused by the external influence exercised upon them by the law and the legislators. Thus, in his Utopia of Salentum, he puts men — with all their interests, faculties, desires, and possessions — under the absolute discretion of the legislator. Whatever the issue

may be, persons do not decide it for themselves; the prince decides for them. The prince is depicted as the soul of this shapeless mass of people who form the nation. In the prince resides the thought, the foresight, all progress, and the principle of all organization. Thus all responsibility rests with him.

The whole of the tenth book of Fenelon's Telemachus proves this. I refer the reader to it, and content myself with quoting at random from this celebrated work to which, in every other respect, I am the first to pay homage.

Socialists Ignore Reason and Facts

With the amazing credulity which is typical of the classicists, Fenelon ignores the authority of reason and facts when he attributes the general happiness of the Egyptians, not to their own wisdom but to the wisdom of their kings:

"We could not turn our eyes to either shore without seeing rich towns and country estates most agreeably located; fields, never fallowed, covered with golden crops every year; meadows full of flocks; workers bending under the weight of the fruit which the earth lavished upon its cultivators; shepherds who made the echoes resound with the soft notes from their pipes and flutes. "Happy," said Mentor, "is the people governed by a wise king."..."

Later, Mentor desired that I observe the contentment and abundance which covered all Egypt, where twenty-two thousand cities could be counted. He admired the good police regulations in the cities; the justice rendered in favour of the poor against the rich; the sound education of the children in obedience, labour, sobriety, and the love of the arts and letters; the exactness with which all religious ceremonies were performed; the unselfishness, the high regard for honour, the faithfulness to men, and the fear of the gods which every father taught his children. He never stopped admiring the prosperity of the country. "Happy," said he, "is the people ruled by a wise king in such a manner."

Socialists Want to Regiment People

Fenelon's idyll on Crete is even more alluring. Mentor is made to say:

"All that you see in this wonderful island results from the laws of Minos. The education which he ordained for the children makes their bodies strong and robust. From the very beginning, one accustoms the children to a life of frugality and labour, because one assumes that all pleasures of the senses weaken both body and mind. Thus one allows them no pleasure except that of becoming invincible by virtue, and of acquiring glory.... Here one punishes three vices that go unpunished among other people: ingratitude, hypocrisy, and greed. There is no need to punish persons for pomp and dissipation, for they are unknown in Crete.... No costly furniture, no magnificent clothing, no delicious feasts, no gilded palaces are permitted."

Thus does Mentor prepare his student to mould and to manipulate — doubtless with the best of intentions — the people of Ithaca. And to convince the student of the wisdom of these ideas, Mentor recites to him the example of Salentum.

It is from this sort of philosophy that we receive our first political ideas! We are taught to treat

persons much as an instructor in agriculture teaches farmers to prepare and tend the soil.

A Famous Name and an Evil Idea

Now listen to the great Montesquieu on this same subject:

"To maintain the spirit of commerce, it is necessary that all the laws must favour it. These laws, by proportionately dividing up the fortunes as they are made in commerce, should provide every poor citizen with sufficiently easy circumstances to enable him to work like the others. These same laws should put every rich citizen in such lowered circumstances as to force him to work in order to keep or to gain."

Thus the laws are to dispose of all fortunes!

Although real equality is the soul of the state in a democracy, yet this is so difficult to establish that an extreme precision in this matter would not always be desirable. It is sufficient that there be established a census to reduce or fix these differences in wealth within a certain limit. After this is done, it remains for specific laws to equalize inequality by imposing burdens upon the rich and granting relief to the poor.

Here again we find the idea of equalizing fortunes by law, by force.

In Greece, there were two kinds of republics, One, Sparta, was military; the other, Athens, was commercial. In the former, it was desired that the citizens be idle; in the latter, love of labour was encouraged.

Note the marvellous genius of these legislators: By debasing all established customs — by mixing the usual concepts of all virtues — they knew in advance that the world would admire their wisdom.

Lycurgus gave stability to his city of Sparta by combining petty thievery with the soul of justice; by combining the most complete bondage with the most extreme liberty; by combining the most atrocious beliefs with the greatest moderation. He appeared to deprive his city of all its resources, arts, commerce, money, and defences In Sparta, ambition went without the hope of material reward. Natural affection found no outlet because a man was neither son, husband, nor father. Even chastity was no longer considered becoming. By this road, Lycurgus led Sparta on to greatness and glory.

This boldness which was to be found in the institutions of Greece has been repeated in the midst of the degeneracy and corruption of our modern times. An occasional honest legislator has moulded a people in whom integrity appears as natural as courage in the Spartans.

Mr. William Penn, for example, is a true Lycurgus. Even though Mr. Penn had peace as his objective — while Lycurgus had war as his objective — they resemble each other in that their moral prestige over free men allowed them to overcome prejudices, to subdue passions, and to lead their respective peoples into new paths.

The country of Paraguay furnishes us with another example [of a people who, for their own good, are moulded by their legislators].*

**Translator's note: What was then known as Paraguay was a much larger area than it is today. It was*

colonized by the Jesuits who settled the Indians into villages, and generally saved them from further brutalities by the avid conquerors.

Now it is true that if one considers the sheer pleasure of commanding to be the greatest joy in life, he contemplates a crime against society; it will, however, always be a noble ideal to govern men in a manner that will make them happier.

Those who desire to establish similar institutions must do as follows: Establish common ownership of property as in the republic of Plato; revere the gods as Plato commanded; prevent foreigners from mingling with the people, in order to preserve the customs; let the state, instead of the citizens, establish commerce. The legislators should supply arts instead of luxuries; they should satisfy needs instead of desires.

A Frightful Idea

Those who are subject to vulgar infatuation may exclaim: "Montesquieu has said this! So it's magnificent! It's sublime!" As for me, I have the courage of my own opinion. I say: What! You have the nerve to call that fine? It is frightful! It is abominable! These random selections from the writings of Montesquieu show that he considers persons, liberties, property — mankind itself — to be nothing but materials for legislators to exercise their wisdom upon.

The Leader of the Democrats

Now let us examine Rousseau on this subject. This writer on public affairs is the supreme authority of the democrats. And although he bases the social structure upon the will of the people, he has, to a greater extent than anyone else, completely accepted the theory of the total inertness of mankind in the presence of the legislators:

"If it is true that a great prince is rare, then is it not true that a great legislator is even more rare? The prince has only to follow the pattern that the legislator creates. The legislator is the mechanic who invents the machine; the prince is merely the workman who sets it in motion.

And what part do persons play in all this? They are merely the machine that is set in motion. In fact, are they not merely considered to be the raw material of which the machine is made?"

Thus the same relationship exists between the legislator and the prince as exists between the agricultural expert and the farmer; and the relationship between the prince and his subjects is the same as that between the farmer and his land. How high above mankind, then, has this writer on public affairs been placed? Rousseau rules over legislators themselves, and teaches them their trade in these imperious terms:

"Would you give stability to the state? Then bring the extremes as closely together as possible. Tolerate neither wealthy persons nor beggars.

If the soil is poor or barren, or the country too small for its inhabitants, then turn to industry and arts, and trade these products for the foods that you need.... On a fertile soil — if you are short of inhabitants — devote all your attention to agriculture, because this multiplies people; banish the arts, because they only serve to depopulate the nation....

If you have extensive and accessible coast lines, then cover the sea with merchant ships; you will have a brilliant but short existence. If your seas wash only inaccessible cliffs, let the people be barbarous and eat fish; they will live more quietly — perhaps better — and, most certainly, they will live more happily.

In short, and in addition to the maxims that are common to all, every people has its own particular circumstances. And this fact in itself will cause legislation appropriate to the circumstances."

This is the reason why the Hebrews formerly — and, more recently, the Arabs — had religion as their principle objective. The objective of the Athenians was literature; of Carthage and Tyre, commerce; of Rhodes, naval affairs; of Sparta, war; and of Rome, virtue. The author of The Spirit of Laws has shown by what art the legislator should direct his institutions toward each of these objectives.... But suppose that the legislator mistakes his proper objective, and acts on a principle different from that indicated by the nature of things? Suppose that the selected principle sometimes creates slavery, and sometimes liberty; sometimes wealth, and sometimes population; sometimes peace, and sometimes conquest? This confusion of objective will slowly enfeeble the law and impair the constitution. The state will be subjected to ceaseless agitations until it is destroyed or changed, and invincible nature regains her empire.

But if nature is sufficiently invincible to regain its empire, why does not Rousseau admit that it did not need the legislator to gain it in the first place? Why does he not see that men, by obeying their own instincts, would turn to farming on fertile soil, and to commerce on an extensive and easily accessible coast, without the interference of a Lycurgus or a Solon or a Rousseau who might easily be mistaken.

Socialists Want Forced Conformity

Be that as it may, Rousseau invests the creators, organizers, directors, legislators, and controllers of society with a terrible responsibility. He is, therefore, most exacting with them:

"He who would dare to undertake the political creation of a people ought to believe that he can, in a manner of speaking, transform human nature; transform each individual — who, by himself, is a solitary and perfect whole — into a mere part of a greater whole from which the individual will henceforth receive his life and being. Thus the person who would undertake the political creation of a people should believe in his ability to alter man's constitution; to strengthen it; to substitute for the physical and independent existence received from nature, an existence which is partial and moral. In short, the would- be creator of political man must remove man's own forces and endow him with others that are naturally alien to him."*

Poor human nature! What would become of a person's dignity if it were entrusted to the followers of Rousseau?

**Translator's note: According to Rousseau, the existence of social man is partial in the sense that he is henceforth merely a part of society. Knowing himself as such — and thinking and feeling from the point of view of the whole - he thereby becomes moral.*

Legislators Desire to Mould Mankind

Now let us examine Raynal on this subject of mankind being moulded by the legislator:

"The legislator must first consider the climate, the air, and the soil. The resources at his disposal

determine his duties. He must first consider his locality. A population living on maritime shores must have laws designed for navigation.... If it is an inland settlement, the legislator must make his plans according to the nature and fertility of the soil....

It is especially in the distribution of property that the genius of the legislator will be found. As a general rule, when a new colony is established in any country, sufficient land should be given to each man to support his family....

On an uncultivated island that you are populating with children, you need do nothing but let the seeds of truth germinate along with the development of reason.... But when you resettle a nation with a past into a new country, the skill of the legislator rests in the policy of permitting the people to retain no injurious opinions and customs which can possibly be cured and corrected. If you desire to prevent these opinions and customs from becoming permanent, you will secure the second generation by a general system of public education for the children. A prince or a legislator should never establish a colony without first arranging to send wise men along to instruct the youth...."

In a new colony, ample opportunity is open to the careful legislator who desires to purify the customs and manners of the people. If he has virtue and genius, the land and the people at his disposal will inspire his soul with a plan for society. A writer can only vaguely trace the plan in advance because it is necessarily subject to the instability of all hypotheses; the problem has many forms, complications, and circumstances that are difficult to foresee and settle in detail.

Legislators Told How to Manage Men

Raynal's instructions to the legislators on how to manage people may be compared to a professor of agriculture lecturing his students: "The climate is the first rule for the farmer. His resources determine his procedure. He must first consider his locality. If his soil is clay, he must do so and so. If his soil is sand, he must act in another manner. Every facility is open to the farmer who wishes to clear and improve his soil. If he is skilful enough, the manure at his disposal will suggest to him a plan of operation. A professor can only vaguely trace this plan in advance because it is necessarily subject to the instability of all hypotheses; the problem has many forms, complications, and circumstances that are difficult to foresee and settle in detail."

Oh, sublime writers! Please remember sometimes that this clay, this sand, and this manure which you so arbitrarily dispose of, are men! They are your equals! They are intelligent and free human beings like yourselves! As you have, they too have received from God the faculty to observe, to plan ahead, to think, and to judge for themselves!

A Temporary Dictatorship

Here is Mably on this subject of the law and the legislator. In the passages preceding the one here quoted, Mably has supposed the laws, due to a neglect of security, to be worn out. He continues to address the reader thusly:

"Under these circumstances, it is obvious that the springs of government are slack. Give them a new tension, and the evil will be cured.... Think less of punishing faults, and more of rewarding that which you need. In this manner you will restore to your republic the vigour of youth. Because free people have been ignorant of this procedure, they have lost their liberty! But if the evil has made such headway that

ordinary governmental procedures are unable to cure it, then resort to an extraordinary tribunal with considerable powers for a short time. The imagination of the citizens needs to be struck a hard blow."

In this manner, Mably continues through twenty volumes.

Under the influence of teaching like this — which stems from classical education — there came a time when everyone wished to place himself above mankind in order to arrange, organize, and regulate it in his own way.

Socialists Want Equality of Wealth

Next let us examine Condillac on this subject of the legislators and mankind:

"My Lord, assume the character of Lycurgus or of Solon. And before you finish reading this essay, amuse yourself by giving laws to some savages in America or Africa. Confine these nomads to fixed dwellings; teach them to tend flocks.... Attempt to develop the social consciousness that nature has planted in them.... Force them to begin to practice the duties of humanity.... Use punishment to cause sensual pleasures to become distasteful to them. Then you will see that every point of your legislation will cause these savages to lose a vice and gain a virtue.

All people have had laws. But few people have been happy. Why is this so? Because the legislators themselves have almost always been ignorant of the purpose of society, which is the uniting of families by a common interest.

Impartiality in law consists of two things: the establishing of equality in wealth and equality in dignity among the citizens.... As the laws establish greater equality, they become proportionately more precious to every citizen.... When all men are equal in wealth and dignity — and when the laws leave no hope of disturbing this equality — how can men then be agitated by greed, ambition, dissipation, idleness, sloth, envy, hatred, or jealousy?

What you have learned about the republic of Sparta should enlighten you on this question. No other state has ever had laws more in accord with the order of nature; of equality."

The Error of the Socialist Writers

Actually, it is not strange that during the seventeenth and eighteenth centuries the human race was regarded as inert matter, ready to receive everything — form, face, energy, movement, life — from a great prince or a great legislator or a great genius. These centuries were nourished on the study of antiquity. And antiquity presents everywhere — in Egypt, Persia, Greece, Rome — the spectacle of a few men moulding mankind according to their whims, thanks to the **prestige of force and of fraud.** But this does not prove that this situation is desirable. It proves only that since men and society are capable of improvement, it is naturally to be expected that error, ignorance, despotism, slavery, and superstition should be greatest towards the origins of history. The writers quoted above were not in error when they found ancient institutions to be such, but they were in error when they offered them for the admiration and imitation of future generations. Uncritical and childish conformists, they took for granted the grandeur, dignity, morality, and happiness of the artificial societies of the ancient world. They did not understand that knowledge appears and grows with the passage of

time; and that in proportion to this growth of knowledge, might takes the side of right, and society regains possession of itself.

What Is Liberty?

Actually, what is the political struggle that we witness? It is the instinctive struggle of all people toward liberty. And what is this liberty, whose very name makes the heart beat faster and shakes the world? Is it not the union of all liberties — liberty of conscience, of education, of association, of the press, of travel, of labour, of trade? In short, is not liberty the freedom of every person to make full use of his faculties, so long as he does not harm other persons while doing so? Is not liberty the destruction of all despotism — including, of course, legal despotism? Finally, is not liberty the restricting of the law only to its rational sphere of organizing the right of the individual to lawful self- defence; of punishing injustice?

It must be admitted that the tendency of the human race toward liberty is largely thwarted, especially in France. This is greatly due to a fatal desire — learned from the teachings of antiquity — that our writers on public affairs have in common: They desire to set themselves above mankind in order to arrange, organize, and regulate it according to their fancy.

Philanthropic Tyranny

While society is struggling toward liberty, these famous men who put themselves at its head are filled with the spirit of the seventeenth and eighteenth centuries. They think only of subjecting mankind to the philanthropic tyranny of their own social inventions. Like Rousseau, they desire to force mankind docilely to bear this yoke of the public welfare that they have dreamed up in their own imaginations.

This was especially true in 1789. No sooner was the old regime destroyed than society was subjected to still other artificial arrangements, always starting from the same point: the omnipotence of the law.

Listen to the ideas of a few of the writers and politicians during that period:

SAINT-JUST: "The legislator commands the future. It is for him to will the good of mankind. It is for him to make men what he wills them to be."

ROBESPIERRE: "The function of government is to direct the physical and moral powers of the nation toward the end for which the commonwealth has come into being."

BILLAUD-VARENNES: "A people who are to be returned to liberty must be formed anew. A strong force and vigorous action are necessary to destroy old prejudices, to change old customs, to correct depraved affections, to restrict superfluous wants, and to destroy ingrained vices.... Citizens, the inexible austerity of Lycurgus created the firm foundation of the Spartan republic. The weak and trusting character of Solon plunged Athens into slavery. This parallel embraces the whole science of government."

LE PELLETIER: "Considering the extent of human degradation, I am convinced that it is necessary to effect a total regeneration and, if I may so express myself, of creating a new people."

The Socialists Want Dictatorship

Again, it is claimed that persons are nothing but raw material. It is not for them to will their own improvement; they are incapable of it. According to Saint- Just, only the legislator is capable of doing this. Persons are merely to be what the legislator wills them to be. According to Robespierre, who copies Rousseau literally, the legislator begins by decreeing the end for which the commonwealth has come into being. Once this is determined, the government has only to direct the physical and moral forces of the nation toward that end. Meanwhile, the inhabitants of the nation are to remain completely passive. And according to the teachings of Billaud- Varennes, the people should have no prejudices, no affections, and no desires except those authorized by the legislator. He even goes so far as to say that the inflexible austerity of one man is the foundation of a republic.

In cases where the alleged evil is so great that ordinary governmental procedures cannot cure it, Mably recommends a dictatorship to promote virtue: "Resort," he says, "to an extraordinary tribunal with considerable powers for a short time. The imagination of the citizens needs to be struck a hard blow." This doctrine has not been forgotten. Listen to Robespierre:

"The principle of the republican government is virtue, and the means required to establish virtue is terror. In our country we desire to substitute morality for selfishness, honesty for honour, principles for customs, duties for manners, the empire of reason for the tyranny of fashion, contempt of vice for contempt of poverty, pride for insolence, greatness of soul for vanity, love of glory for love of money, good people for good companions, merit for intrigue, genius for wit, truth for glitter, the charm of happiness for the boredom of pleasure, the greatness of man for the littleness of the great, a generous, strong, happy people for a good-natured, frivolous, degraded people; in short, we desire to substitute all the virtues and miracles of a republic for all the vices and absurdities of a monarchy."

Dictatorial Arrogance

At what a tremendous height above the rest of mankind does Robespierre here place himself! And note the arrogance with which he speaks. He is not content to pray for a great reawakening of the human spirit. Nor does he expect such a result from a well-ordered government. No, he himself will remake mankind, and by means of terror.

This mass of rotten and contradictory statements is extracted from a discourse by Robespierre in which he aims to explain the principles of morality which ought to guide a revolutionary government. Note that Robespierre's request for dictatorship is not made merely for the purpose of repelling a foreign invasion or putting down the opposing groups. Rather he wants a dictatorship in order that he may use terror to force upon the country his own principles of morality. He says that this act is only to be a temporary measure preceding a new constitution. But in reality, he desires nothing short of using terror to extinguish from France selfishness, honour, customs, manners, fashion, vanity, love of money, good companionship, intrigue, wit, sensuousness, and poverty. Not until he, Robespierre, shall have accomplished these miracles, as he so rightly calls them, will he permit the law to reign again.*

**At this point in the original French text, Mr. Bastiat pauses and speaks thusly to all do-gooders and would-be rulers of mankind: "Ah, you miserable creatures! You who think that you are so great! You who*

judge humanity to be so small! You who wish to reform everything! Why don't you reform yourselves? That task would be sufficient enough."

The Indirect Approach to Despotism

Usually, however, these gentlemen — the reformers, the legislators, and the writers on public affairs — do not desire to impose direct despotism upon mankind. Oh no, they are too moderate and philanthropic for such direct action. Instead, they turn to the law for this despotism, this absolutism, this omnipotence. They desire only to make the laws.

To show the prevalence of this queer idea in France, I would need to copy not only the entire works of Mably, Raynal, Rousseau, and Fenelon — plus long extracts from Bossuet and Montesquieu — but also the entire proceedings of the Convention. I shall do no such thing; I merely refer the reader to them.

Napoleon Wanted Passive Mankind

It is, of course, not at all surprising that this same idea should have greatly appealed to Napoleon. He embraced it ardently and used it with vigour Like a chemist, Napoleon considered all Europe to be material for his experiments. But, in due course, this material reacted against him.

At St. Helena, Napoleon — greatly disillusioned — seemed to recognize some initiative in mankind. Recognizing this, he became less hostile to liberty. Nevertheless, this did not prevent him from leaving this lesson to his son in his will: "To govern is to increase and spread morality, education, and happiness."

After all this, it is hardly necessary to quote the same opinions from Morelly, Babeuf, Owen, Saint-Simon, and Fourier. Here are, however, a few extracts from Louis Blanc's book on the organization of labour: "In our plan, society receives its momentum from power."

Now consider this: The impulse behind this momentum is to be supplied by the plan of Louis Blanc; his plan is to be forced upon society; the society referred to is the human race. Thus the human race is to receive its momentum from Louis Blanc.

Now it will be said that the people are free to accept or to reject this plan. Admittedly, people are free to accept or to reject advice from whomever they wish. But this is not the way in which Mr. Louis Blanc understands the matter. He expects that his plan will be legalized, and thus forcibly imposed upon the people by the power of the law:

"In our plan, the state has only to pass labour laws (nothing else?) by means of which industrial progress can and must proceed in complete liberty. The state merely places society on an incline (that is all?). Then society will slide down this incline by the mere force of things, and by the natural workings of the established mechanism."

But what is this incline that is indicated by Mr. Louis Blanc? Does it not lead to an abyss? (No, it leads to happiness.) If this is true, then why does not society go there of its own choice? (Because society does not know what it wants; it must be propelled.) What is to propel it? (Power.) And who is to supply the impulse for this power? (Why, the inventor of the machine —

in this instance, Mr. Louis Blanc.)

The Vicious Circle of Socialism

We shall never escape from this circle: the idea of passive mankind, and the power of the law being used by a great man to propel the people.

Once on this incline, will society enjoy some liberty? (Certainly.) And what is liberty, Mr. Louis Blanc?

Once and for all, liberty is not only a mere granted right; it is also the power granted to a person to use and to develop his faculties under a reign of justice and under the protection of the law.

And this is no pointless distinction; its meaning is deep and its consequences are difficult to estimate. For once it is agreed that a person, to be truly free, must have the power to use and develop his faculties, then it follows that every person has a claim on society for such education as will permit him to develop himself. It also follows that every person has a claim on society for tools of production, without which human activity cannot be fully effective. Now by what action can society give to every person the necessary education and the necessary tools of production, if not by the action of the state?

Thus, again, liberty is power. Of what does this power consist? (Of being educated and of being given the tools of production.) Who is to give the education and the tools of production? (Society, which owes them to everyone.) By what action is society to give tools of production to those who do not own them? (Why, by the action of the state.) And from whom will the state take them?

Let the reader answer that question. Let him also notice the direction in which this is taking us.

The Doctrine of the Democrats

The strange phenomenon of our times — one which will probably astound our descendants — is the doctrine based on this triple hypothesis: the total inertness of mankind, the omnipotence of the law, and the infallibility of the legislator. These three ideas form the sacred symbol of those who proclaim themselves totally democratic.

The advocates of this doctrine also profess to be social. So far as they are democratic, they place unlimited faith in mankind. But so far as they are social, they regard mankind as little better than mud. Let us examine this contrast in greater detail.

What is the attitude of the democrat when political rights are under discussion? How does he regard the people when a legislator is to be chosen? Ah, then it is claimed that the people have an instinctive wisdom; they are gifted with the finest perception; their will is always right; the general will cannot err; voting cannot be too universal.

When it is time to vote, apparently the voter is not to be asked for any guarantee of his wisdom. His will and capacity to choose wisely are taken for granted. Can the people be mistaken? Are we not living in an age of enlightenment? What! are the people always to be kept on leashes?

Have they not won their rights by great effort and sacrifice? Have they not given ample proof of their intelligence and wisdom? Are they not adults? Are they not capable of judging for themselves? Do they not know what is best for themselves? Is there a class or a man who would be so bold as to set himself above the people, and judge and act for them? No, no, the people are and should be free. They desire to manage their own affairs, and they shall do so.

But when the legislator is finally elected — ah! then indeed does the tone of his speech undergo a radical change. The people are returned to passiveness, inertness, and unconsciousness; the legislator enters into omnipotence. Now it is for him to initiate, to direct, to propel, and to organize. Mankind has only to submit; the hour of despotism has struck. We now observe this fatal idea: The people who, during the election, were so wise, so moral, and so perfect, now have no tendencies whatever; or if they have any, they are tendencies that lead downward into degradation.

The Socialist Concept of Liberty

But ought not the people be given a little liberty?

But Mr. Considerant has assured us that liberty leads inevitably to monopoly!

We understand that liberty means competition. But according to Mr. Louis Blanc, competition is a system that ruins the businessmen and exterminates the people. It is for this reason that free people are ruined and exterminated in proportion to their degree of freedom. (Possibly Mr. Louis Blanc should observe the results of competition in, for example, Switzerland, Holland, England, and the United States.)

Mr. Louis Blanc also tells us that competition leads to monopoly. And by the same reasoning, he thus informs us that low prices lead to high prices; that competition drives production to destructive activity; that competition drains away the sources of purchasing power; that competition forces an increase in production while, at the same time, it forces a decrease in consumption. From this, it follows that free people produce for the sake of not consuming; that liberty means oppression and madness among the people; and that Mr. Louis Blanc absolutely must attend to it.

Socialists Fear All Liberties

Well, what liberty should the legislators permit people to have? Liberty of conscience? (But if this were permitted, we would see the people taking this opportunity to become atheists.)

Then liberty of education? (But parents would pay professors to teach their children immorality and falsehoods; besides, according to Mr. Thiers, if education were left to national liberty, it would cease to be national, and we would be teaching our children the ideas of the Turks or Hindus; whereas, thanks to this legal despotism over education, our children now have the good fortune to be taught the noble ideas of the Romans.)

Then liberty of labour? (But that would mean competition which, in turn, leaves production unconsumed, ruins businessmen, and exterminates the people.)

Perhaps liberty of trade? (But everyone knows — and the advocates of protective tariffs have

proved over and over again — that freedom of trade ruins every person who engages in it, and that it is necessary to suppress freedom of trade in order to prosper.)

Possibly then, liberty of association? (But, according to socialist doctrine, true liberty and voluntary association are in contradiction to each other, and the purpose of the socialists is to suppress liberty of association precisely in order to force people to associate together in true liberty.)

Clearly then, the conscience of the social democrats cannot permit persons to have any liberty because they believe that the nature of mankind tends always toward every kind of degradation and disaster. Thus, of course, the legislators must make plans for the people in order to save them from themselves.

This line of reasoning brings us to a challenging question: If people are as incapable, as immoral, and as ignorant as the politicians indicate, then why is the right of these same people to vote defended with such passionate insistence?

The Superman Idea

The claims of these organizers of humanity raise another question which I have often asked them and which, so far as I know, they have never answered: If the natural tendencies of mankind are so bad that it is not safe to permit people to be free, how is it that the tendencies of these organizers are always good? Do not the legislators and their appointed agents also belong to the human race? Or do they believe that they themselves are made of a finer clay than the rest of mankind? The organizers maintain that society, when left undirected, rushes headlong to its inevitable destruction because the instincts of the people are so perverse. The legislators claim to stop this suicidal course and to give it a saner direction. Apparently, then, the legislators and the organizers have received from Heaven an intelligence and virtue that place them beyond and above mankind; if so, let them show their titles to this superiority.

They would be the shepherds over us, their sheep. Certainly such an arrangement presupposes that they are naturally superior to the rest of us. And certainly we are fully justified in demanding from the legislators and organizers proof of this natural superiority.

The Socialists Reject Free Choice

Please understand that I do not dispute their right to invent social combinations, to advertise them, to advocate them, and to try them upon themselves, at their own expense and risk. But I do dispute their right to impose these plans upon us by law — by force — and to compel us to pay for them with our taxes.

I do not insist that the supporters of these various social schools of thought — the Proudhonists, the Cabetists, the Fourierists, the Universitarists, and the Protectionists — renounce their various ideas. I insist only that they renounce this one idea that they have in common: They need only to give up the idea of forcing us to acquiesce to their groups and series, their socialized projects, their free- credit banks, their Graeco - Roman concept of morality, and their commercial regulations. I ask only that we be permitted to decide upon these plans for ourselves; that we not be forced to accept them, directly or indirectly, if we find

them to be contrary to our best interests or repugnant to our consciences.

But these organizers desire access to the tax funds and to the power of the law in order to carry out their plans. In addition to being oppressive and unjust, this desire also implies the fatal supposition that the organizer is infallible and mankind is incompetent. But, again, if persons are incompetent to judge for themselves, then why all this talk about universal suffrage?

The Cause of French Revolutions

This contradiction in ideas is, unfortunately but logically, reflected in events in France. For example, Frenchmen have led all other Europeans in obtaining their rights — or, more accurately, their political demands. Yet this fact has in no respect prevented us from becoming the most governed, the most regulated, the most imposed upon, the most harnessed, and the most exploited people in Europe. France also leads all other nations as the one where revolutions are constantly to be anticipated. And under the circumstances, it is quite natural that this should be the case.

And this will remain the case so long as our politicians continue to accept this idea that has been so well expressed by Mr. Louis Blanc: "Society receives its momentum from power." This will remain the case so long as human beings with feelings continue to remain passive; so long as they consider themselves incapable of bettering their prosperity and happiness by their own intelligence and their own energy; so long as they expect everything from the law; in short, so long as they imagine that their relationship to the state is the same as that of the sheep to the shepherd.

The Enormous Power of Government

As long as these ideas prevail, it is clear that the responsibility of government is enormous. Good fortune and bad fortune, wealth and destitution, equality and inequality, virtue and vice — all then depend upon political administration. It is burdened with everything, it undertakes everything, it does everything; therefore it is responsible for everything.

If we are fortunate, then government has a claim to our gratitude; but if we are unfortunate, then government must bear the blame. For are not our persons and property now at the disposal of government? Is not the law omnipotent?

In creating a monopoly of education, the government must answer to the hopes of the fathers of families who have thus been deprived of their liberty; and if these hopes are shattered, whose fault is it?

In regulating industry, the government has contracted to make it prosper; otherwise it is absurd to deprive industry of its liberty. And if industry now suffers, whose fault is it?

In meddling with the balance of trade by playing with tariffs, the government thereby contracts to make trade prosper; and if this results in destruction instead of prosperity, whose fault is it?

In giving protection instead of liberty to the industries for defence, the government has contracted to make them profitable; and if they become a burden to the taxpayers, whose fault

is it?

Thus there is not a grievance in the nation for which the government does not voluntarily make itself responsible. Is it surprising, then, that every failure increases the threat of another revolution in France?

And what remedy is proposed for this? To extend indefinitely the domain of the law; that is, the responsibility of government.

But if the government undertakes to control and to raise wages, and cannot do it; if the government undertakes to care for all who may be in want, and cannot do it; if the government undertakes to support all unemployed workers, and cannot do it; if the government undertakes to lend interest- free money to all borrowers, and cannot do it; if, in these words that we regret to say escaped from the pen of Mr. de Lamartine, "The state considers that its purpose is to enlighten, to develop, to enlarge, to strengthen, to spiritualize, and to sanctify the soul of the people" — and if the government cannot do all of these things, what then? Is it not certain that after every government failure — which, alas! is more than probable — there will be an equally inevitable revolution?

Politics and Economics

[Now let us return to a subject that was briefly discussed in the opening pages of this thesis: the relationship of economics and of politics — political economy.]*

**Translator's note: Mr. Bastiat has devoted three other books and several articles to the development of the ideas contained in the three sentences of the following paragraph.*

A science of economics must be developed before a science of politics can be logically formulated. Essentially, economics is the science of determining whether the interests of human beings are harmonious or antagonistic. This must be known before a science of politics can be formulated to determine the proper functions of government.

Immediately following the development of a science of economics, and at the very beginning of the formulation of a science of politics, this all-important question must be answered: What is law? What ought it to be? What is its scope; its limits? Logically, at what point do the just powers of the legislator stop?

I do not hesitate to answer: Law is the common force organized to act as an obstacle to injustice. In short, law is justice.

Proper Legislative Functions

It is not true that the legislator has absolute power over our persons and property. The existence of persons and property preceded the existence of the legislator, and his function is only to guarantee their safety.

It is not true that the function of law is to regulate our consciences, our ideas, our wills, our education, our opinions, our work, our trade, our talents, or our pleasures. The function of law is to protect the free exercise of these rights, and to prevent any person from interfering with

the free exercise of these same rights by any other person.

Since law necessarily requires the support of force, its lawful domain is only in the areas where the use of force is necessary. This is justice.

Every individual has the right to use force for lawful self- defence It is for this reason that the collective force — which is only the organized combination of the individual forces — may lawfully be used for the same purpose; and it cannot be used legitimately for any other purpose.

Law is solely the organization of the individual right of self-defence which existed before law was formalized. Law is justice.

Law and Charity Are Not the Same

The mission of the law is not to oppress persons and plunder them of their property, even though the law may be acting in a philanthropic spirit. Its mission is to protect persons and property.

Furthermore, it must not be said that the law may be philanthropic if, in the process, it refrains from oppressing persons and plundering them of their property; this would be a contradiction. The law cannot avoid having an effect upon persons and property; and if the law acts in any manner except to protect them, its actions then necessarily violate the liberty of persons and their right to own property.

The law is justice — simple and clear, precise and bounded. Every eye can see it, and every mind can grasp it; for justice is measurable, immutable, and unchangeable. Justice is neither more than this nor less than this.

If you exceed this proper limit — if you attempt to make the law religious, fraternal, equalizing, philanthropic, industrial, literary, or artistic — you will then be lost in an uncharted territory, in vagueness and uncertainty, in a forced utopia or, even worse, in a multitude of utopias, each striving to seize the law and impose it upon you. This is true because fraternity and philanthropy, unlike justice, do not have precise limits. Once started, where will you stop? And where will the law stop itself?

The High Road to Communism

Mr. de Saint-Cricq would extend his philanthropy only to some of the industrial groups; he would demand that the law control the consumers to benefit the producers.

Mr. Considerant would sponsor the cause of the labour groups; he would use the law to secure for them a guaranteed minimum of clothing, housing, food, and all other necessities of life.

Mr. Louis Blanc would say — and with reason — that these minimum guarantees are merely the beginning of complete fraternity; he would say that the law should give tools of production and free education to all working people.

Another person would observe that this arrangement would still leave room for inequality; he would claim that the law should give to everyone — even in the most inaccessible hamlet —

luxury, literature, and art.

All of these proposals are the high road to communism; legislation will then be — in fact, it already is — the battlefield for the fantasies and greed of everyone.

The Basis for Stable Government

Law is justice. In this proposition a simple and enduring government can be conceived. And I defy anyone to say how even the thought of revolution, of insurrection, of the slightest uprising could arise against a government whose organized force was confined only to suppressing injustice.

Under such a regime, there would be the most prosperity — and it would be the most equally distributed. As for the sufferings that are inseparable from humanity, no one would even think of accusing the government for them. This is true because, if the force of government were limited to suppressing injustice, then government would be as innocent of these sufferings as it is now innocent of changes in the temperature.

As proof of this statement, consider this question: Have the people ever been known to rise against the Court of Appeals, or mob a Justice of the Peace, in order to get higher wages, free credit, tools of production, favourable tariffs, or government-created jobs? Everyone knows perfectly well that such matters are not within the jurisdiction of the Court of Appeals or a Justice of the Peace. And if government were limited to its proper functions, everyone would soon learn that these matters are not within the jurisdiction of the law itself.

But make the laws upon the principle of fraternity — proclaim that all good, and all bad, stem from the law; that the law is responsible for all individual misfortunes and all social inequalities — then the door is open to an endless succession of complaints, irritations, troubles, and revolutions.

Justice Means Equal Rights

Law is justice. And it would indeed be strange if law could properly be anything else! Is not justice right? Are not rights equal? By what right does the law force me to conform to the social plans of Mr. Mimerel, Mr. de Melun, Mr. Thiers, or Mr. Louis Blanc? If the law has a moral right to do this, why does it not, then, force these gentlemen to submit to my plans? Is it logical to suppose that nature has not given me sufficient imagination to dream up a utopia also? Should the law choose one fantasy among many, and put the organized force of government at its service only?

Law is justice. And let it not be said — as it continually is said — that under this concept, the law would be atheistic, individualistic, and heartless; that it would make mankind in its own image. This is an absurd conclusion, worthy only of those worshippers of government who believe that the law is mankind.

Nonsense! Do those worshippers of government believe that free persons will cease to act? Does it follow that if we receive no energy from the law, we shall receive no energy at all? Does it follow that if the law is restricted to the function of protecting the free use of our faculties,

we will be unable to use our faculties? Suppose that the law does not force us to follow certain forms of religion, or systems of association, or methods of education, or regulations of labour, or regulations of trade, or plans for charity; does it then follow that we shall eagerly plunge into atheism, hermitary, ignorance, misery, and greed? If we are free, does it follow that we shall no longer recognize the power and goodness of God? Does it follow that we shall then cease to associate with each other, to help each other, to love and succour our unfortunate brothers, to study the secrets of nature, and to strive to improve ourselves to the best of our abilities?

The Path to Dignity and Progress

Law is justice. And it is under the law of justice — under the reign of right; under the influence of liberty, safety, stability, and responsibility — that every person will attain his real worth and the true dignity of his being. It is only under this law of justice that mankind will achieve — slowly, no doubt, but certainly — God's design for the orderly and peaceful progress of humanity.

It seems to me that this is theoretically right, for whatever the question under discussion — whether religious, philosophical, political, or economic; whether it concerns prosperity, morality, equality, right, justice, progress, responsibility, cooperation, property, labour, trade, capital, wages, taxes, population, finance, or government — at whatever point on the scientific horizon I begin my researches, I invariably reach this one conclusion: The solution to the problems of human relationships is to be found in liberty.

Proof of an Idea

And does not experience prove this? Look at the entire world. Which countries contain the most peaceful, the most moral, and the happiest people? Those people are found in the countries where the law least interferes with private affairs; where government is least felt; where the individual has the greatest scope, and free opinion the greatest influence; where administrative powers are fewest and simplest; where taxes are lightest and most nearly equal, and popular discontent the least excited and the least justifiable; where individuals and groups most actively assume their responsibilities, and, consequently, where the morals of admittedly imperfect human beings are constantly improving; where trade, assemblies, and associations are the least restricted; where labour, capital, and populations suffer the fewest forced displacements; where mankind most nearly follows its own natural inclinations; where the inventions of men are most nearly in harmony with the laws of God; in short, the happiest, most moral, and most peaceful people are those who most nearly follow this principle: Although mankind is not perfect, still, all hope rests upon the free and voluntary actions of persons within the limits of right; law or force is to be used for nothing except the administration of universal justice.

The Desire to Rule over Others

This must be said: There are too many "great" men in the world — legislators, organizers, do-gooders, leaders of the people, fathers of nations, and so on, and so on. Too many persons

place themselves above mankind; they make a career of organizing it, patronizing it, and ruling it.

Now someone will say: "You yourself are doing this very thing."

True. But it must be admitted that I act in an entirely different sense; if I have joined the ranks of the reformers, it is solely for the purpose of persuading them to leave people alone. I do not look upon people as Vancauson looked upon his automaton. Rather, just as the physiologist accepts the human body as it is, so do I accept people as they are. I desire only to study and admire.

My attitude toward all other persons is well illustrated by this story from a celebrated traveller: He arrived one day in the midst of a tribe of savages, where a child had just been born. A crowd of soothsayers, magicians, and quacks - - armed with rings, hooks, and cords — surrounded it. One said: "This child will never smell the perfume of a peace- pipe unless I stretch his nostrils." Another said: "He will never be able to hear unless I draw his ear-lobes down to his shoulders." A third said: "He will never see the sunshine unless I slant his eyes." Another said: "He will never stand upright unless I bend his legs." A fifth said: "He will never learn to think unless I flatten his skull."

"Stop," cried the traveller "What God does is well done. Do not claim to know more than He. God has given organs to this frail creature; let them develop and grow strong by exercise, use, experience, and liberty."

Let Us Now Try Liberty

God has given to men all that is necessary for them to accomplish their destinies. He has provided a social form as well as a human form. And these social organs of persons are so constituted that they will develop themselves harmoniously in the clean air of liberty. Away, then, with quacks and organizers! Away with their rings, chains, hooks, and pincers! Away with their artificial systems! Away with the whims of governmental administrators, their socialized projects, their centralization, their tariffs, their government schools, their state religions, their free credit, their bank monopolies, their regulations, their restrictions, their equalization by taxation, and their pious moralizations!

And now that the legislators and do-gooders have so futilely inflicted so many systems upon society, may they finally end where they should have begun: May they reject all systems, and try liberty; for liberty is an acknowledgement of faith in God and His works.

Review of Important Essays

Jurisdiction

Understanding Jurisdiction - Author Is Anonymous

In all of history there has been but one successful protest against an income tax. It is little understood in that light, primarily because the remnants of protest groups still exist, but no longer wish to appear to be "anti-government." They don't talk much about these roots. Few even know them. We need to go back in time about 400 years to find this success. It succeeded only because the term "jurisdiction" was still well understood at that time as meaning "oath spoken." "Juris," in the original Latin meaning, is "oath." "Diction" as everyone knows, means "spoken." The protest obviously didn't happen here. It occurred in England. Given that the origins of our law are traced there, most of the relevant facts in this matter are still applicable in this nation. Here's what happened.

The Bible had just recently been put into print. To that time, only the churches and nobility owned copies, due to given to the extremely high cost of paper. Contrary to what you've been taught, it was not the invention of movable type that led to printing this and other books. That concept had been around for a very long time. It just had no application. Printing wastes some paper. Until paper prices fell, it was cheaper to write books by hand than to print them with movable type. The handwritten versions were outrageously costly, procurable only by those with extreme wealth: churches, crowns and the nobility. The wealth of the nobility was attributable to feudalism. "Feud" is Old English for "oath." The nobility held the land under the crown. But unimproved land, itself, save to hunter/gatherers, is rather useless. Land is useful to farming. So that's how the nobility made their wealth. No, they didn't push a plough. They had servants to do it. The nobility wouldn't sell their land, nor would they lease it. They rented it. Ever paid rent without a lease? Then you know that if the landlord raised the rent, you had no legal recourse. You could move out or pay. But what if you couldn't have moved out? Then you'd have a feel for what feudalism was all about.

A tenant wasn't a freeman. He was a servant to the (land)lord, the noble. In order to have access to the land to farm it, the noble required that the tenant kneel before him, hat in hand, swear an oath of fealty and allegiance and kiss his ring (extending that oath in that last act to the heirs of his estate). That oath established a servitude. The tenant then put his plough to the fields. The rent was a variable. In good growing years it was very high, in bad years it fell. The tenant was a subsistence farmer, keeping only enough of the produce of his labours to just sustain him and his family. Rent was actually an "income tax." The nobleman could have demanded 100% of the productivity of his servant except . . . under the common law, a servant was akin to livestock. He had to be fed. Not well fed, just fed, same as a horse or cow. And, like a horse or cow, one usually finds it to his benefit to keep it fed, that so that the critter is productive. Thus, the tenant was allowed to keep some of his own productivity. Liken it to a "personal and dependent deductions."

The freemen of the realm, primarily the tradesmen, were un-sworn and un-allieged. They knew

it. They taught their sons the trade so they'd also be free when grown. Occasionally they took on an apprentice under a sworn contract of indenture from his father. His parents made a few coins. But the kid was the biggest beneficiary. He'd learn a trade. He'd never need to become a tenant farmer. He'd keep what he earned. He was only apprenticed for a term of years, most typically about seven. The tradesmen didn't need adolescents; they needed someone strong enough to pull his own weight. They did not take on anyone under 13.

By age 21 he'd have learned enough to practice the craft. That's when the contract expired. He was then called a "journeyman." Had he made a journey? No. But, if you pronounce that word, it is "Jur-nee-man." He was a "man," formerly ("nee"), bound by oath ("jur")." He'd then go to work for a "master" (craftsman). The pay was established, but he could ask for more if he felt he was worth more. And he was free to quit. Pretty normal, eh? Yes, in this society that's quite the norm. But 400 some years ago these men were the exceptions, not the rule. At some point, if the journeyman was good at the trade, he'd be recognized by the market as a "master" (craftsman) and people would be begging him to take their children as apprentices, so they might learn from him, become journeymen, and keep what they earned when manumitted at age 21! The oath of the tenant ran for life. The oath of the apprentice's father ran only for a term of years. Still, oaths were important on both sides. In fact, the tradesmen at one point established guilds (means "gold") as a protection against the potential of the government attempting to bind them into servitudes by compelled oaths.

When an apprentice became a journeyman, he was allowed a membership in the guild only by swearing a secret oath to the guild. He literally swore to "serve gold." Only gold. He swore he'd only work for pay! Once so sworn, any other oath of servitude would be a perjury of that oath. He bound himself for life to never be a servant, save to the very benevolent master: gold! (Incidentally, the Order of Free and Accepted Masons is a remnant of one of these guilds. Their oath is a secret. They'd love to have you think that the "G" in the middle of their logo stands for "God." The obvious truth is that it stands for "GOLD.")

Then the Bible came to print. The market for this tome wasn't the wealthy. They already had a handwritten copy. Nor was it the tenants. They were far too poor to make this purchase. The market was the tradesmen - and the book was still so costly that it took the combined life savings of siblings to buy a family Bible. The other reason that the tradesmen were the market was that they'd also been taught how to read as part of their apprenticeship. As contractors they had to know how to do that! Other than the families of the super-rich (and the priests) nobody else knew how to read.

These men were blown away when they read Jesus' command against swearing oaths (Matt 5: 33-37). This was news to them. For well over a millennia they'd been trusting that the church - originally just the Church of Rome, but now also the Church of England - had been telling them everything they needed to know in that book. Then they found out that **Jesus said, "Swear no oaths."** Talk about an eye-opener.

Imagine seeing a conspiracy revealed that went back over 1000 years. Without oaths there'd have been no tenants, labouring for the nobility, and receiving mere subsistence in return. The whole society was premised on oaths; the whole society CLAIMED it was Christian, yet, it violated a very simple command of Christ! And the tradesmen had done it, too, by demanding sworn contracts of indenture for apprentices and giving their own oaths to the guilds. They

had no way of knowing that was prohibited by Jesus! They were angry. "Livid" might be a better term. The governments had seen this coming. What could they do? Ban the book? The printing would have simply moved underground and the millennia long conspiracy would be further evidenced in that banning. They came up with a better scheme. You call it the "Reformation."

In an unprecedented display of unanimity, the governments of Europe adopted a treaty. This treaty would allow anyone the State-right of founding a church. It was considered a State right, there and then. The church would be granted a charter. It only had to do one very simple thing to obtain that charter. It had to assent to the terms of the treaty.

Buried in those provisions, most of which were totally innocuous, was a statement that the church would never oppose the swearing of lawful oaths. Jesus said, "None." The churches all said (and still say), "None, except . . ." Who do you think was (is) right?

The tradesmen got even angrier! They had already left the Church of England. But with every new "reformed" church still opposing the clear words of Christ, there was no church for them to join - or found. They exercised the right of assembly to discuss the Bible. Some of them preached it on the street corners, using their right of freedom of speech. But they couldn't establish a church, which followed Jesus' words, for that would have required assent to that treaty which opposed what Jesus had commanded. To show their absolute displeasure with those who'd kept this secret for so long, they refused to give anyone in church or state any respect. It was the custom to doff one's hat when he encountered a priest or official. They started wearing big, ugly black hats, just so that the most myopic of these claimed "superiors" wouldn't miss the fact that the hat stayed atop their head. Back then the term "you" was formal English, reserved for use when speaking to a superior. "Thee" was the familiar pronoun, used among family and friends. So they called these officials only by the familiar pronoun "thee" or by their Christian names, "George, Peter, Robert, etc."

We call these folk "Quakers." That was a nickname given to them by a judge. One of them had told the judge that he'd better "Quake before the Lord, God almighty." The judge, in a display of irreverent disrespect replied, "Thee are the quaker here." They found that pretty funny, it being such a total misnomer (as you shall soon see), and the nickname stuck. With the huge membership losses from the Anglican Church - especially from men who'd been the more charitable to it in the past - the church was technically bankrupt. It wasn't just the losses from the Quakers. Other people were leaving to join the new "Reformed Churches." Elsewhere in Europe, the Roman Church had amassed sufficient assets to weather this storm. The far newer Anglican Church had not.

But the Anglican Church, as an agency of the State, can't go bankrupt. It becomes the duty of the State to support it in hard times. Parliament did so. It enacted a tax to that end. A nice religious tax, and by current standards a very low tax, a tithe (10%). But it made a deadly mistake in that. The Quakers, primarily as tradesmen, recognized this income tax as a tax "without jurisdiction,' at least so far as they went. As men un-sworn and un-allieged, they pointed out that they didn't have to pay it, nor provide a return. Absent their oaths establishing this servitude, there was "no jurisdiction." And they were right. Despite laws making it a crime to wilfully refuse to make a return and pay this tax, NONE were charged or arrested.

That caused the rest of the society to take notice. Other folk who'd thought the Quakers were "extremists" suddenly began to listen to them. As always, money talks. These guys were keeping all they earned, while the rest of the un-sworn society, thinking this tax applied to them, well; they were out 10%. The Quaker movement expanded significantly, that proof once made in the marketplace. Membership in the Anglican Church fell even further, as did charity to it. The taxes weren't enough to offset these further losses. The tithe (income) tax was actually counter-productive to the goal of supporting the church. The members of the government and the churchmen were scared silly.

If this movement continued to expand at the current rate, no one in the next generation would swear an oath. Who'd then farm the lands of the nobility? Oh, surely someone would, but not as a servant working for subsistence. The land would need to be leased under a contract, with the payment for that use established in the market, not on the unilateral whim of the nobleman. The wealth of the nobility, their incomes, was about to be greatly diminished. And the Church of England, what assets it possessed, would need to be sold-off, with what remained of that church greatly reduced in power and wealth. But far worse was the diminishment of the respect demanded by the priests and officials. They'd always held a position of superiority in the society. What would they do when all of society treated them only as equals?

They began to use the term "anarchy." But England was a monarchy, not an anarchy. And that was the ultimate solution to the problem, or so those in government thought. There's an aspect of a monarchy that Americans find somewhat incomprehensible, or at least we did two centuries ago. A crown has divine right, or at least it so claims. An expression of the divine right of a crown is the power to rule by demand. A crown can issue commands. The king says, "jump." Everyone jumps.

Why do they jump? Simple. It's a crime to NOT jump. To "wilfully fail (hey, there's a couple of familiar terms) to obey a crown command" is considered to be a treason, high treason. The British crown issued a Crown Command to end the tax objection movement.

Did the crown order that everyone shall pay the income tax? No, that wasn't possible. There really was "no jurisdiction." And that would have done nothing to cure the lack of respect. The crown went one better. It ordered that every man shall swear an oath of allegiance to the crown! Damned Christian thing to do, eh? Literally!

A small handful of the tax objectors obeyed. Most refused. It was a simple matter of black and white. Jesus said "swear not at all." They opted to obey Him over the crown. That quickly brought them into court, facing the charge of high treason. An official would take the witness stand, swearing that he had no record of the defendant's oath of allegiance. Then the defendant was called to testify, there being no right to refuse to witness against one's self. He refused to accept the administered oath. That refusal on the record, the court instantly judged him guilty. Took all of 10 minutes.

That expedience was essential, for there were another couple hundred defendants waiting to be tried that day for their own treasons against the crown. In short order the jails reached their capacity, plus. But they weren't filled as you'd envision them. The men who'd refused the oaths weren't there. Their children were. There was a "Stand-in" law allowing for that. There was no social welfare system. The wife and children of a married man in prison existed on the charity

of church and neighbours, or they ceased to exist, starving to death. It was typical for a man convicted of a petty crime to have one of his kid's stand in for him for 30 or 90 days. That way he could continue to earn a living, keeping bread on the table, without the family having to rely on charity.

However, a man convicted of more heinous crimes would usually find it impossible to convince his wife to allow his children to serve his time. The family would prefer to exist on charity rather than see him back in society. But in this case the family had no option. The family was church-less. The neighbours were all in the same situation. Charity was non-existent for them. The family was destined to quick starvation unless one of the children stood- in for the breadwinner. Unfortunately, the rational choice of which child should serve the time was predicated on which child was the least productive to the family earnings.

That meant nearly the youngest, usually a daughter. Thus, the prisons of England filled with adolescent females, serving the life sentences for their dads. Those lives would be short. There was no heat in the jails. They were rife with tuberculosis and other deadly diseases. A strong man might last several years. A small girl measured her remaining time on earth in months. It was Christian holocaust, a true sacrifice of the unblemished lambs. (And, we must note, completely ignored in virtually every history text covering this era, lest the crown, government and church be duly embarrassed.) Despite the high mortality rate the jails still overflowed. There was little fear that the daughters would be raped or die at the brutality of other prisoners. The other prisoners, the real felons, had all been released to make room. Early release was premised on the severity of the crime. High treason was the highest crime. The murderers, thieves, arsonists, rapists, etc., had all been set free. That had a very profound effect on commerce. It stopped. There were highwaymen afoot on every road. Thugs and muggers ruled the city streets. The sworn subjects of the crown sat behind bolted doors, in cold, dark homes, wondering how they'd exist when the food and water ran out.

They finally dared to venture out to attend meetings to address the situation. At those meetings they discussed methods to overthrow the crown to which they were sworn! Call that perjury. Call that sedition. Call it by any name, they were going to put their words into actions, and soon, or die from starvation or the blade of a thug. Here we should note that chaos (and nearly anarchy: "no crown") came to be, not as the result of the refusal to swear oaths, but as the direct result of the governmental demand that people swear them! The followers of Jesus' words didn't bring that chaos, those who ignored that command of Christ brought it. The crown soon saw the revolutionary handwriting on the wall and ordered the release of the children and the recapture of the real felons, before the government was removed from office under force of arms. The courts came up with the odd concept of an "affirmation in lieu of oath." The Quakers accepted that as a victory. Given what they'd been through, that was understandable. However, Jesus also prohibited affirmations, calling the practice an oath "by thy head." Funny that He could foresee the legal concept of an affirmation 1600 years before it came to be. Quite a prophecy!

When the colonies opened to migration, the Quakers fled Europe in droves, trying to put as much distance as they could between themselves and crowns. They had a very rational fear of a repeat of the situation. That put a lot of them here, enough that they had a very strong influence on politics. They could have blocked the ratification of the Constitution had they

opposed it. Some of their demands were incorporated into it, as were some of their concessions, in balance to those demands. Their most obvious influence found in the Constitution is the definition of treason, the only crime defined in that document. Treason here is half of what can be committed under a crown. In the United States treason may only arise out of an (overt) ACTION. A refusal to perform an action at the command of the government is not a treason, hence, NOT A CRIME. You can find that restated in the Bill of Rights, where the territorial jurisdiction of the courts to try a criminal act is limited to the place wherein the crime shall have been COMMITTED. A refusal or failure is not an act "committed" - it's the opposite, an act "omitted." In this nation "doing nothing" can't be criminal, even when someone claims the power to command you do something. That concept in place, the new government would have lasted about three years. You see, if it were not a crime to fail to do something, then the officers of that government would have done NOTHING - save to draw their pay. That truth forced the Quakers to a concession.

Anyone holding a government job would need be sworn (or affirmed) to support the Constitution. That Constitution enabled the Congress to enact laws necessary and proper to control the powers vested in these people. Those laws would establish their duties. Should such an official "fail" to perform his lawful duties, he'd evidence in that omission that his oath was false. To swear a false oath is an ACTION. Thus, the punishments for failures would exist under the concept of perjury, not treason. But that was only regarding persons under oath of office, who were in office only by their oaths. And that's still the situation. It's just that the government has very cleverly obscured that fact so that the average man will pay it a rent, a tax on income. As you probably know, the first use of income tax here came well in advance of the 16th amendment. That tax was NEARLY abolished by a late 19th century Supreme Court decision. The problem was that the tax wasn't apportioned, and couldn't be apportioned, that because of the fact that it rested on the income of each person earning it, rather than an up-front total, divided and meted out to the several States according to the census. But the income tax wasn't absolutely abolished. The court listed a solitary exception. The incomes of federal officers, derived as a benefit of office, could be so taxed. You could call that a "kick back" or even a "return." Essentially, the court said that what Congress gives, it can demand back. As that wouldn't be income derived within a State, the rule of apportionment didn't apply. Make sense?

Now, no court can just make up rulings. The function of a court is to answer the questions posed to it. And in order to pose a question, a person needs standing." The petitioner has to show that an action has occurred which affects him, hence, giving him that standing. For the Supreme Court to address the question of the income of officers demonstrates that the petitioner was such. Otherwise, the question couldn't have come up.

Congress was taxing his benefits of office. But Congress was ALSO taxing his outside income, that from sources within a State. Could have been interest, dividends, rent, royalties, and even alimony. If he had a side job, it might have even been commissions or salary. Those forms of income could not be taxed. However, Congress could tax his income from the benefits he derived by being an officer.

That Court decision was the end of all income taxation. The reason is pretty obvious. Rather than tax the benefits derived out of office, it's far easier to just reduce the benefits up front!

Saves time. Saves paper. The money stays in Treasury rather than going out, then coming back as much as 15 or 16 months later. So, even though the benefits of office could have been taxed, under that Court ruling, that tax was dropped by Congress. There are two ways to overcome a Supreme Court ruling. The first is to have the court reverse itself. That's a very strange concept at law. Actually, it's impossibility at law. The only way a court can change a prior ruling is if the statutes or the Constitution change, that changing the premises on which its prior conclusion at law was derived. Because it was a Supreme Court ruling nearly abolishing the income tax, the second method, an Amendment to the Constitution, was used to overcome the prior decision. That was the 16th Amendment.

The 16th allows for Congress to tax incomes from whatever source derived, without regard to apportionment. Whose incomes? Hey, it doesn't say (nor do the statues enacted under it). The Supreme Court has stated that this Amendment granted Congress "no new powers." That's absolutely true. Congress always had the power to tax incomes, but only the incomes of officers and only their incomes derived out of a benefit of office. All the 16th did was extend that EXISTING POWER to tax officers' incomes (as benefits of office) to their incomes from other sources (from whatever source derived). The 16th Amendment and the statutes enacted thereunder don't have to say whose incomes are subject to this tax. The Supreme Court had already said that: officers. That's logical. If it could be a crime for a freeman to "wilfully fail" to file or pay this tax, that crime could only exist as a treason by monarchical definition. In this nation a crime of failure may only exist under the broad category of a perjury. Period, no exception.

Thus, the trick employed by the government is to get you to claim that you are an officer of that government. Yeah, you're saying, "Man, I'd never be so foolish as to claim that." I'll betcha $100 I can prove that you did it and that you'll be forced to agree. Did you ever sign a tax form, a W-4, a 1040? Then you did it.

Look at the fine print at the bottom of the tax forms you once signed. You declared that it was "true" that you were "under penalties of perjury." Are you? Were you? Perjury is a felony. To commit a perjury you have to FIRST be under oath (or affirmation). You know that. It's common knowledge. So, to be punished for a perjury you'd need to be under oath, right? Right. There's no other way, unless you pretend to be under oath. To pretend to be under oath is a perjury automatically. There would be no oath. Hence it's a FALSE oath. Perjury rests on making a false oath. So, to claim to be "under penalties of perjury" is to claim that you're under oath. That claim could be true, could be false. But if false, and you knowingly and willingly made that false claim, then you committed a perjury just by making that claim.

You've read the Constitution. How many times can you be tried and penalized for a single criminal act? Once? Did I hear you right? Did you say once; only once? Good for you. You know that you can't even be placed in jeopardy of penalty (trial) a second time.

The term "penalties" is plural. More than one. Oops. Didn't you just state that you could only be tried once, penalized once, for a single criminal action? Sure you did. And that would almost always be true. There's a solitary exception. A federal official or employee may be twice tried, twice penalized. The second penalty, resulting out of a conviction of impeachment, is the loss of the benefits of office, for life. Federal officials are under oath, an oath of office. That's why you call them civil servants. That oath establishes jurisdiction (oath spoken), allowing them to

be penalized, twice, for a perjury (especially for a perjury of official oath). You have been tricked into signing tax forms under the perjury clause. You aren't under oath enabling the commission of perjury. You can't be twice penalized for a single criminal act, even for a perjury. Still, because you trusted that the government wouldn't try to deceive you, you signed an income tax form, pretending that there was jurisdiction (oath spoken) where there was none.

Once you sign the first form, the government will forever believe that you are a civil servant. Stop signing those forms while you continue to have income and you'll be charged with "wilful failure to file," a crime of doing nothing when commanded to do something!

Initially, the income tax forms were required to be SWORN (or affirmed) before a notary. A criminal by the name of Sullivan brought that matter all the way to the Supreme Court. He argued that if he listed his income from criminal activities, that information would later be used against him on a criminal charge. If he didn't list it, then swore that the form was "true, correct and complete," he could be charged and convicted of a perjury. He was damned if he did, damned if he didn't. The Supreme Court could only agree. It ruled that a person could refuse to provide any information on that form, taking individual exception to each line, and stating in that space that he refused to provide testimony against himself. That should have been the end of the income tax. In a few years everyone would have been refusing to provide answers on the "gross" and "net income" lines, forcing NO answer on the "tax due" line, as well. Of course, that decision was premised on the use of the notarized oath, causing the answers to have the quality of "testimony."

Congress then INSTANTLY ordered the forms be changed. In place of the notarized oath, the forms would contain a statement that they were made and signed "Under penalties of perjury." The prior ruling of the Supreme Court was made obsolete. Congress had changed the premise on which it had reached its conclusion. The verity of the information on the form no longer rested on a notarized oath. It rested on the taxpayer's oath of office. And, as many a tax protester in the 1970s and early 1980s quickly discovered, the Supreme Court ruling for Sullivan had no current relevance.

There has never been a criminal trial in any matter under federal income taxation without a SIGNED tax form in evidence before the court. The court takes notice of the signature below the perjury clause and assumes the standing of the defendant is that of a federal official, a person under oath of office who may be twice penalized for a single criminal act of perjury (to his official oath). The court has jurisdiction to try such a person for a "failure." That jurisdiction arises under the concept of perjury, not treason.

However, the court is in an odd position here. If the defendant should take the witness stand, under oath or affirmation to tell the truth, and then truthfully state that he is not under oath of office and is not a federal officer or employee, that statement would contradict the signed statement on the tax form, already in evidence and made under claim of oath. That contradiction would give rise to a technical perjury. Under federal statutes, courtroom perjury is committed when a person wilfully makes two statements, both under oath, which contradict one another.

The perjury clause claims the witness to be a federal person. If he truthfully says the contrary

from the witness stand, the judge is then duty bound to charge him with the commission of a perjury! At his ensuing perjury trial, the two contradictory statements "(I'm) under penalties of perjury" and "I'm not a federal official or employee" would be the sole evidence of the commission of the perjury. As federal employment is a matter of public record, the truth of the last statement would be evidenced. That would prove that the perjury clause was a FALSE statement. Can't have that proof on the record, can we? About now you are thinking of some tax protester trials for "wilful failure" where the defendant took the witness stand and testified, in full truth, that he was not a federal person. This writer has studied a few such cases. Those of Irwin Schiff and F. Tupper Saussy come to mind. And you are right; they told the court that they weren't federal persons. Unfortunately, they didn't tell the court that while under oath.

A most curious phenomenon occurs at "wilful failure" trials where the defendant has published the fact, in books or newsletters, that he isn't a federal person. The judge becomes very absent-minded - at least that's surely what he'd try to claim if the issue were ever raised. He forgets to swear-in the defendant before he takes the witness stand. The defendant tells the truth from the witness stand, but does so without an oath. As he's not under oath, nothing he says can constitute a technical perjury as a contradiction to the "perjury clause" on the tax forms already in evidence. The court will almost always judge him guilty for his failure to file. Clever system. And it all begins when a person who is NOT a federal officer or employee signs his first income tax form, FALSELY claiming that he's under an oath which if perjured may bring him a duality of penalties. It's still a matter of jurisdiction (oath spoken). That hasn't changed in over 400 years. The only difference is that in this nation, we have no monarch able to command us to action.

In the United States of America, you have to VOLUNTEER to establish jurisdiction. Once you do, then you are subject to commands regarding the duties of your office. Hence the income tax is "voluntary," in the beginning, but "compulsory" once you volunteer. You volunteer when you sign your very first income tax form, probably a Form W-4 and probably at about age 15. You voluntarily sign a false statement, a false statement that claims that you are subject to jurisdiction. Gotcha! Oh, and when the prosecutor enters your prior signed income tax forms into evidence at a wilful failure to file trial, he will always tell the court that those forms evidence that you knew it was your DUTY to make and file proper returns. DUTY! A free man owes no DUTY. A free man owes nothing to the federal government, as he receives nothing from it. But a federal official owes a duty. He receives something from that government - the benefits of office. In addition to a return of some of those benefits, Congress can also demand that he pay a tax on his other forms of income, now under the 16th Amendment, from whatever source they may be derived. If that were ever to be understood, the ranks of real, sworn federal officers would diminish greatly. And the ranks of the pretended federal officers (including you) would vanish to zero.

It's still the same system as it was 400 years ago, with appropriate modifications, so you don't immediately realize it. Yes, it's a jurisdictional matter. An Oath-spoken matter. Quite likely you, as a student of the Constitution, have puzzled over the 14th Amendment. You've wondered who are persons "subject to the jurisdiction" of the United States and in the alternative, who are not. This is easily explained, again in the proper historical perspective.

The claimed purpose of the 14th was to vest civil rights to the former slaves. A method was needed to convert them from chattel to full civil beings. The Supreme Court had issued rulings that precluded that from occurring. Hence, an Amendment was necessary. But it took a little more than the amendment. The former slaves would need to perform an act, subjecting themselves to the "jurisdiction" of the United States. You should now realize that an oath is the way that was/is accomplished.

After the battles of the rebellion had ceased, the manumitted slaves were free, but right-less. They held no electoral franchise - they couldn't vote. The governments of the Southern States were pretty peeved over what had occurred in the prior several years, and they weren't about to extend electoral franchises to the former slaves. The Federal government found a way to force that.

It ordered that voters had to be "registered." And it ordered that to become a registered voter, one had to SWEAR an oath of allegiance to the Constitution. The white folks, by and large, weren't about to do that. They were also peeved that the excuse for all the battles was an unwritten, alleged, Constitutional premise, that a "State had no right to secede." The former slaves had no problem swearing allegiance to the Constitution. The vast majority of them didn't have the slightest idea of what an oath was, nor did they even know what the Constitution was!

Great voter registration drives took place. In an odd historical twist, these were largely sponsored by the Quakers who volunteered their assistance. Thus, most of the oaths administered were administered by Quakers! Every former slave was sworn-in, taking what actually was an OATH OF OFFICE. The electoral franchise then existed almost exclusively among the former slaves, with the white folks in the South unanimously refusing that oath and denied their right to vote. For a while many of the Southern State governments were comprised of no one other than the former slaves. The former slaves became de jure (by oath) federal officials, "subject to the jurisdiction of the United States" by that oath. They were non-compensated officials, receiving no benefits of their office, save what was then extended under the 14th Amendment. There was some brief talk of providing compensation in the form of 40 acres and a mule, but that quickly faded.

Jurisdiction over a person exists only by oath. Always has, always will. For a court to have jurisdiction, some one has to bring a charge or petition under an oath. In a criminal matter, the charge is forwarded under the oaths of the grand jurors (indictment) or under the oath of office of a federal officer (information). Even before a warrant may be issued, someone has to swear there is probable cause. Should it later be discovered that there was NOT probable cause, that person should be charged with a perjury. It's all about oaths. And the one crime for which immunity, even "sovereign immunity," cannot be extended is ... perjury.

You must understand "jurisdiction." That term is only understandable when one understands the history behind it. Know what "jurisdiction" means. You didn't WILFULLY claim that you were "Under penalties of perjury" on those tax forms you signed. You may have done it voluntarily, but you surely did it ignorantly! You didn't realize the import and implications of that clause. It was, quite frankly, a MISTAKE. A big one. A dumb one. Still it was only a mistake. Wilfulness rests on intent. You had no intent to claim that you were under an oath of office, a perjury of which could bring you dual penalties. You just didn't give those words any thought. What do you do when you discover you've made a mistake?

As an honest man, you tell those who may have been affected by your error, apologize to them, and usually you promise to be more careful in the future, that as a demonstration that you, like all of us, learn by your mistakes. You really ought to drop the Secretary of the Treasury of the United States a short letter, cc it to the Commissioner of Internal Revenue. Explain that you never realized that the fine print on the bottom of all income tax forms meant that you were claiming to be "under oath" a perjury of which might be "twice" penalized. Explain that you've never sworn such an oath and that for reasons of conscience, you never will. You made this mistake on every tax form you'd ever signed. But now that you understand the words, you'll most certainly not make that mistake again! That'll be the end of any possibility that you'll ever be charged with "wilful failure to file." Too simple? No, it's only as simple as it's supposed to be.

Jurisdiction (oath spoken) is a pretty simple matter. Either you are subject to jurisdiction, by having really sworn an oath, or you are not. If you aren't under oath, and abolish all the pretences, false pretences you provided, on which the government assumed that you were under oath, then the jurisdiction fails and you become a freeman. A freeman can't be compelled to perform any act and threatened with a penalty, certainly not two penalties, should he fail to do so. That would constitute a treason charge by the part of the definition abolished here.

It's a matter of history. European history, American history, and finally, the history of your life. The first two may be hidden from you, making parts of them difficult to discover. But the last history you know. If you know that you've never sworn an oath of office, and now understand how that truth fits the other histories, then you are free. Truth does that. Funny how that works.

Jesus was that Truth. His command that His followers "Swear not at all." That was the method by which He set men free. Israel was a feudal society. It had a crown; it had landlords; they had tenant farmers bound by oath to them. Jesus scared them silly. Who'd farm those lands in the next generation, when all of the people refused to swear oaths? Ring a bell? And what did the government do to Jesus? It tried to obtain jurisdiction on the false oath of a witness, charging Him with "sedition" for the out-of-context, allegorical statement that He'd "tear down the temple" (a government building). At that trial, Jesus stood mute, refusing the administered oath. That was unheard of!

The judge became so frustrated that he posed a trick question attempting to obtain jurisdiction from Jesus. He said, "I adjure you in the name of the Living God, are you the man (accused of sedition)." An adjuration is a "compelled oath." Jesus then broke his silence, responding, "You have so said."

He didn't "take" the adjured oath. He left it with its speaker, the judge! That bound the judge to truth. Had the judge also falsely said that Jesus was the man (guilty of sedition)? No, not out loud, not yet. But in his heart he'd said so. That's what this trial was all about. Jesus tossed that falsehood back where it belonged as well as the oath. In those few words, "You have so said," Jesus put the oath, and the PERJURY of it, back on the judge, where it belonged. The court couldn't get jurisdiction.

Israel was occupied by Rome at that time. The court then shipped Jesus off to the martial

governor, Pontius Pilate, hoping that martial power might compel him to submit to jurisdiction. But Pilate had no quarrel with Jesus. He correctly saw the charge as a political matter, devoid of any real criminal act. Likely, Pilate offered Jesus the "protection of Rome." Roman law extended only to sworn subjects. All Jesus would need do is swear an oath to Caesar, then Pilate could protect him. Otherwise, Jesus was probably going to turn up dead at the hands of "person or persons unknown" which would really be at the hands of the civil government, under the false charge of sedition. Pilate administered that oath to Caesar. Jesus stood mute, again refusing jurisdiction. Pilate "marvelled at that." He'd never before met a man who preferred to live free or die. Under Roman law the un-sworn were considered to be unclean - the "great unwashed masses." The elite were sworn to Caesar.

When an official errantly extended the law to an un-sworn person that "failure of jurisdiction" required that the official perform a symbolic act. To cleanse himself and the law, he would "wash his hands." Pilate did so. Under Roman law, the law to which he was sworn, he had to do so. The law, neither Roman law nor the law of Israel, could obtain jurisdiction over Jesus. The law couldn't kill Him, nor could it prevent that murder. Jesus was turned over to a mob, demanding His death. How's that for chaos? Jesus was put to death because He refused to be sworn. But the law couldn't do that. Only a mob could do so, setting free a true felon in the process. Thus, Jesus proved the one failing of the law - at least the law then and there - the law has no ability to touch a truly free man. A mob can, but the result of that is chaos, not order.

In every situation where a government attempts to compel an oath, or fails to protect a man of conscience who refuses it, the result is chaos. That government proves itself incapable of any claimed powers as the result, for the only purpose of any government should be to defend the people establishing it - all of those people - and not because they owe that government any duty or allegiance, but for the opposite reason, because the government owes the people its duty and allegiance under the law. This nation came close to that concept for quite a few decades. Then those in federal office realized that they could fool all of the people, some of the time. That "some of the time" regarded oaths and jurisdiction. We were (and still are) a Christian nation, at least the vast majority of us claim ourselves to be Christian. But we are led by churchmen who still uphold the terms of that European treaty. They still profess that it is Christian to swear an oath, so long as it's a "lawful oath." We are deceived. As deceived as the tenant in 1300, but more so, for we now have the Words of Jesus to read for ourselves.

Jesus said, "Swear no oaths," extending that even to oaths which don't name God. If His followers obeyed that command, the unscrupulous members of the society in that day would have quickly realized that they could file false lawsuits against Jesus' followers, suits that they couldn't answer (under oath). Thus, Jesus issued a secondary command, ordering His followers to sell all they had, making themselves what today we call "judgement proof." They owned only their shirt and a coat. If they were sued for their shirt, they were to offer to settle out-of-court (without oath) by giving the plaintiff their coat. That wasn't a metaphor. Jesus meant those words in the literal sense!

It's rather interesting that most income tax protesters are Christian and have already made themselves virtually judgement proof, perhaps inadvertently obeying one of Jesus' commands out of a self-preservation instinct. Do we sense something here? You need to take the final step. You must swear no oaths. That is the penultimate step in self-preservation, and in obedience to

the commands of Christ. It's all a matter of "jurisdiction" (oath spoken), which a Christian can't abide. Christians must be freemen. Their faith, duty and allegiance can go to no one on earth. We can't serve two masters. No one can. As Christians our faith and allegiance rests not on an oath. Our faith and allegiance arise naturally. These are duties owed by a child to his father. As Children of God, we must be faithful to Him, our Father, and to our eldest Brother, the Inheritor of the estate. That's certain.

As to what sort of a society Jesus intended without oaths or even affirmations, this writer honestly can't envision. Certainly it would have been anarchy (no crown). Would it have also been chaos? My initial instinct is to find that it would lead to chaos. Like the Quakers in 1786, I can't envision a functional government without the use of oaths. Yet, every time a government attempts to use oaths as a device to compel servitudes, the result is CHAOS. History proves that. The Dark Ages were dark, only because the society was feudal, failing to advance to enlightenment because they were sworn into servitudes, unwittingly violating Jesus' command. When the British crown attempted to compel oaths of allegiance, chaos certainly resulted. And Jesus' own death occurred only out of the chaos derived by His refusal to swear a compelled oath and an offered oath.

The current Internal Revenue Code is about as close to legislated chaos as could ever be envisioned. No two people beginning with identical premises will reach the same conclusion under the IRC. Is not that chaos? Thus, in every instance where the government attempts to use oaths to bind a people, the result has been chaos.

Hence, this writer is forced to the conclusion that Jesus was right. We ought to avoid oaths at all costs, save our own souls, and for precisely that reason. Yet, what system of societal interaction Jesus envisioned, without oaths, escapes me. How would we deal with murderers, thieves, rapists, etc. present in the society without someone bringing a complaint, sworn complaint, before a Jury (a panel of sworn men), to punish them for these criminal actions against the civil members of that society? Perhaps you, the reader, can envision what Jesus had in mind. Even if you can't, you still have to obey His command. That will set you free. As to where we go from there, well, given that there has never been a society, neither civil nor martial, which functioned without oaths, I guess we won't see how it will function until it arrives.

Meanwhile, the first step in the process is abolishing your prior FALSE claims of being under oath (of office) on those income tax forms. You claimed "jurisdiction." Only you can reverse that by stating the Truth. It worked 400 years ago. It'll still work. It's the only thing that'll work. History can repeat, but this time without the penalty of treason extended to you (or your daughters). You can cause it. Know and tell this Truth and it will set you free. HONESTLY. Tell the government, then explain it to every Christian you know. Most of them will hate you for that bit of honesty. Be kind to them anyhow. Once they see that you are keeping what you earn, the market will force them to realize that you aren't the extremist they originally thought! If only 2% of the American people understand what is written here, income taxation will be abolished - that out of a fear that the knowledge will expand. The government will be scared silly.

What if no one in the next generation would swear an oath? Then there'd be no servants! No, the income tax will be abolished long before that could ever happen. That's only money. Power

comes by having an ignorant people to rule. A government will always opt for power. That way, in two or three generations, the knowledge lost to the obscure "between the lines" of history, they can run the same money game. Pass this essay on to your Christian friends. But save a copy. Will it to your grandchildren. Someday, they too will probably need this knowledge. Teach your children well. Be honest; tell the truth. That will set you free - and it'll scare the government silly.

Memorandum of Law

by Joseph Ray Sundarsson

Global Isles Declaration

"I, a decent individual declare that I am aware that my Being is grounded in Truth, and that I live, move and Become upon these Global Isles on the third planet from our lovely Sun. I hereby consciously claim my inherent right to exist, create and dispose of my creations without causing harm or loss to any other individual or person and so do hereby proceed to unfold my life, liberties and happiness." - 15th June 2009, Richard Miles.

The Rights and Powers of Man

"All rights, liberties and powers reserved without prejudice".

Previous enumerations of the powers and rights of man

A summary of rights and powers of man previously delineated:

Constitution of the united States of America circa

"Life, liberty and the pursuit of happiness"

> *We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain* ***unalienable Rights****, that among these are* ***Life, Liberty and the pursuit of Happiness****. - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, - That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government...*

Summary of first ten amendments to the Constitution of the United States of America

1. Freedom of religion, of speech, of the press, to assemble, and to petition
2. The right to keep and bear arms
3. No quartering of soldiers in private houses during peacetime.
4. Search warrant is required to search persons or property.
5. Right to silence: Indictments; due process; self-incrimination; double jeopardy, and rules for eminent domain.
6. Rights to a fair and speedy public trial, to notice of accusations, to confront the accuser, to subpoenas, to counsel.
7. Right to trial by jury in civil cases.

8. No excessive bail or fines, or cruel and unusual punishment
9. Unenumerated rights are reserved to the people.
10. Limits the powers of the federal government to only those specifically granted to it by the constitution.

Notes regarding the 11th Amendment and beyond

The 11th Amendment stripped the courts over jurisdiction over law and equity. By this time, the federal government has been overtaken by powers foreign to the people. The sham government was in place – all treaties, accords, statutes signed by the federal government since the 11th amendment are unenforceable against them or the people – their own courts have no jurisdiction to enforce[25] !

Magna Carta circa 1215 AD

The Magna Carta "Great Charter" of King John, signed and sealed on 15th June 1215 acknowledged that the ruler was not above the common law. It separated the ruler from the church, established the right to due process and justice, instituted uniform weights and measures, and limited the power of the ruler.

"What has Magna Carta meant for American law? It is the source of many of our most fundamental concepts of law. Indeed, the very concept of a written constitution stems from Magna Carta. In over one hundred decisions, the United States Supreme Court has traced our dependence on Magna Carta for our understanding of due process of law, trial by jury of one's peers, the importance of a speedy and unbiased trial, and protection against excessive bail or fines or cruel and unusual punishment."

"Although Carta figured briefly in one 1815 case, the first analysis of its impact in America came in the 1819 case of The Bank of Columbia v. Okely, 4 Wheat.(l 7 U.S.) 235, where a Maryland statute allowing summary process and attachment against debtors was upheld against attacks based on the U.S. Constitution's Seventh Amendment jury trial guarantee and Maryland's parallel: "The 21st Article of the Declaration of Rights of the State of Maryland is in the words of Magna Carta, "No freeman ought to be taken or imprisoned, etc. or deprived of his life, liberty, or property, but by the judgement of his peers, or by he law of the land." In that decision, the court expressed an understanding of Magna Carta which remains valid today: "As to the words from Magna Carta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: **that they were intended to secure the individual from the arbitrary exercise of the powers of government,** unrestrained by the established principals of private rights and disruptive justice." "[26]

See page 380 for the text of the Magna Carta from Project Gutenberg.

25 See the record in the Rodney Dale Class et all vs the UNITED STATES et all doing business as corporations. http://www.rayservers.com/blog/rodney-class-vs-us
26 http://www.magnacharta.com/articles/article04.htm

Charter of Liberties aka Coronation Charter circa 1100 AD

The coronation charter of King Henry I clearly confirms the primacy of the common law, the importance of discarding bad customs, the importance of private property and rights of heirs, the rights of women, justice against false money, the necessity of criminals even in government to make just amends for their offence – no "immunities", forgiveness as a principle of justice, and the restoration of stolen property. The Charter of Liberties inspired the Magna Carta and is as relevant and important today as it was on the day it was signed:

"If any of my barons or men commit a crime, he shall not bind himself to a payment at the king's mercy as he has been doing in the time of my father or my brother; but he shall make amends according to the extent of the crime as he would have done before the time of my father in the time of my other predecessors. But if he be convicted of treachery or heinous crime, he shall make amends as is just."

See page 390 for the full text.

Law and Authority

The source of law, authority and power, even sovereignty is conscious life itself. Dead kings cannot rule, dead slaves cannot produce (the King's "sovereign" command cannot make the dead slave lift a finger). The concept of a legal fiction, a State or Corporation, which has no animating conscious life, having power over life itself is against the laws of the universe.

The Source of Life

The fountain of life arises in conscious experience[27].

The Rational Man

The ability to *discriminate*[28], *reason*[29] , *judge*[30], and *assign value* separates man from mere animal.

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27 For without conscious life you would not be able to know anything! [This is to eat the fruit of the tree of knowledge].

28 Separate truth from falsehood, reality from appearance, fraud from law.

29 Reason Rea"son (r[=e]"z'n), n. [OE. resoun, F. raison, fr. L. ratio (akin to Goth. ra[thorn]j[=o] number, account, gara[thorn]jan to count, G. rede speech, reden to speak), fr. reri, ratus, to reckon, believe, think. Cf. Arraign, Rate, Ratio, Ration.]

1. A thought or a consideration offered in support of a determination or an opinion; a just ground for a conclusion or an action; that which is offered or accepted as an explanation; the efficient cause of an occurrence or a phenomenon; a motive for an action or a determination; proof, more or less decisive, for an opinion or a conclusion; principle; efficient cause; final cause; ground of argument.

[1913 Webster]

I'll give him reasons for it. --Shak.

[1913 Webster]

30 Know good from evil

KJV Genesis 3:5 For God doth know that in the day ye eat thereof, then your eyes shall be opened, **and ye shall be as gods, knowing good and evil.**

Man is a fourfold of feeling[31], thinking[32], willing[33] and being[34].

Lawful Money

Lawful money is gold and silver – objective substance that serves as a lawful money – a special category of goods. Objective substance that can serve as *lawful money* satisfies the test that no man can suspend the *running of limitations* in that good.

Goods

Goods are deliverable substance, that is products and commodities. Goods are good because they are objective to the participants in the marketplace. The purity, weight and volume can be measured. Goods themselves are, even to the most spiritually advanced levels attainable by man, objective ideas held as it were in the Mind of God not subject to arbitrary laws or whims of mortal men but the laws of Nature or God.

Property

The concept of property arises from the fundamental processes in *Mind*. Mind is that in which awareness arises. Bare awareness when it becomes cognisant of itself becomes self-aware, the *I AM* of scripture – this is pure consciousness, a *void*, bereft of a second thing. Pure self-identity when it particularizes itself, *I AM THIS*, obtains *THIS* as its objective body and property, with the *not-THIS* being the Universe around it. When THIS becomes *self-aware*, you have *MAN*.

Thus *MAN* is made in the image of the *Mind* or *God* itself, she has the power to create and modify the objective universe and own that which she has created. These are what are the *Goods* described above. The instantaneous power to create ideas, which are a power of the Mind itself, equally present in potential in every MAN, an *unalienable*[35] power of MAN, cannot be denied.

The consequence of the ontology of the world you live in, even if you are a materialist, is that goods are property, and those that have sold you on the idea that ideas can be property have blasphemed against the *Nature of the Universe* itself and used the trick to steal all the real property which their little minds have been lusting for.

The scriptures speak in parables, lest pure knowledge be corrupted or be lost in a generation. The literal minded West has forgotten the power of the parable, and how to *recognize* its mysteries. Adam and Eve are Reason and Feeling, present in every *MAN* and *WOMAN* and the Tree of Knowledge is the manifest universe itself. Reason and Feeling, working together can know Good from Evil.

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31 The capacity to appreciate and distinguish beauty from its opposite: to distinguish elevated music from crass noise, for example.

32 The capacity to reason, rise above mere logic, to intuit truth – be it mathematical, the laws of the universe or those of the higher spiritual life.

33 The capacity to act – to do, create, make real.

34 The capacity to be – to exist, to be still, to become one with Him from whom Being arises – that which says "I am" in you itself arises.
"Be still, and know that I am God: I will be exalted among the heathen, I will be exalted in the earth" Psalms, psalm 46

35 Unalienable powers cannot be sold or given away.

The Free Market

A free market, even with imperfect information, exists when there are many buyers and sellers of a particular good, and no participant in the market can suspend the running of limitations.

It is the existence of a free market that guarantees the Rational Man a lawful way of measuring value – the natural and lawful process of price discovery in two party voluntary, lawful contracts.

Two Party Voluntary, Lawful Contracts

Two party lawful, voluntary contracts occur when two participants in the free market agree on an exchange of goods or services to the mutual benefit and satisfaction of both parties.

Lawful money, as substance, when involved in the exchange automatically ensures *finality of settlement* and the right of man to the fruit of his labours.

This just fruit of the labours of man is his lawful profit – which he may with another man – each giving good substance to the other ensuring that goods shall multiply amongst men.

Even when one may provides lawful money for the services of another – an intangible – he receives good benefit from the service that aids him increase his production or enjoyment of a good. Examples abound – the expertise of a doctor in healing his ills that he may return to productive capacity, the designs of an architect that beautify his house, and so forth.

A two party contract entered into, that is denominated in liabilities circulated by a third party may be deemed to be unlawful and *void ab initio* and/or cause a *force majeure*[36] event if the *third party* has used fraud, deception or other devious and unlawful means with intent to suspend the *running of limitations*. This is the great danger that today confronts a blinded population.

Running of Limitations

An artifice to suspend the operation of the laws of Nature or God.

> Take a board game with four people around a table playing. Total "cash" at the table is four hundred *bucks*[37], but this is not known to the players, each was dealt a hundred to start the game. What would happen if someone charged a thousand bucks for an item? It would remain unsold. The price would have to be lowered to below what any of the other players could pay before the item could sell. It is evident that prices in a fixed money system do not rise arbitrarily.
>
> If one of the players had the ability to "loan" more bucks into circulation out of thin air to the other players – soon, everything on the board game would be "owed" back to him. Prices would rise as he "loaned" more money out to the other players. If he also had the power to arbitrarily cease "lending", then the participants would go broke one after another and he would soon "own" all the property at the table – by having suspended the running of limitations – this is ***circular fraud***. This participant would not be subject to any limitations at all. This is the situation today – where not one adult in a hundred who can explain it. See Finality of Settlement – Part I – for a longer explanation of the different kinds of dollars in circulation. In short – the "credit crisis" is an artificial, deliberately engineered crisis in a society that has no lawful money and hence has abandoned the rule of law – no matter how many statutes there be on the books.

36 An event beyond the control of the contracting parties.
37 Slang for units of money.

Circular Fraud

The issuance of debt denominated in debt units, where the debt units cannot be redeemed in lawful substance is circular fraud.

The primary circular fraud is this process conducted between the central bank (usually private and not subject to the *law of the land*) and a legislative body purporting to represent the people. The central bank does not risk any funds in "lending" to the government – the asset is the promise of the government to steal from its people who, through fraudulent deceit, are fraudulently converted to "citizens" under the power of the fraudulent government.

Identity theft

The creation of such identity, bound to a "citizen" and its use by the government to steal from the people is *identity theft*.

Human trafficking

The trading of stolen identity – the bonds created by monetized birth certificate – is human trafficking. The theft of the bond funds by government officials operating under the colour of law in sham courts resulting in false imprisonment is aggravated kidnapping. All participating government officials shall be jointly liable for the amount stolen – in lawful money that is gold – computed at the historical exchange rate between gold and the units of the bond at the time of the commission of the crime.

Legal Tender

The fraction of the circular fraud debt, held outright by the central bank, monetized by the government printing agent with who these assets are pledged is termed "legal tender" and is circulated as-if it were money. **Legal tender cannot be used to discharge debts at law.**

Debts at Law

Valid debts at law have a term of five years or less, carry simple interest, and the lender will have to deliver and give up control over the lawful substance in which the debt is denominated to the borrower.

The commencement date of a debt at law is the day on which the lender delivered lawful substance to the borrower.

Any debt at law not collected within seven years of the commencement date of the loan shall become void and non-collectable. This is Common Law.

Any debt at law is *void ab initio* if the lender concludes a loan with the borrower where the borrower could not possibly repay the loan based on the limitations of nature. Examples of such debts include loans denominated in gold whose repayment value exceed all the gold ever mined. Arguments such as "oldest note wins" is fraudulent assault.

Any debt at law that is concluded with a party that can only repay by theft or enforced contract "taxation" from another party shall be *void ab initio*. Any government debt whose source of funds is non-voluntary taxation is not a debt at law and is void on its face.

The power of the people of the land to withhold their taxes to reign in an out of control government shall not be infringed.

No government of any form – elected, trust, public trust, monarchical, judicial [unlawfully ruling from the bench in administrative courts], &c., shall have the power to emit bills of credit or incur debt on behalf of the people. This is the will of the people – there is no equivocation about this[38].

Fractional Reserve and Fraudulent Conversion

Retail commercial banks who, either on concocted "fractional-reserve"[39], or purely fraudulent conversion basis, monetize the promissory notes of the citizens and circulate them as-if they were legal tender commit fraud in the inducement, fraudulent concealment, fraudulent conversion and circular fraud. This is the secondary circular fraud that create more notional accounting units that the banks circulate as-if it were a thing.

Sham Independence, Fraudulent Wars

The grant of political independence where powers foreign to the people of the land operate a central bank is sham independence. Every country with a central bank is not independent and can be pushed to achieve any objective, including war on behalf of the foreign powers that operate central banks. Any such wars are unlawful – started by fraudulent coercion. Those who created the situations, engineered the financial crisis, organized the false flag attacks shall be found, and tried by a standing grand jury of the people in a court of record.

> The full force of Natural and Common Law shall be applicable at all times in all places and cannot be annulled by the declaration of emergency, war or other device by any State or entity. The Global Isles Claim of Right – Richard Miles, 15th June 2009.

The UNITED NATIONS with a number of "countries", each of whom are corporate actors that have sham independence, whose people do not select the representatives, who vote on matters of life and death, war and plunder, who shall live and who shall die, and assign the costs to the people are in a very precarious position with respect to the common law.

Powers foreign to the people of the land – Acts of Ultra Vires

The people of the land or their representatives do not have the power to commit circular fraud. This is an example of a power foreign to the people of the land. All those who have engaged

38 No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. Article I, section 10, clause 1, Constitution of the United States of America.

39 See "Modern Money Mechanics", published by the Federal Reserve. http://www.rayservers.com/images/ModernMoneyMechanics.pdf

themselves in such circular fraud or have benefited from such fraud have given up the protection of the people and have removed themselves to a foreign fraudulent jurisdiction and thereby given up any right to protection or sustenance from the people.

The people of the land or their representatives do not have the power to prevent another individual – a man or a woman – from travel with their property and family to anywhere on these Global Isles. This is another example of another power foreign to the people of the land. There shall be no more refugees – the crossing of a border to another land – automatically entitles the man or woman to be regarded as one of the people of that land with all rights, privileges and powers under the common law.

The people of the land or their representatives do not have the power to prevent another individual from producing, working or trading their property, accepting voluntary, lawful charity and living by voluntary, lawful contract.

The people of the land or their representatives do not have the power to grant monopolies to institute rules that allow one man to produce a thing or perform a service while forbidding another. There shall be no "licensing" - the common law is sufficient to protect the people – the law cannot save the people from the exercise of their own discrimination and judgement. Common custom is sufficient to ensure that doctors will be recognized as such when they have received competent training, operators shall ensure that they can safely operate their conveyance. Those that cause harm or loss by their poor skills will have to make amends for it under the common law.

The people of the land or their representatives do not have the power to prevent the probabilistic universe from causing random failures. The people of the land have every right to use their thinking, reason and mathematical judgement – actuarial statistics – to mitigate the effects of such. The sale of risk instruments "insurance", "stocks", "real bills", "futures contracts", paid for, and denominated in lawful, deliverable goods or money, is a right of the people and no representative can forbid this.

The people of the land or their representatives do not have the power to prevent another individual from self expression, or from remaining silent, or to deny due process, or speedy justice, or to create statutes that proclaim crimes without victims. Those who legislate and proclaim fines or penalties for victimless crimes have exceeded their authority and removed themselves from being qualified for an office of trust.

The people of the land or their representatives do not have the power to call for mass murder "war", damage to private property, the spreading of poisons, authorize the use of nuclear weapons or depleted uranium weapons. The technology exists today to bring the most errant leaders of the most dictatorial states into compliance with the *Common Law* without the use of such indiscriminate force. [It is not a weapon, and it works using a common law approach and it will be highly effective].

The people of the land or their representatives do not have the power to create a "marriage license" - a three party contract with the State as the superior controlling party, nor do they have a right to dictate anything whatsoever about the private life of the sovereign people.

The people of the land or their representatives do not have the power to dictate what shall

constitute the schooling or curriculum of the children of the sovereign people. The parents shall be free to educate the children at their own expense in a manner of their choosing.

The people of the land cannot and do not authorize a pyramid of power where the elected representative [see page 120] holds power over the common law itself. What is the common law? *Thou shalt not cause harm or loss to another.*

Trust

Assured resting of the mind on the integrity, veracity, justice, friendship, or other sound principle, of another person; confidence; reliance; reliance. "O ever-failing trust in mortal strength!" --Milton.

[1913 Webster]

Woe unto thee who have trusted your purchasing power and your very life, liberties and laws to the purveyors of fraud.

Modern Bank

A licensed or chartered fraud, licensed to “lend” that which they do not have, which fraudulent substance they create these days by fraudulent conversion, they then deceive you into reliance on the fraudulent substance as if it were money, and they then circulate such liabilities as-if they were legal tender. They that grant these licenses arbitrarily shut down these banks based on accounting gimmicks to remove this substance from circulation to cause an engineered crisis. Every step in the process has the goal of theft of private property of the people by fraud.

And, people *trust* the banks and their partners in crime, the “legislators”, but not their fellow man – or even gold – which is God's or Nature's lawful money!

Jurisdiction

Jurisdiction. Lit: Law or oath spoken. The authority of a sovereign power to govern or legislate; the right of making or enforcing laws; the power or right of exercising authority.

A *court of record* with a standing grand jury, proceeding according to the natural and common law, has unlimited jurisdiction. This is the jurisdiction of the *Common Law of the Global Isles* - jurisdiction over any place where men may breathe air and live.

Those who have assumed public office, who have spoken an oath to protect the people and uphold the law, who have promptly proceeded to do the very opposite – connive with powers foreign to the land, institute fraud, operate under the colour of the law, shall be found, and tried by a grand jury of the people in a *court of record*.

Penalties at Law

A court of record may impose penalties or fines upon those who have violated the law and seize funds sourced in fraud or other crimes. The penalties shall be measured in lawful money.

Penalties at law cannot create unlawful debts. Penalties at law, bail or other court related fees or fines must be reasonable and not excessive. If amnesty is granted, the violator shall, at a maximum be subject to a fine totalling five years of productive earnings, spread over the next fifteen years – the court must allow sufficient working capital to be retained by the person being provided amnesty so that he may start his lawful, productive life anew.

Imprisonment

Imprisonment shall be reserved for those who are a danger to the people of the land and who cannot therefore qualify for amnesty. Dangerous criminals shall include those who have committed war crimes, crimes against humanity, torture, use of nuclear weapons including depleted uranium weapons, geophysical weapons such as hurricane generators, earthquake and tsunami weapons, undersea sonic booms, offensive wave or particle weapons, electric shock such a tasers – especially against unarmed peaceful people who exercise their inherent right to peaceful self expression, disproportionate use of force.

Lawful force

The people of the land shall, by their inherent power and right, be the most qualified to own and operate weapons no matter how powerful.

Lawfully owned weapons are always purchased with a lawful source of funds. Weapons employed by any party where the weapons are purchased with funds obtained by circular fraud shall be surrendered to a lawful court of record or a grand jury of the people which shall decide on how to dispose of the weapons or re-deploy them in pursuit of criminals who have committed crimes against humanity, war crimes, circular fraud &c.

The use of weapons shall be subject to the operation of the common law – and the use of force shall always be proportional to the threat. Force may be used in self defence, to protect life, liberty and private property, to bring criminals to justice, to execute the will of a lawful grand jury.

Amnesty

The sovereign power to forgive and forget, to grant pardon.

Any such standing grand jury of the people in a court of record has the power to grant amnesty. Such an amnesty shall ensure that those so pardoned are stripped of any power, shall be banned from holding an office of trust, and that that they do not benefit from the assets they have stolen by fraud, theft, embezzlement, and war. The purpose of such an amnesty shall be to return such men to productive work, where they shall have equal opportunity to live by production of wealth.

Lawful funds

Lawful funds are those obtained by an individual or entity that is sourced in lawful activity –

the production and sale of goods and services.

Money laundering

Money laundering shall be defined as the act of deliberately passing off assets whose source lies in crimes against humanity as defined in this memorandum of law.

Legal Plunder

Legal Plunder is the act of a State and its co-conspirators to take through force or deceit the property of individuals – "*we the people*"[40].

Philosophy

The love of wisdom, the wisdom that encompasses all experience – scientific, religious, emotional, atheistic, even paranormal and alien.

In Mind we live and move and have our Being – is a modern re-statement of the biblical truth " For in Him we live, and move, and have our being"[41] - an all encompassing philosophical position, the key to the mysteries and the sciences[42].

It is the wonder and privilege of our age to have the philosophy and distilled wisdom of the ages and people of this world available at a mouse click. In the tumult of the last few hundred years, the sages of the human race have come and left us a legacy of philosophy, history, science and literature in the English Language. It is not their fault if you have not searched, sought for, and imbibed the wisdom in their words.

The Rights of Minorities

The ultimate minority is an individual. The right of one man or woman to reserve all her rights, liberties and powers shall not be infringed.

Sovereignty of Man[43]

"The very meaning of 'sovereignty' is that the decree of the sovereign makes law." American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

The quality or state of being sovereign, or of being a sovereign; the exercise of, or right to exercise, supreme power; dominion; sway; supremacy; independence; also, that which is sovereign.

"...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves;

40 See Finality of Settlement Part I – Law vs legal plunder.
41 Acts, chapter 17
42 The theory of relativity requires an observer – a conscious mind. Also see *The Emperor's New Mind* by Roger Penrose.
43 The word Man refers to a woman or a man – an indivisible being. Such beings are inherently endowed by Nature or God with conscious rational intelligence and the possibility of direct insight into Truth.

the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty." CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL 1793 pp471-472

Republic

A republic is a where the *people of the land* are the sovereigns, who constitute a limited government to ensure that their liberties, powers and freedoms are protected.

The People of the Land

Any living man or woman present on the land.

A Country

The regional boundaries determined by the people of the land, for the purpose of instituting a lawful limited government to protect their rights, liberties and powers.

Democracy

A true democracy is where the offices holders of the limited government are selected by the people. Such selected people must not just be popular, they must pass the test of knowing what is lawful, acting as true servants of the people, their sovereign masters. In can be mathematically shown that a limited government chosen by an electoral college system produces the most diverse representative group of leaders. Such diversity does not necessarily prevent a democracy from turning into a sham democracy.

Sham Democracy

When the government is replaced by a private corporation of the same name, staffed by rigged elections, running a veritable dictatorship by fraudulent deception – where the rights, liberties and powers of the people of the land are circumscribed, where controls and "licensing requirements" are placed on the liberties of the people to produce, trade, work, enter or leave the country, where the lawful money has been stolen by fraud, war and other deceptive fear tactics, where the tyranny of the legislators and hidden interests is inflicted upon the people – this is a sham democracy masquerading as a republic.

Representative

An agent, deputy, or substitute, who supplies the place of another, or others, being invested with his or their authority[44].

44 As you can clearly see, your elected *representative* draws his authority from you – and cannot thus have authority over you. Since she is the representative of more than one individual, the powers represented must, by reason, be less than the natural powers of any one man – for, by the common law, he may not harm or restrict even one of those men he claims to represent.

[1913 Webster]

An Act vs The Law

If all the legislators in the world got together and passed an Act that said "Eggs shall not smash when dropped onto a concrete floor. This shall have the force of law." – clearly that Act would be void on its face and would have no effect on the operation of the Laws of Physics. The same is true for Moral Law – if the State were to legislate that it would be legal for your neighbour to take the eggs you have in your refrigerator whenever he chooses – that "law" would be void on its face. Such acts are beyond the power of these mortal men, that is, acts of *ultra vires*.

An Act of Congress or similar legislature is not automatically a law – it does not matter if the legislature is in a civil or common law jurisdiction.

Court

The person and suite of the sovereign. The suite of the sovereign is the assemblage or persons who attend upon the sovereign. In a republic the assemblage of persons are the officials of a court who are paid with public money – in effect, those hired by the sovereign people to attend upon them. One of the people can choose to hire such officials distinguished by their neutrality, their ability to reason &c., and have, in effect an effective private court. The jury, of course, would have to be selected from the peers of the plaintiff and the defendant.

Freedom

There is no limit as to what you may do other than the natural limits of the universe, and the sovereignty of a fellow sovereign – as discovered in a *court of record,* or by a jury.

People vs Citizen[45]

PEOPLE ---> GOVERNMENT ---> CITIZENS

As a king you "are entitled to all the rights which formerly belonged to the King by his prerogative." You can do what you want to do when you want to do it. You have your own property and your own courts. There is no limit as to what you may do other than the natural limits of the universe, and the sovereignty of a fellow sovereign. You should treat the other sovereign in accordance with the Golden Rule, and at the very least must never harm him. Your sovereignty stops where the other sovereignty begins. You are one of the owners of the government, and it is their promise that they will support your sovereignty. You have no allegiance to anyone. The government, your only [public] servant, has an allegiance to you.

As a citizen, you are only entitled to whatever your sovereign grants to you. You have no rights. If you wish to do something that would be otherwise illegal, you must apply for a license giving you special permission. If there is no license available, and if there is no specific permission granted in the statutes, then you must apply for special permission or a waiver in

45 http://1215.org/lawnotes/lawnotes/pvc.htm

order to do it. Your only allegiance is to your sovereign (the government), and that allegiance is mandated by your sovereign's law (the government, though not absolutely sovereign, is sovereign relative to you if you claim to be a citizen of the sovereign).

A Court of Record

A "court of record" is a judicial tribunal 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. 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.

A *court of record* has the following attributes:

1. **The tribunal is independent of the magistrate or judge**:
    1. The magistrate or judge's role is to ensure that the due process and the rules of court are followed at all times by all parties – this is what the judge judges. The judge in a court of record does not pass judgement on the subject matter being examined by the court, she merely records the the decision of the tribunal.
2. **The *tribunal* of the court is the body that has the power to pass judgement in court. The tribunal is either:**
    1. **The sovereign plaintiff** – the man or woman who has brought the suite against the defendants for violation of the common law – for having suffered harm or loss due to the actions of the defendants; **or**,
    2. **The jury** – twelve or more peers, all equal fellow sovereigns, chosen from the people of the land who know the difference between being one of the people and a "citizen", who, as twelve sovereigns can rule unanimously for or against the sovereign plaintiff.
        1. "Citizens" created by the State cannot serve on a lawful grand jury. Citizenship bestowed by the State creates a second class deluded man or woman who, knowingly or unknowingly has been defrauded by the State into believing that the State holds sovereignty over the people.
3. **A court of record proceeds according to the common law** – there are no statutes:
    1. The common law is justice!
    2. The common law cannot be suspended. The full force of *Natural and Common Law* shall be applicable at all times in all places and cannot be annulled by the declaration of emergency, war or other device by any State or entity.

        > Sir William Jones, an English judge in India, and one of the most learned judges that ever lived, learned in Asiatic as well as European law, says: "It is pleasing to remark the similarity, or, rather, the identity, of those conclusions which pure, unbiased reason, in all ages and nations, seldom fails to draw, in such juridical inquiries as are not fettered and manacled by positive institutions." --- Jones on Bailments, 133.

3. The sovereign plaintiff lays down the law. She can choose to bring in statutes enacted by legislature, or, to reject such statutes as unlawful, or bring in works of law, including this memorandum.

   An example of an unlawful statute: If the legislature has passed a "law" that says that neighbours could walk in at any time and take food from their neighbour's refrigerator, it does not effect the ability of the sovereign plaintiff to bring a suit in law against his neighbour for theft for doing so. Statutes cannot excuse violation of *the law*: statutes cannot suspend the running of limitations, promote circular fraud, coerce the acceptance of "legal tender", provide immunity for theft, fraud and murder. Unlawful statutes are a fraud. There is no statute of limitations on fraud[46].

4. It is the duty and responsibility of a *court of record* to throw out statutes that are unlawful or fraudulent – or the court become party to the fraud. Coercive legislation has no effect on a court of record or the powers of a sovereigns – the people – to protect and defend their life, liberties and property.

4. **The proceedings of a court of record are recorded for a perpetual memorial:**
   1. All arguments "heard" in a court of record are made in writing. An oral hearing, if any, serves to clarify that which was written.
5. **A court of record generally has a seal.**
6. **A court of record has the power to imprison for contempt.**
7. **A court of record cannot accept unlawful money.**

Superior and Inferior Courts

A superior court is a court of record. Decisions by a court of record cannot be reviewed. Inferior courts are administrative courts whose role is to enforce statutes to the letter.

Practically every operating court including so-called current SUPREME COURT OF THE UNITED STATES, the WORLD COURT and other high court on the planet today is operating as an inferior court – they have become chartered corporations whose profit is made by increasing the public debt by deceiving the people by a process of bonding. Every sitting justice is, as such, committing felonies – fraud, obstruction of justice, operating under the colour of law, operation of a piratical enterprise, kidnapping, human trafficking, extortion and racketeering – all while being paid in public debt created by circular fraud written on the backs of their victims.

Protecting the Environment

There is no need of a government to protect the environment – all you need is the operation of the common law. It flows naturally from property rights. If you, a sovereign, choose to build a factory on your allodial land, you cannot be prevented from doing so unless you have signed a contract that limits your rights (such as buying property within a development that has certain

46

rules). Should you have toxic waste on your property, they are your property – the moment your toxic, untreated waste leaves your property – by radiation, air, land, or water, you are trespassing on the sovereign allodial property of your sovereign neighbour's land. You are causing harm and a loss to her. She can sue you in a court of record and win damages. In a common law country, there is no wanton pollution or abuse of the environment.

The common law will bring justice – for the use of depleted uranium, for the chem-trails, for the use of radiation weapons – HAARP and so forth. Those who have blindly followed orders are liable along with their masters.

Misprision of Felony[47]

Whosoever having direct knowledge of the commission of a crime against humanity – of the theft of the people's gold by fraud and war, of corporations posing as legitimate government, of the replacement of *courts of record* by sham administrative courts, of human trafficking by the monetization of birth certificates, by operation of implicit trusts on behalf of the people without their informed consent, of creation of adhesion contracts and revenue collection by colour of law, fear and a process of statutory[48] bonding &c., conceals and does not bring the crime to the attention of the people, a qualified court of record, or a grand jury of the people, shall be tried as an accomplice to these crimes in a *court of record* by a grand jury of the people.

Note: Misprision of Felony applies directly to the wilful suppression of the truth by the media.

47 U.S. CODE, TITLE 18, PART 1, CHAPTER 1, SECTION 4:
'Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some Judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both'.

48 The creation and enforcement of unlawful statutes and the process of indebting the people for victimless crimes.

Memorandum on Economics

By Joseph Ray Sundarsson

Required Prerequisites

This memorandum is written in April of 2010. Much history is happening. The engineered contraction in the money supply is working its charm, lowering prices as cash for the common man becomes scarce. Lawful grand juries have convened in every Republic of the States of America.

Before you proceed, this writer assumes that you have studied the writings of Frederic Bastiat from circa 1850 – *That which is Seen and That which is not Seen* [page 30] and *The Law* [page 59]. Bastiat wrote in a day and age when gold – which is lawful money – was the norm. How much worse is the situation today when so-called capitalists have no capital in lawful money, and the so-called *Sovereign Wealth Funds "SWF"* with "trillions" of circular fraud units parade around like Gods from another planet not knowing *that they have been had*, taken in by the most sophisticated multi-tier *circular fraud racket* of human history.

Evolving Situation

The bonds of the Governors of the incorporated States have been arrested at the Depository Trust Corporation, 55 Water Street, New York, NY, www.dtcc.com. The DTCC, the clearing arm of the DTC trades over a Quadrillion dollars a year worth of credit instruments. If you do not have a background in law and economics, you will be at a loss to comprehend the evolving world situation – and to prepare yourself and those who you do business with for the re-emergence of a lawful economy, where "cheap credit" will not be available.

Economics

Economics is the study of the production and interaction of goods within the system of Nature.

Finance

Finance concerns itself with the task of raising the required capital necessary for the production of goods.

Capital

Purchasing power employed in the production of goods.

Purchasing Power

The measure of the ability acquire goods in the free market by voluntary, lawful trade.

Working Capital

That portion of the capital of a productive enterprise that is liquid, that is, quickly able to be used to purchase goods and services.

Note

A brief writing intended to assist the memory; a memorandum; a minute.

[1913 Webster]

A written or printed paper acknowledging a debt, and promising payment; as, a promissory note; a note of hand; a negotiable note.

[1913 Webster]

Note is, in short, a contract signed by the issuer promising payment in a good. Traditionally all contracts need two parties to sign – a bearer note is one where the second party is the one bearing or holding the note.

Issuer

The person with a name who signs the note, which then leaves the hands of the issuer.

Person

A person in commerce is a name doing business.

Bearer

One who holds a thing.

Trust

Any name in business is implicitly or explicitly a trust.

Bob walks into John's bakery with a sack of potatoes he has just purchased. “Hey, John, could I leave these potatoes here for a few minutes, I'll be right back with a newspaper”. “Sure, Bob”, replies the baker. Instantly, John the baker is holding the sack of potatoes in trust, 'on account' for Bob.

Register

“Give to the King”. The King usually gives back a Certificate or Title that lets you use the thing as if it were yours.

Types of trusts

In the example above, we see in action an implicit trust. Formalize it on paper, you have an express trust. Write in the formalization of this trust that the trust has limited liability, you have a limited liability company. Divide the trust in a number of units, you have a unit trust. When held by a number of people, you have a joint stock trust. A joint stock trust with limited liability is a corporation. The rules the trust shall use – are its "software" - the articles make the trust behave in a certain way. Note: This exposition is meant to be compact.

If you walk into an old fashioned goldsmith and open an account or make a deposit for a note: the goldsmith is the trustee, you are the settlor and beneficiary, the gold deposited is the *res* – the thing in the trust held by the trustee, the note you get from the goldsmith is the demand liability for the gold in trust – a bearer trust as it were. While the gold is at the goldsmith – the goldsmith is the owner of the gold, you are the beneficiary. If the goldsmith is wise enough to create an *Express Trust* for his business, the liability cab be discharged by those that operate the business name even if the goldsmith died.

Today, corporations and limited liability companies are created by *registering* the trust with the State or ruler, who provides the "protection" of limited liability and a point to process service in exchange for "protection money", that is, the right to tax the trust registered as a corporation; and further, the King can *regulate* the affairs of the corporations *registered* with him. This is supposed to be a good thing, but it has resulted in violations of trust, chartered frauds which are a license to run a piratical enterprise – you cannot, as a principle, *regulate* what is fundamentally a fraud into *compliance* with the law.

Violations of trust

Today, when you walk into a bank and open an account, they accept legal tender – notes that are backed by the currency created by circular liabilities of the State backed by taxation that are held by the central bank, and they immediately turn around and provide you a distinctly different liability currency: money-of-account which is backed by fraudulently obtained circular promissory notes of the people. The bank is instantly in violation of trust and is involved in constructive fraud. See page 238 *et seq*. Also see Finality of Settlement Part I.

Liabilities

There are only two types of liabilities: Loans and promissory notes.

Loan

A loan is said to be made when the lender parts with goods under contract to the borrower for a repayment at a future time in a greater quantity of the good that was loaned.

Promissory Note

A promissory note is a contract to deliver a given amount of a good at a given time. If it is

payable on demand it is a demand note. If the issuer of the demand note warrants that she always has a 100% of the demand liability on hand, it becomes a proxy for that good in the marketplace.

Circular Fraud in Promissory Notes

Today, the credit currencies that circulate in banks as-if they were money are 100% circular fraud promissory notes for they were issued out of nothing by fraudulent conversion – putting the promissory note of the funder – the borrower – on deposit at the bank, and are payable in nothing that is a good.

A thorough exposition of this fraud is presented in the affidavit of Walker E Todd, an attorney and expert in the monetary system who has worked for the twenty years with the Federal Reserve Bank of New York and Cleveland. See page 288 *et seq*.

In Rem

Lit., in or against a (or the) thing;

IN REM, remedies.

This technical term is used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions which are said to be in personam. Proceedings in rem include not only judgements of property as forfeited, or as prize in the admiralty, or the English exchequer, but also the decisions of other courts upon the personal status, or relations of the party, such as marriage, divorce, bastardy, settlement, or the like. 1 Greenl. Ev. Sec. 525, 541.

2. Courts of admiralty enforce the performance of a contract by seizing into their custody the very subject of hypothecation; for in these case's the parties are not personally bound, and the proceedings are confined to the thing in specie. Bro. Civ. and Adm. Law, 98; and see 2 Gall. R. 200; 3 T. R. 269, 270.

3. There are cases, however, where the remedy is either in personam or in rem. Seamen, for example, may proceed against the ship or cargo for their wages, and this is the most expeditious mode; or they may proceed against the master or owners. 4 Burr. 1944; 2 Bro. C. & A. Law, 396. Vide, generally, 1 Phil. Ev. 254; 1 Stark. Ev. 228; Dane's Ab. h.t.; Serg. Const. Law, 202, 203, 212.

-- From Bouvier's Law Dictionary, Revised 6th Ed (1856)

Price Discovery

The process by which, in a free market with many buyers and sellers of a given good, a "fair and equitable" price is discovered that brings the most benefit to the most worthy of such benefit.

An example in price discovery

Let us say you are having a Sunday afternoon tea party and you need someone to assist with the cooking on the grill – a common skill in your community. You post notices for this in your church, supermarket and other places asking for people to call in with a bid. You get some calls – you get three applicants – one says she will do it for twenty bucks[49], the next at 10, and the third says he that he is homeless and will work for a sandwich. Who do you pick? Surely the choice is the man who needs the work the most – the homeless one. Did the market provide the most "good" to the one most needed it? Yes.

Why minimum wage laws hurt the poorest in society

Take the above example. Lets say the legislators got together to ensure that everyone would be rich. They set the minimum wage to a hundred bucks an hour – why not – everyone needs to live like a king! This immediately puts the job described above for the Sunday afternoon tea party off the market – the job could simply not be afforded, and the homeless man is done out of a sandwich. Minimum wage laws are unlawful and an assault on the dignity of the common man and initiate coercive force against those least able to resist it.

A thought experiment in price discovery

There are four people around a table playing a board game such as monopoly. Each is dealt a hundred bucks to start, although they do not know how much each was dealt. The game proceeds, with the participants buying and selling. At some point, one of the participants sets the price of a "house" on the board at a thousand bucks. Does he get any bids? No. Why? There is a total of only 400 bucks around the table. He lowers his price... 800...600...400...200...120... sold. Could something on the table ever sell for 1,000 bucks? No. Its impossible. The theorem: In a fixed money system prices do not keep rising. Corollary: If prices of assets in a system keep rising, it indicates that the unit of account is being diluted - "inflated" - and purchasing power is thereby stolen from the players – it is a sign that *legal plunder* is active. Corollary 2: Sharp declines in prices across the board indicate that there is a stupendous deflation in the unit of account in which that asset is being priced – this is a sign that legal plunder enters its final harvest phase: you water the deluded masses with rising asset prices, then you go and reap their property by engineered contraction.

49 We use the word "bucks", taken from colloquial speech, to make for a generic unit of account, quite similar to the imaginary units you use today.

Why hyperinflation has not already happened

The answer is simple. All of the inflation has been in a currency that IS NOT CASH and IS NOT LEGAL TENDER. What is this currency? Bank liabilities to pay cash. It is legally and by contract, clearly a distinct currency from legal tender dollars.

What things in the market (in the USA) are priced solely in non-cash bank-liability dollars?

Answer: Real Estate. And, not to forget, stocks and commodity contracts.

Who created the bank-liability currency that houses are priced in?

The bank did. By fraudulent conversion.

Who funded that unit of account?

Answer: The *borrower* – with his signature. In reality, there is a deposit account in the name of the borrower at the bank. Any court of record can subpoena the books of the bank as evidence of this. This is true for a home mortgage and it is true for the so-called "national debt" or debt of poor "debtor nations".

What is the "deposit money" at the bank?

Answer: The promissory notes of the "borrowers". The borrowers are, in fact, and according to the books of the bank, the funders of the *deposit money* that is on deposit at the bank !

If you follow the analysis presented in the Affidavit of Walker F. Todd, an attorney and expert who worked for the Federal Reserve Banks for twenty years [see pages 288 *et seq*], you will have to conclude that the current engineered collapse is an attempt to get the property of the planet into the hands of those who engineered this system – and that the position ***in law*** is truly the opposite – the people are the creditors to the bankers, the bankers have been running the most impressive and stupendous scam that has resulted in World Wars, and if there was justice, their lands, gold and properties would be confiscate and they would forever forfeit the possibility of holding a position of trust. The same is true of every legislator and Head of State.

How much do the banks owe to the funders of the deposit money?

All principal plus interest paid by the borrower.

Will this situation carry on?

Answer: No. It has already fallen apart, and all the Kings horses and all the King's men are not going to put Humpty together again.

Why will it not carry on?

Answer: No, because it is against ***the law***. The fraud, once discovered, is like turning on the light in the dark. The darkness is not coming back. The sun is rising.

Are there any other injured parties?

Yes. First, the producers of goods who have sold goods for fraudulent substance. Second, the so-called creditor nations and sovereign wealth funds have been scammed.

What about the debtor nations?

They have been tricked by the same fraudulent conversion by the central bankers. The people are the ones who are the funders of the so-called debt. The bankers and shareholders of the central banks are the ones who have been the beneficiaries of the fraud. There are no independent countries on planet Earth. *All* the *people of the land* have been defrauded, including both the so-called creditor and debtor nations.

Who is doing something about this scandalous state of affairs?

The people of America are. Like it or not, fifty grand juries of the people of America are active – one in each republic of America – formerly the incorporated "State of". The "bonds" of the Governors have been arrested at the Depository Trust Corporation[50] – where all the trade in fraudulent tokens takes place. See the orders of the Grand Juries on page 658 *et seq*.

Who will enforce the orders?

The military of the USA. They are back under civilian control. Any errant, unlawful act will be the subject of further Grand Jury action. Any false flag wars will be war crimes, acts of mass murder.

Restoring Honour in Society

"I, Sir, stand upon my honour and challenge you to a duel". These words once greeted those who failed to meet the highest standards of integrity. Those words guarded access to credit markets, and ensured that those without honour never entered[51]. Today, there is a lawful, peaceful way to ensure that a duel is not necessary, nor is the scam of banking needed, people can live at peace, live a life of leisure and watch their wealth multiply over the land. What is this wonderful invention? It is free markets in risk priced in lawful substance. This is the genius of western civilization and that which enabled America to become a super power and conquer the world. Let us examine the difference between what was then and what is now.

First, some basics. We live in a probabilistic world. Any proposed business venture has a certain probability of failure. How then does the investor recover his principal? This is the question we shall discuss after some illusions are destroyed. A thorough comprehension of all these principles are necessary to return wealth and peace to all on this planet.

If you have not yet read and thoroughly understood the economic fallacies that were clearly known in 1850, it is time now to go and read up on those. They are summarized here:

50 The DTCC trades over 1 quadrillion dollars (a thousand trillion is a quadrillion) in contracts a year, and dwarfs any "real" market such as the New York stock or commodities market. Depository Trust Corporation, 55 Water St., New York, NY. See www.dtcc.com

51 http://www3.amherst.edu/~cgkingston/duels.pdf

A summary of economic fallacies

The broken window fallacy

Destroying property – such as the proverbial stone through the glass window – causes society to have permanently lost that value. It does not, in the least, promote the economy. Page 30. There is no such thing as "creative destruction".

Disbanding the military or government jobs will leave millions destitute

They will lose a government job, yes. Instead of being a burden upon those who produce, pay taxes and hence pay their salaries, those on government jobs will return to producing wealth. They will keep what they produce! See a quick lesson in home economics below, and page 32.

Taxes are what pays for our way of life and our infrastructure

It can be shown in America that the only purpose of income taxes is to pay the fictitious national debt as taxes to the British CROWN, which, in itself can be shown to be a corporation with hidden shareholders. Most high speed highways are all toll roads and self financing. So are airports, ports, railways, telephone, electricity, water, internet. The purpose of the military is clearly to protect the bankers who are looting the world using the US dollar, not for your safety. The purpose of the cold war and the moon race can be shown to be looting the gold from the American treasury. It is not our job to demonstrate this to you. Investigative grand juries will uncover these facts and catch the crooks. If anything, we at the Global Settlement Foundation will try to create a wealthy world so that there is no witch hunt, war, or enslavement. This is the purpose of this monograph – restore wealth generation, justice with forgiveness and compassion, and peace – all features of natural and common law. See page 34

We need protective tariffs on imports

Import duties raise the cost of living for the common man. It makes him poorer. It enriches the parasites in government and their patrons who paid into their election fund.

We need strong borders

Strong borders makes for a strong prison. Ask the people who were once behind the iron curtain, or those currently in Palestine. Every holocaust has been caused by strong borders. Ask the Jews. Strong borders are against the common law. No man or woman has a right to prevent another man or woman from travel across these Global Isles on the common way – airway, waterway or roadway. This is a basic *unalienable* right. See page 369.

We must have work permits

Work permits prevent wealth from being produced. They are against *the law*.

We must have public education

You get what you pay for. Not one adult in a 1000 can explain how a bank works. This is enforced ignorance. See the Underground History of American Education by John Taylor Gatto. *"The shocking possibility that dumb people don't exist in sufficient numbers to warrant the millions of careers devoted to tending them will seem incredible to you."*

Old fashioned banking is lawful feudalism

Consider a lender of yore. He had a large pot of gold coins. He loaned them out to several farmers, to a few cobblers, &c. If the average risk of business failure was 1 in 10 – he would, if he were to recover his principal – need to charge more than 10% - this much should be immediately obvious.

What is less obvious is that the lender would *never* lend to risky ventures. Society would stagnate. With over 90% of all the world's gold held by the fraudsters of our time, a return to a lawful lending society would *ensure* slavery. This is, in fact, the obvious end game to central banking.

Modern circular fraud banking is unlawful neo-feudalism

Today's lenders, the banks – risk nothing. The borrower visits the bank, signs a *credit application*, the bank creates the money on its books. The banker recovers principal plus interest from each so-called "borrower". This is why the so-called interest rates are so low – there is no need for interest – even at 0%, the banker makes 100% ! Even if one in 5 businesses he lends to is going under, it does not matter ! It is unlimited power over the people. Those who create nothing, can, if they decide to quit "extending credit", own everything as the helpless people pay back the "loans" they believe they owe. This is why there is a *credit crisis* today. Those who are the brains behind this system have decided to take over a helpless world, repossess all the real estate, and enslave everyone, and likely start WWIII in the process to hide their crime. This is a stark reality and it does not matter if you don't like it, refuse to believe it, &c. We who have done the research, know this as fact. The last time around it was WWII.

A quick lesson in home economics

Lets say, you are an average middle class couple – both husband and wife working to pay the rent and expenses. Do you think that having your dearest politician living in your house deciding on the rules of when you can go to sleep, what you can eat, and the kinds of jobs you can and cannot work for, brain washing your kids against you, eating out of your fridge and taking long, hot showers would help you pay the bills?

The scam of Social Security

For centuries, mankind have looked after their families and taken care of the elders who had the experience and wisdom to help guide the adults and time look after and educate the grand kids. Now that you have read the quick lesson on home economics – what makes you think that hiring an entire fleet of idiots in the social security administration is going to help ensure that Grandpa and Grandma have a retirement? Don't you know by now, that "the money" they paid has long since vanished? The entire evil of social security is deliberately designed to fool the gullible into a false sense of security, ensure their children are brainwashed instead of educated, and leave them without even the slightest clue about what *money* is.

If there is a clear and present danger to those trying to restore civilian rule, it is social security. The only way to fund it will be to take back the property – the gold and real estate stolen by fraud and use that to fund the social security plan. The next generation better plan on keeping real wealth around for their retirement.

The scam of rising real estate prices

Rising real estate prices have been funded by fraudulent conversion practiced by the banks - "for their own purposes". The purpose is clear – to defraud all the people of the world of all their property – the last remaining store of value for the common man.

What is fraudulent conversion?

The act of getting the borrower to sign a promissory note when he is lead to believe it is a "loan", is fraudulent inducement. The act of stamping the promissory note and putting it on deposit is fraudulent conversion.

A Tutorial on Fraud – from Part I of the Finality of Settlement series

Christopher Story, of www.worldreports.org has done much to uncover the games of deceit that are being played. The following is an excellent short definitive tutorial from World Reports:

LEGAL TUTORIAL: The Steps of Common Fraud:

Step 1: Fraud in the Inducement

"... is intended to and which does cause one to execute an instrument, or make an agreement... The misrepresentation involved does not mislead one as the paper he signs but rather misleads as to the true facts of a situation, and the false impression it causes is a basis of a decision to sign or render a judgement" Source: Steven H. Gifis, 'Law Dictionary', 5th Edition, Happauge: Barron's Educational Series, Inc., 2003, s.v.: 'Fraud'.

Step 2: Fraud in Fact by Deceit (Obfuscation and Denial) and Theft

"ACTUAL FRAUD. Deceit. Concealing something or making a false representation with an evil intent [scanter] when it causes injury to another...". Source: Steven H. Gifis, 'Law Dictionary', 5th Edition, Happauge: Barron's Educational Series, Inc., 2003, s.v.: 'Fraud'.

"THE TORT OF FRAUDULENT DECEIT... The elements of actionable deceit are: A false representation of a material fact made with knowledge of its falsity, or recklessly, or without reasonable grounds for believing its truth, and with intent to induce reliance thereon, on which plaintiff justifiably relies on his injury...". Source: Steven H. Gifis, 'Law Dictionary', 5th Edition, Happauge: Barron's Educational Series, Inc., 2003, s.v.: 'Deceit'.

Step 3: Theft by Deception and Fraudulent Conveyance

THEFT BY DECEPTION:

"FRAUDULENT CONCEALMENT... The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose...".

"The test of whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of the parties: failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual 'fraudulent concealment'...".

To suspend running of limitations, it means the employment of artifice, planned to prevent inquiry or escape investigation and mislead or hinder acquirement of information disclosing a right of action, and acts relied on must be of an affirmative character and fraudulent...".

Source: Black, Henry Campbell, M.A., Black's Law Dictionary', Revised 4th Edition, St Paul: West Publishing Company, 1968, s.v. 'Fraudulent Concealment'.

FRAUDULENT CONVEYANCE:

'FRAUDULENT CONVEYANCE... A conveyance or transfer of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach...".

"Conveyance made with intent to avoid some duty or debt due by or incumbent on person (entity) making transfer...".

Source: Black, Henry Campbell, M.A., 'Black's Law Dictionary, Revised 4th Edition, St Paul: West Publishing Company, 1968, s.v. 'Fraudulent Conveyance'.

Fraud in the Corridors of Power

There was an old lady[52], she chartered a fraud,
I don't know why, she chartered a fraud,
Perhaps she'll die.

The act of chartering a bank or granting a bank license is itself an act of *ultra vires* – for one group of mortal men[53] has no power to grant another group of men the privilege of lending money they do not have. Further, the system itself is an inducement to commit fraud, both on the part of the person who applies for a bank license/charter and for the person who grants it. It is an artifice for the chartered bank to suspend running of limitations, planned to prevent lawful inquiry, and to escape investigation.

The act of a chartered bank lending money they do not have is deceit; further it is deceit with evil intent[54] to cause others to rely on the fraudulent substance as-if it were money.

The act of a bank in leading its depositors to believe that the units of its checking account liability are at par with the nominal "legal tender" units they represent is fraudulent concealment.

The act of a bank to monetize and circulate the promissory notes[55] of its customers, by deceiving the borrower into thinking that he is borrowing money when he is executing a promissory note that is called a "loan" which funds a deposit account in the name of the borrower in the nominal units, is fraud in the inducement. Further, the act of concealing the existence of such deposit account, is fraudulent concealment; the act of stamping and taking the promissory note on deposit on the books of the bank is fraudulent conveyance; and the entire process is theft by fraudulent deception[56] and duress[57].

52 Any inference that this is a particular person, is solely in your own imagination. Just as in the children's poem where the old lady swallows a fly, spider and so forth, this initial fraud of chartering a bank with the power to create money out of thin air requires the maintenance of an an endless array of regulators, compliance officers, crooked administrative courts and the "law" and order that flows from the barrel of a gun.

53 Who represent themselves as the Head of State or their agents.

54 The evil intent includes the inducement of others to write fraudulent promissory notes, to conspire to circulate those liabilities by fraudulent conveyance; and further to defraud the victims of their inherent sovereignty and liberty, and further to steal via fraudulent deception the gold and other treasure from the treasury of any remaining bastions of liberty; to obtain resources - such as a world dominating military force - that is beyond the ability of the perpetrators of the fraud to obtain by honest means.

55 Fraudulently represented to be "loans" to the "borrower" who is the actual funder of the loan. A careful examination of the contract will show that it is not a loan but a "line of credit". As such, no lawful consideration was loaned by the bank to the borrower. If the contract were examined in a court of law, and the question "should the funder of the account be repaid" be asked and the the books of the bank were opened as evidence, it would be discovered that there is a deposit account in the name of the borrower than is funded by the promissory note of the borrower. This note was stamped by the bank – received for deposit – which is fraudulent conversion. The lawful result is – a contract void ab initio. This is as true at the national and international level with "loans" being provided by the banks to countries as well as at the level of individual loans – mortgage contracts, lines of credit and credit cards.

56 Deception, usage: Deception usually refers to the act, and deceit to the habit of the mind; hence we speak of a person as skilled in deception and addicted to deceit. The practice of deceit springs altogether from design, and that of the worst kind; but a deception does not always imply aim and intention. It may be undesigned or accidental. An imposition is an act of deception practised upon some one to his annoyance or injury; a fraud implies the use of stratagem, with a view to some unlawful gain or advantage. [1913 Webster]

57 Duress: An actual or a threatened violence or restraint of a man's person, contrary to law, to compel him to enter into a

First by chartering a fraud, then by inducing the State to "borrow" funds at compound interest to create obligations it can never repay[58], next by monetizing those fraudulent debt instruments and printing notes against it and inducing the commercial banks to "lend" to the retail banks and mortgage companies who further induce the retail clients to "borrow", that is, write promissory notes that are then circulated as checking account liabilities payable in the printed notes above; the whole system would be found to be *void ab initio* under the law by any honest judge[59] and jury that knows the distinction between what is law and what is but an act of *ultra vires*.

What is seen and not seen in today's market

We have done much modelling of what goes on, and a few conclusions are presented below so that investigative grand juries, and others interested in a return to the rule of law will be able to complete their job.

Excessive taxation onshore, no tax offshore and the drug racket

What is seen is that "the rich guys" don't pay any tax, and the common man has the burden.

What is seen are the drug busts and the drama around legislators, border guards and cops.

What is seen is that no one you know has made it rich in the forex market.

What is not seen, is that the rich white guys are the suckers who have performed the useful job of siphoning the fraudulent tokens in the onshore market by selling cheap goods made elsewhere, and, because of the no-tax situation, will never bring it back onshore.

What is further not seen is that these super rich are enticed by bank roll programs[60] that let them watch a number growing into the billion and trillions, which essentially lock up these non-legal tender dollars and keep it from causing a run on onshore banks.

What is not seen, is that all the above locks up bank liabilities at an amazing pace and prevents hyperinflation and/or bank failure.

What is seen is that drugs are smuggled in and sold for a very high price – paid in cash.

What is not seen is that this takes cash out of the USA.

What is further not seen is that this reduces the liability of the Federal Reserve Banks. What is not seen is that this cash train is washed via the offshore banks and allows them to continue

contract, or to discharge one. 1 Fairf. 325. Duress is present because the fearsome machinery of the State is what provides that contract any value whatsoever.

58 If you lend your money to the local community sponge, you would be the laughing stock of the town when you insist on repayment. You would hold bad debt. By definition, all current national governments are parasites - they consume more than they produce - in other words the individuals that run the national government are simply the aggregate of all sponges who imagine themselves to be in "national service". The government was fraudulently induced to borrow and the instruments are, in any system that is lawful - voidable. The only way such a government can repay is by involuntary confiscation of property, another form of legal plunder, i.e., theft by taxation. This is theft to justify fraud.

59 In what is known as the Minnesota Credit River decision of 1969, Judge Martin V Mahoney found the currently circulating Federal Reserve Notes to be unconstitutional. He was killed within six months of that still standing judgement. More information is available at http://www.rayservers.com/frn and http://www.rayservers.com/fraud. [see pages 229 *et seq*]

60 Madoff etc., we believe, know that their job is to fool the rich.

this game and maintain their "reserve" ratios.

Amazing Real Estate Miracles

What is seen are the buildings bursting out of the ground in Dubai, Panama and so forth – what is not seen is that this is the result of the theft of purchasing power from America by the above process.

The success of offshore banks

What is seen is that they receive all the "money" in the world. What is not seen, is that they have no assets to back it other than the gravy train of drug cash – which is now over.

The Amazing Euro

What is seen is that the central banks from the far East ran to the Euro. What is not seen is, we believe, that the Euro itself benefits from the above laundry of drug war cash and is likely financed by this process. What is not seen, is that the final phase of the close of the current incarnation of the Federal Reserve will essentially leave all those without "clean" dollar bills unable to claim it against the Federal Reserve's assets. What is not seen is that when this happens, we believe, the Federal Reserve stock holders will walk with most of their assets intact.

The Far East / Chinese Miracle

What is seen is that China and makes most of the goods that are sold. What is not seen, is that they have sold these goods for bank liabilities created by fraudulent conversion. What is not seen, is that the producers of the world and their hapless governments are unlikely to recover from this coming take down of the current financial system. They have, in short, been paid in loot and are about to be completely looted.

I'm an honest producer, how do I survive?

If you are the head of a corporation or other entity that actually has produced wealth that is goods, then it is time to face the reality of the world situation and begin to trade goods for goods. There is no escape from doing this, those not doing it will not be in business within five years.

WHO owes?

WHO owes the money to whom is the most important question. The banks are the ones who have done the fraudulent conversion. The money has been funded by the "borrower"[61]. Any principal plus interest paid by the funder to the bank is due back to the funder from the bank. This is the inescapable conclusion of law. The assets of the funder have been stripped from the

61 See Affidavit of Walker F. Todd, expert from the Federal Reserve Banks. Pages 288 *et seq*]

funder and, very likely washed through several layers of structures. Those who claim to be owed all the money in the world are the ones who have all the gold in the world in secret stashes. Is the motivation for world-wide genocide not clear?

A return to Finality of Settlement

If mankind does not return to a finally settled means of trade, its days are numbered. One does not need revelations from ancient texts to figure this out.

How to put an end to the madness

The solution is simplicity itself.

1. **Trade goods for goods.** Any good can function as a money. With computers, it becomes possible to trade fractions of a BMW for instance. There is no need for the intermediation of any other "currency".
2. **Open up markets in risk** – anyone should be able to issue risk instrument denominated in lawful substance. Finance must be through risk instruments, not debt. Old fashioned stocks are examples of risk instruments.
3. **Replace interest and capital account income with dividends denominated in goods.**
4. **Dismantle all border controls**. Anyone trying to deny or hinder the inalienable right to travel with one's family and property is committing a *felony*.
5. How to deal with the quadrillions of bank-liabilities to pay "dollars" or other currency:
    1. **Cease the creation and destruction of these "liabilities"** – they have been traded as-if they were things, that is, *in rem*, by the banks. The banks must have no power to destroy them now. No one must be allowed to write promissory notes in these liabilities. Banks can circulate them with clear specifications:
        1. **Clearly specify whose**, that is, which bank's **liabilities are on offer** – each is a distinct type of currency backed by the assets of that bank (the assets they stole by the process, not the "deposit money" that is the fraudulent promissory notes)
        2. This is a remedy ***in rem*** – any lawful military left must do their final act in admiralty. Forensic accounting will be required.
    2. Every account holder be it in gold or bank tokens must **declare lawful source of funds**, and *what* they did to earn the money. Those who participated in unlawful activities or benefited from such will have their tokens frozen. If this step is not done, there will be hyperinflation in these currencies and there will be chaos. A suitable remedy must be found for those who have indirectly benefited from the scams – all the traders in the loot that circulates in financial markets. They are traders – they can start to trade in real goods.
    3. Those who have run or participated in this incredible scam must be barred from any office of trust – and all control of military or military weapons banned from them –

these people are itching to start a war.

6. There **must be no vengeance**. Those that have been entrapped by the system must be allowed to quickly return to productive work.
7. **Dismantle the identity based system**. Other than banks and their assets, everyone else needs to transition to fungible moneys.

For the *good of all humanity*[62], these things must come about. The alternative is worse than "anarchy" - it is total world destruction by WWIII – courtesy, your democratic government.

62 Phrase originally attributed to Queen Elizabeth of England.

Finality of Settlement – that which preserves the World™
Part II – Volume II

Memorandum of Law, Economic Principles, and Justice

And

A Declaration of Trust and Passport of the Trustees

I am only one, but I am one. I cannot do everything, but I can do something. What I can do, I should do and, with the help of God, I will do!

Everett Hale

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Introduction to Part II – Volume II

The measure of greatness of a country, is how the people respond to, and deal with a breakdown in civilian rule. There is a lot going on within the united States of America, republic, that is not being covered in the media.

This second volume brings together material that is essential reading to becoming an informed, rational, grown adult acting in commercial ventures and protecting value. It covers money, administrative law and common law – with source documents from each.

Money

If you have never read Modern Money Mechanics, published at one time by the Federal Reserve itself, its time you did. If you have not comprehended the significance of how the modern money system works, read the Affidavit of Walker F. Todd, an expert and attorney for the Federal Reserve. The consequences in law are staggering. If you did not know that Federal Reserve Notes have been found unconstitutional since 1968... hear about it in the Minnesota Credit River decision. Now that you know all this, you will realize, that if you are in a position of trust in a major corporation, it is time you did something to safeguard your working capital. There are changes sweeping America that will transform the world as you know it, and these changes are inevitable, and include revelations of scandals on a scale you may only have begun to suspect.

Administrative or Statutory Law

Did you know that America has been in continuous martial law for decades? Did you know that every court in America flies a gold fringed American flag that informs those entering that this court that it is a military court? Did you know that these courtrooms are not Article III common law courts and that they have been operating only under colour of law? Did you know that the entire process that happens in court is a financial transaction that creates and trades *bonds*? Did you realize that this is the situation worldwide? Do you realize that there has been only sham political independence in your country? Do you realize that the so-called debt owed by the people is actually a debt owed by those who have run the central banking scam? This is an inevitable conclusion *in law*, should you be able to comprehend the mechanics of modern money. Do you know that watertight cases within statutory law against the entire corporate USA government are pending before military authorities?

Common Law and its Historical Documents

Have you read the Charter of Liberties from 1100 AD? The Magna Carta from 1215? Do you know that this is the foundation for the English language civilization itself? Do you realize that there are people who are bringing America back to the supreme *law of the land* – the common law?

The Restore America Plan

Have you heard of the Restore America Plan? Did you know that there 50 grand juries of the people have restored civilian rule? Did you know that the military of the united States of America is now, via its Provost Marshals ensuring that the switch over happens? Do you know that the Federal Reserve will soon be history? We believe that this fits in perfectly with our analysis of the Federal Reserve's possible plans !

Go on to read the judicial notice that is being used with success in corporate colour-of-law courts that essentially proves that the federal courts have no jurisdiction over *law and equity*! Do you realize that this means that every treaty signed by the UNITED STATES which is doing business as a corporation is essentially *void ab initio*?!

The Extraordinary Scandals of Our Time

We do not need to more than mention some extraordinary scandals of out time that are a result of abuse of unlimited power: 911, USS Liberty, the Leo Wanta affair and the looting of Europe, Russia, China and the Far East, the horrors of WWII, the evils of Depleted Uranium? Do you honestly think that the people of the land do not know the difference between an engineered explosion and a smoky fire? Do you think that such *people of the land* will let this carry on? Do you think that handing out social security is going to help us forget? You know who you are, and you know that Nature has her ways and that righteous men shall arise to end this charade. Even Captain Nasty of the USS Nimitz has to stand on his ship – a proxy for the land – so that he breaths the free air of creation lest he perish amidst the waves. "Which is greater, the land or the sea?" was once asked of a wise man, and he answered "the land, for the sea is but a part of the land". There are no statute of limitations on fraud and war. It is not possible to suspend the Natural and Common Law or the ***unalienable*** rights of the people. Now is the time to let the truth be known, to repent and return to the law of the land for justice will otherwise overtake those who think they are immune from such. It is so written in the heavens.

The principle of forgiveness and just amends

You can see both principles in the Charter of Liberties of King Henry I [page 390]. There may not be 24 honest barons to be found with the said title, but certainly there are enough good people on the land of greater integrity and equal unalienable sovereignty to organize a grand jury that has to follow *the law* and see that justice is done.

Certainly there will be distractions such as "doubling of your social security", and so forth, we see the signs already. Equally we see the signs that a silent genocide by health care, vaccinations, GMO foods, corrupted pesticides, scalar weapons and so forth is being attempted. This is the hubris of those who think that they will prevail. The weapons they posses are fearsome, but will not and can not stop the march of justice.

A lawful economy

A lawful economy shall arise, and "they" can do nothing lawful to stop it. Your choice is clear: the way of truth and *the law*, or the way of *legal plunder*.

Contents for Volume I & II

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MODERN MONEY MECHANICS [64]

A Workbook on Bank Reserves and Deposit Expansion

Federal Reserve Bank of Chicago

This complete booklet was originally produced and distributed free by:
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Introduction

The purpose of this booklet is to describe the basic process of money creation in a "fractional reserve" banking system. The approach taken illustrates the changes in bank balance sheets that occur when deposits in banks change as a result of monetary action by the Federal Reserve System - the central bank of the United States. The relationships shown are based on simplifying assumptions. For the sake of simplicity, the relationships are shown as if they were mechanical, but they are not, as is described later in the booklet. Thus, they should not be interpreted to imply a close and predictable relationship between a specific central bank transaction and the quantity of money.

The introductory pages contain a brief general description of the characteristics of money and how the U.S. money system works. The illustrations in the following two sections describe two processes: first, how bank deposits expand or contract in response to changes in the amount of reserves supplied by the central bank; and second, how those reserves are affected by both Federal Reserve actions and other

64 Reproduced here from the World Wide Web under fair use – to elucidate a difficult topic and as *evidence* of how the bank system is supposed to work. The text has been re-formatted and although every effort has been made to ensure faithful reproduction, this text should not be considered authoritative. Page and other numbers referenced in the text do not correspond to the page numbers or other reference numbers in this publication.

factors. A final section deals with some of the elements that modify, at least in the short run, the simple mechanical relationship between bank reserves and deposit money.
Money is such a routine part of everyday living that its existence and acceptance ordinarily are taken for granted. A user may sense that money must come into being either automatically as a result of economic activity or as an outgrowth of some government operation. But just how this happens all too often remains a mystery.

What is Money?

If money is viewed simply as a tool used to facilitate transactions, only those media that are readily accepted in exchange for goods, services, and other assets need to be considered. Many things - from stones to baseball cards - have served this monetary function through the ages. Today, in the United States, money used in transactions is mainly of three kinds - currency (paper money and coins in the pockets and purses of the public); demand deposits (non-interest bearing checking accounts in banks); and other checkable deposits, such as negotiable order of withdrawal (NOW) accounts, at all depository institutions, including commercial and savings banks, savings and loan associations, and credit unions. Travelers checks also are included in the definition of transactions money. Since $1 in currency and $1 in checkable deposits are freely convertible into each other and both can be used directly for expenditures, they are
convertible into each other and both can be used directly for expenditures, they are money in equal degree. However, only the cash and balances held by the nonbank public are counted in the money supply. Deposits of the U.S. Treasury, depository institutions, foreign banks and official institutions, as well as vault cash in depository institutions are excluded.
This transactions concept of money is the one designated as M1 in the Federal Reserve's money stock statistics. Broader concepts of money (M2 and M3) include M1 as well as certain other financial assets (such as savings and time deposits at depository institutions and shares in money market mutual funds) which are relatively liquid but believed to represent principally investments to their holders rather than media of exchange. While funds can be shifted fairly easily between transaction balances and these other liquid assets, the money-creation process takes place principally through transaction accounts. In the remainder of this booklet, "money" means M1.

The distribution between the currency and deposit components of money depends largely on the preferences of the public. When a depositor cashes a check or makes a cash withdrawal through an automatic teller machine, he or she reduces the amount of deposits and increases the amount of currency held by the public. Conversely, when people have more currency than is needed, some is returned to banks in exchange for deposits.

While currency is used for a great variety of small transactions, most of the dollar amount of money payments in our economy are made by check or by electronic transfer between deposit accounts. Moreover, currency is a relatively small part of the money stock. About 69 percent, or $623 billion, of the $898 billion total stock in December 1991, was in the form of transaction deposits, of which $290 billion were demand and $333 billion were other checkable deposits.

What Makes Money Valuable?

In the United States neither paper currency nor deposits have value as commodities. Intrinsically, a dollar bill is just a piece of paper, deposits merely book entries. Coins do have some intrinsic value as metal, but generally far less than their face value.

What, then, makes these instruments - checks, paper money, and coins - acceptable at face value in payment of all debts and for other monetary uses? Mainly, it is the confidence people have that they will be able to exchange such money for other financial assets and for real goods and services whenever they choose to do so.

Money, like anything else, derives its value from its scarcity in relation to its usefulness. Commodities or services are more or less valuable because there are more or less of them relative to the amounts people want. Money's usefulness is its unique ability to command other goods and services and to permit a holder to be constantly ready to do so. How much money is demanded depends on several factors, such as the total volume of transactions in the economy at any given time, the payments habits of the society, the amount of money that individuals and businesses want to keep on hand to take care of unexpected transactions, and the forgone earnings of holding financial assets in the form of money rather than some other asset.

Control of the *quantity* of money is essential if its value is to be kept stable. Money's real value can be measured only in terms of what it will buy. Therefore, its value varies

inversely with the general level of prices. Assuming a constant rate of use, if the volume of money grows more rapidly than the rate at which the output of real goods and services increases, prices will rise. This will happen because there will be more money than there will be goods and services to spend it on at prevailing prices. But if, on the other hand, growth in the supply of money does not keep pace with the economy's current production, then prices will fall, the nations's labor force, factories, and other production facilities will not be fully employed, or both.

Just how large the stock of money needs to be in order to handle the transactions of the economy without exerting undue influence on the price level depends on how intensively money is being used. Every transaction deposit balance and every dollar bill is part of somebody's spendable funds at any given time, ready to move to other owners as transactions take place. Some holders spend money quickly after they get it, making these funds available for other uses. Others, however, hold money for longer periods. Obviously, when some money remains idle, a larger total is needed to accomplish any given volume of transactions.

Who Creates Money?

Changes in the quantity of money may originate with actions of the Federal Reserve System (the central bank), depository institutions (principally commercial banks), or the public. The major control, however, rests with the central bank.

The actual process of money creation takes place primarily in banks.(1)[65] As noted earlier, checkable liabilities of banks are money. These liabilities are customers' accounts. They increase when customers deposit currency and checks and when the proceeds of loans made by the banks are credited to borrowers' accounts.

In the absence of legal reserve requirements, banks can build up deposits by increasing loans and investments so long as they keep enough currency on hand to redeem whatever amounts the holders of deposits want to convert into currency. This unique attribute of the banking business was discovered many centuries ago.

65 (1) In order to describe the money-creation process as simply as possible, the term "bank" used in this booklet should be understood to encompass all depository institutions. Since the Depository Institutions Deregulation and Monetary Control Act of 1980, all depository institutions have been permitted to offer interest bearing transaction accounts to certain customers. Transaction accounts (interest bearing as well as demand deposits on which payment of interest is still legally prohibited) at all depository institutions are subject to the reserve requirements set by the Federal Reserve. Thus all such institutions, not just commercial banks, have the potential for creating money.

It started with goldsmiths. As early bankers, they initially provided safekeeping services, making a profit from vault storage fees for gold and coins deposited with them. People would redeem their "deposit receipts" whenever they needed gold or coins to purchase something, and physically take the gold or coins to the seller who, in turn, would deposit them for safekeeping, often with the same banker. Everyone soon found that it was a lot easier simply to use the deposit receipts directly as a means of payment. These receipts, which became known as notes, were acceptable as money since whoever held them could go to the banker and exchange them for metallic money.

Then, bankers discovered that they could make loans merely by giving their promises to pay, or bank notes, to borrowers. In this way, banks began to create money. More notes could be issued than the gold and coin on hand because only a portion of the notes outstanding would be presented for payment at any one time. Enough metallic money had to be kept on hand, of course, to redeem whatever volume of notes was presented for payment.

Transaction deposits are the modern counterpart of bank notes. It was a small step from printing notes to making book entries crediting deposits of borrowers, which the borrowers in turn could "spend" by writing checks, thereby "printing" their own money.

What Limits the Amount of Money Banks Can Create?

If deposit money can be created so easily, what is to prevent banks from making too much - more than sufficient to keep the nation's productive resources fully employed without price inflation? Like its predecessor, the modern bank must keep available, to make payment on demand, a considerable amount of currency and funds on deposit with the central bank. The bank must be prepared to convert deposit money into currency for those depositors who request currency. It must make remittance on checks written by depositors and presented for payment by other banks (settle adverse clearings). Finally, it must maintain legally required reserves, in the form of vault cash and/or balances at its Federal Reserve Bank, equal to a prescribed percentage of its deposits.

The public's demand for currency varies greatly, but generally follows a seasonal pattern that is quite predictable. The effects on bank funds of these variations in the amount of currency held by the public usually are offset by the central bank, which

replaces the reserves absorbed by currency withdrawals from banks. (Just how this is done will be explained later.) For all banks taken together, there is no net drain of funds through clearings. A check drawn on one bank normally will be deposited to the credit of another account, if not in the same bank, then in some other bank.

These operating needs influence the minimum amount of reserves an individual bank will hold voluntarily. However, as long as this minimum amount is less than what is legally required, operating needs are of relatively minor importance as a restraint on aggregate deposit expansion in the banking system. Such expansion cannot continue beyond the point where the amount of reserves that all banks have is just sufficient to satisfy legal requirements under our "fractional reserve" system. For example, if reserves of 20 percent were required, deposits could expand only until they were five times as large as reserves. Reserves of $10 million could support deposits of $50 million. The lower the percentage requirement, the greater the deposit expansion that can be supported by each additional reserve dollar. Thus, the legal reserve ratio together with the dollar amount of bank reserves are the factors that set the upper limit to money creation.

What Are Bank Reserves?

Currency held in bank vaults may be counted as legal reserves as well as deposits (reserve balances) at the Federal Reserve Banks. Both are equally acceptable in satisfaction of reserve requirements. A bank can always obtain reserve balances by sending currency to its Reserve Bank and can obtain currency by drawing on its reserve balance. Because either can be used to support a much larger volume of deposit liabilities of banks, currency in circulation and reserve balances together are often referred to as "high-powered money" or the "monetary base." Reserve balances and vault cash in banks, however, are not counted as part of the money stock held by the public.

For individual banks, reserve accounts also serve as working balances.(2)[66] Banks may increase the balances in their reserve accounts by depositing checks and proceeds from electronic funds transfers as well as currency. Or they may draw down these

66 (2) Part of an individual bank's reserve account may represent its reserve balance used to meet its reserve requirements while another part may be its required clearing balance on which earnings credits are generated to pay for Federal Reserve Bank services.

balances by writing checks on them or by authorizing a debit to them in payment for currency, customers' checks, or other funds transfers.
Although reserve accounts are used as working balances, each bank must maintain, on the average for the relevant reserve maintenance period, reserve balances at their Reserve Bank and vault cash which together are equal to its required reserves, as determined by the amount of its deposits in the reserve computation period.

Where Do Bank Reserves Come From?

Increases or decreases in bank reserves can result from a number of factors discussed later in this booklet. From the standpoint of money creation, however, the essential point is that the reserves of banks are, for the most part, liabilities of the Federal Reserve Banks, and net changes in them are largely determined by actions of the Federal Reserve System. Thus, the Federal Reserve, through its ability to vary both the total volume of reserves and the required ratio of reserves to deposit liabilities, influences banks' decisions with respect to their assets and deposits. One of the major responsibilities of the Federal Reserve System is to provide the total amount of reserves consistent with the monetary needs of the economy at reasonably stable prices. Such actions take into consideration, of course, any changes in the pace at which money is being used and changes in the public's demand for cash balances.
The reader should be mindful that deposits and reserves tend to expand simultaneously and that the Federal Reserve's control often is exerted through the market place as individual banks find it either cheaper or more expensive to obtain their required reserves, depending on the willingness of the Fed to support the current rate of credit and deposit expansion.
While an individual bank can obtain reserves by bidding them away from other banks, this cannot be done by the banking system as a whole. Except for reserves borrowed temporarily from the Federal Reserve's discount window, as is shown later, the supply of reserves in the banking system is controlled by the Federal Reserve.
Moreover, a given increase in bank reserves is not necessarily accompanied by an expansion in money equal to the theoretical potential based on the required ratio of reserves to deposits. What happens to the quantity of money will vary, depending upon the reactions of the banks and the public. A number of slippages may occur. What

amount of reserves will be drained into the public's currency holdings? To what extent will the increase in total reserves remain unused as excess reserves? How much will be absorbed by deposits or other liabilities not defined as money but against which banks might also have to hold reserves? How sensitive are the banks to policy actions of the central bank? The significance of these questions will be discussed later in this booklet. The answers indicate why changes in the money supply may be different than expected or may respond to policy action only after considerable time has elapsed.
In the succeeding pages, the effects of various transactions on the quantity of money are described and illustrated. The basic working tool is the "T" account, which provides a simple means of tracing, step by step, the effects of these transactions on both the asset and liability sides of bank balance sheets. Changes in asset items are entered on the left half of the "T" and changes in liabilities on the right half. For any one transaction, of course, there must be at least two entries in order to maintain the equality of assets and liabilities.

Bank Deposits - How They Expand or Contract

Let us assume that expansion in the money stock is desired by the Federal Reserve to achieve its policy objectives. One way the central bank can initiate such an expansion is through purchases of securities in the open market. Payment for the securities adds to bank reserves. Such purchases (and sales) are called "open market operations."
How do open market purchases add to bank reserves and deposits? Suppose the Federal Reserve System, through its trading desk at the Federal Reserve Bank of New York, buys $10,000 of Treasury bills from a dealer in U. S. government securities. (3)[67] In today's world of computerized financial transactions, the Federal Reserve Bank pays for the securities with an "telectronic" check drawn on itself.(4)[68] Via its "Fedwire" transfer network, the Federal Reserve notifies the dealer's designated bank (Bank A) that payment for the securities should be credited to (deposited in) the dealer's account at Bank A. At the same time, Bank A's reserve account at the Federal Reserve is credited

67 (3) Dollar amounts used in the various illustrations do not necessarily bear any resemblance to actual transactions. For example, open market operations typically are conducted with many dealers and in amounts totaling several billion dollars.
68 (4) Indeed, many transactions today are accomplished through an electronic transfer of funds between accounts rather than through issuance of a paper check. Apart from the time of posting, the accounting entries are the same whether a transfer is made with a paper check or electronically. The term "check," therefore, is used for both types of transfers.

for the amount of the securities purchase. The Federal Reserve System has added $10,000 of securities to its assets, which it has paid for, in effect, by creating a liability on itself in the form of bank reserve balances. These reserves on Bank A's books are matched by $10,000 of the dealer's deposits that did not exist before. See illustration 1.

How the Multiple Expansion Process Works

If the process ended here, there would be no "multiple" expansion, i.e., deposits and bank reserves would have changed by the same amount. However, banks are required to maintain reserves equal to only a fraction of their deposits. Reserves in excess of this amount may be used to increase earning assets - loans and investments. Unused or excess reserves earn no interest. Under current regulations, the reserve requirement against most transaction accounts is 10 percent.(5)[69] Assuming, for simplicity, a uniform 10 percent reserve requirement against all transaction deposits, and further assuming that all banks attempt to remain fully invested, we can now trace the process of expansion in deposits which can take place on the basis of the additional reserves provided by the Federal Reserve System's purchase of U. S. government securities.

The expansion process may or may not begin with Bank A, depending on what the dealer does with the money received from the sale of securities. If the dealer immediately writes checks for $10,000 and all of them are deposited in other banks, Bank A loses both deposits and reserves and shows no net change as a result of the System's open market purchase. However, other banks have received them. Most likely, a part of the initial deposit will remain with Bank A, and a part will be shifted to other banks as the dealer's checks clear.

It does not really matter where this money is at any given time. The important fact is that these deposits do not disappear. They are in some deposit accounts at all times. All banks together have $10,000 of deposits and reserves that they did not have before. However, they are not required to keep $10,000 of reserves against the $10,000 of deposits. All they need to retain, under a 10 percent reserve requirement, is $1000. The

69 (5) For each bank, the reserve requirement is 3 percent on a specified base amount of transaction accounts and 10 percent on the amount above this base. Initially, the Monetary Control Act set this base amount - called the "low reserve tranche" - at $25 million, and provided for it to change annually in line with the growth in transaction deposits nationally. The low reserve tranche was $41.1 million in 1991 and $42.2 million in 1992. The Garn-St. Germain Act of 1982 further modified these requirements by exempting the first $2 million of reservable liabilities from reserve requirements. Like the low reserve tranche, the exempt level is adjusted each year to reflect growth in reservable liabilities. The exempt level was $3.4 million in 1991 and $3.6 million in 1992.

remaining $9,000 is "excess reserves." This amount can be loaned or invested. See illustration 2.

If business is active, the banks with excess reserves probably will have opportunities to loan the $9,000. Of course, they do not really pay out loans from the money they receive as deposits. If they did this, no additional money would be created. What they do when they make loans is to accept promissory notes in exchange for credits to the borrowers' transaction accounts. Loans (assets) and deposits (liabilities) both rise by $9,000. Reserves are unchanged by the loan transactions. But the deposit credits constitute new additions to the total deposits of the banking system. See illustration 3.

Loans..... +9,000 **Borrower deposits.... +9,000**

This is the beginning of the deposit expansion process. In the first stage of the process, total loans and deposits of the banks rise by an amount equal to the excess reserves existing before any loans were made (90 percent of the initial deposit increase). At the end of Stage 1, deposits have risen a total of $19,000 (the initial $10,000 provided by the Federal Reserve's action plus the $9,000 in deposits created by Stage 1 banks). See illustration 4. However, only $900 (10 percent of $9000) of excess reserves have been absorbed by the additional deposit growth at Stage 1 banks. See illustration 5.

The lending banks, however, do not expect to retain the deposits they create through their loan operations. Borrowers write checks that probably will be deposited in other banks. As these checks move through the collection process, the Federal Reserve Banks debit the reserve accounts of the paying banks (Stage 1 banks) and credit those of the receiving banks. See illustration 6.

Whether Stage 1 banks actually do lose the deposits to other banks or whether any or all of the borrowers' checks are redeposited in these same banks makes no difference in the expansion process. If the lending banks expect to lose these deposits - and an equal amount of reserves - as the borrowers' checks are paid, they will not lend more than their excess reserves. Like the original $10,000 deposit, the loan-credited deposits may be transferred to other banks, but they remain somewhere in the banking system. Whichever banks receive them also acquire equal amounts of reserves, of which all but 10 percent will be "excess."

Assuming that the banks holding the $9,000 of deposits created in Stage 1 in turn make

loans equal to their excess reserves, then loans and deposits will rise by a further $8,100 in the second stage of expansion. This process can continue until deposits have risen to the point where all the reserves provided by the initial purchase of government securities by the Federal Reserve System are just sufficient to satisfy reserve requirements against the newly created deposits.(See pages10 and 11.)
The individual bank, of course, is not concerned as to the stages of expansion in which it may be participating. Inflows and outflows of deposits occur continuously. Any deposit received is new money, regardless of its ultimate source. But if bank policy is to make loans and investments equal to whatever reserves are in excess of legal requirements, the expansion process will be carried on.

How Much Can Deposits Expand in the Banking System?

The total amount of expansion that can take place is illustrated on page 11. Carried through to theoretical limits, the initial $10,000 of reserves distributed within the banking system gives rise to an expansion of $90,000 in bank credit (loans and investments) and supports a total of $100,000 in new deposits under a 10 percent reserve requirement. The deposit expansion factor for a given amount of new reserves is thus the reciprocal of the required reserve percentage (1/.10 = 10). Loan expansion will be less by the amount of the initial injection. The multiple expansion is possible because the banks as a group are like one large bank in which checks drawn against borrowers' deposits result in credits to accounts of other depositors, with no net change in the total reserves.

Expansion through Bank Investments

Deposit expansion can proceed from investments as well as loans. Suppose that the demand for loans at some Stage 1 banks is slack. These banks would then probably purchase securities. If the sellers of the securities were customers, the banks would make payment by crediting the customers' transaction accounts, deposit liabilities would rise just as if loans had been made. More likely, these banks would purchase the securities through dealers, paying for them with checks on themselves or on their reserve accounts. These checks would be deposited in the sellers' banks. In either case, the net effects on the banking system are identical with those resulting from loan

operations.

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4 As a result of the process so far, total assets and total liabilities of all banks together have risen 19,000.

ALL BANKS

Assets	**Liabilities**
Reserves with F. R. Banks...+10,000	Deposits: Initial. . . .+10,000
Loans . . . . . + 9,000	Stage 1 . . . . . + 9,000
Total . . . . . +19,000	
Total . . . . . .+19,000	

---

5 Excess reserves have been reduced by the amount required against the deposits created by the loans made in Stage 1. back

Total reserves gained from initial deposits. . . .	**10,000**
less: Required against initial deposits	**-1,000**
less: Required against Stage 1 requirements	**-900**
equals: Excess reserves.	**8,100**

Why do these banks stop increasing their loans and deposits when they still have excess reserves?

---

6 ...because borrowers write checks on their accounts at the lending banks. As these checks are deposited in the payees' banks and cleared, the deposits created by Stage 1 loans and an equal amount of reserves may be transferred to other banks.

STAGE 1 BANKS

Assets	**Liabilities**
Reserves with F. R. Banks . -9000 (matched under FR bank other bank deposits)	Borrower deposits . . . -9,000 (shown as additions to other bank deposits)

FEDERAL RESERVE BANK

Assets	Liabilities
	Reserve accounts: Stage 1 banks . -9,000
	Other banks. . . . . +9,000

OTHER BANKS

Assets	Liabilities
Reserves with F. R. Banks . +9,000	Deposits . . . . . +9,000

Deposit expansion has just begun!

---

7 Expansion continues as the banks that have excess reserves increase their loans by that amount, crediting borrowers' deposit accounts in the process, thus creating still more money.

STAGE 2 BANKS

Assets	Liabilities
Loans . . . . . + 8100	Borrower deposits . . . +8,100

---

8 Now the banking system's assets and liabilities have risen by 27,100.

ALL BANKS

Assets	Liabilities
Reserves with F. R. Banks . +10,000	Deposits: Initial . . . . +10,000
Loans: Stage 1 . . . . . .+ 9,000	Stage 1 . . . . . +9,000
Stage 2 . . . . . + 8,100	Stage 2 . . . . . +8,100
Total. . . . . +27,000	Total . . . . . +27,000

---

9 But there are still 7,290 of excess reserves in the banking system.

Total reserves gained from initial deposits	10,000
less: Required against initial deposits .	-1,000
less: Required against Stage 1 deposits .	-900

less: Required against Stage 2 deposits . -810 . . .	2,710
equals: Excess reserves	7,290 --> to Stage 3 banks

---

10 As borrowers make payments, these reserves will be further dispersed, and the process can continue through many more stages, in progressively smaller increments, until the entire 10,000 of reserves have been absorbed by deposit growth. As is apparent from the summary table on page 11, more than two-thirds of the deposit expansion potential is reached after the first ten stages.

It should be understood that the stages of expansion occur neither simultaneously nor in the sequence described above. Some banks use their reserves incompletely or only after a considerable time lag, while others expand assets on the basis of expected reserve growth.

The process is, in fact, continuous and may never reach its theoretical limits.

End page 10.

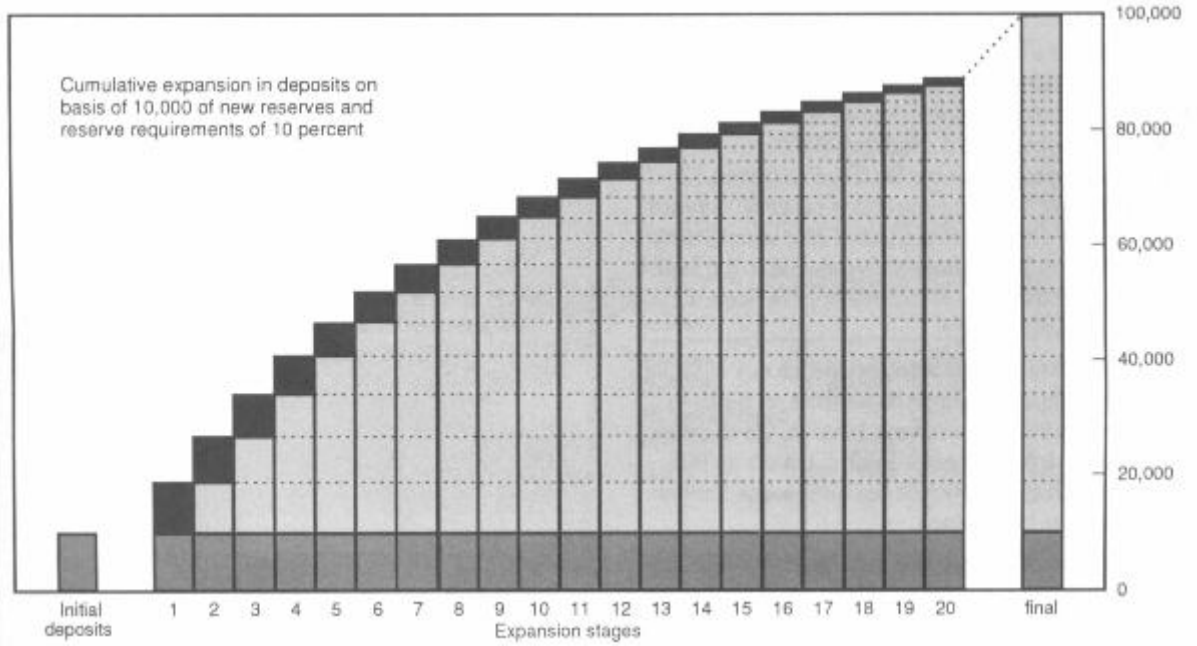
Page 11.

Thus through stage after stage of expansion,
"money" can grow to a total of 10 times the new
reserves supplied to the banking system....

	Assets			**Liabilities**	
[	**Reserves**	]			
	Total	**(Required)**	**(Excess)**	**Loans and Investments**	**Deposits**
Reserves provided	10,000	1,000	9,000	-	10,000
Exp. Stage 1	10,000	1900	8,100	9,000	19,000
Stage2	10,000	2,710	7,290	17,100	27,100
Stage 3	10,000	3,439	6,561	24,390	34,390
Stage 4	10,000	4,095	5,905	30,951	40,951
Stage 5	10,000	4,686	5,314	36,856	46,856

Stage 6	10,000	5,217	4,783	42,170	52,170
Stage 7	10,000	5,695	4,305	46,953	56,953
Stage 8	10,000	6,126	3,874	51,258	61,258
Stage 9	10,000	6,513	3,487	55,132	65,132
Stage 10	10,000	6,862	3,138	58,619	68,619
...	...	...	...	...	...
...	...	...	...	...	...
...	...	...	...	...	...
Stage 20	10,000	8,906	1,094	79,058	89,058
...	...	...	...	...	...
...	...	...	...	...	...
...	...	...	...	...	...
Final Stage	10,000	10,000	0	90,000	100,000

...as the new deposits created by loans at each stage are added to those created at all earlier stages and those supplied by the initial reserve-creating action.



How Open Market Sales Reduce bank Reserves and Deposits

Now suppose some reduction in the amount of money is desired. Normally this would

reflect temporary or seasonal reductions in activity to be financed since, on a year-to-year basis, a growing economy needs at least some monetary expansion. Just as purchases of government securities by the Federal Reserve System can provide the basis for deposit expansion by adding to bank reserves, sales of securities by the Federal Reserve System reduce the money stock by absorbing bank reserves. The process is essentially the reverse of the expansion steps just described.

Suppose the Federal Reserve System sells $10,000 of Treasury bills to a U.S. government securities dealer and receives in payment an "electronic" check drawn on Bank A. As this payment is made, Bank A's reserve account at a Federal Reserve Bank is reduced by $10,000. As a result, the Federal Reserve System's holdings of securities and the reserve accounts of banks are both reduced $10,000. The $10,000 reduction in Bank A's depost liabilities constitutes a decline in the money stock. See illustration 11.

Contraction Also Is a Cumulative Process

While Bank A may have regained part of the initial reduction in deposits from other banks as a result of interbank deposit flows, all banks taken together have $10,000 less in both deposits and reserves than they had before the Federal Reserve's sales of securities. The amount of reserves freed by the decline in deposits, however, is only $1,000 (10 percent of $10,000). Unless the banks that lose the reserves and deposits had excess reserves, they are left with a reserve deficiency of $9,000. See illustration 12. Although they may borrow from the Federal Reserve Banks to cover this deficiency temporarily, sooner or later the banks will have to obtain the necessary reserves in some other way or reduce their needs for reserves.

One way for a bank to obtain the reserves it needs is by selling securities. But, as the buyers of the securities pay for them with funds in their deposit accounts in the same or other banks, the net result is a $9,000 decline in securities and deposits at all banks. See illustration 13. At the end of Stage 1 of the contraction process, deposits have been reduced by a total of $19,000 (the initial $10,000 resulting from the Federal Reserve's action plus the $9,000 in deposits extinguished by securities sales of Stage 1 banks). See illustration 14.

However, there is now a reserve deficiency of $8,100 at banks whose depositors drew down their accounts to purchase the securities from Stage 1 banks. As the new group of

reserve-deficient banks, in turn, makes up this deficiency by selling securities or reducing loans, further deposit contraction takes place.

Thus, contraction proceeds through reductions in deposits and loans or investments in one stage after another until total deposits have been reduced to the point where the smaller volume of reserves is adequate to support them. The contraction multiple is the same as that which applies in the case of expansion. Under a 10 percent reserve requirement, a $10,000 reduction in reserves would ultimately entail reductions of $100,000 in deposits and $90,000 in loans and investments.

As in the case of deposit expansion, contraction of bank deposits may take place as a result of either sales of securities or reductions of loans. While some adjustments of both kinds undoubtedly would be made, the initial impact probably would be reflected in sales of government securities. Most types of outstanding loans cannot be called for payment prior to their due dates. But the bank may cease to make new loans or refuse to renew outstanding ones to replace those currently maturing. Thus, deposits built up by borrowers for the purpose of loan retirement would be extinguished as loans were repaid.

There is one important difference between the expansion and contraction processes. When the Federal Reserve System adds to bank reserves, expansion of credit and deposits may take place up to the limits permitted by the minimum reserve ratio that banks are required to maintain. But when the System acts to reduce the amount of bank reserves, contraction of credit and deposits must take place (except to the extent that existing excess reserve balances and/or surplus vault cash are utilized) to the point where the required ratio of reserves to deposits is restored. But the significance of this difference should not be overemphasized. Because excess reserve balances do not earn interest, there is a strong incentive to convert them into earning assets (loans and investments).

End of page 12.

Page 13.

Deposit Contraction

11When the Federal Reserve Bank sells government securities, bank reserves decline. This happens because the buyer of the securities makes payment through a debit to a designated deposit account at a bank (Bank A), with the transfer of funds being effected by a debit to Bank A's reserve account at the Federal Reserve Bank.

FEDERAL RESERVE BANK		BANK A	
Assets	**Liabilities**	**Assets**	**Liabilities**
U.S govt securities....-10,000	Reserve Accts. Bank A....-10,000	Reserves with F.R. Banks....-10,000	Customer deposits....-10,000

This reduction in the customer deposit at Bank A may be spread among a number of banks through interbank deposit flows.

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12 The loss of reserves means that all banks taken together now have a reserve deficiency.

Total reserves lost from deposit withdrawal	10,000
less: Reserves freed by deposit decline(10%).	1,000
equals: Deficiency in reserves against remaining deposits . .	9,000

Contraction - Stage 1

13 The banks with the reserve deficiencies (Stage 1 banks) can sell government securities to acquire reserves, but this causes a decline in the deposits and reserves of the buyers' banks.

STAGE 1 BANKS

Assets	**Liabilities**
U.S.government securities...-9,000	
Reserves with F.R. Banks..+9,000	

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserve Accounts:

Stage 1 banks.....+9,000
Other banks.....-9,000

OTHER BANKS

Assets	**Liabilities**
Reserves with F.R. Banks . . -9,000	Deposits . . . . -9,000

---

14 As a result of the process so far, assets and total deposits of all banks together have declined 19,000. Stage 1 contraction has freed 900 of reserves, but there is still a reserve deficiency of 8,100. back

ALL BANKS

Assets		**Liabilities**	
		Deposits:	
Reserves with F.R. Banks . .	-10,000	Initial	-10,000
U.S. government securities . .	-9,000	Stage 1	-9,000
Total	-19,000		
Total	-19,000		

Further contraction must take place!

Bank Reserves - How They Change

Money has been defined as the sum of transaction accounts in depository institutions, and currency and travelers checks in the hands of the public. Currency is something almost everyone uses every day. Therefore, when most people think of money, they think of currency. Contrary to this popular impression, however, transaction deposits are the most significant part of the money stock. People keep enough currency on hand to effect small face-to-face transactions, but they write checks to cover most large expenditures. Most businesses probably hold even smaller amounts of currency in relation to their total transactions than do individuals.

Since the most important component of money is transaction deposits, and since these deposits must be supported by reserves, the central bank's influence over money hinges on its control over the total amount of reserves and the conditions under which

banks can obtain them.

The preceding illustrations of the expansion and contraction processes have demonstrated how the central bank, by purchasing and selling government securities, can deliberately change aggregate bank reserves in order to affect deposits. But open market operations are only one of a number of kinds of transactions or developments that cause changes in reserves. Some changes originate from actions taken by the public, by the Treasury Department, by the banks, or by foreign and international institutions. Other changes arise from the service functions and operating needs of the Reserve Banks themselves.

The various factors that provide and absorb bank reserve balances, together with symbols indicating the effects of these developments, are listed on the opposite page. This tabulaton also indicates the nature of the balancing entries on the Federal Reserve's books. (To the extent that the impact is absorbed by changes in banks' vault cash, the Federal Reserve's books are unaffected.)

Independent Factors Versus Policy Action

It is apparent that bank reserves are affected in several ways that are independent of the control of the central bank. Most of these "independent" elements are changing more or less continually. Sometimes their effects may last only a day or two before being reversed automatically. This happens, for instance, when bad weather slows up the check collection process, giving rise to an automatic increase in Federal Reserve credit in the form of "float." Other influences, such as changes in the public's currency holdings, may persist for longer periods of time.

Still other variations in bank reserves result solely from the mechanics of institutional arrangements among the Treasury, the Federal Reserve Banks, and the depository institutions. The Treasury, for example, keeps part of its operating cash balance on deposit with banks. But virtually all disbursements are made from its balance in the Reserve Banks. As is shown later, any buildup in balances at the Reserve Banks prior to expenditure by the Treasury causes a dollar-for-dollar drain on bank reserves.

In contrast to these independent elements that affect reserves are the policy actions taken by the Federal Reserve System. The way System open market purchases and sales of securities affect reserves has already been described. In addition, there are two

other ways in which the System can affect bank reserves and potential deposit volume directly; first, through loans to depository institutions, and second, through changes in reserve requirement percentages. A change in the required reserve ratio, of course, does not alter the dollar volume of reserves directly but does change the amount of deposits that a given amount of reserves can support.

Any change in reserves, regardless of its origin, has the same potential to affect deposits. Therefore, in order to achieve the net reserve effects consistent with its monetary policy objectives, the Federal Reserve System continuously must take account of what the independent factors are doing to reserves and then, using its policy tools, offset or supplement them as the situation may require.

By far the largest number and amount of the System's gross open market transactions are undertaken to offset drains from or additions to bank reserves from non-Federal Reserve sources that might otherwise cause abrupt changes in credit availability. In addition, Federal Reserve purchases and/or sales of securities are made to provide the reserves needed to support the rate of money growth consistent with monetary policy objectives.

In this section of the booklet, several kinds of transactions that can have important week-to-week effects on bank reserves are traced in detail. Other factors that normally have only a small influence are described briefly on page 35.

Factors Changing Reserve Balances - Independent Policy Actions

	FEDERAL RESERVE BANKS		
	Assets	**Liabilities**	
		Reserve balances	**other**
Public actions			
Increase in currency holdings.....		-	+
Decrease in currency holdings.....		+	-
Treasury, bank, and foreign actions			
Increase in Treasury deposits in F.R. Banks.....		-	+

Decrease in Treasury deposits in F.R. Banks.....	+	-
Gold purchases (inflow) or increase in official valuation*..	+	-
Gold sales (outflows)*.....	-	+
Increase in SDR certificates issued*.....	+	-
Decrease in SDR certificates issued*.....	-	+
Increase in Treasury currency outstanding*.....	+	-
Decrease in Treasury currency outstanding*.....	-	+
Increase in Treasury cash holdings*.....	-	+
Decrease in Treasury cash holdings*.....	+	-
Increase in service-related balances/adjustments.....	-	+
Decrease in service-related balances/adjustments.....	+	-
Increase in foreign and other deposits in F.R. Banks...	-	+
Decrease in foreign and other deposits in F.R. Banks....	+	-

Federal Reserve actions

Purchases of securities.....	+	+
Sales of securities.....	-	-
Loans to depository institutions.....	+	+
Repayment of loans to depository institutions.....	-	-
Increase in Federal Reserve float.....	+	+
Decrease in Federal Reserve float.....	-	-
Increase in assets denominated in foreign currency ...	+	+
Decrease in assets denominated in foreign currency ...	-	-
Increase in other assets**.....	+	+
Decrease in other assets**.....	-	-
Increase in other liabilities**.....	-	+
Decrease in other liabilities**.....	+	-
Increase in capital accounts**.....	-	+
Decrease in capital accounts**.....	+	-
Increase in reserve requirements.....		-***
Decrease in reserve requirements.....		+***

* These factors represent assets and liabilities of the Treasury. Changes in them typically affect reserve balances through a related change in the Federal Reserve Banks' liability "Treasury deposits."
** Included in "Other Federal Reserve accounts" as described on page 35.
*** Effect on excess reserves. Total reserves are unchanged.
Note: To the extent that reserve changes are in the form of vault cash, Federal Reserve accounts are not affected.

Changes in the Amount of Currency Held by the Public

Changes in the amount of currency held by the public typically follow a fairly regular intramonthly pattern. Major changes also occur over holiday periods and during the Christmas shopping season - times when people find it convenient to keep more pocket money on hand. (See chart.) The public acquires currency from banks by cashing checks. (6)[70] When deposits, which are fractional reserve money, are exchanged for currency, which is 100 percent reserve money, the banking system experiences a net reserve drain. Under the assumed 10 percent reserve requirement, a given amount of bank reserves can support deposits ten times as great, but when drawn upon to meet currency demand, the exchange is one to one. A $1 increase in currency uses up $1 of reserves.

Suppose a bank customer cashed a $100 check to obtain currency needed for a weekend holiday. Bank deposits decline $100 because the customer pays for the currency with a check on his or her transaction deposit; and the bank's currency (vault cash reserves) is also reduced $100. See illustration 15.

Now the bank has less currency. It may replenish its vault cash by ordering currency from its Federal Reserve Bank - making payment by authorizing a charge to its reserve account. On the Reserve Bank's books, the charge against the bank's reserve account is offset by an increase in the liability item "Federal Reserve notes." See illustration 16.

The reserve Bank shipment to the bank might consist, at least in part, of U.S. coins rather than Federal Reserve notes. All coins, as well as a small amount of paper currency still outstanding but no longer issued, are obligations of the Treasury. To the extent that shipments of cash to banks are in the form of coin, the offsetting entry on the Reserve Bank's books is a decline in its asset item "coin."

The public now has the same volume of money as before, except that more is in the form of currency and less is in the form of transaction deposits. Under a 10 percent reserve requirement, the amount of reserves required against the $100 of deposits was

70 (6) The same balance sheet entries apply whether the individual physically cashes a paper check or obtains currency by withdrawing cash through an automatic teller machine.

only $10, while a full $100 of reserves have been drained away by the disbursement of $100 in currency. Thus, if the bank had no excess reserves, the $100 withdrawal in currency causes a reserve deficiency of $90. Unless new reserves are provided from some other source, bank assets and deposits will have to be reduced (according to the contraction process described on pages 12 and 13) by an additional $900. At that point, the reserve deficiency caused by the cash withdrawal would be eliminated.

When Currency Returns to Banks, Reserves Rise

After holiday periods, currency returns to the banks. The customer who cashed a check to cover anticipated cash expenditures may later redeposit any currency still held that's beyond normal pocket money needs. Most of it probably will have changed hands, and it will be deposited by operators of motels, gasoline stations, restaurants, and retail stores. This process is exactly the reverse of the currency drain, except that the banks to which currency is returned may not be the same banks that paid it out. But in the aggregate, the banks gain reserves as 100 percent reserve money is converted back into fractional reserve money.

When $100 of currency is returned to the banks, deposits and vault cash are increased. See illustration 17. The banks can keep the currency as vault cash, which also counts as reserves. More likely, the currency will be shipped to the Reserve Banks. The Reserve Banks credit bank reserve accounts and reduce Federal Reserve note liabilities. See illustration 18. Since only $10 must be held against the new $100 in deposits, $90 is excess reserves and can give rise to $900 of additional deposits(7).

To avoid multiple contraction or expansion of deposit money merely because the public wishes to change the composition of its money holdings, the effects of changes in the public's currency holdings on bank reserves normally are offset by System open market operations.

15 When a depositor cashes a check, both deposits and vault cash reserves decline.

back

BANK A

Assets	**Liabilities**
Vault cash reserves . . -100	Deposits . . . . -100
(Required . . -10)	

(Deficit . . . . 90)

---

16 If the bank replenishes its vault cash, its account at the Reserve Bank is drawn down in exchange for notes issued by the Federal Reserve.

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserve accounts: Bank A . . . -100
	F.R. notes . . . +100

BANK A

Assets		**Liabilities**
Vault cash	+100	
Reserves with F.R. Banks .	-100	

---

17 When currency comes back to the banks, both deposits and vault cash reserves rise.

BANK A

Assets	**Liabilities**
Vault cash reserves . . +100	Deposits . . . . +100
(Required . . . +10)	
(Excess . . . . +90)	

---

18 If the currency is returned to the Federal reserve, reserve accounts are credited and Federal Reserve notes are taken out of circulation.

FEDERAL RESERVE BANK

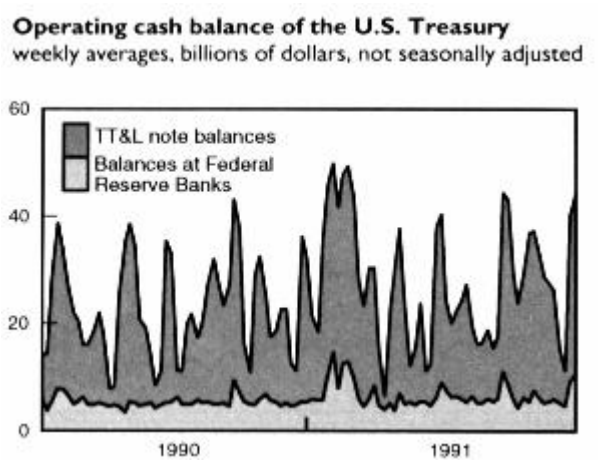
Assets	**Liabilities**
	Reserve accounts: Bank A . . +100
	F.R. notes . . . . . -100

BANK A

Assets	**Liabilities**
Vault cash . . . . . -100	
Reserves with F.R. Banks . . . +100	

Page 18

Changes in U.S. Treasury Deposits in Federal Reserve Banks



Reserve accounts of depository institutions constitute the bulk of the deposit liabilities of the Federal Reserve System. Other institutions, however, also maintain balances in the Federal Reserve Banks - mainly the U.S. Treasury, foreign central banks, and international financial institutions. In general, when these balances rise, bank reserves fall, and vice versa. This occurs because the funds used by these agencies to build up their deposits in the Reserve Banks ultimately come from deposits in banks. Conversely, recipients of payments from these agencies normally deposit the funds in banks. Through the collection process these banks receive credit to their reserve accounts.

The most important nonbank depositor is the U.S. Treasury. Part of the Treasury's operating cash balance is kept in the Federal Reserve Banks; the rest is held in depository institutions all over the country, in so-called "Treasury tax and loan" (TT&L) note accounts. (See chart.) Disbursements by the Treasury, however, are made against its balances at the Federal Reserve. Thus, transfers from banks to Federal Reserve Banks are made through regularly scheduled "calls" on TT&L balances to assure that

sufficient funds are available to cover Treasury checks as they are presented for payment. (8) [71]

Bank Reserves Decline as the Treasury's Deposits at the Reserve Banks Increase

Calls on TT&L note accounts drain reserves from the banks by the full amount of the transfer as funds move from the TT&L balances (via charges to bank reserve accounts) to Treasury balances at the Reserve Banks. Because reserves are not required against TT&L note accounts, these transfers do not reduce required reserves.(9) [72]

Suppose a Treasury call payable by Bank A amounts to $1,000. The Federal Reserve Banks are authorized to transfer the amount of the Treasury call from Bank A's reserve account at the Federal Reserve to the account of the U.S. Treasury at the Federal Reserve. As a result of the transfer, both reserves and TT&L note balances of the bank are reduced. On the books of the Reserve Bank, bank reserves decline and Treasury deposits rise. See illustration 19. This withdrawal of Treasury funds will cause a reserve deficiency of $1,000 since no reserves are released by the decline in TT&L note accounts at depository institutions.

Bank Reserves Rise as the Treasury's Deposits at the Reserve Banks Decline

As the Treasury makes expenditures, checks drawn on its balances in the Reserve Banks are paid to the public, and these funds find their way back to banks in the form of deposits. The banks receive reserve credit equal to the full amount of these deposits although the corresponding increase in their required reserves is only 10 percent of this amount.

Suppose a government employee deposits a $1,000 expense check in Bank A. The bank sends the check to its Federal Reserve Bank for collection. The Reserve Bank

71 (8) When the Treasury's balance at the Federal Reserve rises above expected payment needs, the Treasury may place the excess funds in TT&L note accounts through a "direct investment." The accounting entries are the same, but of opposite signs, as those shown when funds are transferred from TT&L note accounts to Treasury deposits at the Fed.

72 (9) Tax payments received by institutions designated as Federal tax depositories initially are credited to reservable demand deposits due to the U.S. government. Because such tax payments typically come from reservable transaction accounts, required reserves are not materially affected on this day. On the next business day, however, when these funds are placed either in a nonreservable note account or remitted to the Federal Reserve for credit to the Treasury's balance at the Fed, required reserves decline.

then credits Bank A's reserve account and charges the Treasury's account. As a result, the bank gains both reserves and deposits. While there is no change in the assets or total liabilities of the Reserve Banks, the funds drawn away from the Treasury's balances have been shifted to bank reserve accounts. See illustration 20.

One of the objectives of the TT&L note program, which requires depository institutions that want to hold Treasury funds for more than one day to pay interest on them, is to allow the Treasury to hold its balance at the Reserve Banks to the minimum consistent with current payment needs. By maintaining a fairly constant balance, large drains from or additions to bank reserves from wide swings in the Treasury's balance that would require extensive offsetting open market operations can be avoided. Nevertheless, there are still periods when these fluctuations have large reserve effects. In 1991, for example, week-to-week changes in Treasury deposits at the Reserve Banks averaged only $56 million, but ranged from -$4.15 billion to +$8.57 billion.

Page 19.

19 When the Treasury builds up its deposits at the Federal Reserve through "calls" on TT&L note balances, reserve accounts are reduced.

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserve accounts: Bank A . . -1,000
	U.S. Treasury deposits . . +1,000

BANK A

Assets	**Liabilities**
Reserves with F.R. Banks . . -1,000	Treasury tax and loan note account .. .. . . -1,000
(Required . . . . 0)	
(Deficit . . 1,000)	

---

20 Checks written on the Treasury's account at the Federal Reserve Bank are deposited in banks. As these are collected, banks receive credit to their reserve accounts at the Federal Reserve Banks.

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserve accounts: Bank A . . +1,000
	U.S. Treasury deposits . . . -1,000

BANK A

Assets	**Liabilities**
Reserves with F.R. Banks . . +1,000	Private deposits . . +1,000
(Required . . . +100)	
(Excess . . . . . +900)	

End of page 19.

Changes in Federal Reserve Float

A large proportion of checks drawn on banks and deposited in other banks is cleared (collected) through the Federal Reserve Banks. Some of these checks are credited immediately to the reserve accounts of the depositing banks and are collected the same day by debiting the reserve accounts of the banks on which the checks are drawn. All checks are credited to the accounts of the depositing banks according to availability schedules related to the time it normally takes the Federal Reserve to collect the checks, but rarely more than two business days after they are received at the Reserve Banks, even though they may not yet have been collected due to processing, transportation, or other delays.

The reserve credit given for checks not yet collected is included in Federal Reserve "float."(10) On the books of the Federal Reserve Banks, balance sheet float, or statement float as it is sometimes called, is the difference between the asset account

"items in process of collection," and the liability account "deferred credit items." Statement float is usually positive since it is more often the case that reserve credit is given before the checks are actually collected than the other way around.

Published data on Federal Reserve float are based on a "reserves-factor" framework rather than a balance sheet accounting framework. As published, Federal Reserve float includes statement float, as defined above, as well as float-related "as-of" adjustments.(11) These adjustments represent corrections for errors that arise in processing transactions related to Federal Reserve priced services. As-of adjustments do not change the balance sheets of either the Federal Reserve Banks or an individual bank. Rather they are corrections to the bank's reserve position, thereby affecting the calculation of whether or not the bank meets its reserve requirements.

An Increase in Federal Reserve Float Increases Bank Reserves

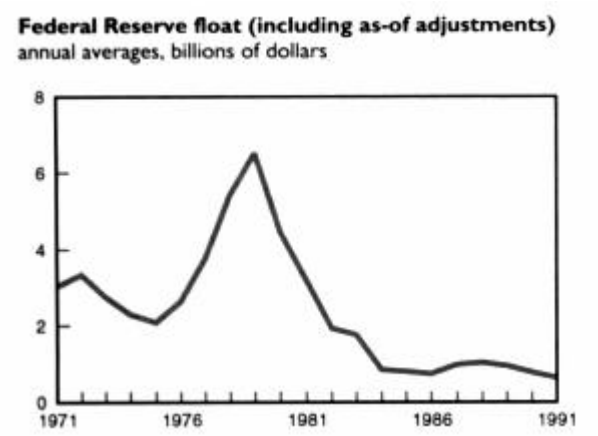
As float rises, total bank reserves rise by the same amount. For example, suppose Bank A receives checks totaling $100 drawn on Banks B, C, and D, all in distant cities. Bank A increases the accounts of its depositors $100, and sends the items to a Federal Reserve Bank for collection. Upon receipt of the checks, the Reserve Bank increases its own asset account "items in process of collection," and increases its liability account "deferred credit items" (checks and other items not yet credited to the sending bank's reserve accounts). As long as these two accounts move together, there is no change in float or in total reserves from this source. See illustration 21.

On the next business day (assuming Banks B, C, and D are one-day deferred availability points), the Reserve Bank pays Bank A. The Reserve Bank's "deferred credit items" account is reduced, and Bank A's reserve account is increased $100. If these items actually take more than one business day to collect so that "items in process of collection" are not reduced that day, the credit to Bank A represents an addition to total bank reserves since the reserve accounts of Banks B, C, and D will not have been commensurately reduced.(12) See illustration 22.

A Decline in Federal Reserve Float Reduces Bank Reserves

Only when the checks are actually collected
from Banks B, C, and D does the float

involved in the above example disappear - "items in process of collection" of the Reserve Bank decline as the reserve accounts of Banks B, C, and D are reduced. See illustration 23.



On an annual average basis, Federal Reserve float declined dramatically from 1979 through 1984, in part reflecting actions taken to implement provisions of the Monetary Control Act that directed the Federal Reserve to reduce and price float. (See chart.) Since 1984, Federal Reserve float has been fairly stable on an annual average basis, but often fluctuates sharply over short periods. From the standpoint of the effect on bank reserves, the significant aspect of float is not that it exists but that its volume changes in a difficult-to-predict way. Float can increase unexpectedly, for example, if weather conditions ground planes transporting checks to paying banks for collection. However, such periods typically are followed by ones where actual collections exceed new items being received for collection. Thus, reserves gained from float expansion usually are quite temporary.

21 When a bank receives deposits in the form of checks drawn on other banks, it can send them to the Federal Reserve Bank for collection. (Required reserves are not affected immediately because requirements apply to net transaction accounts, i.e., total transaction accounts minus both cash items in process of collection and deposits due from domestic depository institutions.) back

FEDERAL RESERVE BANK

Assets	Liabilities
Items in process of collection . . +100	Deferred credit items . . +100

BANK A

Assets	Liabilities
Cash items in process of collection . . +100	Deposits . . . . . +100

22 If the reserve account of the payee bank is credited before the reserve accounts of the paying banks are debited, total reserves increase.

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Deferred credit items . . -100
	Reserve account: Bank A . . +100

BANK A

Assets	**Liabilities**
Cash items in process of collection . . -100	
Reserves with F.R. Banks . . . +100	
(Required . . . . +10)	
(Excess. . . . . +90)	

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23 But upon actual collection of the items, accounts of the paying banks are charged, and total reserves decline. back

FEDERAL RESERVE BANK

Assets	**Liabilities**
Items in process	Reserve accounts:
of collection . . . . . -100	Banks B, C, and D . . . . . -100

BANK B, C, and D

Assets	**Liabilities**
Reserves with F.R.Banks . . -100	Deposits . . . . . -100
(Required . . . -10)	
(Deficit . . . . . 90)	

Changes in Service-Related Balances and Adjustments

In order to foster a safe and efficient payments system, the Federal Reserve offers banks a variety of payments services. Prior to passage of the Monetary Control Act in 1980, the Federal Reserve offered its services free, but only to banks that were members of the Federal Reserve System. The Monetary Control Act directed the Federal Reserve to offer its services to all depository institutions, to charge for these services, and to reduce and price Federal Reserve float.(13) Except for float, all services covered by the Act were priced by the end of 1982. Implementation of float pricing essentially was completed in 1983.

The advent of Federal reserve priced services led to several changes that affect the use of funds in banks' reserve accounts. As a result, only part of the total balances in bank reserve accounts is identified as "reserve balances" available to meet reserve requirements. Other balances held in reserve accounts represent "service-related balances and adjustments (to compensate for float)." Service-related balances are "required clearing balances" held by banks that use Federal Reserve services while "adjustments" represent balances held by banks that pay for float with as-of adjustments.

An Increase in Required Clearing Balances Reduces Reserve Balances

Procedures for establishing and maintaining clearing balances were approved by the Board of Governors of the Federal Reserve System in February of 1981. A bank may be required to hold a clearing balance if it has no required reserve balance or if its required reserve balance (held to satisfy reserve requirements) is not large enough to handle its volume of clearings. Typically a bank holds both reserve balances and required clearing balances in the same reserve account. Thus, as required clearing balances are established or increased, the amount of funds in reserve accounts identified as reserve balances declines.

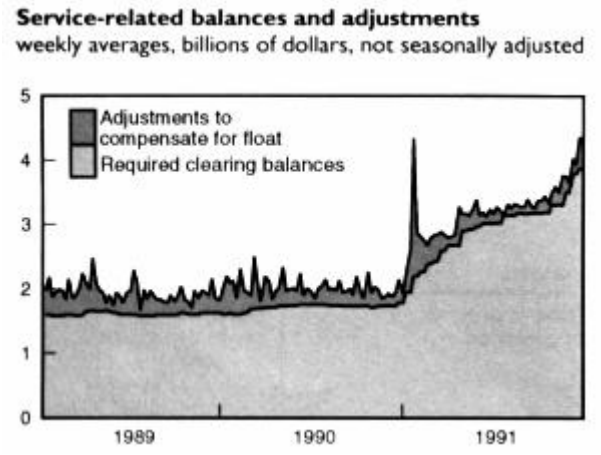
Suppose Bank A wants to use Federal Reserve services but has a reserve balance requirement that is less than its expected operating needs. With its Reserve Bank, it is determined that Bank A must maintain a required clearing balance of $1,000. If Bank A

has no excess reserve balance, it will have to obtain funds from some other source. Bank A could sell $1,000 of securities, but this will reduce the amount of total bank reserve balances and deposits. See illustration 24.

Banks are billed each month for the Federal Reserve services they have used with payment collected on a specified day the following month. All required clearing balances held generate "earnings credits" which can be used only to offset charges for Federal Reserve services.(14) Alternatively, banks can pay for services through a direct charge to their reserve accounts. If accrued earnings credits are used to pay for services, then reserve balances are unaffected. On the other hand, if payment for services takes the form of a direct charge to the bank's reserve account, then reserve balances decline. See illustration 25.

Float Pricing As-Of Adjustments Reduce Reserve Balances

In 1983, the Federal Reserve began pricing explicitly for float,(15) specifically "interterritory" check float, i.e., float generated by checks deposited by a bank served by one Reserve Bank but drawn on a bank served by another Reserve Bank. The depositing bank has three options in paying for interterritory check float it generates. It can use its earnings credits, authorize a direct charge to its reserve account, or pay for the float with an as-of adjustment. If either of the first two options is chosen, the accounting entries are the same as paying for other priced services. If the as-of adjustment option is chosen, however, the balance sheets of the Reserve Banks and the bank are not directly affected. In effect what happens is that part of the total balances held in the bank's reserve account is identified as being held to compensate the Federal reserve for float. This part, then, cannot be used to satisfy either reserve requirements or clearing balance requirements. Float pricing as-of adjustments are applied two weeks after the related float is generated. Thus, an individual bank has sufficient time to obtain funds from other sources in order to avoid any reserve



deficiencies that might result from float pricing as-of adjustments. If all banks together have no excess reserves, however, the float pricing as-of adjustments lead to a decline in total bank reserve balances.

Week-to-week changes in service-related balances and adjustments can be volatile, primarily reflecting adjustments to compensate for float. (See chart.) Since these changes are known in advance, any undesired impact on reserve balances can be offset easily through open market operations.

End of page 22.

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24 When Bank A establishes a required clearing balance at a Federal Reserve Bank by selling securities, the reserve balances and deposits of other banks decline. back

BANK A

Assets	**Liabilities**
U.S. government securities . . -1,000	
Reserve account with F.R. Banks.	
Required clearing balance . . +1000	

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserve accounts:
	Required clearing balances Bank A . . . . +1000
	Reserve balances:
	Other banks . . . . . -1000

OTHER BANKS

Assets	**Liabilities**
Reserve accounts with F.R. Banks:	
Reserve balances . . . . -1,000	Deposits . . . . . -1,000
(Required . . . -100)	
(Deficit . . . . . 900)	

25 When Bank A is billed monthly for Federal Reserve services used, it can pay for these services by having earnings credits applied and/or by authorizing a direct charge to its reserve account. Suppose Bank A has accrued earnings credits of $100 but incurs fees of $125. Then both methods would be used. On the Federal Reserve Bank's books, the liability account "earnings credits due to depository institutions" declines by $100 and Bank A's reserve account is reduced by $25. Offsetting these entries is a reduction in the Fed's (other) asset account "accrued service income." On Bank A's books, the accounting entries might be a $100 reduction to its asset account "earnings credit due from Federal Reserve Banks" and a $25 reduction in its reserve account, which are offset by a $125 decline in its liability "accounts payable." While an individual bank may use different accounting entries, the net effect on reserves is a reduction of $25, the amount of billed fees that were paid through a direct charge to Bank A's reserve account.

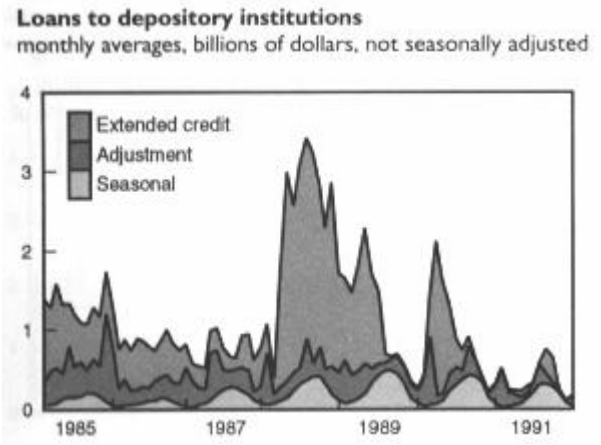
FEDERAL RESERVE BANK

Assets	**Liabilities**
	Earnings credits due to depository
Accrued service income . . . . . -125	institutions . . . . . -100
	Reserve accounts: Bank A . . -25

BANK A

Assets	**Liabilities**
Earnings credits due from F.R.	
Banks . . -100	Accounts payable . . . . . -125
Reserves with F.R. Banks . . . . . -25	

Changes in Loans to Depository Institutions



Prior to passage of the Monetary Control Act of 1980, only banks that were members of the Federal Reserve System had regular access to the Fed's "discount window." Since then, all institutions having deposits reservable under the Act also have been able to borrow from the Fed. Under conditions set by the Federal Reserve, loans are available under three credit programs: adjustment, seasonal, and extended credit.(16)[73] The average amount of each type of discount window credit provided varies over time. (See chart.)

When a bank borrows from a Federal Reserve Bank, it borrows reserves. The acquisition of reserves in this manner differs in an important way from the cases already illustrated. Banks normally borrow adjustment credit only to avoid reserve deficiencies or overdrafts, not to obtain excess reserves. Adjustment credit borrowings, therefore, are reserves on which expansion has already taken place. How can this happen?

In their efforts to accommodate customers as well as to keep fully invested, banks frequently make loans in anticipation of inflows of loanable funds from deposits or money market sources. Loans add to bank deposits but not to bank reserves. Unless excess reserves can be tapped, banks will not have enough reserves to meet the reserve requirements against the new deposits. Likewise, individual banks may incur deficiencies through unexpected deposit outflows and corresponding losses of reserves through clearings. Other banks receive these deposits and can increase their loans accordingly, but the banks that lost them may not be able to reduce outstanding loans or investments in order to restore their reserves to required levels within the required time period. In either case, a bank may borrow reserves temporarily from its Reserve

73 (16) Adjustment credit is short-term credit available to meet temporary needs for funds. Seasonal credit is available for longer periods to smaller institutions having regular seasonal needs for funds. Extended credit may be made available to an institution or group of institutions experiencing sustained liquidity pressures. The reserves provided through extended credit borrowing typically are offset by open market operations.

Bank.

Suppose a customer of Bank A wants to borrow $100. On the basis of the managements's judgment that the bank's reserves will be sufficient to provide the necessary funds, the customer is accommodated. The loan is made by increasing "loans" and crediting the customer's deposit account. Now Bank A's deposits have increased by $100. However, if reserves are insufficient to support the higher deposits, Bank A will have a $10 reserve deficiency, assuming requirements of 10 percent. See illustration 26. Bank A may temporarily borrow the $10 from its Federal Reserve Bank, which makes a loan by increasing its asset item "loans to depository institutions" and crediting Bank A's reserve account. Bank A gains reserves and a corresponding liability "borrowings from Federal Reserve Banks." See illustration 27.

To repay borrowing, a bank must gain reserves through either deposit growth or asset liquidation. See illustration 28. A bank makes payment by authorizing a debit to its reserve account at the Federal Reserve Bank. Repayment of borrowing, therefore, reduces both reserves and "borrowings from Federal Reserve Banks." See illustration 29.

Unlike loans made under the seasonal and extended credit programs, adjustment credit loans to banks generally must be repaid within a short time since such loans are made primarily to cover needs created by temporary fluctuations in deposits and loans relative to usual patterns. Adjustments, such as sales of securities, made by some banks to "get out of the window" tend to transfer reserve shortages to other banks and may force these other banks to borrow, especially in periods of heavy credit demands. Even at times when the total volume of adjustment credit borrowing is rising, some individual banks are repaying loans while others are borrowing. In the aggregate, adjustment credit borrowing usually increases in periods of rising business activity when the public's demands for credit are rising more rapidly than nonborrowed reserves are being provided by System open market operations.

Discount Window as a Tool of Monetary Policy

Although reserve expansion through borrowing is initiated by banks, the amount of reserves that banks can acquire in this way ordinarily is limited by the Federal Reserve's administration of the discount window and by its control of the rate charged banks for

adjustment credit loans - the discount rate.(17)[74] Loans are made only for approved purposes, and other reasonably available sources of funds must have been fully used. Moreover, banks are discouraged from borrowing adjustment credit too frequently or for extended time periods. Raising the discount rate tends to restrain borrowing by increasing its cost relative to the cost of alternative sources of reserves.
Discount window administration is an important adjunct to the other Federal Reserve tools of monetary policy. While the privilege of borrowing offers a "safety valve" to temporarily relieve severe strains on the reserve positions of individual banks, there is generally a strong incentive for a bank to repay borrowing before adding further to its loans and investments.

---

26 A bank may incur a reserve deficiency if it makes loans when it has no excess reserves.

BANK A

Assets	**Liabilities**
Loans . . . . . +100	Deposits . . . . . +100
Reserves with F. R. Banks . . no change	
(Required . . . . +10)	
(Deficit . . . . . 10)	

---

27 Borrowing from a Federal Reserve Bank to cover such a deficit is accompanied by a direct credit to the bank's reserve account.

FEDERAL RESERVE BANK

Assets	**Liabilities**
Loans to depository institution:	
	Reserve accounts: Bank A . . +10
Bank A . . . . . +10	

74 (17) Flexible discount rates related to rates on money market sources of funds currently are charged for seasonal credit and for extended credit outstanding more than 30 days.

BANK A

Assets	**Liabilities**
Reserves with F.R. Banks . . +10	Borrowings from F.R.Banks . . +10

No further expansion can take place on the new reserves because they are all needed against the deposits created in (26).

---

28 Before a bank can repay borrowings, it must gain reserves from some other source.

BANK A

Assets	**Liabilities**
Securities . . . . . -10	
Reserves with F.R. Banks . . . +10	

---

29 Repayment of borrowings from the Federal Reserve Bank reduces reserves. back

FEDERAL RESERVE BANK

Assets	**Liabilities**
Loans to depository institutions:	
	Reserve accounts: Bank A . . . -10
Bank A . . . . . -10	

BANK A

Assets	**Liabilities**
Reserves with F.R. Bank . . -10	Borrowings from F.R. Bank . . -10

Changes in Reserve Requirements

Thus far we have described transactions that affect the volume of bank reserves and the impact these transactions have upon the capacity of the banks to expand their assets and deposits. It is also possible to influence deposit expansion or contraction by

changing the required minimum ratio of reserves to deposits.

The authority to vary required reserve percentages for banks that were members of the Federal Reserve System (member banks) was first granted by Congress to the Federal Reserve Board of Governors in 1933. The ranges within which this authority can be exercised have been changed several times, most recently in the Monetary Control Act of 1980, which provided for the establishment of reserve requirements that apply uniformly to all depository institutions. The 1980 statute established the following limits:

On transaction accounts

first $25 million 3%

above $25 million . . . . . 8% to 14%

On nonpersonal time deposits . . . . 0% to 9%

The 1980 law initially set the requirement against transaction accounts over $25 million at 12 percent and that against nonpersonal time deposits at 3 percent. The initial $25 million "low reserve tranche" was indexed to change each year in line with 80 percent of the growth in transaction accounts at all depository institutions. (For example, the low reserve tranche was increased from $41.1 million for 1991 to $42.2 million for 1992.) In addition, reserve requirements can be imposed on certain nondeposit sources of funds, such as Eurocurrency liabilities.(18)[75] (Initially the Board set a 3 percent requirement on Eurocurrency liabilities.)

The Garn-St. Germain Act of 1982 modified these provisions somewhat by exempting from reserve requirements the first $2 million of total reservable liabilities at each depository institution. Similar to the low reserve tranche adjustment for transaction accounts, the $2 million "reservable liabilities exemption amount" was indexed to 80 percent of annual increases in total reservable liabilities. (For example, the exemption amount was increased from $3.4 million for 1991 to $3.6 million for 1992.)

The Federal Reserve Board is authorized to change, at its discretion, the percentage requirements on transaction accounts above the low reserve tranche and on nonpersonal time deposits within the ranges indicated above. In addition, the Board may impose differing reserve requirements on nonpersonal time deposits based on the

75 (18) The 1980 statute also provides that "under extraordinary circumstances" reserve requirements can be imposed at any level on any liability of depository institutions for as long as six months; and, if essential for the conduct of monetary policy, supplemental requirements up to 4 percent of transaction accounts can be imposed.

maturity of the deposit. (The Board initially imposed the 3 percent nonpersonal time deposit requirement only on such deposits with original maturities of under four years.) During the phase-in period, which ended in 1984 for most member banks and in 1987 for most nonmember institutions, requirements changed according to a predetermined schedule, without any action by the Federal Reserve Board. Apart from these legally prescribed changes, once the Monetary Control Act provisions were implemented in late 1980, the Board did not change any reserve requirement ratios until late 1990. (The original maturity break for requirements on nonpersonal time deposits was shortened several times, once in 1982, and twice in 1983, in connection with actions taken to deregulate rates paid on deposits.) In December 1990, the Board reduced reserve requirements against nonpersonal time deposits and Eurocurrency liabilities from 3 percent to zero. Effective in April 1992, the reserve requirement on transaction accounts above the low reserve tranche was lowered from 12 percent to 10 percent.

When reserve requirements are lowered, a portion of banks' existing holdings of required reserves becomes excess reserves and may be loaned or invested. For example, with a requirement of 10 percent, $10 of reserves would be required to support $100 of deposits. See illustration 30. But a reduction in the legal requirement to 8 percent would tie up only $8, freeing $2 out of each $10 of reserves for use in creating additional bank credit and deposits. See illustration 31.

An increase in reserve requirements, on the other hand, absorbs additional reserve funds, and banks which have no excess reserves must acquire reserves or reduce loans or investments to avoid a reserve deficiency. Thus an increase in the requirement from 10 percent to 12 percent would boost required reserves to $12 for each $100 of deposits. Assuming banks have no excess reserves, this would force them to liquidate assets until the reserve deficiency was eliminated, at which point deposits would be one-sixth less than before. See illustration 32.

Reserve Requirements and Monetary Policy

The power to change reserve requirements, like purchases and sales of securities by the Federal Reserve, is an instrument of monetary policy. Even a small change in requirements - say, one-half of one percentage point - can have a large and widespread impact. Other instruments of monetary policy have sometimes been used to cushion the

initial impact of a reserve requirement change. Thus, the System may sell securities (or purchase less than otherwise would be appropriate) to absorb part of the reserves released by a cut in requirements.

It should be noted that in addition to their initial impact on excess reserves, changes in requirements alter the expansion power of every reserve dollar. Thus, such changes affect the leverage of all subsequent increases or decreases in reserves from any source. For this reason, changes in the total volume of bank reserves actually held between points in time when requirements differ do not provide an accurate indication of the Federal Reserve's policy actions.

Both reserve balances and vault cash are eligible to satisfy reserve requirements. To the extent some institutions normally hold vault cash to meet operating needs in amounts exceeding their required reserves, they are unlikely to be affected by any change in requirements.

---

30 Under a 10 percent reserve requirement, $10 of reserves are needed to support each $100 of deposits. back

BANK A

Assets	**Liabilities**
Loans and investments . . . 90	Deposits 100
Reserves 10	
(Required . . . . 10)	
(Excess. . . . . 0)	

---

31 With a reduction in requirements from 10 percent to 8 percent, fewer reserves are required against the same volume of deposits so that excess reserves are created. These can be loaned or invested.

BANK A

Assets	**Liabilities**
Loans and investments 90	Deposits 100

Reserves 10
(Required . . . . . 8)
(Excess . . . . . 2)

FEDERAL RESERVE BANK

Assets	**Liabilities**
No change	No change

There is no change in the total amount of reserves.

---

32 With an increase in requirements from 10 percent to 12 percent, more reserves are required against the same volume of deposits. The resulting deficiencies must be covered by liquidation of loans or investments...

BANK A

Assets	**Liabilities**
Loans and investments 90	Deposits 100
Reserves 10	
(Required. . . . . 12)	
(Deficit . . . . . 2)	

FEDERAL RESERVE BANK

Assets	Liabilities
No change	No change

...because the total amount of bank reserves remains unchanged.

Changes in Foreign-Related Factors

The Federal Reserve has engaged in foreign currency operations for its own account since 1962. In addition, it acts as the agent for foreign currency transactions of the U.S. Treasury, and since the 1950s has executed transactions for customers such as foreign central banks. Perhaps the most publicized type of foreign currency transaction undertaken by the Federal Reserve is intervention in foreign exchange markets. Intervention, however, is only one of several foreign-related transactions that have the

potential for increasing or decreasing reserves of banks, thereby affecting money and credit growth.

Several foreign-related transactions and their effects on U.S. bank reserves are described in the next few pages. Included are some but not all of the types of transactions used. The key point to remember, however, is that the Federal Reserve routinely offsets any undesired change in U.S. bank reserves resulting from foreign-related transactions. As a result, such transactions do not affect money and credit growth in the United States.

Foreign Exchange Intervention for the Federal Reserve's Own Account

When the Federal Reserve intervenes in foreign exchange markets to sell dollars for its own account,(19)[76] it acquires foreign currency assets and reserves of U.S. banks initially rise. In contrast, when the Fed intervenes to buy dollars for its own account, it uses foreign currency assets to pay for the dollars purchased and reserves of U.S. banks initially fall.

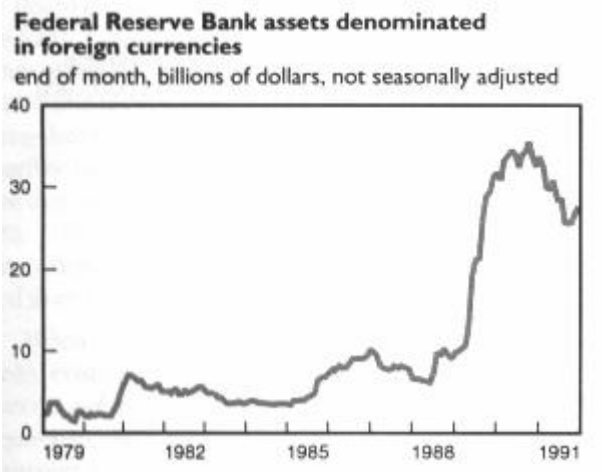
Consider the example where the Federal Reserve intervenes in the foreign exchange markets to sell $100 of U.S. dollars for its own account. In this transaction, the Federal Reserve buys a foreign-currency-denominated deposit of a U.S. bank held at a foreign commercial bank,(20)[77] and pays for this foreign currency deposit by crediting $100 to the U.S. bank's reserve account at the Fed. The Federal Reserve deposits the foreign currency proceeds in its account at a Foreign Central Bank, and as this transaction clears, the foreign bank's reserves at the Foreign Central Bank decline. See illustration 33. Initially, then, the Fed's intervention sale of dollars in this example leads to an increase in Federal Reserve Bank assets denominated in foreign currencies and an increase in reserves of U.S. banks.

Suppose instead that the Federal Reserve

76 (19) Overall responsibility for U.S. intervention in foreign exchange markets rests with the U.S Treasury. Foreign exchange transactions for the Federal Reserve's account are carried out under directives issued by the Federal Reserve's Open Market Committee within the general framework of exchange rate policy established by the U.S. Treasury in consultation with the Fed. They are implemented at the Federal Reserve Bank of New York, typically at the same time that similar transactions are executed for the Treasury's Exchange Stabilization Fund.

77 (20) Americans traveling to foreign countries engage in "foreign exchange" transactions whenever they obtain foreign coins and paper currency in exchange for U.S. coins and currency. However, most foreign exchange transactions do not involve the physical exchange of coins and currency. Rather, most of these transactions represent the buying and selling of foreign currencies by exchanging one bank deposit denominated in one currency for another bank deposit denominated in another currency. For ease of exposition, the examples assume that U.S. banks and foreign banks are the market participants in the intervention transactions, but the impact on reserves would be the same if the U.S. or foreign public were involved.

intervenes in the foreign exchange markets to buy $100 of U.S. dollars, again for its own account. The Federal Reserve purchases a dollar-denominated deposit of a foreign bank held at a U.S. bank, and pays for this dollar deposit by drawing on its foreign currency deposit at a Foreign Central Bank. (The Federal Reserve might have to sell some of its foreign currency investments to build up its deposits at the Foreign Central Bank, but this would not affect U.S. bank reserves.) As the Federal Reserve's account at the Foreign Central Bank is charged, the foreign bank's reserves at the Foreign Central Bank increase. In turn, the dollar deposit of the foreign bank at the U.S. bank declines as the U.S bank transfers ownership of those dollars to the Federal Reserve via a $100 charge to its reserve account at the Federal Reserve. See illustration 34. Initially, then, the Fed's intervention purchase of dollars in this example leads to a decrease in Federal Reserve Bank assets denominated in foreign currencies and a decrease in reserves of U.S. banks.



As noted earlier, the Federal Reserve offsets or "sterilizes" any undesired change in U.S. bank reserves stemming from foreign exchange intervention sales or purchases of dollars. For example, Federal Reserve Bank assets denominated in foreign currencies rose dramatically in 1989, in part due to significant U.S. intervention sales of dollars. (See chart.) Total reserves of U.S. banks, however, declined slightly in 1989 as open market operations were used to "sterilize" the initial intervention-induced increase in reserves.

Monthly Revaluation of Foreign Currency Assets

Another set of accounting transactions that affects Federal Reserve Bank assets denominated in foreign currencies is the monthly revaluation of such assets. Two business days prior to the end of the month, the Fed's foreign currency assets are

increased if their market value has appreciated or decreased if their value has depreciated. The offsetting accounting entry on the Fed's balance sheet is to the "exchange-translation account" included in "other F.R. liabilities." These changes in the Fed's balance sheet do not alter bank reserves directly. However, since the Federal Reserve turns over its net earnings to the Treasury each week, the revaluation affects the amount of the Fed's payment to the Treasury, which in turn influences the size of TT&L calls and bank reserves. (See explanation on pages 18 and 19.

Foreign-Related Transactions for the Treasury

U.S. intervention in foreign exchange markets by the Federal Reserve usually is divided between its own account and the Treasury's Exchange Stabilization Fund (ESF) account. The impact on U.S. bank reserves from the intervention transaction is the same for both - sales of dollars add to reserves while purchases of dollars drain reserves. See illustration 35. Depending upon how the Treasury pays for, or finances, its part of the intervention, however, the Federal Reserve may not need to conduct offsetting open market operations.

The Treasury typically keeps only minimal balances in the ESF's account at the Federal Reserve. Therefore, the Treasury generally has to convert some ESF assets into dollar or foreign currency deposits in order to pay for its part of an intervention transaction. Likewise, the dollar or foreign currency deposits acquired by the ESF in the intervention typically are drawn down when the ESF invests the proceeds in earning assets.

For example, to finance an intervention sale of dollars (such as that shown in illustration 35), the Treasury might redeem some of the U.S. government securities issued to the ESF, resulting in a transfer of funds from the Treasury's (general account) balances at the Federal Reserve to the ESF's account at the Fed. (On the Federal Reserve's balance sheet, the ESF's account is included in the liability category "other deposits.") The Treasury, however, would need to replenish its Fed balances to desired levels, perhaps by increasing the size of TT&L calls - a transaction that drains U.S. bank reserves. The intervention and financing transactions essentially occur simultaneously. As a result, U.S. bank reserves added in the intervention sale of dollars are offset by the drain in U.S. bank reserves from the TT&L call. See illustrations 35 and 36. Thus, no Federal Reserve offsetting actions would be needed if the Treasury financed the

intervention sale of dollars through a TT&L call on banks.

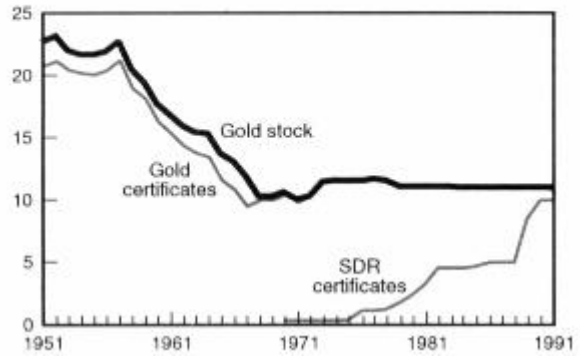
Offsetting actions by the Federal Reserve would be needed, however, if the Treasury restored deposits affected by foreign-related transactions through a number of transactions involving the Federal Reserve. These include the Treasury's issuance of SDR or gold certificates to the Federal Reserve and the "warehousing" of foreign currencies by the Federal Reserve.

SDR certificates. Occasionally the Treasury acquires dollar deposits for the ESF's account by issuing certificates to the Federal Reserve against allocations of Special Drawing Rights (SDRs) received from the International Monetary Fund.(21)[78] For example, $3.5 billion of SDR certificates were issued in 1989, and another $1.5 billion in 1990. This "monetization" of SDRs is reflected on the Federal Reserve's balance sheet as an increase in its asset "SDR certificate account" and an increase in its liability "other deposits (ESF account)."

If the ESF uses these dollar deposits directly in an intervention sale of dollars, then the intervention-induced increase in U.S. bank reserves is not altered. See illustrations 35 and 37. If not needed immediately for an intervention transaction, the ESF might use the dollar deposits from issuance of SDR certificates to buy securities from the Treasury, resulting in a transfer of funds from the ESF's account at the Federal Reserve to the Treasury's account at the Fed. U.S. bank reserves would then increase as the Treasury spent the funds or transferred them to banks through a direct investment to TT&L note accounts.

Gold stock and gold certificates. Changes in the U.S. monetary gold stock used to be an important factor affecting bank reserves. However, the gold stock and gold certificates issued to the Federal Reserve in "monetizing" gold, have not changed significantly since the early 1970s. (See chart.)

U.S gold stock, gold certificates and SDR certificates
end of year, billions of dollars



Prior to August 1971, the Treasury bought and sold gold for a fixed price in terms of U.S. dollars, mainly at the initiative of foreign

78 (21) SDRs were created in 1970 for use by governments in official balance of payments transactions.

central banks and governments. Gold purchases by the Treasury were added to the U.S. monetary gold stock, and paid for from its account at the Federal Reserve. As the sellers deposited the Treasury's checks in banks, reserves increased. To replenish its balance at the Fed, the Treasury issued gold certificates to the Federal Reserve and received a credit to its deposit balance. Treasury sales of gold have the opposite effect. Buyers' checks are credited to the Treasury's account and reserves decline. Because the official U.S. gold stock is now fully "monetized," the Treasury currently has to use its deposits to retire gold certificates issued to the Federal Reserve whenever gold is sold. However, the value of gold certificates retired, as well as the net contraction in bank reserves, is based on the official gold price. Proceeds from a gold sale at the market price to meet demands of domestic buyers likely would be greater. The difference represents the Treasury's profit, which, when spent, restores deposits and bank reserves by a like amount.

While the Treasury no longer purchases gold and sales of gold have been limited, increases in the official price of gold have added to the value of the gold stock. (The official gold price was last raised from $38.00 to $42.22 per troy ounce, in 1973.)

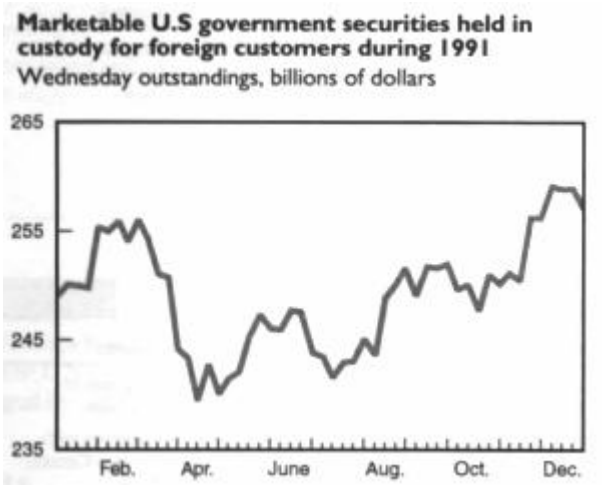
Warehousing. The Treasury sometimes acquires dollar deposits at the Federal Reserve by "warehousing" foreign currencies with the Fed. (For example, $7 billion of foreign currencies were warehoused in 1989.) The Treasury or ESF acquires foreign currency assets as a result of transactions such as intervention sales of dollars or sales of U.S government securities denominated in foreign currencies. When the Federal Reserve warehouses foreign currencies for the Treasury,(22)[79] "Federal Reserve Banks assets denominated in foreign currencies" increase as do Treasury deposits at the Fed. As these deposits are spent, reserves of U.S. banks rise. In contrast, the Treasury likely will have to increase the size of TT&L calls - a transaction that drains reserves - when it repurchases warehoused foreign currencies from the Federal Reserve. (In 1991, $2.5 billion of warehoused foreign currencies were repurchased.) The repurchase transaction is reflected on the Fed's balance sheet as declines in both Treasury deposits at the

79 (22) Technically, warehousing consists of two parts: the Federal Reserve's agreement to purchase foreign currency assets from the Treasury or ESF for dollar deposits now, and the Treasury's agreement to repurchase the foreign currencies sometime in the future.

Federal Reserve and Federal Reserve Bank assets denominated in foreign currencies.

Transactions for Foreign Customers

Many foreign central banks and governments maintain deposits at the Federal Reserve to facilitate dollar-denominated transactions. These "foreign deposits" on the liability side of the Fed's balance sheet typically are held at minimal levels that vary little from week to week. For example, foreign deposits at the Federal Reserve averaged only $237 million in 1991, ranging from $178 million to $319 million on a weekly average basis. Changes in foreign deposits are small because foreign customers "manage" their Federal Reserve balances to desired levels daily by buying and selling U.S. government securities. The extent of these foreign customer "cash management" transactions is reflected, in part, by large and frequent changes in marketable U.S. government securities held in custody by the Federal Reserve for foreign customers. (See chart.) The net effect of foreign customers' cash management transactions usually is to leave U.S. bank reserves unchanged.



Managing foreign deposits through sales of securities. Foreign customers of the Federal Reserve make dollar-denominated payments, including those for intervention sales of dollars by foreign central banks, by drawing down their deposits at the Federal Reserve. As these funds are deposited in U.S. banks and cleared, reserves of U.S. banks rise. See illustration 38. However, if payments from their accounts at the Federal Reserve lower balances to below desired levels, foreign customers will replenish their Federal Reserve deposits by selling U.S. government securities. Acting as their agent, the Federal Reserve usually executes foreign customers' sell orders in the market. As buyers pay for the securities by drawing down deposits at U.S. banks, reserves of U.S. banks fall and offset the increase in reserves from the disbursement transactions. The

net effect is to leave U.S. bank reserves unchanged when U.S. government securities of customers are sold in the market. See illustrations 38 and 39. Occasionally, however, the Federal Reserve executes foreign customers' sell orders with the System's account. When this is done, the rise in reserves from the foreign customers' disbursement of funds remains in place. See illustration 38 and 40. The Federal reserve might choose to execute sell orders with the System's account if an increase in reserves is desired for domestic policy reasons.

Managing foreign deposits through purchases of securitites. Foreign customers of the Federal Reserve also receive a variety of dollar denominated payments, including proceeds from intervention purchases of dollars by foreign central banks, that are drawn on U.S. banks. As these funds are credited to foreign deposits at the Federal Reserve, reserves of U.S. banks decline. But if receipts of dollar-denominated payments raise their deposits at the Federal Reserve to levels higher than desired, foreign customers will buy U.S. government securities. The net effect generally is to leave U.S. bank reserves unchanged when the U.S. government securities are purchased in the market.

Using the swap network. Occasionally, foreign central banks acquire dollar deposits by activating the "swap" network, which consists of reciprocal short-term credit arrangements between the Federal Reserve and certain foreign central banks. When a foreign central bank draws on its swap line at the Federal Reserve, it immediately obtains a dollar deposit at the Fed in exchange for foreign currencies, and agrees to reverse the exchange sometime in the future. On the Federal Reserve's balance sheet, activation of the swap network is reflected as an increase in Federal Reserve Bank assets denominated in foreign currencies and an increase in the liability category "foreign deposits." When the swap line is repaid, both of these accounts decline. Reserves of U.S. banks will rise when the foreign central bank spends its dollar proceeds from the swap drawing. See illustration 41. In contrast, reserves of U.S. banks will fall as the foreign central bank rebuilds its deposits at the Federal Reserve in order to repay a swap drawing.

The accounting entries and impact of U.S. bank reserves are the same if the Federal Reserve uses the swap network to borrow and repay foreign currencies. However, the Federal Reserve has not activated the swap network in recent years.

33 When the Federal Reserve intervenes to sell dollars for its own account, it pays for a foreign-currency-denominated deposit of a U.S. bank at a foreign commercial bank by crediting the reserve account of the U.S. bank, and acquires a foreign currency asset in the form of a deposit at a Foreign Central Bank. The Federal Reserve, however, will offset the increase in U.S. bank reserves if it is inconsistent with domestic policy objectives.

FEDERAL RESERVE BANK

Assets	**Liabilities**
Deposits at Foreign Central Bank . . +100	Reserves: U.S. bank . . +100

U. S. BANK

Assets	**Liabilities**
Reserves with F.R. Bank . . +100	
Deposits at foreign bank . . -100	

FOREIGN BANK

Assets	**Liabilities**
Reserves with	
Foreign Central Bank . . -100	Deposits of U.S. bank . . -100

FOREIGN CENTRAL BANK

Assets	**Liabilities**
	Deposits of F.R. Banks . . . +100
	Reserves of foreign bank . . . -100

---

34 When the Federal Reserve intervenes to buy dollars for its own account, it draws down its foreign currency deposits at a foreign Central Bank to pay for a dollar-denominated deposit of a foreign bank at a U.S. bank, which leads to a contraction in reserves of the U.S. bank. This reduction in reserves will be offset by the Federal Reserve if it is inconsistent with domestic policy objectives.

FEDERAL RESERVE BANK

Assets	**Liabilities**
Deposits at Foreign Central Bank . -100	Reserves: U. S. bank . . -100

U. S. BANK

Assets	**Liabilities**
Reserves with F.R. Bank . . -100	Deposits of foreign bank . . -100

FOREIGN BANK

Assets	**Liabilities**
deposits at U.S. bank . . . -100	
Reserves with Foreign Central Bank . +100	

FOREIGN CENTRAL BANK

Assets	**Liabilities**
	Deposits of F.R. Banks . . -100
	Reserves of foreign bank . . +100

---

35 In an intervention sale of dollars for the U.S. Treasury, deposits of the ESF[80] at the Federal Reserve are used to pay for a foreign currency deposit of a U.S. bank at a foreign bank, and the foreign currency proceeds are deposited in an account at a Foreign Central Bank. U.S. bank reserves increase as a result of this intervention transaction. back

ESF

Assets	**Liabilities**
Deposits at F.R. Bank . . . . -100	
Deposits at Foreign Central Bank . . +100	

U. S. Treasury

Assets	**Liabilities**
No change	No change

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserves: U.S. bank . . . +100
	Other deposits: ESF . . . -100

80 Exchange Stabilization Fund

U. S. BANK

Assets	**Liabilities**
Reserves with F.R. Bank . . . +100	
Deposits at foreign bank . . . -100	

FOREIGN BANK

Assets	**Liabilities**
Reserves with Foreign Central Bank . -100	Deposits of U.S. bank . -100

FOREIGN CENTRAL BANK

Assets	**Liabilities**
	Deposits of ESF . . . +100
	Reserves of foreign bank . . -100

---

36 Concurrently, the Treasury must finance the intervention transaction in (35). The Treasury might build up deposits in the ESF's account at the Federal Reserve by redeeming securities issued to the ESF, and replenish its own (general account) deposits at the Federal Reserve to desired levels by issuing a call on TT&L note accounts. This set of transactions drains reserves of U.S. banks by the same amount as the intervention in (35) added to U.S. bank reserves.

ESF

Assets	**Liabilities**
U.S govt. securities . . . -100	
Deposits at F.R. Banks . . +100	

U. S. Treasury

Assets	**Liabilities**
TT&L accts . . . . . -100	Securities issued ESF . . . -100
Deposits at F.R. Banks . . . net 0	
(from U.S bank . . +100)	
(to ESF . . . . . -100)	

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserves: U.S. bank . . . -100
	Treas. deps: . . . . net 0
	(from U.S. bank . +100)
	(to ESF. . . . . -100)
	Other deposits: ESF . . . . +100

U. S. BANK

Assets	**Liabilities**
Reserves with F.R. Bank . . -100	TT&L accts . . . . . -100

---

37 Alternatively, the Treasury might finance the intervention in (35) by issuing SDR certificates to the Federal Reserve, a transaction that would not disturb the addition of U.S. bank reserves in intervention (35). The Federal Reserve, however, would offset any undesired change in U.S. bank reserves. back

ESF

Assets	**Liabilities**
Deposits at F.R. Banks . . +100	SDR certificates issued to F.R. Banks . . . . . +100

U. S. Treasury

Assets	**Liabilities**
No change	No change

FEDERAL RESERVE BANK

Assets	**Liabilities**
SDR certificate account . . +100	Other deposits: ESF . . . +100

U. S. BANK

Assets	**Liabilities**
No change	No change

---

38 When a Foreign Central Bank makes a dollar-denominated payment from its account at the Federal Reserve, the recipient deposits the funds in a U.S. bank. As the payment order clears, U.S. bank reserves rise.

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserves: U.S. bank . . . +100
	Foreign deposits . . . . -100

U. S. BANK

Assets	**Liabilities**
Reserves with F.R. Banks . . +100	Deposits . . . . . +100

FOREIGN CENTRAL BANK

Assets	**Liabilities**
Deposits at F.R. Banks . . . . -100	Accounts payable . . . . . -100

---

39 If a decline in its deposits at the Federal Reserve lowers the balance below desired levels, the Foreign Central Bank will request that the Federal Reserve sell U.S. government securities for it. If the sell order is executed in the market, reserves of U.S. banks will fall by the same amount as reserves were increased in (38). back

FEDERAL RESERVE BANK

Assets	**Liabilities**
	Reserves: U.S. bank . . . . -100
	Foreign deposits . . . . . +100

U. S. BANK

Assets	**Liabilities**
Reserves with F.R. Banks . . . -100	Deposits of securities buyer . . -100

FOREIGN CENTRAL BANK

Assets	**Liabilities**
Deposits at F.R. Banks . . +100	
U.S. govt. securities . . -100	

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40 If the sell order is executed with the Federal Reserve's account, however, the increase in reserves from (38) will remain in place. The Federal Reserve might choose to execute the foreign customer's sell order with the System's account if an increase in reserves is desired for domestic policy reasons.

FEDERAL RESERVE BANK

Assets	Liabilities
U.S. govt. securities . . . . +100	Foreign deposits . . . . +100

U. S. Bank

Assets	Liabilities
No change	No change

FOREIGN CENTRAL BANK

Assets	Liabilities
Deposits at F.R. Banks . . . +100	
U.S. govt. securities . . . . . -100	

---

41 When a Foreign Central Bank draws on a "swap" line, it receives a credit to its dollar deposits at the Federal Reserve in exchange for a foreign currency deposit credited to the Federal Reserve's account. Reserves of U.S. banks are not affected by the swap drawing transaction, but will increase as the Foreign Central Bank uses the funds as in (38).

FEDERAL RESERVE BANK

Assets	Liabilities
deposits at Foreign Central Bank . . +100	Foreign deposits . . . . +100

U. S. Bank

Assets	Liabilities
No change	No change

FOREIGN CENTRAL BANK

Assets	Liabilities
Deposits at F.R. Banks . . . +100	Deposits of F.R. Banks . . . +100

Federal Reserve Actions Affecting Its Holdings of U. S. Government Securities

In discussing various factors that affect reserves, it was often indicated that the Federal Reserve offsets undesired changes in reserves through open market operations, that is, by buying and selling U.S. government securities in the market. However, outright purchases and sales of securities by the Federal Reserve in the market occur infrequently, and typically are conducted when an increase or decrease in another factor is expected to persist for some time. Most market actions taken to implement changes in monetary policy or to offset changes in other factors are accomplished through the use of transactions that change reserves temporarily. In addition, there are off-market transactions the Federal Reserve sometimes uses to change its holdings of U.S. government securities and affect reserves. (Recall the example in illustrations 38 and 40.) The impact on reserves of various Federal Reserve transactions in U.S. government and federal agency securities is explained below. (See table for a summary.)

Outright transactions.

Ownership of securities is transferred permanently to the buyer in an outright transaction, and the funds used in the transaction are transferred permanently to the seller. As a result, an outright purchase of securities by the Federal Reserve from a dealer in the market adds reserves permanently while an outright sale of securities to a dealer drains reserves permanently. The Federal Reserve can achieve the same net effect on reserves through off-market transactions where it executes outright sell and purchase orders from customers internally with the System account. In contrast, there is no impact on reserves if the Federal Reserve fills customers' outright sell and purchase orders in the market.

Temporary transactions.

Repurchase agreements (RPs), and associated matched sale-purchase agreements (MSPs), transfer ownership of securities and use of funds temporarily. In an RP transaction, one party sells securities to another and agrees to buy them back on a specified future date. In an MSP transaction, one party buys

securities from another and agrees to sell them back on a specified future date. In essence, then, and RP for one party in the transaction works like an MSP for the other party.

When the Federal Reserve executes what is referred to as a "System RP," it acquires securities in the market from dealers who agree to buy them back on a specified future date 1 to 15 days later. Both the System's portfolio of securities and bank reserves are increased during the term of the RP, but decline again when the dealers repurchase the securities. Thus System RPs increase reserves only temporarily. Reserves are drained temorarily when the Fed executes what is known as a "System MSP." A System MSP works like a System RP, only in the opposite directions. In a system MSP, the Fed sells securities to dealers in the market and agrees to buy them back on a specified day. The System's holdings of securities and bank reserves are reduced during the term of the MSP, but both increase when the Federal Reserve buys back the securities.

Impact on reserves of Federal Reserve transactions in U.S. government and federal agency securities

Federal Reserve Transactions Reserve Impact

Outright purchase of Securities

- From dealer in market Permanent increase
- To fill customer sell orders Permanent increase

(If customer buy orders filled in market) (No impact)

Outright Sales of Securites

- To dealer in market Permanent decrease
- To fill customer buy orders internally Permanent decrease

(If customer buy orders filled in market) (No impact)

Repurchase Agreements (RPs)

- With dealer in market in System RP Temporary increase

Matched Sale-Purchase Agreements (MSPs)

- With dealer in market in a system MSP Temporary decrease
- To fill customer RP orders internally No impact*

(If customer RP orders passed to market as customer related RPs) (Temporary increase*)

Redemption of Maturing Securities

- Replace total amount maturing — No impact
- Redeem part of amount maturing — Permanent decrease
- Buy more than amount maturing** — Permanent increase**

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*Impact based on assumption that the amount of RP orders done internally is the same as on the prior day.

**The Federal Reserve currently is prohibited by law from buying securities directly from the Treasury, except to replace maturing issues.

The Federal Reserve also uses MSPs to fill foreign customers' RP orders internally with the System account. Considered in isolation, a Federal Reserve MSP transaction with customers would drain reserves temporarily. However, these transactions occur every day, with the total amount of RP orders being fairly stable from day to day. Thus, on any given day, the Fed both buys back securities from customers to fulfill the prior day's MSP, and sells them about the same amount of securities to satisfy that day's agreement. As a result, there generally is little or no impact on reserves when the Fed uses MSPs to fill customer RP orders internally with the System account. Sometimes, however, the Federal Reserve fills some of the RP orders internally and the rest in the market. The part that is passed on to the market is known as a "customer-related RP." The Fed ends up repurchasing more securities from customers to complete the prior day's MSP than it sells to them in that day's MSP. As a result, customer-related RPs add reserves temporarily.

Maturing securities.

As securities held by the Federal Reserve mature, they are exchanged for new securities. Usually the total amount maturing is replaced so that there is no impact on reserves since the Fed's total holdings remain the same. Occasionally, however, the Federal Reserve will exchange only part of the amount maturing. Treasury deposits decline as payment for the redeemed securities is made, and reserves fall as the Treasury replenishes its deposits at the Fed through TT&L calls.

The reserve drain is permanent. If the Fed were to buy more than the amount of securities maturing directly from the Treasury, then reserves would increase permanently. However, the Federal Reserve currently is prohibited by law from buying securities directly from the Treasury, except to replace maturing issues.

Page 35.

Miscellaneous Factors Affecting Bank Reserves

The factors described below normally have negligible effects on bank reserves because changes in them either occur very slowly or tend to be balanced by concurrent changes in other factors. But at times they may require offsetting action.

Treasury Currency Outstanding

Treasury currency outstanding consists of coins, silver certificates and U.S. notes originally issued by the Treasury, and other currency originally issued by commercial banks and by Federal Reserve Banks before July 1929 but for which the Treasury has redemption responsibility. Short-run changes are small, and their effects on bank reserves are indirect.

The amount of Treasury currency outstanding currently increases only through issuance of new coin. The Treasury ships new coin to the Federal Reserve Banks for credit to Treasury deposits there. These deposits will be drawn down again, however, as the Treasury makes expenditures. Checks issued against these deposits are paid out to the public. As individuals deposit these checks in banks, reserves increase. (See explanation on pages 18 and 19.)

When any type of Treasury currency is retired, bank reserves decline. As banks turn in Treasury currency for redemption, they receive Federal Reserve notes or coin in exchange or a credit to their reserve accounts, leaving their total reserves (reserve balances and vault cash) initially unchanged. However, the Treasury's deposits in the Reserve Banks are charged when Treasury currency is retired. Transfers from TT&L balances in banks to the Reserve Banks replenish these deposits. Such transfers absorb reserves.

Treasury Cash Holdings

In addition to accounts in depository institutions and Federal Reserve Banks, the Treasury holds some currency in its own vaults. Changes in these holdings affect bank reserves just like changes in the Treasury's deposit account at the Reserve Banks. When Treasury holdings of currency increase, they do so at the expense of deposits in banks. As cash holdings of the Treasury decline, on the other hand, these funds move into bank deposits and increase bank reserves.

Other Deposits in Reserve Banks

Besides U.S. banks, the U.S. Treasury, and foreign central banks and governments, there are some international organizations and certain U.S. government agencies that keep funds on deposit in the Federal Reserve Banks. In general, balances are built up through transfers of deposits held at U.S. banks. Such transfers may take place either directly, where these customers also have deposits in U.S. banks, or indirectly by the deposit of funds acquired from others who do have accounts at U.S. banks. Such transfers into "other deposits" drain reserves.

When these customers draw on their Federal Reserve balances (say, to purchase securities), these funds are paid to the public and deposited in U.S. banks, thus increasing bank reserves. Just like foreign customers, these "other" customers manage their balances at the Federal Reserve closely so that changes in their deposits tend to be small and have minimal net impact on reserves.

Nonfloat-Related Adjustments

Certain adjustments are incorporated into published data on reserve balances to reflect nonfloat-related corrections. Such a correction might be made, for example, if an individual bank had mistakenly reported fewer reservable deposits than actually existed and had held smaller reserve balances than necessary in some past period. To correct for this error, a nonfloat-related as-of adjustment will be applied to the bank's reserve position. This essentially results in the bank having to hold higher balances in its reserve account in the current and/or future periods than would be needed to satisfy reserve requirements in those periods. Nonfloat-related as-of adjustments affect the allocation of funds in bank reserve accounts but not the total amount in these accounts

as reflected on Federal Reserve Bank and individual bank balance sheets. Published data on reserve balances, however, are adjusted to show only those reserve balances held to meet the current and/or future period reserve requirements.

Other Federal Reserve Accounts

Earlier sections of this booklet described the way in which bank reserves increase when the Federal Reserve purchases securities and decline when the Fed sells securities. The same results follow from any Federal Reserve expenditure or receipt. Every payment made by the Reserve Banks, in meeting expenses or acquiring any assets, affects deposits and bank reserves in the same way as does payment to a dealer for government securities. Similarly, Reserve Bank receipts of interest on loans and securities and increases in paid-in capital absorb reserves.

End of page 35.

The Reserve Multiplier - Why It Varies

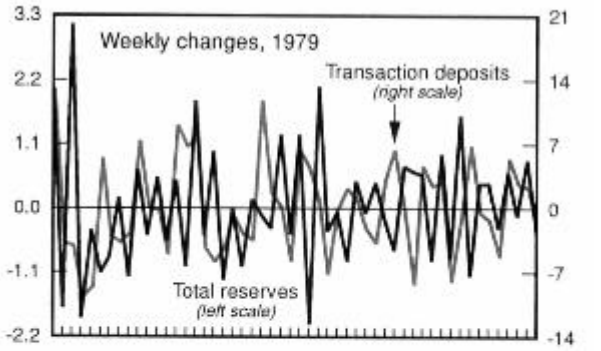
The deposit expansion and contraction associated with a given change in bank reserves, as illustrated earlier in this booklet, assumed a fixed reserve-to-deposit multiplier. That multiplier was determined by a uniform percentage reserve requirement specified for transaction accounts. Such an assumption is an oversimplification of the actual relationship between changes in reserves and changes in money, especially in the short-run. For a number of reasons, as discussed in this section, the quantity of reserves associated with a given quantity of transaction deposits is constantly changing. One slippage affecting the reserve multiplier is variation in the amount of excess reserves. In the real world, reserves are not always fully utilized. There are always some excess reserves in the banking system, reflecting frictions and lags as funds flow among thousands of individual banks.

Excess reserves present a problem for monetary policy implementation only because the amount changes. To the extent that new reserves supplied are offset by rising excess reserves, actual money growth falls short of the theoretical maximum. Conversely, a reduction in excess reserves by the banking system has the same effect on monetary expansion as the injection of an equal amount of new reserves.

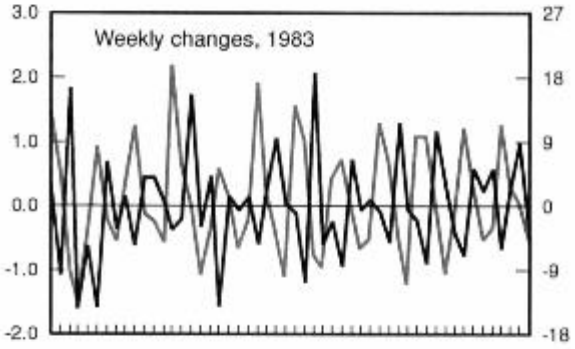
Slippages also arise from reserve requirements being imposed on liabilities not included in money as well as differing reserve ratios being applied to transaction deposits according to the size of the bank. From 1980 through 1990, reserve requirements were imposed on certain nontransaction liabilities of all depository institutions, and before then on all deposits of member banks. The reserve multiplier was affected by flows of funds between institutions subject to differing reserve requirements as well as by shifts of funds between transaction deposits and other liabilities subject to reserve requirements. The extension of reserve requirements to all depository institutions in 1980 and the elimination of reserve requirements against nonpersonal time deposits and Eurocurrency liabilities in late 1990 reduced, but did not eliminate, this source of instability in the reserve multiplier. The deposit expansion potential of a given volume of reserves still is affected by shifts of transaction deposits between larger institutions and those either exempt from reserve requirements or whose transaction deposits are within the tranche subject to a 3 percent reserve requirement.

In addition, the reserve multiplier is affected by conversions of deposits into currency or vice versa. This factor was important in the 1980s as the public's desired currency holdings relative to transaction deposits in money shifted considerably. Also affecting

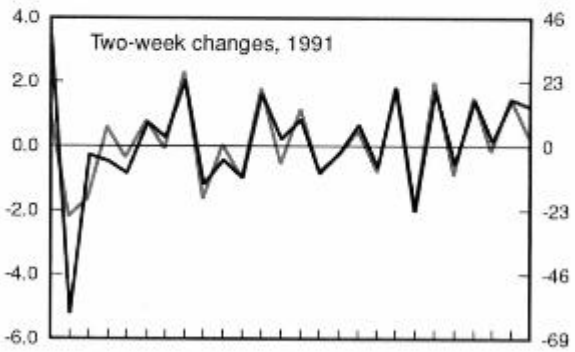
The relationship between short-term changes in reserves and transaction deposits was quite volatile before the Monetary Control Act of 1980 . .



. . . and before adoption of contemporaneous reserve accounting in 1984 . . .



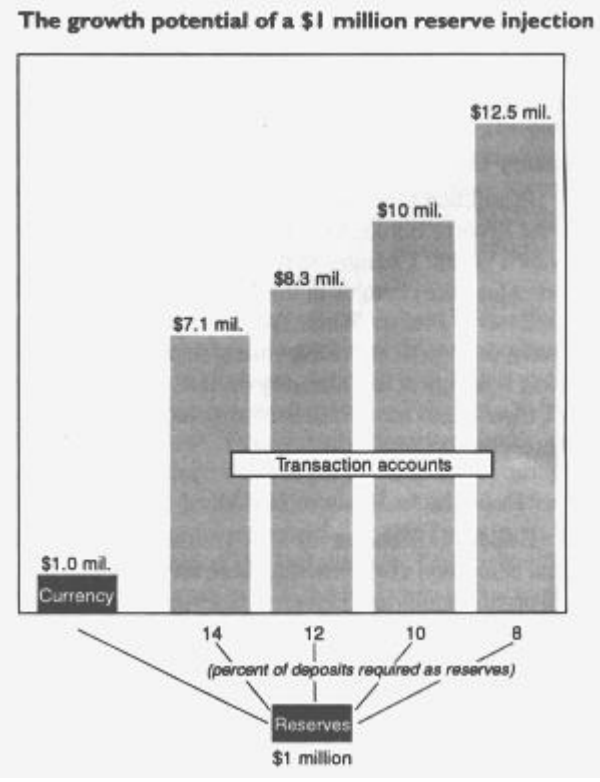
. . . but less variable afterward.



Note: All data are in billions of dollars, not seasonally adusted. Scaling approximately reflects each year's average ratio of transaction deposits to total reserves.

the multiplier are shifts between transaction deposits included in money and other transaction accounts that also are reservable but not included in money, such as demand deposits due to depository institutions, the U.S. government, and foreign banks and official institutions. In the aggregate, these non-money transaction deposits are relatively small in comparison to total transaction accounts, but can vary significantly from week to week.

A net injection of reserves has widely different effects depending on how it is absorbed. Only a dollar-for-dollar increase in the money supply would result if the new reserves were paid out in currency to the public. With a uniform 10 percent reserve requirement, a $1 increase in reserves would support $10 of additional transaction accounts. An even larger amount would be supported under the graduated system where smaller institutions are subject to reserve requirements below 10 percent. But, $1 of new reserves also would support an additional $10 of certain reservable transaction accounts that are not counted as money. (See chart below.) Normally, an increase in reserves would be absorbed by some combination of these currency and transaction deposit changes. All of these factors are to some extent predictable and are taken into account in decisions as to the amount of reserves that need to be supplied to achieve the desired rate of monetary expansion. They help explain why short-run fluctuations in bank



reserves often are disproportionate to, and
sometimes in the opposite direction from,
changes in the deposit component of money.

Money Creation and Reserve Management

Another reason for short-run variation in the amount of reserves supplied is that credit expansion - and thus deposit creation - is variable, reflecting uneven timing of credit demands. Although bank loan policies normally take account of the general availability of funds, the size and timing of loans and investments made under those policies depend largely on customers' credit needs.

In the real world, a bank's lending is not normally constrained by the amount of excess reserves it has at any given moment. Rather, loans are made, or not made, depending on the bank's credit policies and its expectations about its ability to obtain the funds necessary to pay its customers' checks and maintain required reserves in a timely fashion. In fact, because Federal Reserve regulations in effect from 1968 through early 1984 specified that average required reserves for a given week should be based on average deposit levels two weeks earlier ("lagged" reserve accounting), deposit creation actually preceded the provision of supporting reserves. In early 1984, a more "contemporaneous" reserve accounting system was implemented in order to improve monetary control.

In February 1984, banks shifted to maintaining average reserves over a two-week reserve maintenance period ending Wednesday against average transaction deposits held over the two-week computation period ending only two days earlier. Under this rule, actual transaction deposit expansion was expected to more closely approximate the process explained at the beginning of this booklet. However, some slippages still exist because of short-run uncertainties about the level of both reserves and transaction deposits near the close of reserve maintenance periods. Moreover, not all banks must maintain reserves according to the contemporaneous accounting system. Smaller institutions are either exempt completely or only have to maintain reserves quarterly against average deposits in one week of the prior quarterly period.

On balance, however, variability in the reserve multiplier has been reduced by the extension of reserve requirements to all institutions in 1980, by the adoption of

contemporaneous reserve accounting in 1984, and by the removal of reserve requirements against nontransaction deposits and liabilities in late 1990. As a result, short-term changes in total reserves and transaction deposits in money are more closely related now than they were before. (See charts on this page.) The lowering of the reserve requirement against transaction accounts above the 3 percent tranche in April 1992 also should contribute to stabilizing the multiplier, at least in theory. Ironically, these modifications contributing to a less variable relationship between changes in reserves and changes in transaction deposits occurred as the relationship between transactions money (M1) and the economy deteriorated. Because the M1 measure of money has become less useful as a guide for policy, somewhat greater attention has shifted to the broader measures M2 and M3. However, reserve multiplier relationships for the broader monetary measures are far more variable than that for M1. Although every bank must operate within the system where the total amount of reserves is controlled by the Federal Reserve, its response to policy action is indirect. The individual bank does not know today precisely what its reserve position will be at the time the proceeds of today's loans are paid out. Nor does it know when new reserves are being supplied to the banking system. Reserves are distributed among thousands of banks, and the individual banker cannot distinguish between inflows originating from additons to reserves through Federal reserve action and shifts of funds from other banks that occur in the normal course of business.

To equate short-run reserve needs with available funds, therefore, many banks turn to the money market - borrowing funds to cover deficits or lending temporary surpluses. When the demand for reserves is strong relative to the supply, funds obtained from money market sources to cover deficits tend to become more expensive and harder to obtain, which, in turn, may induce banks to adopt more restrictive loan policies and thus slow the rate of deposit growth.

Federal Reserve open market operations exert control over the creation of deposits mainly through their impact on the availability and cost of funds in the money market. When the total amount of reserves supplied to the banking system through open market operations falls short of the amount required, some banks are forced to borrow at the Federal Reserve discount window. Because such borrowing is restricted to short

periods, the need to repay it tends to induce restraint on further deposit expansion by the borrowing bank. Conversely, when there are excess reserves in the banking system, individual banks find it easy and relatively inexpensive to acquire reserves, and expansion in loans, investments, and deposits is encouraged.

The Minnesota Credit River Decision

[2.23.08 Beginning of transcribed document.]

STATE OF MINNESOTA — IN JUSTICE COURT

COUNTY OF SCOTT — TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery,
Plaintiff

vs. — JUDGMENT AND DECREE

Jerome Daly, — Defendant.

The above entitled action came on before the Court and a Jury of 12 on December 7, 1968 at 10:00 A.M. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Mellby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impanneled [sic] and sworn to try the issues in the Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19 Fairview Beach Scott County,Minn [sic]. Plaintiff claimed title to the Real Property in question by foreclosure
of a Note and Mortgage Deed dated May 8, 1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookkeeping entry as the consideration for the Note and Mortgage of May 8, 1964 and alleged failure of the consideration for the Mortgage Deed and alleged that the Sheriff's sale passed no title to Plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that

he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying on the Note and Mortgage waived any right to complain about the Consideration and that the Defendant was estopped from doing so.

At 12:15 on December 7, 1968 the Jury returned a unanimous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of United States and the Constitution and laws of the State of Minnesota not inconsistent therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED;

1. That the Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8, 1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26, 1967 is null and void, of no effect.

4. That the Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded costs in the sum of $75.00 and execution is hereby issued therefore.

7. A 10 day stay is granted.

8. The following memorandum and any supplementary memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

BY THE COURT

Dated December 9, 1968

[Signed:]
MARTIN V. MAHONEY
JUSTICE OF THE PEACE

CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of their interlocking activity and practices, and both being Banking Instutions [sic] Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookkeeping entry. That this was the Consideration used to support the Note dated May 8, 1964
andthe [sic] Mortgage of the same date. The money and credit first came into existence when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the
right to do this. A lawful consideration must exist and be tendered to support the Note. See Ansheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found that there was no lawful consideration and I agree. Only God can created [sic] something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defence
to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 –"no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a
party. [sic...no end quotes.]

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so is repugnant to the Constitution of the United States and is void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

No complaint was made by Plaintiff that Plaintiff did not receive a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7, 1968.

December 9, 1968

BY THE COURT

[Signed:]
MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emission of Bills of Credit upon the books of these private Corporations, for the purpose of private gain [sic...no comma] is not warranted by the Constitution of the United States
and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tread only that path which is marked out by duty. M.V.M.

[End of transcribed document.]

.....

END NOTES From Transcriber:

The full, accepted and searchable cite for the case in the "Note" directly above is: CRAIG v. STATE OF MISSOURI, 29 U.S. 410 (1830) 29 U.S. 410 (Pet.) HIRAM CRAIG, JOHN MOORE AND EPHRAIM MOORE v. THE STATE OF MISSOURI. January Term, 1830. The full sentence from which Mahoney took his quote from the cited case is "This department can listen only to the mandates of law; and can tread only that path which is marked out by duty." However, the whole case should be read as it gives good background and understanding of contracts, as well as loans and "money." Its context in the Credit River Decision is obvious, and has potential application, even, today. Again, from the Craig case, "If money does not have the value it purports to have on its face, it cannot be legal tender." In other words, if the Federal Reserve Note says it's 1 Dollar and it's value is not equal to 371.25 grains of .999 fine silver as is mandated by the 1792 Coinage Act, (1 Stat.), it's not conforming to the "statute" (a written law passed by a legislative body, ie., Congress) and, therefore, NOT legal tender no matter what has

been advanced by Public Policy !

You may actually see a scan of the original 4 page document rendered in an 8 1/2 x 11 format (the original filed in Scott County, MN is in 8 1/2 x 14 format) at
http://studimonetari.org/articoli/creditriver.html

and examine it yourself. But, do remember, that this was just the first part of the Credit River Decision. The whole "decision" is over 40 pages long, but only 38 or so pages are currently available from the Scott County Recorder's Office. The entire file, over 250 pages, would need to be gone over in person and under Scott County's supervision in order to find all of the documents referenced in the 40 pages. The Decision progressed on into January of 1969 and was finally brought to a close after
the bank was disqualified from filing an appeal on February 5, 1969. Their disqualification was due to the bank's use of Federal Reserve Notes to pay for the Appeal fee ! The bank, however, could have used 2 Silver Dollars (the fee being $2.00) or any combinations of denominations of U.S. metal currency and, therefore, could have at least filed. However, most people who have studied this case believe that the appeal would have, again, gone badly for the bank as their use of their standard practices in banking (including showing no lawful evidence of "consideration" in the mortgage contract), which aren't supported by Statute Law, was, and still is, an unlawful activity.

You may also want to look up the term "Talesmen" in a law dictionary.

This transcription was rendered by HW who added some bracketed sics [sic] designating the original certified written word(s) which were kept to preserve authenticity of the document except for the standard and modern display of the dates. This transcription was completed in October of 2007. Special thanks to DF, HWM and STR. Any email inquiry may be made to mentor2@gmail.com .
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Version 1.2

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STATE OF MINNESOTA
COUNTY OF SCOTT

IN JUSTICE COURT
TOWNSHIP OF CREDIT RIVER
MARTIN V. MAHONEY, JUSTICE

First National Bank of Montgomery, Plaintiff,

vs. JUDGMENT AND DECREE

Jerome Daly, Defendant.

The above entitled action came on before the Court and a Jury of 12 on December 7,1968 at 10:00 A.M. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Mellby. Defendant appeared on his own behalf.

A Jury of Talesmen were called, impanneled and sworn to try the issues in this Case. Lawrence V. Morgan was the only witness called for Plaintiff and Defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of Lot 19, Fairview Beach, Scott County,Minn. Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8,1964 which Plaintiff claimed was in default at the time foreclosure proceedings were started.

Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookeeping entry as the consideration for the Note and Mortgage of May 8,1964 and alleged failure of consideration for the Mortgage Deed and alleged that the Sheriff's sale passed no title to Plaintiff.

The issues tried to the Jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the Note for almost 3 years.

Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the [illegible] created credit and by paying

CERTIFICATION
The Clerk and Recorder for the CITY AND COUNTY OF DENVER State of Colorado does hereby certify this document to be a full, true and correct copy of the original document recorded in my office
Clerk and Recorder
by
Date JAN 02 2004

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on the Note and Mortgage waived any right to complain about the Consideration and that Defendant was estopped from doing so.

At 12:15 on December 7,1968 the Jury returned a unaminous verdict for the Defendant.

Now therefore, by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State of Minnesota not inconsistent therewith;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff is not entitled to recover the possession of Lot 19, Fairview Beach, Scott County, Minnesota according to the Plat thereof on file in the Register of Deeds office.

2. That because of failure of a lawful consideration the Note and Mortgage dated May 8,1964 are null and void.

3. That the Sheriff's sale of the above described premises held on June 26,1967 is null and void, of no effect.

4. That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

5. That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this Cause.

6. That Defendant is awarded coats in the sum of $75.00 and execution is hereby issued therefore.

7. A 10 day stay is granted.

8. The following memorandum and any supplemental memorandum made and filed by this Court in support of this Judgment is hereby made a part hereof by reference.

BY THE COURT

Dated December 9,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

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Page 2 of 4
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MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the Jury to resolve.

Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes, because of there interlocking activity and practices, and both being Banking Instutions Incorporated under the Laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookeeping entry. That this was the Consideration used to support the Note dated May 8,1964 andthe Mortgage of the same date. The money and credit first came into existance when they created it. Mr. Morgan admitted that no United States Law or Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the Note. See Anheuser-Busch Brewing Co. v. Emma Mason, 44 Minn. 318, 46 N.W. 558. The Jury found there was no lawful consideration and I agree. Only God can created something of value out of nothing.

Even if Defendant could be charged with waiver or estoppel as a matter of Law this is no defense to the Plaintiff. The Law leaves wrongdoers where it finds them. See sections 50, 51 and 52 of Am Jur 2d "Actions" on page 584 -"no action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which Plaintiff was a party.

Plaintiff's act of creating credit is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not a lawful consideration in the eyes of the Law to support any thing or upon which any lawful rights can be built.

Nothing in the Constitution of the United States limits the Jurisdiction of this Court, which is one of original Jurisdiction with right of trial by Jury guaranteed. This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render Complete Justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so are repugnant to the

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Page 3 of 4
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Constitution of the United States and ~~not~~ void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the Jury, at least in so far as they saw fit.

No complaint was made by Plaintiff that Plaintiff did not recieve a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the Jury. Their Verdict could not reasonably have been otherwise. Justice was rendered completely and without denial, promptly and without delay, freely and without purchase, conformable to the laws in this Court on December 7,1968.

BY THE COURT

December 9,1968

MARTIN V. MAHONEY
JUSTICE OF THE PEACE
CREDIT RIVER TOWNSHIP
SCOTT COUNTY, MINNESOTA

Note: It has never been doubted that a Note given on a Consideration which is prohibited by law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emmission of Bills of Credit upon the books of these private Corporations, for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. Mo. 4 Peters Reports 912. This Court can tread only that path which is marked out by duty. M.V.M.

MEMORANDUM OF LAW – BANK FRAUD [81]

I have, through research, learned the following to be true and most likely applies to me, which is the reason I have requested and demanded "the bank" to validate their claims and produce pursuant to applicable law. This MEMORANDUM serves to support my suspicions and identify criminal facts. The "bank" allegedly "loaned me their money" when in reality they deposited (credited) my promissory note and used that deposit to "pay my seller". Source and reasoning after reviewing the original file clearly shows this fact, which is the reason for the "bank" refusing and failing to validate and to produce as stipulated by law. However, the truth is out and there is plenty of law backing up the fact that the bank is criminal.

FORECLOSURE ACTIONS AND CASES LAWFULLY DISMISSED (NOT LETTING BANK FORECLOSE WITHOUT LAWFUL VALIDATION AND PRODUCTION) BY THE COURTS DUE TO BANK'S FAILURE TO VALIDATE & PRODUCE AS STIPULATED BY LAW AND COMMITTED "BANK FRAUD" AGAINST THE BORROWER

FROM THE BAR ASSOCIATION'S OFFICIAL WEB SITE :... "this Court has the responsibility to assure itself that the foreclosure plaintiffs have standing and that subject matter jurisdiction requirements are met at the time the complaint is filed. Even without the concerns raised by the documents the plaintiffs have filed, there is reason to question the existence of standing and the jurisdictional amount". Over 30 cases are covered by the BAR at: http://www.abanet.org/rpte/publications/ereport/2008/3/Ohioforeclosures.pdf

1. "A national bank has no power to lend its credit to any person or corporation . . . Bowen v. Needles Nat. Bank, 94 F 925 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.
2. Countrywide Home Loans, Inc. v Taylor - Mayer, J., Supreme Court, Suffolk County / 9/07
3. American Brokers Conduit v. ZAMALLOA - Judge SCHACK 28Jan2008
   Aurora Loan Services v. MACPHERSON - Judge FARNETI 1 1Mar2008
4. "A bank may not lend its credit to another even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be

81 From http://www.scribd.com/doc/24929701/Exhibit-C-Mem-of-Law-Bank-Fraud

cited, which-would look like a catalog of ships." [Emphasis added] Norton Grocery Co. v. Peoples Nat. Bank, 144 SE 505. 151 Va 195.

5. "In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him."' Farmers and Miners Bank v. Bluefield Nat 'l Bank, 11 F 2d 83, 271 U.S. 669.
6. Bank of New York v. SINGH - Judge KURTZ 14Dec2007
7. Bank of New York v. TORRES - Judge COSTELLO 11Mar2008
8. Bank of New York v. OROSCO - Judge SCHACK 19Nov2007
   Citi Mortgage Inc. v. BROWN - Judge FARNETI 13Mar2008
9. "The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often.... Zinc Carbonate Co. v. First National Bank, 103 Wis 125, 79 NW 229. American Express Co. v. Citizens State Bank, 194 NW 430.
   "It has been settled beyond controversy that a national bank, under federal Law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires . . ." Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759(1926).
10. ". . . checks, drafts, money orders, and bank notes are not lawful money of the United States ..." State v. Neilon, 73 Pac 324, 43 Ore 168.
11. American Brokers Conduit v. ZAMALLOA - Judge SCHACK 11 Sep2007
    Countrywide Mortgage v. BERLIUK - Judge COSTELLO 1 3Mar2008
12. Deutsche Bank v. Barnes-Judgment Entry
13. Deutsche Bank v. Barnes-Withdrawal of Objections and Motion to Dismiss
    Deutsche Bank v. ALEMANY Judge COSTELLO 07Jan2008
    Deutsche Bank v. Benjamin CRUZ – Judge KURTZ 21May2008
    Deutsche Bank v. Yobanna CRUZ - Judge KURTZ 21May2008
    Deutsche Bank v. CABAROY - Judge COSTELLO 02Apr2008
    Deutsche Bank v. CASTELLANOS / 2007NYSlipOp50978U/- Judge SCHACK 11May2007
14. Deutsche Bank v. CASTELLANOS/ 2008NYSlipOp50033U/ - Judge SCHACK

14Jan 2008

15. HSBC v. Valentin - Judge SCHACK calls them liars and dismisses WITH prejudice **

16. Deutsche Bank v. CLOUDEN / 2007NYSlipOp5 1 767U/ Judge SCHACK 1 8Sep2007

17. Deutsche Bank v. EZAGUI - Judge SCHACK 21Dec2007
Deutsche Bank v. GRANT - Judge SCHACK 25Apr2008
Deutsche Bank v. HARRIS - Judge SCHACK 05Feb2008

18. Deutsche Bank v. LaCrosse, Cede, DTC Complaint

19. Deutsche Bank v. NICHOLLS - Judge KURTZ 21May2008
Deutsche Bank v. RYAN - Judge KURTZ 29Jan2008
Deutsche Bank v. SAMPSON - Judge KURTZ 16Jan2008

20. Deutsche v. Marche - Order to Show Cause to VACATE Judgment of Foreclosure – 11 June2009

21. GMAC Mortgage LLC v. MATTHEWS - Judge KURTZ 10Jan2008
GMAC Mortgage LLC v. SERAFINE - Judge COSTELLO 08Jan2008
HSBC Bank USA NA v. CIPRIANI Judge COSTELLO 08Jan2008
HSBC Bank USA NA v. JACK - Judge COSTELLO 02Apr2008
IndyMac Bank FSB v. RODNEY-ROSS - Judge KURTZ 15Jan2008
LaSalleBank NA v. CHARLEUS - Judge KURTZ 03Jan2008
LaSalleBank NA v. SMALLS - Judge KURTZ 03Jan2008
PHH Mortgage Corp v. BARBER - Judge KURTZ 15Jan2008
Property Asset Management v. HUAYTA 05Dec2007

22. Rivera, In Re Services LLC v. SATTAR / 2007NYSlipOp5 1 895U/ - Judge SCHACK 09Oct2007

23. USBank NA v. AUGUSTE - Judge KURTZ 27Nov2007
USBank NA v. GRANT - Judge KURTZ 14Dec2007
USBank NA v. ROUNDTREE - Judge BURKE 11Oct2007
USBank NA v. VILLARUEL - Judge KURTZ 01Feb2008

24. Wells Fargo Bank NA v. HAMPTON - Judge KURTZ 03 Jan2008

25. Wells Fargo, Litton Loan v. Farmer WITH PREJUDICE Judge Schack June2008

26. Wells Fargo v. Reyes WITH PREJUDICE, Fraud on Court & Sanctions Judge Schack June2008
27. Deutsche Bank v. Peabody Judge Nolan (Regulation Z)
    Indymac Bank,FSB v. Boyd - Schack J. January 2009
28. Indymac Bank, FSB v. Bethley - Schack, J. February 2009 (The tale of many hats)
29. LaSalle Bank Natl. Assn. v Ahearn - Appellate Division, Third Department (Pro Se)
30. NEW JERSEY COURT DISMISSES FORECLOSURE FILED BY DEUTSCHE BANK FOR FAILURE TO PRODUCE THE NOTE
31. Whittiker v. Deutsche (MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS) Whittiker (PLAINTIFFS' OBJECTIONS TO REPORT AND RECOMMENDATION) Whittiker (DEFENDANT WELTMAN, WEINBERG & REIS CO., LPA'S RESPONSE TO PLAINTIFFS' OBJECTIONS TO REPORT AND RECOMMENDATION) Whittiker (RESPONSE TO PLAINTIFFS' OBJECTIONS TO MAGISTRATE JUDGE PEARSON'S REPORT AND RECOMMENDATION TO GRANT ITS MOTION TO DISMISS)
32. Novastar v. Snyder * (lack of standing) Snyder (motion to amend w/prejudice) Snyder (response to amend)
33. Washington Mutual v. City of Cleveland (WAMU's motion to dismiss)
34. 2008-Ohio-1177; DLJ Mtge. Capital, Inc. v. Parsons (SJ Reversed for lack of standing)
35. Everhome v. Rowland
36. Deutsche - Class Action (RICO) Bank of New York v. TORRES - Judge COSTELLO 1 1Mar2008
37. Deutsche Bank Answer Whittiker
38. Manley Answer Whittiker
39. Justice Arthur M. Schack
40. Judge Holschuh- Show cause
41. Judge Holschuh- Dismissals
42. Judge Boyko's Deutsche Bank Foreclosures
43. Rose Complaint for Foreclosure | Rose Dismissals
44. O'Malley Dismissals

45. City Of Cleveland v. Banks
46. Dowd Dismissal
47. EMC can't find the note
48. Ocwen can't find the note
49. US Bank can't find the Note
50. US Bank - No Note
51. Key Bank - No Note
52. Wells Fargo - Defective pleading
53. Complaint in Jack v. MERS, Citi, Deutsche
54. GMAC v. Marsh
55. Massachusetts : Robin Hayes v. Deutsche Bank
56. Florida: Deutsche Bank's Summary Judgment Denied
57. Texas: MERS v. Young / 2nd Circuit Court of Appeals - PANEL: LIVINGSTON, DAUPHINOT, and MCCOY, JJ.
58. Nevada: MERS crushed: In re Mitchell
59. "Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics, . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. I Morse. Banks and Banking 5th Ed. Sec 65; Magee, Banks and Banking, 3rd Ed. Sec 248." American Express Co. v. Citizens State Bank, 194 NW 429.
60. "It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." Federal Intermediate Credit Bank v. L 'Herrison, 33 F 2d 841, 842 (1929).
61. "There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." National Bank of Commerce v. Atkinson, 55 E 471.

62. "A bank can lend its money, but not its credit." First Nat'l Bank of Tallapoosa v. Monroe . 135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.
63. ".. . the bank is allowed to hold money upon personal security; but it must be money that it loans, not its credit." Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No.12, 642, 1039.
64. "A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest." Parsons v. Fox 179 Ga 605, 176 SE 644. Also see Kirkland v. Bailey, 155 SE 2d 701 and United States v. Neifert White Co., 247 Fed Supp 878, 879.
65. "The word 'money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of exchange . . ." Lane v. Railey 280 Ky 319, 133 SW 2d 75.
66. "A promise to pay cannot, by argument, however ingenious, be made the equivalent of actual payment ..." Christensen v. Beebe, 91 P 133, 32 Utah 406.
67. “A bank is not the holder in due course upon merely crediting the depositors account.” Bankers Trust v. Nagler, 229 NYS 2d 142, 143.
68. "A check is merely an order on a bank to pay money." Young v. Hembree, 73 P2d 393
69. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam Wood Oil Co. 92 F 26 817.
70. "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." Leonard v. Springer 197 Ill 532. 64 NE 301.
71. “If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise.” Menominee River Co. v. Augustus

Spies L & C Co.,147 Wis 559-572; 132 NW 1122.

72. “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.” Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis 550, 279 NW 83.

73. “It is not necessary for recision of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations.” Whipp v. Iverson, 43 Wis 2d 166.

74. "Each Federal Reserve bank is a separate corporation owned by commercial banks in its region ..." Lewis v. United States, 680 F 20 1239 (1982).

HOW AND WHY THE BANKS SECRETLY AND QUICKLY “SWITCH CURRENCY” Y

NOT FULFILL THE “LOAN AGREEMENT “(THE CONTRACT)

OBTAIN YOUR MORTGAGE NOTE WITHOUT INVESTING ONE CENT

TO FORCE YOU TO LABOR TO PAY INTEREST ON “THE CONTRACT “

TO REFUSE TO FULFILL “THE CONTRACT “

TO MAKE YOU A DEPOSITOR (NOT A BORROWER)

The oldest scheme throughout History is the changing of currency. Remember the moneychangers in the temple (BIBLE)? "If you lend money to My people, to the poor among you, you are not to act as a creditor to him; you shall not charge him interest” Exodus 22:25. They changed currency as a business. You would have to convert to Temple currency in order to buy an animal for sacrifice. The Temple Merchants made money by the exchange. The Bible calls it unjust weights and measures, and judges it to be an abomination. Jesus cleared the Temple of these abominations. Our Christian Founding Fathers did the same. Ben Franklin said in his autobiography, "... the inability of the colonists to get the power to issue their own money permanently out of the hands

of King George III and the international bankers was the prime reason for the revolutionary war." The year 1913 was the third attempt by the European bankers to get their system back in place within the United States of America. President Andrew Jackson ended the second attempt in 1836. What they could not win militarily in the Revolutionary War they attempted to accomplish by a banking money scheme which allowed the European Banks to own the mortgages on nearly every home, car, farm, ranch, and business at no cost to the bank. Requiring "We the People" to pay interest on the equity we lost and the bank got free.

Today people believe that cash and coins back up the all checks. If you deposit $100 of cash, the bank records the cash as a bank asset (debit) and credits a Demand Deposit Account (DDA), saying that the bank owes you $100. For the $100 liability the bank owes you, you may receive cash or write a check. If you write a $100 check, the $100 liability your bank owes you is transferred to another bank and that bank owes $100 to the person you wrote the check to. That person can write a $100 check or receive cash. So far there is no problem.

Remember one thing however, for the check to be valid there must first be a deposit of money to the banks ASSETS, to make the check (liability) good. The liability is like a HOLDING ACCOUNT claiming that money was deposited to make the check good.

Here then, is how the switch in currency takes place

The bank advertises it loans' money. The bank says, "sign here". However the bank never signs because they know they are not going to lend you theirs, or other depositor's money. Under the law of bankruptcy of a nation, the mortgage note acts like money. The bank makes it look like a loan but it is not. It is an exchange.

The bank receives the equity in the home you are buying, for free, in exchange for an unpaid bank liability that the bank cannot pay, without returning the mortgage note. If the bank had fulfilled its end of the contract, the bank could not have received the equity in your home for free.

The bank receives your mortgage note without investing or risking one-cent.

The bank sells the mortgage note, receives cash or an asset that can then be converted to cash and still refuses to loan you their or other depositors' money or

pay the liability it owes you. On a $100,000 loan the bank does not give up $100,000. The bank receives $100,000 in cash or an asset and issues a $100,000 liability (check) the bank has no intention of paying. The $100,000 the bank received in the alleged loan is the equity (lien on property) the bank received without investment, and it is the $100,000 the individual lost in equity to the bank. The $100,000 equity the individual lost to the bank, which demands he/she repay plus interest.

The loan agreement the bank told you to sign said LOAN. The bank broke that agreement. The bank now owns the mortgage note without loaning anything. The bank then deposited the mortgage note in an account they opened under your name without your authorization or knowledge. The bank withdrew the money without your authorization or knowledge using a forged signature. The bank then claimed the money was the banks' property, which is a fraudulent conversion.

The mortgage note was deposited or debited (asset) and credited to a Direct Deposit Account, (DDA) (liability). The credit to Direct Deposit Account (liability) was used from which to issue the check. The bank just switched the currency. The bank demands that you cannot use the same currency, which the bank deposited (promissory notes or mortgage notes) to discharge your mortgage note. The bank refuses to loan you other depositors' money, or pay the liability it owes you for having deposited your mortgage note.

To pay this liability the bank must return the mortgage note to you. However instead of the bank paying the liability it owes you, the bank demands you use these unpaid bank liabilities, created in the alleged loan process, as the new currency. Now you must labor to earn the bank currency (unpaid liabilities created in the alleged loan process) to pay back the bank. What the bank received for free, the individual lost in equity.

If you tried to repay the bank in like kind currency, (which the bank deposited without your authorization to create the check they issued you), then the bank claims the promissory note is not money. They want payment to be in legal tender (check book money).

The mortgage note is the money the bank uses to buy your property in the foreclosure. They get your real property at no cost. If they accept your promissory note to discharge the mortgage note, the bank can use the promissory note to buy your home if you sell it.

Their problem is, the promissory note stops the interest and there is no lien on the property. If you sell the home before the bank can find out and use the promissory note to buy the home, the bank lost. The bank claims they have not bought the home at no cost. Question is, what right does the bank have to receive the mortgage note at no cost in direct violation of the contract they wrote and refused to sign or fulfill.

By demanding that the bank fulfill the contract and not change the currency, the bank must deposit your second promissory note to create check book money to end the fraud, putting everyone back in the same position they where, prior to the fraud, in the first place. Then all the homes, farms, ranches, cars and businesses in this country would be redeemed and the equity returned to the rightful owners (the people). If not, every time the homes are refinanced the banks get the equity for free. You and I must labor 20 to 30 years full time as the bankers sit behind their desks, laughing at us because we are too stupid to figure it out or to force them to fulfill their contract.

The $100,000 created inflation and this increases the equity value of the homes. On an average homes are refinanced every 7 1/2 years. When the home is refinanced the bank again receives the equity for free. What the bank receives for free the alleged borrower loses to the bank.

According to the Federal Reserve Banks' own book of Richmond, Va. titled "YOUR MONEY" page seven, "...demand deposit accounts are not legal tender..." If a promissory note is legal tender, the bank must accept it to discharge the mortgage note. The bank changed the currency from the money deposited, (mortgage note) to check book money (liability the bank owes for the mortgage note deposited) forcing us to labor to pay interest on the equity, in real property (real estate) the bank received for free. This cost was not disclosed in NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW, Federal Reserve Regulation Z.

When a bank says they gave you credit, they mean they credited your transaction account, leaving you with the presumption that they deposited other depositors money in the account. The fact is they deposited your money (mortgage note). The bank cannot claim they own the mortgage note until they loan you their money. If bank deposits your money, they are to credit a Demand Deposit Account under your name, so you can write checks and spend your money. In this case they claim your money is their money. Ask a

criminal attorney what happens in a fraudulent conversion of your funds to the bank's use and benefit, without your signature or authorization.
What the banks could not win voluntarily, through deception they received for free.
Several presidents, John Adams, Thomas Jefferson, and Abraham Lincoln believed that banker capitalism was more dangerous to our liberties than standing armies. U.S. President James A. Garfield said, “Whoever controls the money in any country is absolute master of industry and commerce."
The Chicago Federal Reserve Bank's book,”Modern Money Mechanics”, explains exactly how the banks expand and contract the checkbook money supply forcing people into foreclosure. This could never happen if contracts were not violated and if we received equal protection under the law of Contract.

HOW THE BANK SWITCHES THE CURRENCY

This is a repeat worded differently to be sure you understand it.

You must understand the currency switch.

The bank does not loan money. The bank merely switches the currency. The alleged borrower created money or currency by simply signing the mortgage note. The bank does not sign the mortgage note because they know they will not loan you their money. The mortgage note acts like money. To make it look like the bank loaned you money the bank deposits your mortgage note (lien on property) as money from which to issue a check. No money was loaned to legally fulfill the contract for the bank to own the mortgage note. By doing this, the bank received the lien on the property without risking or using one cent. The people lost the equity in their homes and farms to the bank and now they must labor to pay interest on the property, which the bank got for free and they lost.
The check is not money, the check merely transfers money and by transferring money the check acts LIKE money. The money deposited is the mortgage note. If the bank never fulfills the contract to loan money, then the bank does not own the mortgage note. The deposited mortgage note is still your money and the checking account they set up in your name, which they credited, from which to issue the check, is still your money. They only returned your money in the form of a check. Why do you have to fulfill your end of the agreement if the bank refuses to fulfill their end of the agreement? If the bank does not loan you their money they have not fulfilled the agreement, the contract is void.

You created currency by simply signing the mortgage note. The mortgage note has value because of the lien on the property and because of the fact that you are to repay the loan. The bank deposits the mortgage note (currency) to create a check (currency, bank money). Both currencies cost nothing to create. By law the bank cannot create currency (bank money, a check) without first depositing currency, (mortgage note) or legal tender. For the check to be valid there must be mortgage note or bank money as legal tender, but the bank accepted currency (mortgage note) as a deposit without telling you and without your authorization.

The bank withdrew your money, which they deposited without telling you and withdrew it without your signature, in a fraudulent conversion scheme, which can land the bankers in jail but is played out in every City and Town in this nation on a daily basis. Without loaning you money, the bank deposits your money (mortgage note), withdraws it and claims it is the bank's money and that it is their money they loaned you.

It is not a loan, it is merely an exchange of one currency for another, they'll owe you the money, which they claimed they were to loan you. If they do not loan the money and merely exchange one currency for another, the bank receives the lien on your property for free. What they get for free you lost and must labor to pay back at interest.

If the banks loaned you legal tender, they could not receive the liens on nearly every home, car, farm, and business for free. The people would still own the value of their homes. The bank must sell your currency (mortgage note) for legal tender so if you use the bank's currency (bank money), and want to convert currency (bank money) to legal tender they will be able to make it appear that the currency (bank money) is backed by legal tender. The bank's currency (bank money) has no value without your currency (mortgage note). The bank cannot sell your currency (mortgage note) without fulfilling the contract by loaning you their money. They never loaned money, they merely exchanged one currency for another. The bank received your currency for free, without making any loan or fulfilling the contract, changing the cost and the risk of the contract wherein they refused to sign, knowing that it is a change of currency and not a loan.

If you use currency (mortgage note), the same currency the bank deposited to create currency (bank money), to pay the loan, the bank rejects it and says you must use currency (bank money) or legal tender. The bank received your currency (mortgage note)

and the bank's currency (bank money) for free without using legal tender and without loaning money thereby refusing to fulfill the contract. Now the bank switches the currency without loaning money and demands to receive your labor to pay what was not loaned or the bank will use your currency (mortgage note) to buy your home in foreclosure, The Revolutionary war was fought to stop these bank schemes. The bank has a written policy to expand and contract the currency (bank money), creating recessions, forcing people out of work, allowing the banks to obtain your property for free.
If the banks loaned legal tender, this would never happen and the home would cost much less. If you allow someone to obtain liens for free and create a new currency, which is not legal tender and you must use legal tender to repay. This changes the cost and the risk. Under this bank scheme, even if everyone in the nation owned their homes and farms debt free, the banks would soon receive the liens on the property in the loan process. The liens the banks receive for free, are what the people lost in property, and now must labor to pay interest on. The interest would not be paid if the banks fulfilled the contract they wrote. If there is equal protection under the law and contract, you could get the mortgage note back without further labor. Why should the bank get your mortgage note and your labor for free when they refuse to fulfill the contract they wrote and told you to sign? Sorry for the redundancy, but it is important for you to know by heart their “shell game”, I will continue in that redundancy as it is imperative that you understand the principle. The following material is case law on the subject and other related legal issues as well as a summary.

LOGIC AS EVIDENCE

The check was written without deducting funds from Savings Account or Certificate of Deposit allowing the mortgage note to become the new pool of money owed to Demand Deposit Account, Savings Account, Certificate of Deposit with Demand Deposit, Savings Account, and/or Certificate of Deposit increasing by the amount of the mortgage note. In this case the bankers sell the mortgage note for Federal Reserve Bank Notes or other assets while still owing the liability for the mortgage note sold and without the bank giving up any- Federal Reserve Bank Notes.
If the bank had to part with Federal Reserve Bank Notes, and without the benefit of checks to hide the fraudulent conversion of the mortgage note from which it issues the

check, the bank fraud would be exposed.

Federal Reserve Bank Notes are the only money called legal tender. If only Federal Reserve Bank Notes are deposited for the credit to Demand Deposit Account- Savings Account, Certificate of Deposit, and if the bank wrote a check for the mortgage note, the check then transfers Federal Reserve Bank Notes and the bank gives the borrower a bank asset. There is no increase in the check book money supply that exists in the loan process. The bank policy is to increase bank liabilities; Demand Deposit Account, Savings Account, Certificate of Deposit, by the mortgage note. If the mortgage note is money, then the bank never gave up a bank asset. The bank simply used fraudulent conversion of ownership of the mortgage note. The bank cannot own the mortgage note until the bank fulfills the contract.

The check is not the money; the money is the deposit that makes the check good. In this case, the mortgage note is the money from which the check is issued. Who owns the mortgage note when the mortgage note is deposited? The borrower owns the mortgage note because the bank never paid money for the mortgage note and never loaned money (bank asset). The bank simply claimed the bank owned the mortgage note without paying for it and deposited the mortgage note from which the check was issued. This is fraudulent conversion. The bank risked nothing! Not even one penny was invested. They never took money out of any account, in order to own the mortgage note, as proven by the bookkeeping entries, financial ratios, the balance sheet, and of course the bank's literature. The bank simply never complied with the contract.

If the mortgage note is not money, then the check is check kiting and the bank is insolvent and the bank still never paid. If the mortgage note is money, the bank took our money without showing the deposit, and without paying for it, which is fraudulent conversion. The bank claimed it owned the mortgage note without paying for it, then sold the mortgage note, took the cash and never used the cash to pay the liability it owed for the check the bank issued. The liability means that the bank still owes the money. The bank must return the mortgage note or the cash it received in the sale, in order to pay the liability. Even if the bank did this, the bank still never loaned us the bank's money, which is what 'loan' means. The check is not money but merely an order to pay money. If the mortgage note is money then the bank must pay the check by returning the mortgage

note.
The only way the bank can pay Federal Reserve Bank Notes for the check issued is to sell the mortgage note for Federal Reserve Bank Notes. Federal Reserve Bank Notes are non-redeemable in violation of the UCC. The bank forces us to trade in non-redeemable private bank notes of which the bank refuses to pay the liability owed. When we present the Federal Reserve Bank Notes for payment the bank just gives us back another Federal Reserve Bank Note which the bank paid 2 1/2 cents for per bill regardless of denomination.
What a profit for the bank!
The check issued can only be redeemed in Federal Reserve Bank Notes, which the bank obtained by selling the mortgage note that they paid nothing for.
The bank forces us to trade in bank liabilities, which they never redeem in an asset. We the people are forced to give up our assets to the bank for free, and without cost to the bank. This is fraudulent conversion making the contract, which the bank created with their policy of bookkeeping entries, illegal and the alleged contract null and void.
The bank has no right to the mortgage note or to a lien on the property, until the bank performs under the contract. The bank had less than ten percent of Federal Reserve Bank Notes to back up the bank liabilities in Demand Deposit Account, Savings Account, or Certificate of Deposit's. A bank liability to pay money is not money. When we try and repay the bank in like funds (such as is the banks policy to deposit from which to issue checks) they claim it is not money. The bank's confusing and deceptive trade practices and their alleged contracts are unconscionable.

SUMMARY OF DAMAGES

The bank made the alleged borrower a depositor by depositing a $100,000 negotiable instrument, which the bank sold or had available to sell for approximately $100,000 in legal tender. The bank did not credit the borrower's transaction account showing that the bank owed the borrower the $100,000. Rather the bank claimed that the alleged borrower owed the bank the $100,000, then placed a lien on the borrower's real property for $100,000 and demanded loan payments or the bank would foreclose.
The bank deposited a non-legal tender negotiable instrument and exchanged it for another non legal tender check, which traded like money, using the deposited negotiable

instrument as the money deposited. The bank changed the currency without the borrower's authorization. First by depositing non legal tender from which to issue a check (which is non-legal tender) and using the negotiable instrument (your mortgage note), to exchange for legal tender, the bank needed to make the check appear to be backed by legal tender. No loan ever took place. Which shell hides the little pea?

The transaction that took place was merely a change of currency (without authorization), a negotiable instrument for a check. The negotiable instrument is the money, which can be exchanged for legal tender to make the check good. An exchange is not a loan. The bank exchanged $100,000 for $100,000. There was no need to go to the bank for any money. The customer (alleged borrower) did not receive a loan, the alleged borrower lost $100,000 in value to the bank, which the bank kept and recorded as a bank asset and never loaned any of the bank's money.

In this example, the damages are $100,000 plus interest payments, which the bank demanded by mail. The bank illegally placed a lien on the property and then threatened to foreclose, further damaging the alleged borrower, if the payments were not made. A depositor is owed money for the deposit and the alleged borrower is owed money for the loan the bank never made and yet placed a lien on the real property demanding payment. Damages exist in that the bank refuses to loan their money. The bank denies the alleged borrower equal protection under the law and contract, by merely exchanging one currency for another and refusing repayment in the same type of currency deposited. The bank refused to fulfill the contract by not loaning the money, and by the bank refusing to be repaid in the same currency, which they deposited as an exchange for another currency. A debt tender offered and refused is a debt paid to the extent of the offer. The bank has no authorization to alter the alleged contract and to refuse to perform by not loaning money, by changing the currency and then refusing repayment in what the bank has a written policy to deposit.

The seller of the home received a check. The money deposited for the check issued came from the borrower not the bank. The bank has no right to the mortgage note until the bank performs by loaning the money.

In the transaction the bank was to loan legal tender to the borrower, in order for the bank to secure a lien. The bank never made the loan, but kept the mortgage note the alleged

borrower signed. This allowed the bank to obtain the equity in the property (by a lien) and transfer the wealth of the property to the bank without the bank's investment, loan, or risk of money. Then the bank receives the alleged borrower's labor to pay principal and Usury interest. What the people owned or should have owned debt free, the bank obtained ownership in, and for free, in exchange for the people receiving a debt, paying interest to the bank, all because the bank refused to loan money and merely exchanged one currency for another. This places you in perpetual slavery to the bank because the bank refuses to perform under the contract. The lien forces payment by threat of foreclosure. The mail is used to extort payment on a contract the bank never fulfilled.
If the bank refuses to perform, then they must return the mortgage note. If the bank wishes to perform, then they must make the loan. The past payments must be returned because the bank had no right to lien the property and extort interest payments. The bank has no right to sell a mortgage note for two reasons. The mortgage note was deposited and the money withdrawn without authorization by using a forged signature and; two, the contract was never fulfilled. The bank acted without authorization and is involved in a fraud thereby damaging the alleged borrower.

Excerpts From “Modem Money Mechanics” Pages 3 & 6

What Makes Money Valuable? In the United States neither paper currency nor deposits have value as commodities. Intrinsically, a dollar bill is just a piece of paper, deposits merely book entries. Coins do have some intrinsic value as metal, but generally far less than face value.

Then, bankers discovered that they could make loans merely by giving their promises to pay, or bank notes, to borrowers, in this way, banks began to create money. More notes could be issued than the gold and coin on hand because only a portion of the notes outstanding would be presented for payment at any one time. Enough metallic money had to be kept on hand, of course, to redeem whatever volume of notes was presented for payment.

Transaction deposits are the modem counterpart of bank notes. It was a small step from printing notes to making book entries crediting deposits of borrowers, which the borrowers in turn could "spend" by writing checks, thereby "printing" their own money.

Notes, exchange just like checks.

How do open market purchases add to bank reserves and deposits? Suppose the Federal Reserve System, through its trading desk at the Federal Reserve Bank of New York, buys $10,000 of Treasury bills from a dealer in U.S. government securities. In today's world of Computer financial transactions, the Federal Reserve Bank pays for the securities with an "electronic" check drawn on itself. Via its "Fedwire" transfer network, the Federal Reserve notifies the dealer's designated bank (Bank A) that payment for the securities should be credited to (deposited in) the dealer's account at Bank A. At the same time, Bank A's reserve account at the Federal Reserve is credited for the amount of the securities purchased. The Federal Reserve System has added $10,000 of securities to its assets, which it has paid for, in effect, by creating a liability on itself in the form of bank reserve balances. These reserves on Bank A's books are matched by $10,000 of the dealer's deposits that did not exist before.

If business is active, the banks with excess reserves probably will have opportunities to loan the $9,000. Of course, they do not really pay out loans from money they receive as deposits. If they did this, no additional money would be created. What they do when they make loans is to accept promissory notes in exchange for credits to tile borrower's transaction accounts. Loans (assets) and deposits (liabilities) both rise by $9,000. Reserves are unchanged by the loan transactions. But the deposit credits constitute new additions to the total deposits of the banking system.

PROOF BANKS DEPOSIT NOTES AND ISSUE BANK CHECKS.

THE CHECKS ARE ONLY AS GOOD AS THE PROMISSORY NOTE. NEARLY ALL BANK CHECKS ARE CREATED FROM PRIVATE NOTES. FEDERAL RESERVE BANK NOTES ARE A PRIVATE CORPORATE NOTE (Chapter 48, 48 Stat 112) WE USE NOTES TO DISCHARGE NOTES.

Excerpt from booklet Your Money, page 7: Other M1 Money

While demand deposits, traveler’s checks, and interest-bearing accounts with unlimited checking authority are not legal tender, they are usually acceptable in payment for purchases of goods and services.

The booklet, “Your Money”, is distributed free of charge. Additional copies may be obtained by writing to: Federal Reserve Bank of Richmond Public Services Department P.O. Box 27622 Richmond, Virginia 23261

CREDIT LOANS AND VOID CONTRACTS: CASE LAW

75. “In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him.”' Farmers and Miners Bank v. Bluefield Nat 'l Bank, 11 F 2d 83, 271 U.S. 669.

76. "A national bank has no power to lend its credit to any person or corporation . . . Bowen v. Needles Nat. Bank, 94 F 925 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637.

77. “The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often .. .” Zinc Carbonate Co. v. First National Bank, 103 Wis 125, 79 NW 229. American Express Co. v. Citizens State Bank, 194 NW 430.

78. “A bank may not lend its credit to another even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be cited, which-would look like a catalog of ships.” [Emphasis added] Norton Grocery Co. v. Peoples Nat. Bank, 144 SE 505. 151 Va 195.

79. "It has been settled beyond controversy that a national bank, under federal Law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires . . ." Howard & Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759(1926).

80. “. . . checks, drafts, money orders, and bank notes are not lawful money of the United States ...” State v. Neilon, 73 Pac 324, 43 Ore 168.

81. "Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. I Morse. Banks and Banking 5th Ed. Sec 65; Magee,

Banks and Banking, 3rd Ed. Sec 248." American Express Co. v. Citizens State Bank, 194 NW 429.

82. "It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." Federal Intermediate Credit Bank v. L 'Herrison, 33 F 2d 841, 842 (1929).
83. "There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." National Bank of Commerce v. Atkinson, 55 E 471.
84. "A bank can lend its money, but not its credit." First Nat'l Bank of Tallapoosa v. Monroe . 135 Ga 614, 69 SE 1124, 32 LRA (NS) 550.
85. ".. . the bank is allowed to hold money upon personal security; but it must be money that it loans, not its credit." Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No.12, 642, 1039.
86. "A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest." Parsons v. Fox 179 Ga 605, 176 SE 644. Also see Kirkland v. Bailey, 155 SE 2d 701 and United States v. Neifert White Co., 247 Fed Supp 878, 879.
87. "The word 'money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of exchange . . ." Lane v. Railey 280 Ky 319, 133 SW 2d 75.
88. "A promise to pay cannot, by argument, however ingenious, be made the equivalent of actual payment ..." Christensen v. Beebe, 91 P 133, 32 Utah 406.
89. “A bank is not the holder in due course upon merely crediting the depositors account.” Bankers Trust v. Nagler, 229 NYS 2d 142, 143.
90. "A check is merely an order on a bank to pay money." Young v. Hembree, 73 P2d 393.
91. "Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam Wood Oil Co.. 92 F 26 817.

92. "Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." Leonard v. Springer 197 Ill 532. 64 NE 301.
93. “If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise.” Menominee River Co. v. Augustus Spies L & C Co., 147 Wis 559. 572; 132 NW 1122.
94. “The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.” Guardian Agency v. Guardian Mut. Savings Bank, 227 Wis 550, 279 NW 83.
95. “It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations.” Whipp v. Iverson, 43 Wis 2d 166.
96. "Each Federal Reserve bank is a separate corporation owned by commercial banks in its region ..." Lewis v. United States, 680 F 20 1239 (1982).
97. In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate." The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action. Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank. 755 F2d 239, Cert. denied, 473 US 906 (1985).
98. The Supreme Court found that the Plaintiff in a civil RICO action need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that the Defendant need only have caused harm to the Plaintiff by the commission

of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. Sedima, SPRL v. Imrex Co., 473 US 479 (1985).

DEFINITIONS TO KNOW WHEN EXAMINING A BANK CONTRACT

BANK ACCOUNT: A sum of money placed with a bank or banker, on deposit, by a customer, and subject to be drawn out on the latter's check.

BANK: whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans and issue promissory notes payable to bearer, known as bank notes.

BANK CREDIT: A credit with a bank by which, on proper credit rating or proper security given to the bank, a person receives liberty to draw to a certain extent agreed upon.

BANK DEPOSIT: Cash, checks or drafts placed with the bank for credit to depositor's account. Placement of money in bank, thereby, creating contract between bank and depositors.

DEMAND DEPOSIT: The right to withdraw deposit at any time.

BANK DEPOSITOR: One who delivers to, or leaves with a bank a sum of money subject to his order.

BANK DRAFT: A check, draft or other form of payment.

ANK OF ISSUE: Bank with the authority to issue notes which are intended to circulate as currency.

LOAN: Delivery by one party to, and receipt by another party, a sum of money upon agreement, express or implied, to repay it with or without interest.

CONSIDERATION: The inducement to a contract. The cause, motive, price or impelling influences, which induces a contracting, party to enter into a contract. The reason, or material cause of a contract.

CHECK: A draft drawn upon a bank and payable on demand, signed by the maker or

drawer, containing an unconditional promise to pay a certain sum in money to the order of the payee. The Federal Reserve Board defines a check as, "...a draft or order upon a bank or banking house purporting to be drawn upon a deposit of funds for the payment at all events of, a certain sum of money to a certain person therein named, or to him or his order, or to bearer and payable instantly on demand of."

QUESTIONS ONE MIGHT ASK THE BANK IN AN INTERROGATORY

Did the bank loan gold or silver to the alleged borrower?

Did the bank loan credit to the alleged borrower?

Did the borrower sign any agreement with the bank, which prevents the borrower from repaying the bank in credit?

Is it true that your bank creates check book money when the bank grants loans, simply by adding deposit dollars to accounts on the bank's books, in exchange, for the borrower's mortgage note?

Has your bank, at any time, used the borrower's mortgage note, "promise to pay", as a deposit on the bank's books from which to issue bank checks to the borrower?

At the time of the loan to the alleged borrower, was there one dollar of Federal Reserve Bank Notes in the bank's possession for every dollar owed in Savings Accounts, Certificates of Deposits and check Accounts (Demand Deposit Accounts) for every dollar of the loan?

According to the bank's policy, is a promise to pay money the equivalent of money?

Does the bank have a policy to prevent the borrower from discharging the mortgage note in "like kind funds" which the bank deposited from which to issue the check?

Does the bank have a policy of violating the Deceptive Trade Practices Act?

When the bank loan officer talks to the borrower, does the bank inform the borrower that the bank uses the borrowers mortgage note to create the very money the bank loans out to the borrower?

Does the bank have a policy to show the same money in two separate places at the same time?

Does the bank claim to loan out money or credit from savings and certificates of deposits while never reducing the amount of money or credit from savings accounts or certificates of deposits, which customers can withdraw from?

Using the banking practice in place at the time the loan was made, is it theoretically possible for the bank to have loaned out a percentage of the Savings Accounts and Certificates of Deposits?
If the answer is "no" to question #13, explain why the answer is no.
In regards to question #13, at the time the loan was made, were there enough Federal Reserve Bank Notes on hand at the bank to match the figures represented by every Savings Account and Certificate of Deposit and checking Account (Demand Deposit Account)?
Does the bank have to obey, the laws concerning, Commercial Paper; Commercial Transactions, Commercial Instruments, and Negotiable Instruments?
Did the bank lend the borrower the bank's assets, or the bank's liabilities?
What is the complete name of the banking entity, which employs you, and in what jurisdiction is the bank chartered?
What is the bank's definition of "Loan Credit"?
Did the bank use the borrowers assumed mortgage note to create new bank money, which did not exist before the assumed mortgage note was signed?
Did the bank take money from any Demand Deposit Account (DDA), Savings Account (SA), or a Certificate of Deposit (CD), or any combination of any Demand Deposit Account, Savings Account or Certificate of Deposit, and loan this money to the borrower?
Did the bank replace the money or credit, which it loaned to the borrower with the borrower's assumed mortgage note?
Did the bank take a bank asset called money, or the credit used as collateral for customers' bank deposits, to loan this money to the borrower, and/or did the bank use the borrower's note to replace the asset it loaned to the borrower?
Did the money or credit, which the bank claims to have loaned to the borrower, come from deposits of money or credit made by the bank's customers, excluding the borrower's assumed mortgage note?
Considering the balance sheet entries of the bank's loan of money or credit to the borrower, did the bank directly decrease the customer deposit accounts (i.e. Demand Deposit Account, Savings Account, and Certificate of Deposit) for the amount of the

loan?
Describe the bookkeeping entries referred to in question #13.
Did the bank's bookkeeping entries to record the loan and the borrower's assumed mortgage note ever, at any time, directly decrease the amount of money or credit from any specific bank customer's deposit account?
Does the bank have a policy or practice to work in cooperation with other banks or financial institutions use borrower's mortgage note as collateral to create an offsetting amount of new bank money or credit or check book money or Demand Deposit Account generally to equal the amount of the alleged loan?
Regarding the borrowers assumed mortgage loan, give the name of the account which was debited to record the mortgage.
Regarding the bookkeeping entry referred to in Interrogatory #17, state the name and purpose of the account, which was credited.
When the borrower's assumed mortgage note was debited as a bookkeeping entry, was the offsetting entry a credit account?
Regarding the initial bookkeeping entry to record the borrower's assumed mortgage note and the assumed loan to the borrower, was the bookkeeping entry credited for the money loaned to the borrower, and was this credit offset by a debit to record the borrower's assumed mortgage note?
Does the bank currently or has it ever at anytime used the borrower's assumed mortgage note as money to cover the bank's liabilities referred to above, i.e. Demand Deposit Account, Savings Account and Certificate of Deposit?
When the assumed loan was made to the borrower, did the bank have every Demand Deposit Account, Savings Account, and Certificate of Deposit backed up by Federal Reserve Bank Notes on hand at the bank?
Does the bank have an established policy and practice to emit bills of credit which it creates upon its books at the time of making a loan agreement and issuing money or so-called money of credit, to its borrowers?

SUMMARY

The bank advertised it would loan money, which is backed by legal tender. Is not that what the symbol $ means? Is that not what the contract said? Do you not know there is no

agreement or contract in the absence of mutual consent? The bank may say that they gave you a check, you owe the bank money. This information shows you that the check came from the money the alleged borrower provided and the bank never loaned any money from other depositors.

I've shown you the law and the bank's own literature to prove my case. All the bank did was trick you. They get your mortgage note without investing one cent, by making you a depositor and not a borrower. The key to the puzzle is, the bank did not sign the contract. If they did they must loan you the money. If they did not sign it, chances are, they deposited the mortgage note in a checking account and used it to issue a check without ever loaning you money or the bank investing one cent.

Our Nation, along with every State of the Union, entered into Bankruptcy, in 1933. This changes the law from "gold and silver" legal money and "common law" to the law of bankruptcy. Under Bankruptcy law the mortgage note acts like money. Once you sign the mortgage note it acts like money. The bankers now trick you into thinking they loaned you legal tender, when they never loaned you any of their money.

The trick is they made you a depositor instead of a borrower. They deposited your mortgage note and issued a bank check. Neither the mortgage note nor the check is legal tender. The mortgage note and the check are now money created that never existed, prior. The bank got your mortgage note for free without loaning you money, and sold the mortgage note to make the bank check appear legal. The borrower provided the legal tender, which the bank gave back in the form of a check. If the bank loaned legal tender, as the contract says, for the bank to legally own the mortgage note, then the people would still own the homes, farms, businesses and cars, nearly debt free and pay little, if any interest. By the banks not fulfilling the contract by loaning legal tender, they make the alleged borrower, a depositor. This is a fraudulent conversion of the mortgage note. A Fraud is a felony.

The bank had no intent to loan, making it promissory fraud, mail fraud, wire fraud, and a list of other crimes a mile long. How can they make a felony, legal? They cannot! Fraud is fraud!

The banks deposit your mortgage note in a checking account. The deposit becomes the bank's property. They withdraw money without your signature, and call the money, the

banks money that they loaned to you. The bank forgot one thing. If the bank deposits your mortgage note, then the bank must credit your checking account claiming the bank owes you $100,000 for the $100,000 mortgage note deposited. The credit of $100,000 the bank owes you for the deposit allows you to write a check or receive cash. They did not tell you they deposited the money, and they forget to tell you that the $100,000 is money the banks owe you, not what you owe the bank. You lost $100,000 and the bank gained $100,000. For the $100,000 the bank gained, the bank received government bonds or cash of $100,000 by selling the mortgage note. For the loan, the bank received $100,000 cash, the bank did not give up $100,000.

Anytime the bank receives a deposit, the bank owes you the money. You do not owe the bank the money.

If you or I deposit anyone's negotiable instrument without a contract authorizing it, and withdraw the money claiming it is our money, we would go to jail. If it was our policy to violate a contract, we could go to jail for a very long time. You agreed to receive a loan, not to be a depositor and have the bank receive the deposit for free. What the bank got for free (lien on real property) you lost and now must pay with interest.

If the bank loaned us legal tender (other depositors' money) to obtain the mortgage note the bank could never obtain the lien on the property for free. By not loaning their money, but instead depositing the mortgage note the bank creates inflation, which costs the consumer money. Plus the economic loss of the asset, which the bank received for free, in direct violation of any signed agreement.

We want equal protection under the law and contract, and to have the bank fulfill the contract or return the mortgage note. We want the judges, sheriffs, and lawmakers to uphold their oath of office and to honor and uphold the founding fathers U.S. Constitution. Is this too much to ask?

What is the mortgage note? The mortgage note represents your future loan payments. A promise to pay the money the bank loaned you. What is a lien? The lien is a security on the property for the money loaned.

How can the bank promise to pay money and then not pay? How can they take a promise to pay and call it money and then use it as money to purchase the future payments of money at interest. Interest is the compensation allowed by law or fixed by the parties for

the use or forbearance of borrowed money. The bank never invested any money to receive your mortgage note. What is it they are charging interest on?

The bank received an asset. They never gave up an asset. Did they pay interest on the money they received as a deposit? A check issued on a deposit received from the borrower cost the bank nothing? Where did the money come from that the bank invested to charge interest on?

The bank may say we received a benefit. What benefit? Without their benefit we would receive equal protection under the law, which would mean we did not need to give up an asset or pay interest on our own money! Without their benefit we would be free and not enslaved. We would have little debt and interest instead of being enslaved in debt and interest. The banks broke the contract, which they never intended to fulfill in the first place. We got a check and a house, while they received a lien and interest for free, through a broken contract, while we got a debt and lost our assets and our country. The benefit is the banks, who have placed liens on nearly every asset in the nation, without costing the bank one cent. Inflation and working to pay the bank interest on our own money is the benefit. Some benefit!

What a Shell Game. The Following case was an actual trial concerning the issues we have covered. The Judge was extraordinary in-that he had a grasp of the Constitution that I haven't seen often enough in our courts. This is the real thing, absolutely true. This case was reviewed by the Minnesota Supreme Court on their own motion. The last thing in the world that the Bankers and the Judges wanted was case law against the Bankers. However, this case law is real.

STATE OF MINNESOTA IN JUSTICE COURT COUNTY OF SCOTT

TOWNSHIP OF

CREDIT RIVER

)MARTIN V. MAHONEY, JUSTICE

FIRST BANK OF MONTGOMERY, Plaintiff,) CASE NO: 19144

Vs.) JUDGMENT AND DECREE

Jerome Daly, Defendant.)

The above entitled action came on before the court and a jury of 12 on December 7, 1968

at 10:00 a.m. Plaintiff appeared by its President Lawrence V. Morgan and was represented by its Counsel Theodore R. Mellby, Defendant appeared on his own behalf. A jury of Talesmen were called, impaneled and sworn to try the issues in this case. Lawrence V. Morgan was the only witness called for plaintiff and defendant testified as the only witness in his own behalf.

Plaintiff brought this as a Common Law action for the recovery of the possession of lot 19, Fairview Beach, Scott County, Minn. Plaintiff claimed titled to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8, 1964 which plaintiff claimed was in default at the time foreclosure proceedings were started. Defendant appeared and answered that the plaintiff created the money and credit upon its own books by bookkeeping entry as the legal failure of consideration for the Mortgage Deed and alleged that the Sheriff's sale passed no title to plaintiff. The issues tried to the jury were whether there was a lawful consideration and whether Defendant had waived his rights to complain about the consideration having paid on the note for almost 3 years. Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private bank, further that he knew of no United States Statute of Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying on the Note and Mortgage waived any right to complain about the consideration and that Defendant was estopped from doing so. At 12:15 on December 7, 1968 the Jury returned a unanimous verdict for the Defendant. Now therefore by virtue of the authority vested in me pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and laws of the State Minnesota not inconsistent therewith.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

That Plaintiff is not entitled to recover the possession of lot 19, Fairview Beach, Scott County, Minnesota according to the plat thereof on file in the Register of Deeds office.

That because of failure of a lawful consideration the note and Mortgage dated May 8, 1964 are null and void.

That the Sheriffs sale of the above described premises held on June 26, 1967 is null and

void, of no effect.

That Plaintiff has no right, title or interest in said premises or lien thereon, as is above described.

That any provision in the Minnesota Constitution and any Minnesota Statute limiting the Jurisdiction of this Court is repugnant to the Constitution of the United States and to the Bill of Rights of the Minnesota Constitution and is null and void and that this Court has Jurisdiction to render complete Justice in this cause.

That Defendant is awarded costs in the sum of $75.00 and execution is hereby issued therefore.

A 10 day stay is granted.

The following memorandum and any supplemental memorandum made and filed by this Court in support of this judgment is hereby made a part hereof by reference.

BY THE COURT

Dated December 9, 1969

MARTIN V. MAHONEY

Justice of the Peace Credit River Township Scott County, Minnesota

MEMORANDUM

The issues in this case were simple. There was no material dispute on the facts for the jury to resolve. Plaintiff admitted that it, in combination with the Federal Reserve Bank of Minneapolis, which are for all practical purposes because of their interlocking activity and practices, and both being Banking Institutions Incorporated under the laws of the United States, are in the Law to be treated as one and the same Bank, did create the entire $14,000.00 in money or credit upon its own books by bookkeeping entry. That this was the Consideration used to support the Note dated May 8, 1964 and the Mortgage of the same date. The Money and credit first came into existence when they credited it.

Mr. Morgan admitted that no United States Law of Statute existed which gave him the right to do this. A lawful consideration must exist and be tendered to support the note. (See Anheuser Busch Brewing Co. v. Emma Mason, 44 Minn. 318. 46 NW 558.) The Jury found there was no lawful consideration and I agree Only God can create something of value out of nothing. Even if defendant could be charged with waiver or estoppel as a matter of law this is no defence to the plaintiff. The law leaves wrongdoers where it finds

them. (See sections 50, 5 1, and 52 of Am Jur 2d "Actions" on page 584.") No action will lie to recover on a claim based upon, or in any manner depending upon, a fraudulent, illegal, or immoral transaction or contract to which plaintiff was a party. Plaintiffs act of creating is not authorized by the Constitution and Laws of the United States, is unconstitutional and void, and is not lawful consideration in the eyes of the law to support any thing or upon which any lawful rights can be built. Nothing in the Constitution of the United States limits the jurisdiction of this Court, which is one of original jurisdiction with right of trial by jury guaranteed.

This is a Common Law Action. Minnesota cannot limit or impair the power of this Court to render complete justice between the parties. Any provisions in the Constitution and laws of Minnesota which attempt to do so is repugnant to the Constitution of the United States and void. No question as to the Jurisdiction of this Court was raised by either party at the trial. Both parties were given complete liberty to submit any and all facts and law to the jury, at least in so far as they saw it. No complaint was made by Plaintiff that Plaintiff did not receive a fair trial. From the admissions made by Mr. Morgan the path of duty was made direct and clear for the jury. Their verdict could not reasonably have been otherwise. Justice was rendered completely and without purchase, conformable to the law in this Court on December 7, 1968.

BY THE COURT

MARTIN V. MAHONEY

Justice of the Peace Credit River Township Scott County, Minnesota

Note: It has never been doubted that a note given on a consideration, which is prohibited by law is void. It has been determined independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emission of Bills of Credit upon the books of these private Corporations for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. See Craig v. @ 4 peters reports 912, This Court can tread only that path which is marked out by duty. M.V.M.

JUDGE MARTIN MAHONEY DECISION AS FOLLOWS

"For the Justice's fees, the First National Bank deposited @ the Clerk of the District Court the two Federal Reserve Bank Notes. The Clerk tendered the Notes to me (the Judge). As Judge my sworn duty compelled me to refuse the tender. This is contrary to

the Constitution of the United States. The States have no power to make bank notes a legal tender. Only gold and silver coin is a lawful tender." (See American Jurist on Money 36 sec.13.)

“Bank Notes are a good tender as money unless specifically objected to. Their consent and usage is based upon the convertibility of such notes to coin at the pleasure of the holder upon presentation to the bank for redemption. When the inability of a bank to redeem its notes is openly avowed they instantly lose their character as money and their circulation as currency ceases." (See American Jurist 36-section 9). "There is no lawful consideration for these Federal Reserve Bank Notes to circulate as money. The banks actually obtained these notes for cost of printing - A lawful consideration must exist for a Note. As a matter of fact, the "Notes" are not Notes at all, as they contain no promise to pay." (See 17 American Jurist section 85, 215) "The activity of the Federal Reserve Banks of Minnesota, San Francisco and the First National Bank of Montgomery is contrary to public policy and contrary to the Constitution of the United States, and constitutes an unlawful creation of money, credit and the obtaining of money and credit for no valuable consideration.

Activity of said banks in creating money and credit is not warranted by the Constitution of the United States." "The Federal Reserve Banks and National Banks exercise an exclusive monopoly and privilege of creating credit and issuing Notes at the expense of the public which does not receive a fair equivalent. This scheme is obliquely designed for the benefit of an idle monopoly to rob, blackmail, and oppress the producers of wealth. "The Federal Reserve Act and the National Bank Act are, in their operation and effect, contrary to the whole letter and spirit of the Constitution of the United States, for they confer an unlawful and unnecessary power on private parties; they hold all of our fellow citizens in dependence; they are subversive to the rights and liberation of the people.” "These Acts have defiled the lawfully constituted Government of the United States. The Federal Reserve Act and the National Banking Act are not necessary and proper for carrying into execution the legislative powers granted to Congress or any other powers vested in the Government of the United States, but on the contrary, are subversive to the rights of the People in their rights to life, liberty, and property." (See Section 462 of Title 31 U. S. Code).

"The meaning of the Constitutional provision, 'NO STATE SHALL make anything but Gold and Silver Coin a legal tender ' payment of debts' is direct, clear, unambiguous and without any qualification. This Court is without authority to interpolate any exception. My duty is simply to execute it, as and to pronounce the legal result. From an examination of the case of Edwards v. Kearsey, Federal Reserve Bank Notes (fiat money) which are attempted to be made a legal tender, are exactly what the authors of the Constitution of the United States intend to prohibit. No State can make these Notes a legal tender. Congress is incompetent to authorize a State to make the Notes a legal tender. For the effect of binding Constitution provisions see Cooke v. Iverson. This fraudulent Federal Reserve System and National Banking System has impaired the obligation of Contract promoted disrespect for the Constitution and Law and has shaken society to its foundation." (See 96 U.S. Code 595 and 108 M 388 and 63 M 147)
"Title 31, U.S. Code, Section 432, is in direct conflict with the Constitution insofar, at least, that it attempts to make Federal Reserve Bank Notes a legal tender. The Constitution is the Supreme Law of the Land. Section 462 of Title 31 is not a law, which is made in pursuance of the Constitution. It is unconstitutional and void, and I so hold. Therefore, the two Federal Reserve Bank Notes are Null and Void for any lawful purpose in so far as this case is concerned and are not a valid deposit of $2.00 with the Clerk of the District Court for the purpose of effecting an Appeal from this Court to the District Court." "However, of these Federal Reserve Bank Notes, previously discussed, and that is that the Notes are invalid, because of a theory that they are based upon a valid, adequate or lawful consideration. At the hearing scheduled for January 22, 1969, at 7:00 P.M., Mr. Morgan appeared at the trial; he appeared as a witness to be candid, open, direct, experienced and truthful. He testified to years of experience with the Bank of America in Los Angeles, the Marquette National Bank of Minnesota and the First National Bank of Minnesota. He seemed to be familiar with the operation of the Federal Reserve System. He freely admitted that his Bank created all of the money and credit upon its books with which it acquired the Note and Mortgage of May 8, 1964. The credit first came into existence when the Bank created it upon its books. Further, he freely admitted that no United States Law gave the Bank the authority to do this. This was obviously no lawful consideration for the Note.

The Bank parted with absolutely nothing except a little ink. In this case, the evidence was on January 22, 1969 that the Federal Reserve Bank obtained the Notes for this seems to be conferred by Title 12 USC Section 420. The cost is about 9/10th of a cent per Note regardless of the amount of the Note. The Federal Reserve Banks create all of the money and credit upon their books by bookkeeping entries by which they acquire United States Securities. The collateral required to obtain the Note is, by section 412 USC, Title 12, a deposit of a like amount of bonds. Bonds which the Banks acquire by creating money and credit by bookkeeping entry."

"No rights can be acquired by fraud. The Federal Reserve Bank Notes are acquired through the use of unconstitutional statutes and fraud." "The Common Law requires a lawful consideration for any contract or Note. These Notes are void for failure at a lawful consideration at Common Law, entirely apart from any Constitutional consideration. Upon this ground, the Notes are ineffectual for any purpose. This seems to be the principal objection to paper fiat money and the cause of its depreciation and failure down through the ages. If allowed to continue, Federal Reserve Bank Notes will meet the same fate. From the evidence introduced on January 22, 1969, this Court finds that as of March 18, 1969, all Gold and Silver backing is removed from Federal Reserve Bank Notes."

"The law leaves wrongdoers where it finds them. (See I Mer. Jur 2nd on Actions Section 550)."Slavery and all its incidents, including Peonage, thralldom, and debt created by fraud is universally prohibited in the United States. This case represents but another refined form of Slavery by the Bankers. Their position is not supported by the Constitution of the United States. The People have spoken their will in terms, which cannot be misunderstood. It is indispensable to the preservation of the Union and independence and liberties of the people that this Court, adhere only to the mandate of the Constitution and administer it as it is written. I, therefore, hold these Notes in question void and not effectual for any purpose." (4) January 30, 1969

Judge Martin V. Mahoney

Justice of the Peace Credit River Township

CREDIT LOANS AND VOID CONTRACTS PERFECT OBLIGATION AS TO A HUMAN BEING AS TO A BANK

Furthermore, this Memorandum of law is offered in order to advance understanding of the complex legal issues, present and embodied in the Common Law, with authorities, law and cases in support of, which will constitute the following facts:
Privately owned banks are making loans of "credit" with the intended purpose of circulating "credit" as "money". Other financial institutions and individuals may "launder" bank credit that they receive directly or indirectly from privately owned banks. This collective activity is unconstitutional, unlawful, in violation of Common Law, U.S. Code and the principles of equity. Such activity and underlying contracts have long been held void, by State Courts, Federal Courts and the U.S. Supreme Court. This Memorandum will demonstrate through authorities and established common law, that credit "money creation" by privately owned bank corporations is not really "money creation" at all. It is the trade specialty and artful illusion of law merchants, which use old-time trade secrets of the Goldsmiths, to entrap the borrower and unjustly enrich the lender through usury and other unlawful techniques. Issues based on law and the principles of equity, which are within the jurisdiction of this Court, will be addressed.

THE GOLDSMITHS

In his book, Money and Banking (8th Edition, 1984), Professor David R. Kamerschen writes on pages 56 -63: "The first bankers in the modern sense were the goldsmiths, who frequently accepted bullion and coins for storage ... One result was that the goldsmiths temporarily could lend part of the gold left with them . . . These loans of their customers' gold were soon replaced by a revolutionary technique. When people brought in gold, the goldsmiths gave them notes promising to pay that amount of gold on demand. The notes, first made payable to the order of the individual, were later changed to bearer obligations. In the previous form, a note payable to the order of Jebidiah Johnson would be paid to no one else unless Johnson had first endorsed the note ... But notes were soon being used in an unforeseen way. The note holders found that, when they wanted to buy something, they could use the note itself in payment more conveniently and let the other person go after the gold, which the person rarely did . . .The specie, then tended to remain in the

goldsmiths' vaults. . . . The goldsmiths began to realize that they might profit handsomely by issuing somewhat more notes than the amount of specie they held. . . These additional notes would cost the goldsmiths nothing except the negligible cost of printing them, yet the notes provided the goldsmiths with funds to lend at interest . . . .And they were to find that the profitability of their lending operations would exceed the profit from their original trade. The goldsmiths became bankers as their interest in manufacture of gold items to sell was replaced by their concern with credit policies and lending activities . . . They discovered early that, although an unlimited note issue would be unwise, they could issue notes up to several times the amount of specie they held. The key to the whole operation lay in the public's willingness to leave gold and silver in the bank's vaults and use the bank's notes. This discovery is the basis of modern banking: On page 74, Professor Kamerschen further explains the evolution of the credit system: "Later the goldsmiths learned a more efficient way to put their credit money into circulation. They lent by issuing additional notes, rather than by paying out in gold. In exchange for the interest-bearing note received from their customer (in effect, the loan contract), they gave their own non-interest bearing note. Each was actually borrowing from the other ... The advantage of the later procedure of' lending notes rather than gold was that . . . more notes could be issued if the gold remained in the vaults ... Thus, through the principle of bank note issuance, banks learned to create money in the form of their own liability." [Emphasis Added]

MODERN MONEY MECHANICS

Another publication which explains modern banking as learned from the Goldsmiths is Modern Money Mechanics (5th edition 1992), published by the Federal Reserve Bank of Chicago which states beginning on page 3: "It started with the goldsmiths ..." At one time, bankers were merely middlemen. They made a profit by accepting gold and coins brought to them for safekeeping and lending the gold and coins to borrowers. But the goldsmiths soon found that the receipts they issued to depositors were being used as a means of payment. 'Then, bankers discovered that they could make loans merely by giving borrowers their promises to pay, or bank notes... In this way, banks began to create money ... Demand deposits are the modern counterpart of bank notes . . . It was a small step from printing notes to making book entries to the credit of borrowers which the

borrowers, in turn, could 'spend' by writing checks, thereby printing their own money." [Emphasis added]

HOW BANKS CREATE MONEY

In the modern sense, banks create money by creating "demand deposits." Demand deposits are merely "book entries" that reflect how much lawful money the bank owes its customers. Thus, all deposits are called demand deposits and are the bank's liabilities. The bank's assets are the vault cash plus all the "IOUs" or promissory notes that the borrower signs when they borrow either money or credit. When a bank lends its cash (legal money), it loans its assets, but when a bank lends its “credit” it lends its liabilities. The lending of credit is, therefore, the exact opposite of the lending of cash (legal money).

At this point, we need to define the meaning of certain words like "lawful money”, “legal tender”, “other money” and “dollars”. The terms "Money" and "Tender" had their origins in Article 1, Sec. 8 and Article 1, Sec. 10 of the Constitution of the United States. 12 U.S.C. §152 refers to "gold and silver coin as lawful money of the United States" and was unconstitutionally repealed in 1994 in-that Congress can not delegate any portion of their constitutional responsibility without Amendment. The term "legal tender" was originally cited in 31 U.S.C.A. §392 and is now re-codified in 31 U.S.C.A. §5103 which states: "United States coins and currency . . . are legal tender for all debts, public charges, taxes, and dues." The common denominator in both "lawful money" and "legal tender money" is that the United States Government issues both.

With Bankers, however, we find that there are two forms of money - one is government-issued, and privately owned banks such as WASHINGTON MUTUAL, and JP MORGAN CHASE, issue the other. As we have already discussed government issued forms of money, we must now scrutinize privately issued forms of money.

All privately issued forms of money today are based upon the liabilities of the issuer. There are three common terms used to describe this privately created money. They are “credit”, “demand deposits” and “checkbook money”. In the Sixth edition of Blacks Law Dictionary, p.367 under the term “Credit” the term “Bank credit” is described as: “Money bank owes or will lend a individual or person”. It is clear from this definition that “Bank credit” which is the “money bank owes” is the bank's liability. The term “checkbook

money" is described in the book "I Bet You Thought", published by the privately owned Federal Reserve Bank of New York, as follows: "Commercial banks create checkbook money whenever they grant a loan, simply by adding deposit dollars to accounts on their books to exchange for the borrowers IOU . . . ." The word "deposit" and "demand deposit" both mean the same thing in bank terminology and refer to the bank's liabilities. For example, the Chicago Federal Reserves publication, "Modern Money Mechanics" states: "Deposits are merely book entries ... Banks can build up deposits by increasing loans ... Demand deposits are the modern counterpart of bank notes. It was a small step from printing notes to making book entries to the credit of borrowers which the borrowers, in turn, could 'spend' by writing checks. Thus, it is demonstrated in "Modern Money Mechanics" how, under the practice of fractional reserve banking, a deposit of $5,000 in cash could result in a loan of credit/checkbook money/demand deposits of. $100,000 if reserve ratios set by the Federal Reserve are 5% (instead of 10%).
In a practical application, here is how it works. If a bank has ten people who each deposit $5,000 (totaling $50,000) in cash (legal money) and the bank's reserve ratio is 5%, then the bank will lend twenty times this amount, or $1,000,000 in "credit" money. What the bank has actually done, however, is to write a check or loan its credit with the intended purpose of circulating credit as "money." Banks know that if all the people who receive a check or credit loan come to the bank and demand cash, the bank will have to close its doors because it doesn't have the cash to back up its check or loan. The bank's check or loan will, however, pass as money as long as people have confidence in the illusion and don't demand cash. Panics are created when people line up at the bank and demand cash (legal money), causing banks to fold as history records in several time periods, the most recent in this country was the panic of 1933.

THE PROCESS OF PASSING CHECKS OR CREDIT AS MONEY IS DONE QUITE SIMPLY

A deposit of $5,000 in cash by one person results in a loan of $100,000 to another person at 5% reserves. The person receiving the check or loan of credit for $100,000 usually deposits it in the same bank or another bank in the Federal Reserve System. The check or loan is sent to the bookkeeping department of the lending bank where a book entry of $100,000 is credited to the borrower's account. The lending bank's check that created the

borrower's loan is then stamped "Paid" when the account of the borrower is credited a "dollar" amount. The borrower may then "spend" these book entries (demand deposits) by writing checks to others, who in turn deposit their checks and have book entries transferred to their account from the borrower's checking account. However, two highly questionable and unlawful acts have now occurred. The first was when the bank wrote the check or made the loan with insufficient funds to back them up. The second is when the bank stamps its own “Not Sufficient Funds” check "paid" or posts a loan by merely crediting the borrower's account with book entries the bank calls "dollars." Ironically, the check or loan seems good and passes as money -- unless an emergency occurs via demands for cash - or a Court challenge -- and the artful, illusion bubble, bursts.

DIFFERENT KINDS OF MONEY

The book, “I Bet You Thought”, published by the Federal Reserve Bank of New York, states: "Money is any generally accepted medium of exchange, not simply coin and currency. Money doesn't have to be intrinsically valuable, be issued by a government or be in any special form." [Emphasis added] Thus we see that privately issued forms of money only require public confidence in order to pass as money. Counterfeit money also passes as money as long as nobody discovers it's counterfeit. Like wise, "bad" checks and "credit" loans pass as money so long as no one finds out they are unlawful. Yet, once the fraud is discovered, the values of such “bank money” like bad check’s ceases to exist. There are, therefore, two kinds of money -- government issued legal money and privately issued unlawful money.

DIFFERENT KINDS OF DOLLARS

The dollar once represented something intrinsically valuable made from gold or silver. For example, in 1792, Congress defined the silver dollar as a silver coin containing 371.25 grains of pure silver. The legal dollar is now known as "United States coins and currency." However, the Banker's dollar has become a unit of measure of a different kind of money. Therefore, with Bankers there is a "dollar" of coins and a dollar of cash (legal money), a "dollar" of debt, a "dollar" of credit, a "dollar" of checkbook money or a "dollar" of checks. When one refers to a dollar spent or a dollar loaned, he should now indicate what kind of "dollar" he is talking about, since Bankers have created so many different kinds.

A dollar of bank "credit money" is the exact opposite of a dollar of "legal money". The former is a liability while the latter is an asset. Thus, it can be seen from the earlier statement quoted from I Bet You Thought, that money can be privately issued as: "Money doesn't have to ... be issued by a government or be in any special form." It should be carefully noted that banks that issue and lend privately created money demand to be paid with government issued money. However, payment in like kind under natural equity would seem to indicate that a debt created by a loan of privately created money can be paid with other privately created money, without regard for “any special form” as there are no statutory laws to dictate how either private citizens or banks may create money.

BY WHAT AUTHORITY?

By what authority do state and national banks, as privately owned corporations, create money by lending their credit --or more simply put - by writing and passing "bad" checks and "credit" loans as "money"? Nowhere can a law be found that gives banks the authority to create money by lending their liabilities.

Therefore, the next question is, if banks are creating money by passing bad checks and lending their credit, where is their authority to do so? From their literature, banks claim these techniques were learned from the trade secrets of the Goldsmiths. It is evident, however, that money creation by private banks is not the result of powers conferred upon them by government, but rather the artful use of long held "trade secrets." Thus, unlawful money creation is not being done by banks as corporations, but unlawfully by bankers.

Article I, Section 10, para. 1 of the Constitution of the United States of America specifically states that no state shall "... coin money, emit bills of credit, make any thing but gold and silver coin a Tender in Payment of Debts, pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligations of Contracts . . "[Emphasis added]

The states, which grant the Charters of state banks also, prohibit the emitting of Bills of credit by not granting such authority in bank charters. It is obvious that "We the people" never delegated to Congress, state government, or agencies of the state, the power to create and issue money in the form of checks, credit, or other "bills of credit."

The Federal Government today does not authorize banks to emit, write, create, issue and pass checks and credit as money. But banks do, and get away with it! Banks call their

privately created money nice sounding names, like “credit”, “demand deposits”, or “checkbook money”. However, the true nature of "credit money" and "checks" does not change regardless of the poetic terminology used to describe them. Such money in common use by privately owned banks is illegal under Art. 1, Sec.10, para. 1 of the Constitution of the United States of America, as well as unlawful under the laws of the United States and of this State.

VOID "ULTRA VIRES" CONTRACTS

The courts have long held that when a corporation executes a contract beyond the scope of its charter or granted corporate powers, the contract is void or "ultra vires".
In Central Transp. Co. v. Pullman 139 U.S. 60, 11 S. Ct. 478, 35 L. Ed. 55, the court

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said: "A contract ultra vires being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it. In such case, however, the action is not maintained upon the unlawful contract, nor according to its terms; but on an implied contract of the defendant to return, or, failing to do that, to make compensation for, property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract."
"When a contract is once declared ultra vires, the fact that it is executed · does not validate it, nor can it be ratified, so as to make it the basis of suitor action, nor does the doctrine of estoppel apply." F& PR v. Richmond, 133 SE 898; 151 Va 195.
"A national bank ... cannot lend its credit to another by becoming surety, indorser, or guarantor for him, such an act ; is ultra vires . . ." Merchants' Bank v. Baird 160 F 642.

THE QUESTION OF LAWFUL CONSIDERATION

The issue of whether the lender who writes and passes a "bad" check or makes a "credit" loan has a claim for relief against the borrower is easy to answer, providing the lender can prove that he gave a lawful consideration, based upon lawful acts. But did the lender

give a lawful consideration? To give a lawful consideration, the lender must prove that he gave the borrower lawful money such as coins or currency. Failing that, he can have no claim for relief in a court at law against the borrower as the lender's actions were ultra vires or void from the beginning of the transaction.

It can be argued that “bad” checks or “credit” loans that pass as money are valuable; but so are counterfeit coins and currency that pass as money. It seems unconscionable that a bank would ask homeowners to put up a homestead as collateral for a "credit loan" that the bank created out of thin air. Would this court of law or equity allow a counterfeiter to foreclose against a person's home because the borrower was late in payments on an unlawful loan of counterfeit money? Were the court to do so, it would be contrary to all principles of law.

The question of valuable consideration in the case at bar, does not depend on any value imparted by the lender, but the false confidence instilled in the "bad" check or "credit" loan by the lender. In a court at law or equity, the lender has no claim for relief. The argument that because the borrower received property for the lender's "bad" check or "credit" loan gives the lender a claim for relief is not valid, unless the lender can prove that he gave lawful value. The seller in some cases who may be holding the “bad” check or “Credit” loan has a claim for relief against the lender or the borrower or both, but the lender has no such claim.

BORROWER RELIEF

Since we have established that the lender of unlawful or counterfeit money has no claim for relief under a void contract, the last question should be, does the borrower have a claim for relief against the lender? First, if it is established that the borrower has made no payments to the lender, then the borrower has no claim for relief ‘against the lender for money damages. But the borrower has a claim for relief to void the debt he owes the lender for notes or obligations unlawfully created by an ultra vires contract for lending "credit" money.

The borrower, the Courts have long held, has a claim for relief against the lender to have the note, security agreement, or mortgage note the borrower signed declared null and void.

The borrower may also have claims for relief for breach of contract by the lender for not

lending "lawful money" and for “usury” for charging an interest rate several times greater than the amount agreed to in the contract for any lawful money actually risked by the lender. For example, if on a $100,000 loan it can be established that the lender actually risked only $5,000 (5% Federal Reserve ratio) with a contract interest rate of 10%, the lender has then loaned $95,000 of "credit" and $5,000 of "lawful money". However, while charging 10% interest ($10,000) on the entire $100,000. The true interest rate on the $5,000 of "lawful money" actually risked by the lender is 200% which violates Usury laws of this state.

If no "lawful money" was loaned, then the interest rate is an infinite percentage.

Such techniques the bankers say were learned from the trade secrets of the Goldsmiths. The Courts have repeatedly ruled that such contracts with borrowers are wholly void from the beginning of the transaction, because banks are not granted powers to enter into such contracts by either state or national charters.

ADDITIONAL BORROWER RELIEF

In Federal District Court the borrower may have additional claims for relief under "Civil RICO" Federal Racketeering laws (18 U.S.C. § 1964). The lender may have established a "pattern of racketeering activity" by using the U.S. Mail more than twice to collect an unlawful debt and the lender may be in violation of 18 U.S.C. §1341, 1343, 1961 and 1962.

The borrower has other claims for relief if he can prove there was or is a conspiracy to deprive him of property without due process of law under. (42 U.S.C. §1983 (Constitutional Injury), 1985 (Conspiracy) and 1986 ("Knowledge" and "Neglect to Prevent" a U.S. Constitutional Wrong), Under 18 U.S.C.A.§ 241 (Conspiracy) violators, "shall be fined not more than $10,000 or imprisoned not more than ten (10) years or both."

In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate". The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful

and that is all that is necessary to support the Civil RICO action. Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank. 755 F2d 239, Cert. denied, 473 US 906 (1985).
The Supreme Court found that the Plaintiff in a civil RICO action, need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that the Defendant need only have caused harm to the Plaintiff by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. Sedima, SPRL v. Imrex Co., 473 US 479 (1985).
Aside from any legal obligation, there exists a societal and moral obligation enure to both the Plaintiff and the Defendant in that if you were to defuse a Bomb, and you completed the task 99% correct, you are still dead. Grantor believes that his position on the law is sound, but fears grievous repercussions throughout the financial community if he should prevail. The credit for money scheme is endemic throughout our society and could have devastating effects on the national economy.
Grantor believes that another approach may be explored as follows:

PERFECT OBLIGATION AS TO A HUMAN BEING

That which is borrowed is wealth. Labor created that wealth, so it is money notwithstanding its form. Consideration is promised in advance by the Promissor of the Note, in the nature of principal and interest payments for the consideration provided by the lender, which is his personal wealth created by his labor.
A Mortgage Note or Promissory Note secures the position of the lender and if there is default on the promise to pay then the borrower has agreed to accept the strict foreclosure remedy provided by state statutes.
Then the borrower obligated themselves to pay back the principal and pay for the use of it, in the form of interest for the years over which the principal is to be paid back. When payments stop there is a prima facie injury to the lender. When payments stop the lender has strict foreclosure procedure in state court to remedy the pay back of the

balance of the principal.
Judgement to foreclose on the property is granted upon the mere proof that payments have ceased as promised. The property is sold to cover the unpaid balance; deficiency judgement may be needed. All is right with the world. Here the lender would be prejudiced if complete and swift remedy were not available. Absent such remedy the government would be party to placing the lender into a condition of involuntary servitude to the borrower.

PERFECT OBLIGATION AS TO A BANK

In years past banks and savings and loans institutions enjoyed the remedy outlined above. The reason was they were lending out money belonging to their depositors and there was prima facie injury to the depositors upon the mere proof that payments had ceased. Thereby the bank as well as the government would be party to creating a condition of involuntary servitude upon the depositors if strict foreclosure remedy were not available. Today depositors are not in jeopardy of being injured when a person borrows money from a bank. The bank does not lend their money, only their credit in the amount of the loan (paper accounting). Hence no prima facie injury exists to either the depositors or the bank upon the mere proof that payments cease. Injury is based upon the payments made as to the credit line.

PERFECT OR IMPERFECT OBLIGATION

A perfect obligation is one recognized and sanctioned by positive law; one of which the fulfillment can be enforced by the aid of the law. But if the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called an "imperfect obligation," and creates no right of action, nor has it any legal operation. The duty of exercising gratitude, charity, and the other merely moral duties are examples of this kind of obligation. Edwards v. Keaney, 96 U.S. 595, 600, 24 L.Ed. 793.
Government approved the Federal Reserve Bank, Inc., as the Central Banking system for the United States, and it’s policy is reviewed by Congress albeit, in a haphazard manner. The Federal Reserve authorizes its “private money” “Federal Reserve Bank Notes” to be used by lending institutions such as member banks, to operate upon a system of fractionalizing. The nature of which is that they do not lend either their money or the

money of the depositors, the money is created out of thin air, by the mere stroke of a pen. When there is no consideration in jeopardy of being returned, then the obligation is to make the bank injury proof, to the extent of the obligation, which would be to make them whole.

The only legal obligation is based upon the moral issue, which under the law is an Imperfect Obligation, to return to them their property, which isn't wealth, but credit. A Promissory Note is signed under "economic compulsion" when, the "loan" will not be consummated unless and until the borrower signs it. Thus, performing the act of signing a Promissory Note cannot be considered voluntary.

The discharging of the credit is based upon social, economic, and moral standards to make the bank whole, if injury is claimed, in any court action where default on the Promissory Note is on record and where the bank fails to verify an injury, the bank cannot enforce a promise to pay consideration where they provided no consideration. For the bank to be able to force upon the defendant an amount over and above the credit, is to force upon the defendants a debt that goes to the control of their labor against their will. This condition would be Peonage, which has been abolished in this country.

(42 U.S.C. § 1994, and 18 U.S.C. §1581.)

The question then arises as to when is the obligation discharged, to put the bank in a position, where there is no record of injury to it?

THE CASE IS CLEAR

Conspiracy against rights: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title

or imprisoned for any term of years or for life, or both, or may be sentenced to death. [18, USC 241]

Deprivation of rights under color of law: Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. [18, USC 242]

Property rights of citizens: All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. [42 USC 1982]

Civil action for deprivation of rights: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. [42 USC 1983]

Conspiracy to interfere with civil rights: Depriving persons of rights or privileges: If

two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators. [42 USC 1985(3)]

Action for neglect to prevent: Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. [42 USC 1986]

COURT: The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. [Black's Law Dictionary, 5th Edition, page 318.]

COURT: An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. [Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's Law Dictionary, 4th Edition, page 425]

COURT OF RECORD: To be a court of record a court must have four characteristics, and may have a fifth. They are:

a. A judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it [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] [Black's Law Dictionary, 4th Ed., 425, 426]
b. Proceeding according to the course of common law [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] [Black's Law Dictionary, 4th Ed., 425, 426]
c. Its acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony. [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]
d. Has power to fine or imprison for contempt. [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.] [Black's Law Dictionary, 4th Ed., 425, 426]

e. Generally possesses a seal. [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., 37 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.] [Black's Law Dictionary, 4th Ed., 425, 426]

Taking into consideration all of the documentation contained herein it is abundantly clear that no foreclosure action is warranted, justified or lawful. There is no injury to the purported lender. A court of record should decide what actions should and must be taken as a result of the unlawful actions of the Plaintiff.

Affidavit of Walker F. Todd

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BANK ONE, N.A.,	)	Case No. 03-047448-CZ
Plaintiff,	)	Hon. E.. Sosnick
v.	)	AFFIDAVIT OF WALKER F. TODD, EXPERT WITNESS FOR DEFENDANTS
HARSHAVARDHAN DAVE and PRATIMA DAVE, jointly and severally,	)	
Defendants.	)	

Harshavardhan Dave and Pratima H. Dave
C/o 5128 Echo Road
Bloomfield Hills, MI 48302
Defendants, in propria persona

Michael C. Hammer (P41705)
Ryan O. Lawlor (P64693)
Dickinson Wright PLLC
Attorneys for Bank One, N.A.
500 Woodward Avenue, Suite 4000
Detroit, Michigan 48226
(313) 223-3500

Now comes the Affiant, Walker F. Todd, a citizen of the United States and the State of Ohio over the age of 21 years, and declares as follows, under penalty of perjury:

1. That I am familiar with the Promissory Note and Disbursement Request and Authorization, dated November 23, 1999, together sometimes referred to in other documents filed by Defendants in this case as the “alleged agreement” between Defendants and Plaintiff but called the “Note” in this Affidavit. If called as a witness, I would testify as stated herein. I make this Affidavit based on my own personal knowledge of the legal, economic, and historical principles stated herein, except that I have relied entirely on documents provided to me, including the Note, regarding certain facts at issue in this case of which I previously had no direct and personal knowledge. I am making this affidavit based on my experience and expertise as an attorney, economist, research writer, and teacher. I am competent to make the following statements.

PROFESSIONAL BACKGROUND QUALIFICATIONS

2. My qualifications as an expert witness in monetary and banking instruments are as follows. For 20 years, I worked as an attorney and legal officer for the legal

departments of the Federal Reserve Banks of New York and Cleveland. Among other things, I was assigned responsibility for questions involving both novel and routine notes, bonds, bankers' acceptances, securities, and other financial instruments in connection with my work for the Reserve Banks' discount windows and parts of the open market trading desk function in New York. In addition, for nine years, I worked as an economic research officer at the Federal Reserve Bank of Cleveland. I became one of the Federal Reserve System's recognized experts on the legal history of central banking and the pledging of notes, bonds, and other financial instruments at the discount window to enable the Federal Reserve to make advances of credit that became or could become money. I also have read extensively treatises on the legal and financial history of money and banking and have published several articles covering all of the subjects just mentioned. I have served as an expert witness in several trials involving banking practices and monetary instruments. A summary biographical sketch and resume including further details of my work experience, readings, publications, and education will be tendered to Defendants and may be made available to the Court and to Plaintiff's counsel upon request.

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GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

3. Banks are required to adhere to Generally Accepted Accounting Principles (GAAP). GAAP follows an accounting convention that lies at the heart of the double-entry bookkeeping system called the Matching Principle. This principle works as follows: When a bank accepts bullion, coin, currency, checks, drafts, promissory notes, or any other similar instruments (hereinafter "instruments") from customers and deposits or records the instruments as assets, it must record offsetting liabilities that match the assets that it accepted from customers. The liabilities represent the amounts that the bank owes the customers, funds accepted from customers. In a fractional reserve banking system like the United States banking system, most of the funds advanced to borrowers (assets of the banks) are created by the banks themselves and are not merely transferred from one set of depositors to another set of borrowers.

RELEVANCE OF SUBTLE DISTINCTIONS ABOUT TYPES OF MONEY

4. From my study of historical and economic writings on the subject, I conclude that a common misconception about the nature of money unfortunately has been perpetuated in the U.S. monetary and banking systems, especially since the 1930s. In classical economic theory, once economic exchange has moved beyond the barter stage, there are two types of money: money of exchange and money of account.. For nearly 300 years in both Europe and the United States, confusion about the distinctiveness of these two concepts has led to persistent attempts to treat money of account as the equivalent of money of exchange. In reality, especially in a fractional reserve banking system, a comparatively small amount of money of exchange (e.g., gold, silver, and official currency notes) may support a vastly larger quantity of

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business transactions denominated in money of account. The sum of these

transactions is the sum of credit extensions in the economy. With the exception of customary stores of value like gold and silver, the monetary base of the economy largely consists of credit instruments. Against this background, I conclude that the Note, despite some language about “lawful money” explained below, clearly contemplates both disbursement of funds and eventual repayment or settlement in money of account (that is, money of exchange would be welcome but is not required to repay or settle the Note). The factual basis of this conclusion is the reference in the Disbursement Request and Authorization to repayment of $95,905.16 to Michigan National Bank from the proceeds of the Note. That was an exchange of the credit of Bank One (Plaintiff) for credit apparently and previously extended to Defendants by Michigan National Bank. Also, there is no reason to believe that Plaintiff would refuse a substitution of the credit of another bank or banker as complete payment of the Defendants’ repayment obligation under the Note. This is a case about exchanges of money of account (credit), not about exchanges of money of exchange (lawful money or even legal tender).

5. Ironically, the Note explicitly refers to repayment in “lawful money of the United States of America” (see “Promise to Pay” clause). Traditionally and legally, Congress defines the phrase “lawful money” for the United States. Lawful money was the form of money of exchange that the federal government (or any state) could be required by statute to receive in payment of taxes or other debts. Traditionally, as defined by Congress, lawful money only included gold, silver, and currency notes redeemable for gold or silver on demand. In a banking law context, lawful money was only those forms of money of exchange (the forms just mentioned, plus U.S. bonds and notes redeemable for gold) that constituted the reserves of a national bank prior to 1913

(date of creation of the Federal Reserve Banks). See, Lawful Money, Webster’s New International Dictionary (2d ed. 1950). In light of these facts, I conclude that Plaintiff and Defendants exchanged reciprocal credits involving money of account and not money of exchange; no lawful money was or probably ever would be disbursed by either side in the covered transactions. This conclusion also is consistent with the bookkeeping entries that underlie the loan account in dispute in the present case. Moreover, it is puzzling why Plaintiff would retain the archaic language, “lawful money of the United States of America,” in its otherwise modern-seeming Note. It is possible that this language is merely a legacy from the pre-1933 era. Modern credit agreements might include repayment language such as, “The repayment obligation under this agreement shall continue until payment is received in fully and finally collected funds,” which avoids the entire question of “In what form of money or credit is the repayment obligation due?”

6. Legal tender, a related concept but one that is economically inferior to lawful money because it allows payment in instruments that cannot be redeemed for gold or silver on demand, has been the form of money of exchange commonly used in the United States since 1933, when domestic private gold transactions were suspended (until

1974).. Basically, legal tender is whatever the government says that it is. The most common form of legal tender today is Federal Reserve notes, which by law cannot be redeemed for gold since 1934 or, since 1964, for silver. See, 31 U.S.C. Sections 5103, 5118 (b), and 5119 (a).

Note: I question the statement that fed reserve notes cannot be redeemed for silver since 1964. It was Johnson who declared on 15 March 1967 that after 15 June 1967 that Fed Res Notes would not be exchanged for silver and the practice did stop on 15 June

1967 – not 1964. I believe this to be error in the text of the author's affidavit.

7. Legal tender under the Uniform Commercial Code (U.C.C.), Section 1-201 (24) (Official Comment), is a concept that sometimes surfaces in cases of this nature. The referenced Official Comment notes that the definition of money is not limited to legal tender under the U.C.C. Money is defined in Section 1-201 (24) as "a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations." The relevant Official Comment states that "The test adopted is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected." Thus, I conclude that the U.C.C. tends to validate the classical theoretical view of money.

HOW BANKS BEGAN TO LEND THEIR OWN CREDIT INSTEAD OF REAL MONEY

8. In my opinion, the best sources of information on the origins and use of credit as money are in Alfred Marshall, MONEY, CREDIT & COMMERCE 249-251 (1929) and Charles P. Kindleberger, A FINANCIAL HISTORY OF WESTERN EUROPE 50-53 (1984). A synthesis of these sources, as applied to the facts of the present case, is as follows: As commercial banks and discount houses (private bankers) became established in parts of Europe (especially Great Britain) and North America, by the mid-nineteenth century they commonly made loans to borrowers by extending their own credit to the borrowers or, at the borrowers' direction, to third parties. The typical form of such extensions of credit was drafts or bills of exchange drawn upon themselves (claims on the credit of the drawees) instead of disbursements of bullion,

coin, or other forms of money. In transactions with third parties, these drafts and bills came to serve most of the ordinary functions of money. The third parties had to determine for themselves whether such "credit money" had value and, if so, how much. The Federal Reserve Act of 1913 was drafted with this model of the commercial economy in mind and provided at least two mechanisms (the discount window and the open-market trading desk) by which certain types of bankers' credits could be exchanged for Federal Reserve credits, which in turn could be withdrawn in lawful money. Credit at the Federal Reserve eventually became the principal form of monetary reserves of the commercial banking system, especially after the suspension

of domestic transactions in gold in 1933. Thus, credit money is not alien to the current official monetary system; it is just rarely used as a device for the creation of Federal Reserve credit that, in turn, in the form of either Federal Reserve notes or banks' deposits at Federal Reserve Banks, functions as money in the current monetary system. In fact, a means by which the Federal Reserve expands the money supply, loosely defined, is to set banks' reserve requirements (currently, usually ten percent of demand liabilities) at levels that would encourage banks to extend new credit to borrowers on their own books that third parties would have to present to the same banks for redemption, thus leading to an expansion of bank-created credit money. In the modern economy, many non-bank providers of credit also extend book credit to their customers without previously setting aside an equivalent amount of monetary reserves (credit card line of credit access checks issued by non-banks are a good example of this type of credit), which also causes an expansion of the aggregate quantity of credit money. The discussion of money taken from Federal Reserve and other modern sources in paragraphs 11 et seq. is consistent with the account of the origins of the use of bank credit as money in this paragraph.

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ADVANCES OF BANK CREDIT AS THE EQUIVALENT OF MONEY

9. Plaintiff apparently asserts that the Defendants signed a promise to pay, such as a note(s) or credit application (collectively, the "Note"), in exchange for the Plaintiff's advance of funds, credit, or some type of money to or on behalf of Defendant. However, the bookkeeping entries required by application of GAAP and the Federal Reserve's own writings should trigger close scrutiny of Plaintiff's apparent assertions that it lent its funds, credit, or money to or on behalf of Defendants, thereby causing them to owe the Plaintiff $400,000. According to the bookkeeping entries shown or otherwise described to me and application of GAAP, the Defendants allegedly were to tender some form of money ("lawful money of the United States of America" is the type of money explicitly called for in the Note), securities or other capital equivalent to money, funds, credit, or something else of value in exchange (money of exchange, loosely defined), collectively referred to herein as "money," to repay what the Plaintiff claims was the money lent to the Defendants. It is not an unreasonable argument to state that Plaintiff apparently changed the economic substance of the transaction from that contemplated in the credit application form, agreement, note(s), or other similar instrument(s) that the Defendants executed, thereby changing the costs and risks to the Defendants. At most, the Plaintiff extended its own credit (money of account), but the Defendants were required to repay in money (money of exchange, and lawful money at that), which creates at least the inference of inequality of obligations on the two sides of the transaction (money, including lawful money, is to be exchanged for bank credit).

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MODERN AUTHORITIES ON MONEY

11. To understand what occurred between Plaintiff and Defendants concerning the

alleged loan of money or, more accurately, credit, it is helpful to review a modern Federal Reserve description of a bank's lending process. See, David H. Friedman, MONEY AND BANKING (4th ed. 1984)(apparently already introduced into this case): "The commercial bank lending process is similar to that of a thrift in that the receipt of cash from depositors increases both its assets and its deposit liabilities, which enables it to make additional loans and investments. . . . When a commercial bank makes a business loan, it accepts as an asset the borrower's debt obligation (the promise to repay) and creates a liability on its books in the form of a demand deposit in the amount of the loan." (Consumer loans are funded similarly.) Therefore, the bank's original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books and a corresponding increase equal to the value of the asset on the liability side of its books. This would show that the bank received the customer's signed promise to repay as an asset, thus monetizing the customer's signature and creating on its books a liability in the form of a demand deposit or other demand liability of the bank. The bank then usually would hold this demand deposit in a transaction account on behalf of the customer. Instead of the bank lending its money or other assets to the customer, as the customer reasonably might believe from the face of the Note, the bank created funds for the customer's transaction account without the customer's permission, authorization, or knowledge and delivered the credit on its own books representing those funds to the customer, meanwhile alleging that the bank lent the customer money. If Plaintiff's response to this line of argument is to the effect that it acknowledges that it lent credit or issued credit instead of money, one might refer to Thomas P. Fitch, BARRON'S

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BUSINESS GUIDE DICTIONARY OF BANKING TERMS, "Credit banking," 3. "Bookkeeping entry representing a deposit of funds into an account." But Plaintiff's loan agreement apparently avoids claiming that the bank actually lent the Defendants money. They apparently state in the agreement that the Defendants are obligated to repay Plaintiff principal and interest for the "Valuable consideration (money) the bank gave the customer (borrower)." The loan agreement and Note apparently still delete any reference to the bank's receipt of actual cash value from the Defendants and exchange of that receipt for actual cash value that the Plaintiff banker returned.

12. According to the Federal Reserve Bank of New York, money is anything that has value that banks and people accept as money; money does not have to be issued by the government. For example, David H. Friedman, I BET YOU THOUGHT. . . . 9, Federal Reserve Bank of New York (4th ed. 1984)(apparently already introduced into this case), explains that banks create new money by depositing IOUs, promissory notes, offset by bank liabilities called checking account balances. Page 5 says, "Money doesn't have to be intrinsically valuable, be issued by government, or be in any special form. . . ."

13. The publication, Anne Marie L. Gonczy, MODERN MONEY MECHANICS 7-33, Federal Reserve Bank of Chicago (rev. ed. June 1992)(apparently already introduced

into this case), contains standard bookkeeping entries demonstrating that money ordinarily is recorded as a bank asset, while a bank liability is evidence of money that a bank owes. The bookkeeping entries tend to prove that banks accept cash, checks, drafts, and promissory notes/credit agreements (assets) as money deposited to create credit or checkbook money that are bank liabilities, which shows that, absent any right of setoff, banks owe money to persons who deposit money.. Cash (money of

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exchange) is money, and credit or promissory notes (money of account) become money when banks deposit promissory notes with the intent of treating them like deposits of cash. See, 12 U.S.C. Section 1813 (l)(1) (definition of “deposit” under Federal Deposit Insurance Act). The Plaintiff acts in the capacity of a lending or banking institution, and the newly issued credit or money is similar or equivalent to a promissory note, which may be treated as a deposit of money when received by the lending bank.. Federal Reserve Bank of Dallas publication MONEY AND BANKING, page 11, explains that when banks grant loans, they create new money. The new money is created because a new “loan becomes a deposit, just like a paycheck does.” MODERN MONEY MECHANICS, page 6, says, “What they [banks] do when they make loans is to accept promissory notes in exchange for credits to the borrowers’ transaction accounts.” The next sentence on the same page explains that the banks’ assets and liabilities increase by the amount of the loans.

COMMENTARY AND SUMMARY OF ARGUMENT

14. Plaintiff apparently accepted the Defendants’ Note and credit application (money of account) in exchange for its own credit (also money of account) and deposited that credit into an account with the Defendants’ names on the account, as well as apparently issuing its own credit for $95,905.16 to Michigan National Bank for the account of the Defendants. One reasonably might argue that the Plaintiff recorded the Note or credit application as a loan (money of account) from the Defendants to the Plaintiff and that the Plaintiff then became the borrower of an equivalent amount of money of account from the Defendants.

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15. The Plaintiff in fact never lent any of its own pre-existing money, credit, or assets as consideration to purchase the Note or credit agreement from the Defendants. (Robertson Notes: I add that when the bank does the forgoing, then in that event, there is an utter failure of consideration for the “loan contract”.) When the Plaintiff deposited the Defendants’ $400,000 of newly issued credit into an account, the Plaintiff created from $360,000 to $400,000 of new money (the nominal principal amount less up to ten percent or $40,000 of reserves that the Federal Reserve would require against a demand deposit of this size). The Plaintiff received $400,000 of credit or money of account from the Defendants as an asset. GAAP ordinarily would require that the Plaintiff record a liability account, crediting the Defendants’ deposit account, showing that the Plaintiff owes $400,000 of money to the Defendants, just as if the Defendants were to deposit cash or a

payroll check into their account.

16. The following appears to be a disputed fact in this case about which I have insufficient information on which to form a conclusion: I infer that it is alleged that Plaintiff refused to lend the Defendants Plaintiff's own money or assets and recorded a $400,000 loan from the Defendants to the Plaintiff, which arguably was a $400,000 deposit of money of account by the Defendants, and then when the Plaintiff repaid the Defendants by paying its own credit (money of account) in the amount of $400,000 to third-party sellers of goods and services for the account of Defendants, the Defendants were repaid their loan to Plaintiff, and the transaction was complete.

17. I do not have sufficient knowledge of the facts in this case to form a conclusion on the following disputed points: None of the following material facts are disclosed in the credit application or Note or were advertised by Plaintiff to prove that the

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Defendants are the true lenders and the Plaintiff is the true borrower. The Plaintiff is trying to use the credit application form or the Note to persuade and deceive the Defendants into believing that the opposite occurred and that the Defendants were the borrower and not the lender. The following point is undisputed: The Defendants' loan of their credit to Plaintiff, when issued and paid from their deposit or credit account at Plaintiff, became money in the Federal Reserve System (subject to a reduction of up to ten percent for reserve requirements) as the newly issued credit was paid pursuant to written orders, including checks and wire transfers, to sellers of goods and services for the account of Defendants.

CONCLUSION

18. Based on the foregoing, Plaintiff is using the Defendant's Note for its own purposes, and it remains to be proven whether Plaintiff has incurred any financial loss or actual damages (I do not have sufficient information to form a conclusion on this point). In any case, the inclusion of the "lawful money" language in the repayment clause of the Note is confusing at best and in fact may be misleading in the context described above.

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AFFIRMATION

19. I hereby affirm that I prepared and have read this Affidavit and that I believe the foregoing statements in this Affidavit to be true. I hereby further affirm that the basis of these beliefs is either my own direct knowledge of the legal principles and historical facts involved and with respect to which I hold myself out as an expert or statements made or documents provided to me by third parties whose veracity I reasonably assumed.

Further the Affiant sayeth naught.

At Chagrin Falls, Ohio

December 5, 2003 _____

WALKER F. TODD (Ohio bar no. 0064539)
Expert witness for the Defendants
Walker F. Todd, Attorney at Law
1164 Sheerbrook Drive
Chagrin Falls, Ohio 44022
(440) 338-1169, fax (440) 338-1537
e-mail: westodd@adelphia.net

NOTARY'S VERIFICATION

At Chagrin Falls, Ohio
December 5, 2003

On this day personally came before me the above-named Affiant, who proved his identity to me to my satisfaction, and he acknowledged his signature on this Affidavit in my presence and stated that he did so with full understanding that he was subject to the penalties of perjury.

_____
Notary Public of the State of Ohio

Note: Emphasis added.

Judicial Notice regarding USA Statutory Law

Gradual Insidious Corruption

The daring yet bold and fantastic corruption of the statutes of United States of America is a fascinating topic. It can be shown that this has been going on for more than a century. When the 11th amendment was adopted in 1795, the USA turned into a land without the rule of *the law*. Since then the entire statutory code was encrypted as far as the normal man could see.

Now, in 2010, Rodney Dale Class and David Buess, two men of the land, have broken the code and are pursuing justice as *Private Attorney Generals*. As of April 12th 2010 their claims are before the US Coast Guard and the Attorney General of the USA, Eric Holder.

http://www.rayservers.com/blog/rod-class-fedex-service-to-eric-holder

http://www.rayservers.com/blog/rod-coast-guard-filing---final-version

All this is happening independently of the 50 grand juries that have convened and have begun a process of their own that is detailed on pages 658 *et seq*.

One if by land and two if by sea

Either way the rulers come to present themselves they are in violation of law: The *law of the land* or the *law of the sea*. All the King's attorneys and all the King's men cannot turn looting into law again.

The situation in other countries

Every country upon these *Global Isles* is equally in violation of *the law* and have statutes that clearly initiate coercive force against their people.

Those that sit in ruler-ship want civil war. They need justification for their plunder. The people of America being the people of the most civilized nation on Earth are proceeding according to the law to rid their system of evil. This is the true measure of greatness of a country – its capacity to give birth to those men that shall rid it of tyranny.

The situation at the UNITED NATIONS

When a number of illicit corporations posing as legitimate governments of the so called NATIONS of this world get together and meet in ostentatious surroundings, they have no more authority to declare war or sanctions against a people than do con artists.

"By what Authority do you come before me?"

Joseph Ray Sundarsson

We proceed in this chapter to present the Judicial Notice that has the courts in a tizzy.

IN THE COURT OF

Petitioner CASE#_____

Vs JUDGE_____

_____

Plaintiff

JUDICIAL NOTICE; NOTICE TO THE ADMINISTRATIVE COURT, ALL COURTS ARE OPERATING UNDER (1) TRADING WITH THE ENEMY ACT AS CODIFIED IN TITLE 50 USC, (2) TITLE 28 USC, CHAPTER 176, FEDERAL DEBT COLLECTION PROCEDURE, AND (3) FED.R.CIV.P. 4(j) UNDER TITLE 28 USC §1608, MAKING THE COURTS "FOREIGN STATES" TO THE PEOPLE BY CONGRESSIONAL MANDATE & IN VIOLATION OF ADMINISTRATIVE PROCEDURE, JUDICIAL PROCEDURES (4) OBLIGATION & CONTRACTUAL VIOLATION BY PARTIES UNDER PRIVATE CONTRACT TO WE THE PEOPLE FOR PAY

STATEMENT OF ISSUES

by: _____agent
Third Party

ADMINISTRATIVE NOTICE

:* *63C Am.Jur.2d, Public Officers and Employees, §247* "As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. [1] Furthermore, the view has been expressed that all public officers, within whatever branch
and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. [2] That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves. [3] and owes a fiduciary duty to the public. [4] It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. [5] Furthermore, it has been stated that any enterprise undertaken by the public official who tends to weaken public confidence and undermine the sense of security for individual rights is against public policy. Fraud in its elementary common law sense of deceit-and this is one of the meanings that fraud bears [483 U.S. 372] in the statute. See United States v. Dial, 757 F.2d 163, 168 (7th Cir1985) includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him and
if he deliberately conceals material information from them, he is guilty of fraud. McNally v United States 483 U.S. 350 (1987)

Texas Penal Code Sec. 1.07. DEFINITIONS. (a) In this code:

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(24) "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(30) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

1

THE COUNTY OF, _____, INC.

THE STATE OF, _____, INC.

THE UNITED STATES, INC.

Re: Alphanumeric Code E.I.N. or T.I.N. OR CASE # ----------

JUDICIAL NOTICE: NOTICE TO THE ADMINISTRATIVE COURT, ALL COURTS ARE OPERATING UNDER (1) TRADING WITH THE ENEMY ACT AS CODIFIED IN TITLE 50 USC, (2) TITLE 28 USC, CHAPTER 176, FEDERAL DEBT COLLECTION PROCEDURE, AND (3) FED.R.CIV.P. 4(j) UNDER TITLE 28 USC §1608, MAKING THE COURTS "FOREIGN STATES" TO THE PEOPLE BY CONGRESSIONAL MANDATE AND IN VIOLATION OF ADMINISTRATIVE PROCEDURE, JUDICIAL PROCEDURES

(4) OBLIGATION & CONTRACTUAL VIOLATION BY PARTIES UNDER PRIVATE CONTRACT TO WE THE PEOPLE FOR PAY

"IT IS THE DUTY OF THE COURT TO DECLARE THE MEANING OF WHAT IS WRITTEN, AND NOT WHAT WAS INTENDED TO BE WRITTEN. J.W. Seavey Hop Corp. v. Pollock, 20 Wn.2d 337,348-49, 147 P.2d 310 (1944), cited with approval in Berg v. Hudesman, 115 Wn2d at 669.

NOW, COMES _____Petitioner as of Right to challenge and **set straight** the jurisdiction of the Court on error of conviction / allegation by Plaintiff **or** Defendant, in violation of Constitutionally-Protected Rights, Due Process violation, Administrative Procedures violation, Judicial Procedures violation, Foreign State violation, violation of the Trading with the Enemy Act and violation of the Federal Debt Collection Procedure under 28 USC chapter 176.

People Pay For Honest Service

ISSUE ONE: PUBLIC OFFICIALS UNDER CONTRACT AS PER THE CONSTITUTION AND STATUTORY LAW

Those holding Public Office under the Constitution and Statutory Law have a WRITTEN contract with *We The People.* The contract clearly states there is compensation for the services. This compensation is for "Honest Service" as per WRITTEN contract / trust / charter, or whatever phrase that is used for the job position serving *We The People.* No one can hold such a position of trust without meeting the qualifications as found in the Statutes at Large; Oaths of Offices, and within the Constitution, Article VI clause 3: "The Senators and Representatives

before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or Public Trust under the United States." In no place does the Constitution allow pay over and above the set compensation. Any other remuneration is **dishonest service**, and not part of the original WRITTEN contract *We The People.*

The federal statutes also address pay allotment. Federal and State funding and grants give allotment to all public offices. When the people have provided compensation to the public officials and then are further charged for services which have already received compensation, and then fail to get remedy, this becomes Honest Services fraud upon the people. When public offices sell their position for credit standing while receiving compensation from the people, this constitutes Honest Services fraud. When public officials use their public position to aid any other agency or department in order to enhance their own revenue, this is fraud, and to receive federal or grant funding in addition to their pay violates Honest Service. Any public official that receives funding in addition to their own compensation under the Constitution would be deemed to have overthrown a Constitutional form of government. Below are listed the foundations of public office.

The Petitioner well reminds the Court under Article III section 2 also deal in contract law. When the Eleventh was passed not only was judicial power restricted so was the law of contract, your offices comes now under common law private contract to the people under commerce condition to pay.

Article I Section 6 clause 1

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Article II section 1 clause 7

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Article III section 1 clause 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 behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 55*** > ***SUBCHAPTER I***

§5507. Officer affidavit; condition to pay

An officer required by section 3332 of this title to file an affidavit may not be paid until the affidavit has been filed.

TITLE 5 > ***PART III*** > ***Subpart B*** > ***CHAPTER 33*** > ***SUBCHAPTER II***

§3332. Officer affidavit; no consideration paid for appointment

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or

hope of receiving assistance in securing the appointment.

TITLE 5 > ***PART III*** > ***Subpart B*** > ***CHAPTER 33*** > ***SUBCHAPTER II***

§3331. Oath of office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

TITLE 5 > ***PART III*** > ***Subpart B*** > ***CHAPTER 33*** > ***SUBCHAPTER II***

§3333. Employee affidavit; loyalty and striking against the Government

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.
(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title.

TITLE 5 > ***PART III*** > ***Subpart F*** > ***CHAPTER 73*** > ***SUBCHAPTER II***

§7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—
(1) advocates the overthrow of our constitutional form of government;
(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;
(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

TITLE 18 > ***PART I*** > ***CHAPTER 93*** >

§1918. Disloyalty and asserting the right to strike against the Government

Whoever violates the provision of section 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he -

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia; shall be fined under this title or imprisoned not more than one year and a day, or both.

TITLE 18 > ***PART I*** > ***CHAPTER 63***

§1346. Definition of "scheme or artifice to defraud"

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

TITLE 10 > ***Subtitle A*** > ***PART I*** > ***CHAPTER 15***

§333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are

unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or **(2)** opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

EXAMPLE OF STATE FEES:

RULES OF THE DISTRICT COURTS OF THE STATE OF NEW HAMPSHIRE

CIVIL RULES
Rule 3.3. Court fees
(I) Fees

(A) Original Entries:

Civil Writ of Summons or Counterclaim (including set-off, recoupment, cross-claims and third-party claims) $ 130.00
Replevin $ 120.00
Landlord/Tenant entry $ 100.00
Registration of Foreign Judgment $ 150.00
Small Claims Entry and Counterclaim, $5000 or less (including set-off, recoupment, cross-claims and third-party claims) $72.00
Small Claims Transfer Fee $ 108.00
Small Claims Entry and Counterclaim, $5001 to $7500 (including set-off, recoupment, cross-claims and third-party claims) $ 127.00

(B) General and Miscellaneous

Motion for Periodic PaymentS $ 25.00
Petition to annul criminal record $ 100.00
Original writ $ 1.00
Writ of Execution $ 25.00
Petition for Ex Parte Attachment, or Writ of Trustee Process $ 25.00
Reissued Orders of Notice $ 25.00
Application to Appear *Pro Hac Vice* $ 225.00

(C) Certificates & Copies

Certificate of Judgment $ 10.00
Exemplification of Judgment $ 25.00

Certified Copies $ 5.00
All copied material (except transcripts) $ .50/page
Computer Screen Printout $ .50/page

(II) Surcharge

Pursuant to RSA 490:26-a, II, the sum of $25.00 shall be added to each civil filing fee set forth in paragraph (I)(A) above, except for the following types of cases which pursuant to RSA 490:26-a, II(b) are exempt from the surcharge:
(III) Records Research Fees
(A) Records Research Fees. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth. A fee of $20 per name will be assessed per name for up to 5 names. Additional names will be assessed $5 per name. Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.

(B) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

FEDERAL OFFICIALS

Table 1. Salaries of Federal Officials
Position Jan. 2003 Jan. 2004 Jan. 2005
Legislative Branch
Vice President of the United States (President of the Senate) $198,600 $203,000 $208,100

Speaker of the House of Representatives 198,600 203,000 208,100

President Pro Tempore of the Senate 171,900 175,700 180,100

Majority and Minority Leaders — House and Senate 171,900 175,700 180,100

Senators, Representatives, Resident Commissioner of Puerto Rico, and Delegates 154,700

158,100 162,100

Judicial Branch
Chief Justice of the United States $198,600 $203,000 $208,100

Associate Justices of the Supreme Court 190,100 194,300 199,200

Judges, U.S. Courts of Appeal 164,000 167,600 171,800

Judges, U.S. Court of Appeals for the Armed

Services 164,000 167,600 171,800

Judges, U.S. District Courts 154,700 158,100 162,100

Judges, United States Court of Federal Claims 154,700 158,100 162,100

Judges, United States Court of International

Trade 154,700 158,100 162,100

Judges, Tax Court of the United States 154,700 158,100 162,100

Judges, U.S. Court of Appeals for Veterans

Claims 154,700 158,100 162,100

Bankruptcy Judges 142,300 145,500 149,132

Magistrate Judges 142,300 145,500 149,132

Executive Branch

President of the United States a $400,000 $400,000 $400,000

Executive Schedule

Level I: Cabinet-level officials $171,900 $175,700 $180,100

Level II: Deputy secretaries of departments, secretaries of military departments, & heads of major agencies 154,700 158,100 162,100

Level III: Under secretaries of departments & heads of middle-level agencies 142,500 145,600 149,200

Level IV: Assistant secretaries & general counsels of departments, heads of minor agencies, members of certain boards & commissions 134,000 136,900 140,300

Level V: Administrators, commissioners, directors, & members of boards, commissions, or units of agencies 125,400 128,200 131,400

Clerk of Court

CLERK OF COURT: United States District Court, Southern District of New York. Manhattan, New York City, NY. Salary: $174,000 (2010).

CLERK OF COURT: United States Bankruptcy Court, Eastern District of California. Sacramento, CA. Salary: $142,783 - $174,000 (2010).

COURT CLERK 1: Second Judicial District Court. Washoe County, NV. **Sa**lary: $26,332 - $55,577 (2010).

CLERK OF COURT: United States Court of Appeals, Eleventh Circuit. Atlanta, GA. Salary: $156,734 - $162,900 (2009).

CLERK OF DISTRICT COURT II: North Dakota Court System. Fargo, ND. Salary: $4,678 monthly starting salary with an increase to $4,871 monthly upon successful completion of probationary period (2009).

CLERK OF COURT: United States Bankruptcy Court, Central District of California. Los Angeles, California. Salary: $167,258 - $174,000 (2009).

CLERK OF COURT: United States Court of Appeals, Fifth Circuit. New Orleans, LA. Salary: $150,533 - $163,389 (2009).

ASSISTANT CLERK OF COURT: Office of Court Administration, Second Judicial District Court. Reno, Nevada. Salary: $71,614 - $103,854. (2009).

CLERK OF THE COURT: United States District and Bankruptcy Court, District of Idaho. Boise, Idaho.

CASE INITIATION CLERK: Eleventh Circuit, United States Court of Appeals, Atlanta GA.. Salary: $35,161-$48,545. (2009)

CLERK OF COURT: U.S. Bankruptcy Appellate Panel, 9th Circuit. Pasadena, CA. Salary: $105,566 - $137,242; $105,566 - $137,242. (2009)

DEPUTY COURT EXECUTIVE OFFICER 2: Bernalillo County Metropolitan Court, Administration Division, Human Resource Division. Albuquerque, NM. Salary: $59,290 - $74,112/annually DOE. (2009)

CLERK OF THE SUPREME COURT: New Jersey Judiciary. NJ. Salary: $104,010 - $137,821. (2009)

CLERK OF THE COURT: District Court of Oregon, Portland OR. Salary: $158,267 – 171,784. (2009)

CLERICAL ASSISTANT: Office of Attorney Ethics, Supreme Court of NJ, AOC. Ewing, NJ. Salary: $18.00/hour. (2009)

RECORDS CLERK: United States District Court, Northern District of Ohio; Cleveland, OH. Salary: $31,644 - $51,424. (2009)

CLERK OF THE DISTRICT COURT II: North Dakota Court System; Fargo, ND. .. Salary: $4,678 monthly. (2009)

CLERK OF THE BANKRUPTCY COURT: Eastern District of Wisconsin, U.S. Bankruptcy Court. Milwaukee, Wisconsin. **Salary**: $111,349 - $149,978. (2008)

CLERK OF COURT: U.S. District Court for the Western District of Michigan, Grand Rapids... Salary**:** $126,618 - $157,999 (2008)

CLERK OF CIRCUIT COURT: Circuit Court, Eau Clair County, WI. TSalary: $59,172 - $60,651 (2008)

CLERK OF COURT: United States Bankruptcy Court, District of Arizona, Phoenix, AZ.. Salary: $109,450 - $158,500 (2008)

CLERK OF THE BANKRUPTCY COURT: United States Bankruptcy Court, Eastern District of Wisconsin, Milwaukee, WI.. Salary: $111,349-$149,978. (2008)

CLERK OF THE SUPREME JUDICIAL COURT: State of Maine Judicial Branch, Portland, ME. Salary: $50,533-$65,818. (2007)_

CLERK OF THE COURT II: Second District Juvenile Court, Salt Lake City, UT.. Salary: $20.06 – $24.92 per hour. (2007)

CLERK OF COURT: United States Bankruptcy Court, Eastern District of New York.. Salary: $154,600 - $165,200 (2007)

STAFF ATTORNEY (Trial Court Law Clerk): Salary: $43,403.40 (2007)

DISTRICT COURT ADMINISTRATOR/CLERK OF THE COURT: Second Judicial District Court, Washoe County, (work in Reno, Nevada) Salary: $80,122 - $124,218 (2007)

CLERK OF COURT III: Salida, CO... Salary: $3,494 - $4,683 / Month. (2007)

COUNTY CLERK: Whatcom County, Bellingham, WA. Salary: $67,500 - $93,168. (2006)

COURT EXECUTIVE OFFICER: Superior Court of California, County of Sacramento.. Salary: Commensurate with experience. (2006)

CLERK OF COURT: U.S. Bankruptcy Court, Northern District of Alabama.. Salary: $138,685 - $150,664. (2006)

CLERK OF THE COURT: U.S. District Court, Eastern District of Wisconsin. Salary: $141,422 - $153,637. (2006)_

CLERK OF THE COURT IV: Anchorage, Alaska. rectly to the Presiding Judge. Perform other duties as assigned by the ACA or Presiding Judge. Salary: $5,162.00 monthly. (2006)

Chief Deputy Clerk of Court

CHIEF DEPUTY CLERK: United States Court of Appeals, Eleventh Circuit. Atlanta, GA. **Qualifications:** Applicants must possess a minimum of six years of progressively responsible managerial or administrative experience, three of which must have involved extensive management responsibility, preferably in an appellate or federal court environment. Salary: $139,383 - $165,300 (2010).

CHIEF DEPUTY CLERK (TYPE II): United States Bankruptcy Court, Western District of Washington. Seattle, WA. . Salary: $59,978 - $162,900 (2009).

CHIEF DEPUTY CLERK: Superior Court of the Virgin Islands, St. Thomas-St. John District. St. Thomas and St. Croix, Virgin Islands.. Salary: $62,085 - $101,733 (2010).

DEPUTY DIRECTOR FOR CLERK OF SUPERIOR COURT: Maricopa County, AZ.. Salary: $93,600 to $108,160 (2009).

Massachusetts Court

4.600 Classification and Wage Compensation Plan

A. The Plan

The Chief Justice for Administration and Management has established a system-wide position Classification and Wage Compensation Plan (Plan) in which positions have corresponding job descriptions and are evaluated and classified according to objective criteria using a weighted factor point methodology. This methodology allows for the evaluation of positions on the basis of such things as duties, responsibilities, and qualifications required for each position. Once evaluated, positions are then classified into compensation levels with corresponding salary ranges based upon the total of the weighted factor points. The Plan and its methodology are flexible and can respond to the operational needs of the Trial Court. Within this framework, positions and classification levels can be added or adjusted.

B. Responsibilities

Department heads are responsible for maintaining the correct classification of their employees at all times. Department heads are encouraged to contact the Human Resources Department before changing an employee's duties and responsibilities to see if an adjustment in position classification is appropriate. Following promotions, department heads are responsible for ensuring that the duties and responsibilities of the promoted employee are consistent with the employee's new position title and job description. The Human Resources Department has the ultimate responsibility for the administration of the Plan consistent with the policies established by the Chief Justice for Administration and Management. The procedures of this section may be subject to other requirements as set forth from time to time by the Chief Justice for Administration and Management.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 55*** > ***SUBCHAPTER IV***

§ 5531. Definitions

For the purpose of section 5533 of this title—

(1) "member" has the meaning given such term by section 101 (23) of title 37;

(2) "position" means a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a nonappropriated fund instrumentality under the jurisdiction of the armed forces) or in the government of the District of Columbia;

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 53*** > ***SUBCHAPTER I***

§ 5306. Pay fixed by administrative action

(A) employees in the legislative, executive, and judicial branches of the Government of the United States (except employees whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives) and of the government of the District of Columbia, whose rates of pay are fixed by administrative action under law and are not otherwise adjusted under this subchapter;

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 53*** > ***SUBCHAPTER I***

§ 5307. Limitation on certain payments

1) Except as otherwise permitted by or under law, or as otherwise provided under subsection (d), no allowance, differential, bonus, award, or other similar cash payment under this title may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee for service performed in such calendar year as an employee in the executive branch (or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 53*** > ***SUBCHAPTER VII***

§ 5372. Administrative law judges

(A) There shall be 3 levels of basic pay for administrative law judges (designated as AL–1, 2, and 3, respectively), and each such judge shall be paid at 1 of those levels, in accordance with the provisions of this section.

(2) The Office of Personnel Management shall determine, in accordance with procedures which the Office shall by regulation prescribe, the level in which each administrative-law-judge position shall be placed and the qualifications to be required for appointment to each level.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 53*** > ***SUBCHAPTER VII***

§ 5374. Miscellaneous positions in the executive branch

The head of the agency concerned shall fix the annual rate of basic pay for each position in the executive branch specifically referred to in, or covered by, a conforming change in statute made by section 305 of the Government Employees Salary Reform Act of 1964 (78 Stat. 422), or other position in the executive branch for which the annual pay is fixed at a rate of $18,500 or more under special provision of statute enacted before August 14, 1964, which is not placed in a

level of the Executive Schedule set forth in subchapter II of this chapter, at a rate equal to the pay rate of a grade and step of the General Schedule set forth in section 5332 of this title. The head of the agency concerned shall report each action taken under this section to the Office of Personnel Management and publish a notice thereof in the Federal Register, except when the President determines that the report and publication would be contrary to the interest of national security.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 55*** > ***SUBCHAPTER IV***

§ 5533. Dual pay from more than one position; limitations; exceptions

(a) Except as provided by subsections (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 55*** > ***SUBCHAPTER IV***

§ 5536. Extra pay for extra services prohibited

An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance.

TITLE 5 > ***PART III*** > ***Subpart D*** > ***CHAPTER 55*** > ***SUBCHAPTER IV***

§ 5535. Extra pay for details prohibited

(a) An officer may not receive pay in addition to the pay for his regular office for performing the duties of a vacant office as authorized by sections 3345–3347 of this title.

(b) An employee may not receive—

(1) additional pay or allowances for performing the duties of another employee; or

(2) pay in addition to the regular pay received for employment held before his appointment or designation as acting for or instead of an occupant of another position or employment.

This subsection does not prevent a regular and permanent appointment by promotion from a

lower to a higher grade of employment.

TITLE 28 > ***PART I*** > ***CHAPTER 21***

§ 455. Disqualification of justice, judge, or magistrate judge

(a)Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

U.S. Department of Justice FY 2010 Budget Request

PRISONS AND DETENTION

+ $386 million in Enhancements

FY 2010 Overview

The FY 2010 Budget provides $6.1 billion for the Bureau of Prisons (BOP) and $1.4 billion for the Office of the Federal Detention Trustee (OFDT) to ensure that sentenced criminals and detainees are housed in facilities that are safe, humane, cost-efficient, and appropriately secure. The budget includes $386 million in program increases for BOP and OFDT.

As a result of successful law enforcement policies targeting terrorism, immigration offenses, violent crime, drug crime, and other major crimes, the number of criminal suspects appearing in federal court continues to grow at a rapid pace, as does the number of individuals ordered detained and ultimately incarcerated. BOP and OFDT have limited flexibility in how they perform these important tasks as their activities are primarily governed by statue. BOP and OFDT continue to protect society by confining offenders in the controlled the environments of prisons and contract- or community-based facilities. BOP also provides work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens and reduce the likelihood of recidivism.

The FY 2010 Budget provides funding for an average daily detention population of nearly 61,000, increases detention bed space in the Southwest Border region, and provides for prisoner transportation and medical costs. The BOP operates 114 federal prisons and contracts for low security prison beds to confine approximately 205,000 inmates in FY 2009. BOP projects that the federal prison population will increase by approximately 4,500 in FY 2010. Therefore, the FY 2010 budget also

expands federal prison capacity by funding the build-out and activation of two new medium security prisons (over 2,400 prison beds). It also provides for medical care and other operational increases, contract bed space, and over 1,000 additional correctional workers to help manage the larger inmate population.

Bureau of Prisons (BOP): $243 million

The BOP ensures that sentenced criminals are removed from society and housed in prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure. An appropriately trained and equipped staff is one of the primary means of accomplishing this task.

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- **Activation of FCI Mendota, CA (1,152 Beds) and FCI McDowell, WV (1,280 Beds): $102.1 million and 737 positions (350 correctional officers)** to begin the process of equipping and staffing newly constructed prisons. When fully operational, these medium security facilities will house approximately 2,400 inmates. This enhancement funds constructive program opportunities for federal offenders, promoting an atmosphere conducive to positive change while they are incarcerated and better transition upon release. There are no current services for this initiative.

- **BOP Staffing Increase: $70.6 million** for increased BOP correctional officer staffing to effectively manage the growing inmate population at BOP institutions. BOP adheres to core values, which include correctional excellence. BOP staff are correctional workers first, and committed to the highest level of performance. However, operating the crowded Federal Prison System without commensurate personnel increases has placed severe demands on existing staff. Currently, 88 percent of the authorized correctional officer positions are filled. Insufficient staffing levels can seriously compromise the security of our federal prisons, endangering life and property. Current services for all of BOP staffing funded by the Salaries and Expenses appropriation is $3.6 billion.

- **New and Existing Contract Beds: $53.4 million** to procure 1,000 new contract beds ($27 million) and to pay for inflationary increases built into existing contracts ($26.4 million). The FY 2010 request provides full year funding for the 1,000 contract beds. Current services for contract beds is $798 million.
- **Medical Increases: $16.7 million** to pay for inflationary increases in medical costs ($16.7 million) needed to operate 115 federal institutions that are expected to house 171,524 offenders in FY 2010. On average in FY 2009, BOP will expend more than $2,700 per inmate annually for medical costs. (Note that the funding for medical costs for the inmates that will be housed in the two prisons that will be activated in FY 2010 is included in the $102.1 million

Office of Federal Detention Trustee (OFDT): $143.2 million

OFDT is responsible for providing secure detention space to individuals who have been arrested and await final disposition of their cases.

- **Detainee Housing, Medical and Transportation: $98.6 million** is provided in the budget to ensure that OFDT is able to pay for the housing, medical, and transportation costs for its detainee population. Recently, contract confinement costs have been increasing at a considerable rate. In addition, in many areas of the country, bed space is scarce, which has resulted in premium prices for existing beds. Consequently, OFDT is forced to pay an expensive premium in order to retain the beds for anticipated growth. The FY 2010 President's Budget will support the anticipated average daily detainee population of 60,575. Current service resources are $928.7 million.

• **Southwest Border and Immigration Enforcement: $44.6** million is provided for costs associated with prisoner detention and care for Southwest Border prosecutorial initiatives. This includes $371,000 to support increased human capital needs for office operations. This program increase is to accommodate the increased housing requirement for criminal aliens apprehended along the southwest border and prosecuted in U.S. district courts during FY 2010. It will support detention housing for 7,000 offenders apprehended by DHS and processed by USMS. Current services for this initiative is 366.7 million.

New Investment Summary (Amount in $000)

Bureau/Initiative	Positions	Correction Officers	Amount
Bureau of Prisons	**737**	**350**	**$242,757**
Activation of FCI Mendota, CA (1,152 beds) (2/2010) and FCI McDowell, WV (1,280 beds) (11/2009)	737	350	$102,120
BOP Staffing Increase	$70,568		
Contract Beds and Contract Bed Wage and Price Increase	$53,384		
Medical Increases	$16,685		
Office of Federal Detention Trustee	**4**	**$143,227**	
Detainee Housing, Medical, and Transportation	$98,648		
Southwest Border and Immigration Enforcement	4	$44,579	
Grand Total, New Investments	**741**	**350**	**$385,984**

Crimes and Criminal Procedure – 18 USC Sec. 4121. Federal Prison Industries; board of directors

"Federal Prison Industries", a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

Crimes and Criminal Procedure - 18 USC Sec. 4122. Administration of Federal Prison Industries

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the production of commodities for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

TITLE 18 > ***PART III*** > ***CHAPTER 307***

§4127 Prison Industries report to Congress

The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section 4129 (a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.

Federal Prison Industries

Summary

UNICOR, the trade name for Federal Prison Industries, Inc. (FPI), is a government-owned corporation that employs offenders incarcerated in correctional facilities under the Federal Bureau of Prisons (BOP). UNICOR manufactures products and provides services that are sold to executive agencies in the federal government. FPI was created to serve as a means for managing, training, and rehabilitating inmates in the federal prison system through employment in one of its
industries. The question of whether UNICOR is unfairly competing with private businesses, particularly small businesses, in the federal market has been and continues to be an issue of debate. The debate has been affected by tensions between competing interests that represent two social goods — the employment and rehabilitation of offenders and the need to protect jobs of law abiding citizens. At the core of the debate is UNICOR's preferential treatment over the private sector. UNICOR's enabling legislation and the Federal Acquisition Regulation require
federal agencies, with the exception of the Department of defence (DOD), to procure *products* offered by UNICOR, unless authorized by UNICOR to solicit bids from the private sector. While federal agencies are not required to procure *services* provided by UNICOR they are encouraged to do so. It is this "mandatory source clause" that has drawn controversy over the years and is the subject of current legislation. Of the eligible inmates held in federal prisons, 19,720 or 18% are employed by UNICOR. By statute, UNICOR must be economically self-sustaining, thus it does not receive funding through congressional appropriations. In FY2005, FPI generated $765 million in sales. UNICOR uses the revenue it generates to purchase raw material and equipment; pay wages to inmates and staff; and invest in expansion of its facilities. Of the revenues generated by FPI's products and services, approximately 74% go toward the purchase of raw material and equipment; 20% go toward staff salaries; and 6% go toward inmate salaries.
In recent years, the Administration has made several efforts to mitigate the competitive advantage UNICOR has over the private sector. Going beyond the Administration's efforts,

Congress has taken legislative action to lessen the adverse impact FPI has caused on small businesses. For example, in 2002, 2003, and 2004, Congress passed legislation that modified FPI's mandatory source clause with respect to procurements made by the Department of defence and the Central Intelligence Agency (CIA); in 2004, Congress passed legislation limiting funds appropriated for FY2004 to be used by federal agencies for the purchase of products or services
manufactured by FPI under certain circumstances. Legislation introduced in the 110th Congress would address many of the same issues as legislation in the 109th Congress. Like legislation in the 109th Congress, legislation introduced in the 110th Congress, S. 1407, S. 1547, and S. 1548, would eliminate the requirement that some or all executive agencies purchase products or services from FPI in most cases. This report will be updated as warranted.

As the federal prison system was established in the first decade of the 20th century, factories were constructed within the prisons to manufacture products needed by the federal government. Labor organizations had been making arguments against prison industries since the late 1800s due to the poor conditions in which inmates were working and their perception that the industries were taking jobs away from law abiding citizens. The Depression of the 1930s and the resulting high levels of unemployment crystalized the debate. UNICOR was established in 1934 under
an executive order issued by President Franklin Delano Roosevelt.[9] The purpose of UNICOR was to consolidate the operations of all federal prison industries in order to provide training opportunities for inmates and "diversify the production of prison shops so that no individual industry would be substantially affected."

UNICOR is economically self-sustaining and does not receive funding through congressional appropriations. In FY2006, FPI generated $718 million in sales.[17] UNICOR uses the revenue it generates to purchase raw material and equipment; pay wages to inmates and staff; and invest in expansion of its facilities. Of the revenues generated by FPI's products and services, approximately 77% go toward the purchase of raw material and equipment; 18% go toward staff salaries; and 5% go toward inmate salaries. Inmates earn from $0.23 per hour up to a maximum of $1.15 per hour, depending on their proficiency and educational level, among other things.
Under BOP's Inmate Financial Responsibility Program, all inmates who have court ordered financial obligations must use at least 50% of their FPI income to satisfy those debts, which accounted for $2.7 million in FY2005; the rest may be retained by the inmate.

28 CFR 42.201 - TITLE 28--JUDICIAL ADMINISTRATION

CHAPTER I--DEPARTMENT OF JUSTICE

PART 42--NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart D--Nondiscrimination in Federally Assisted Programs--Implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

[[Page 695]]

815(c) of the Justice System Improvement Act of 1979 (42 U.S.C. 3789d(c); title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; and title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under either the Justice System Improvement Act or the Juvenile Justice Act by the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics. These regulations also implement Executive Order 12138, which requires all Federal agencies awarding financial assistance to take certain steps to advance women's business enterprise.

ISSUES TWO: CURE FOR CONTRACTUAL VIOLATION

The Petitioner set forth the cure for CONTRACTUAL violation against the party to whom made contract with the people who hold such public office as found under the UNITED STATES Constitution Fourteen Amendment section 3 to public offices. Section 4 allow the Petitioner the collection of public debt under bounty ” Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and

void."

The Petitioner set forth such a bounty against the private party(s) to who made the contract agree with the people under condition to pay clause in order to hold such public office under section 3 of the 14th amendment in the amount of $150 million dollar for any such CONTRACTUAL violation against the public debt plus any amount of public debt accrued by that private party(s) in such a CONTRACTUAL agreement between them and the Petitioner at such time and place that is agree upon to conduct such CONTRACTUAL agreement. Such public debt shall then pay to the Petitioner upon the conclusion of such agreement by the party(s) entering to such CONTRACTUAL agreement at the time and place specified. If at the time and place specified no such agreement can be agreed to as to the public debt and an error was made by said parties the Petitioner will that of sweat equity of $1500 dollars for appearance fee and $250 per hour or any part of an hour spend their after.

ISSUE THREE: OATH OF OFFICE MAKES PUBLIC OFFICIALS "FOREIGN"

1. Those holding Federal or State public office, county or municipal office, under the Legislative, Executive or Judicial branch, including Court Officials, Judges, Prosecutors, Law Enforcement Department employees, Officers of the Court, and etc., before entering into these public offices, are required by the U.S. Constitution and statutory law to comply with Title 5 USC, Sec. §3331, "Oath of office." State Officials are also required to meet this same obligation, according to State Constitutions and State statutory law.

2. All oaths of office come under 22 CFR, Foreign Relations, Sections §§92.12 - 92.30, and all

who hold public office come under Title 8 USC, Section §1481 "Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions."

3. Under Title 22 USC, Foreign Relations and Intercourse, Section §611, a Public Official is considered a foreign agent. In order to hold public office, the candidate must file a true and complete registration statement with the State Attorney General as a foreign principle.

4. The Oath of Office requires the public official in his / her foreign state capacity to uphold the constitutional form of government or face consequences.

> Title 10 USC, Sec. §333, "Interference with State and Federal law"
>
> The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—
>
> > (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.
>
> In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

5. Such willful action, while serving in official capacity, violates Title 18 USC, Section §1918:

> Title 18 USC, Section §1918 "Disloyalty and asserting the right to strike against the government"
>
> Whoever violates the provision of 7311 of title 5 that an individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government; (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

shall be fined under this title or imprisoned not more than one year and a day, or both. and also deprives claimants of "honest services:

Title 18, Section §1346. Definition of "scheme or artifice to defraud"

"For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

and the treaties that placed your public offices in that foreign state under international law and under the United Nation jurisdiction:

49 Stat. 3097; Treaty Series 881 CONVENTION ON RIGHTS AND DUTIES OF STATES

1945 IOIA –That the International Organizations Act of December 29, 1945 (59 Stat. 669; Title 22, Sections 288 to 2886 U.S.C.) the US relinquished every office

TITLE 8 > CHAPTER 12 > SUBCHAPTER I > § 1101
The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states

ISSUE FOUR: JUDGE SERVES AS A DEBT COLLECTOR

6. Judges hold public office under Title 28 USC, Chapter 176, Federal Debt Collection Procedure:

Title 28, Chapter 176, Federal Debt Collection Procedure, Section §3002

As used in this chapter:

(2) "Court" means any court created by the Congress of the United States, excluding the

United States Tax Court.

(3) “Debt” means—

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or (B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

(8) “Judgment” means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt. (15) “United States” means—

(A) a Federal corporation; (B) an agency, department, commission, board, or other entity of the United States; or (C) an instrumentality of the United States.

Title 22 USC, Sec. §286. “Acceptance of membership by United States in International Monetary Fund,” states the following:

The President is hereby authorized to accept membership for the United States in the International Monetary Fund (hereinafter referred to as the "Fund"), and in the International Bank for Reconstruction and Development (hereinafter referred to as the "Bank"), provided for by the Articles of Agreement of the Fund and the Articles of Agreement of the Bank as set forth in the Final Act of the United Nations Monetary and Financial Conference dated July 22, 1944, and deposited in the archives of the Department of State.

8. Title 22 USC, Sec. § 286e-13, “Approval of fund pledge to sell gold to provide resources for Reserve Account of Enhanced Structural Adjustment Facility Trust,” states the following:

The Secretary of the Treasury is authorized to instruct the Fund's pledge to sell, if needed, up to 3,000,000 ounces of the Fund's gold, to restore the resources of the Reserve Account of the Enhanced Structural Adjustment Facility Trust to a level that would be sufficient to meet obligations of the Trust payable to lenders which have made loans to the Loan Account of the Trust that have been used for the purpose of financing programs to Fund members previously in arrears to the Fund.

ISSUE FIVE: NO IMMUNITY UNDER "COMMERCE"

9. All immunity of the United States, and all liability of States, instrumentalities of States, and State officials have been waived under commerce, according to the following US Codes:

Title 15 USC, Commerce, Sec. §1122, "Liability of States, instrumentalities of States, and State officials"

(a) Waiver of sovereign immunity by the United States. The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this Act. (b) Waiver of sovereign immunity by States. Any State, instrumentality of a State or any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity for any violation under this Act.

Title 42 USC, Sec. §12202, "State immunity"

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State

Title 42 USC, Sec. §2000d–7, "Civil rights remedies equalization"

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.

2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance. (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

10. The Administrative Procedure Act of 1946 gives immunity in Administrative Court to the Administrative Law Judge (ALJ) only when an action is brought by the people against a public, agency or corporate official / department. Under Title 5 USC, Commerce, public offices or officials can be sanctioned.

Title 5, USC, Sec. §551:

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;
(B) withholding of relief;
(C) imposition of penalty or fine;
(D) destruction, taking, seizure, or withholding of property;
(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
(F) requirement, revocation, or suspension of a license; or
(G) taking other compulsory or restrictive action;

11. Justice is required to be BLIND while holding a SET OF SCALES and a TWO-EDGED SWORD. This symbolizes true justice. The Administrative Procedure Act of 1946 (60 stat 237) would allow the sword to cut in either direction and give the judge immunity by holding his own court office accountable for honest service fraud, obstruction of justice, false statements, malicious prosecution and fraud placed upon the court. Any willful intent to uncover the EYES OF JUSTICE or TILT THE SCALES is a willful intent to deny Due Process, which violates Title 18

USC §1346, "Scheme or Artifice to Defraud," by perpetrating a scheme or artifice to deprive another of the intangible right of honest services. This is considered fraud and an overthrow of a constitutional form of government and the person depriving the honest service can be held accountable and face punishment under Title 18 USC and Title 42 USC and violates Title 28 USC judicial procedures.

12. Both Title 18 USC, Crime and Criminal Procedure, and Title 42 USC, Public Health and Welfare, allow the Petitioner to bring an action against the United States and/or the State agencies, departments, and employees for civil rights violations while dealing in commerce. All public officials are placed under Title10 section 333 while under a state of emergency. (Declared or undeclared War – falls under TWEA.)

ISSUE SIX: COURTS OPERATING UNDER WAR POWERS ACT

13. The Courts are operating under the Emergency War Powers Act. The country has been under a declared "state of emergency" for the past 70 years resulting in the Constitution being suspended (See Title 50 USC Appendix – Trading with the Enemy Act of 1917). The Courts have been misusing Title 50 USC, Sec. §23, "Jurisdiction of United States courts and judges," which provides for criminal jurisdiction over an "**enemy of the state**," whereas, Petitioner comes under Title 50 USC Appendix Application Sec. §21, "**Claims of naturalized citizens as affected by expatriation**" which states the following:

> The claim of any naturalized American citizen under the provisions of this Act [sections

1 to 6, 7 to 39, and 41 to 44 of this Appendix] shall not be denied **on the ground of any presumption of expatriation** which has arisen against him, under the second sentence of section 2 of the Act entitled "An Act in reference to the expatriation of citizens and their protection abroad," approved March 2, 1907, if he shall give satisfactory evidence to the President, or the court, as the case may be, of his uninterrupted loyalty to the United States during his absence, and that he has returned to the United States, or that he, although desiring to return, has been prevented from so returning by circumstances beyond his control.

14. 15 Statutes at Large, Chapter 249 (section 1), enacted July 27 1868, states the following:

PREAMBLE - Rights of American citizens in foreign states.

WHEREAS the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed.

SECTION I - Right of expatriation declared.

THEREFORE, Be it enacted by the Senate of the and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

SECTION II - Protection to naturalized citizens in foreign states.

And it is further enacted, That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native born citizens in like situations and circumstances. SECTION III - Release of citizens imprisoned by foreign governments to be demanded.

And it is further enacted, That whenever it shall be made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful and in the violation of the rights of American citizenship, the President shall

> forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.
>
> Approved, July 27, 1868

15. The Courts and the States are enforcing the following code on American nationals: Title 50 USC Appendix App, Trading, Act, Sec. §4, "Licenses to enemy or ally of enemy insurance or reinsurance companies; change of name; doing business in United States," as a result of the passage of The Amendatory Act of March 9, 1933 to Title 50 USC, Trading with the Enemy Act Public Law No. 65-91 (40 Stat. L. 411) October 6, 1917. The original Trading with the Enemy Act **excluded** the people of the United States from being classified as the enemy when involved in transactions wholly within the United States. The Amendatory Act of March 9, 1933, however, **included the people of the United States as the enemy,** by incorporating the following language into the Trading With The Enemy Act: "**by any person within the United States.**" The abuses perpetrated upon the American people are the result of Title 50 USC, Trading With The Enemy Act, which turned the American people into "enemy of the state."

ISSUE SEVEN: LANGUAGE NOT CLARIFIED

16. Clarification of language:

the Plaintiff _____ has failed to state the meaning or clarify the definition of words. The Petitioner places before the Court legal definitions and terms, along with NOTICE OF FOREIGN STATE STATUS OF THE COURT. This court, pursuant to the Federal Rules of Civil Procedure (FRCP) Rule 4(j), is, in fact and at law, a FOREIGN STATE as defined in Title 28

USC §1602, et. seq., the FOREIGN SOVEREIGN IMMUNITIES ACT of 1976, Pub. L. 94-583 (hereafter FSIA), and, therefore, lacks jurisdiction in the above captioned case. The above-mentioned "real party in interest" hereby demands full disclosure of the true and limited jurisdiction of this court. Any such failure violates 18 USC §1001, §1505, and §2331. This now violates the PATRIOT ACT, Section 800, Domestic terrorism.

17. There are three different and distinct forms of the "United States" as revealed by this case law:

> "The high Court confirmed that the term "United States" can and does mean three completely different things, depending on the context." Hooven & Allison Co. vs. Evatt, 324 U.S. 652 (1945) & *United States v. Cruikshank,* 92 U.S. 542 (1876) & United States v. Bevans, 16 U.S. 3 Wheat. 336 336 (1818)

The Court and its officers have failed to state which United States they represent, since they can represent only one, and it's under Federal Debt Collection Procedure, as a corporation, the United States, Inc., and it's satellite corporations have no jurisdiction vs Complaintant. An American national and a belligerent claimant, Complainant hereby asserts the right of immunity inherent in the 11th amendment: "*The judicial power shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens of any Foreign State*." This court, by definition is a FOREIGN STATE, and is misusing the name of this Sovereign American by placing Complainant's name in all capital letters, as well as by using Complainant's last name to construe Complainant erroneously, as a "person" which is a "term of art" meaning: *a creature of the law, an artificial being, and a CORPORATION or ens legis:*

"*Ens Legis.* L. Lat. A creature of the law; an artificial being, as contrasted with a natural person.

Applied to corporations, considered as deriving their existence entirely from the law." —Blacks Law Dictionary, 4th Edition, 1951.

18. All complaints and suits against such CORPORATION, or *ens legis,* fall under the aforementioned FSIA and service of process must therefore be made by the clerk of the court, under Section 1608(a)(4) of Title 28 USC, 63 Stat. 111, as amended (22 U.S.C. 2658) [42 FR 6367, Feb. 2, 1977, as amended at 63 FR 16687, Apr. 6, 1998], to the Director of the Office of Special Consular Services in the Bureau of Consular Affairs, Department of State, in Washington, D.C., exclusively, pursuant to 22 CFR §93.1 and §93.2. A copy of the FSIA must be filed with the complaint along with "a certified copy of the diplomatic note of transmittal," and, "the certification shall state the date and place the documents were delivered." The foregoing must be served upon the Chief Executive Officer and upon the Registered Agent of the designated CORPORATION or FOREIGN STATE.

19. MUNICIPAL, COUNTY, or STATE COURTS lack jurisdiction to hear any case since they fall under the definition of FOREIGN STATE, and under all related definitions below. Said jurisdiction lies with the "district court of the United States," established by Congress in the states under Article III of the Constitution, which are "constitutional courts" and do not include the territorial courts created under Article IV, Section 3, Clause 2, which are "legislative" courts. *Hornbuckle v. Toombs*, 85 U.S. 648, 21 L.Ed. 966 (1873), (See Title 28 USC, Rule 1101), exclusively, under the FSIA Statutes pursuant to 28 USC §1330.

20. It is an undisputed, conclusive presumption that the above-mentioned real party in interest is a not a CORPORATION, and, further, is not registered with any Secretary of State as a CORPORATION. Pursuant to Rule 12(b)(6), the Prosecuting Attorney has failed to state a claim

for which relief can be granted to the Complaintant, a FATAL DEFECT, and, therefore, the instant case and all related matters must be DISMISSED WITH PREJUDICE for lack of *in personam*, territorial, and subject matter jurisdiction, as well as for improper Venue, as well as pursuant to the 11th amendment Foreign State Immunity.

21. Moreover, the process in the above-captioned case is not "regular on its face."

Regular on its Face -- "Process is said to be "regular on its face" when it proceeds from the court, officer, or body having authority of law to issue process of that nature, and which is legal in form, and contains nothing to notify, or fairly apprise any one that it is issued without authority."

TABLE OF DEFINITIONS

Foreign Court The courts of a foreign state or nation. In the United States, this term is frequently applied to the courts of one of the States when their judgment or records are introduced in the courts of another.

Foreign jurisdiction Any jurisdiction foreign to that of the forum; e.g., a sister state or another country. Also, the exercise by a state or nation jurisdiction beyond its own territory. Long-arm service of process is a form of such foreign or extraterritorial jurisdiction

Foreign laws The laws of a foreign country, or of a sister state. In conflicts of law, the legal principles of jurisprudence which are part of the law of a sister state or nation. Foreign laws are additions to our own laws, and in that respect are called "*jus receptum.*"

Foreign corporation A corporation doing business in one State though chartered or incorporated in another state is a foreign corporation as to the first state, and, as such, is required to consent to certain conditions and restrictions in order to do business in such first state. Under federal tax laws, a foreign corporation is one which is not organized under the law of one of the States or Territories of the United States. I.R.C. § 7701 (a) (5). Service of process on

foreign corporation is governed by the Fed. R. Civ. P. 4 See also Corporation.

Foreign service of process Service of process for the acquisition of jurisdiction by a court in the United States upon a person in a foreign country is prescribed by Fed R. Civ. P. 4 (i) and 28 U.S.C.A. § 1608. Service of process on foreign corporations is governed by Fed. R. Civ. P. 4(d) (3).

Foreign states Nations which are outside the United States. Term may also refer to another state; i.e. a sister state.

Foreign immunity With respect to jurisdictional immunity of foreign states, see 28 USC, Sec. §1602 *et seq*. Title 8 USC, Chapter 12, Subchapter I, Sec. §1101(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.

Profiteering Taking advantage of unusual or exceptional circumstance to make excessive profit; e.g. selling of scarce or essential goods at inflated price during time of emergency or war.

Person In general usage, a human being (i.e. natural person) though by statute the term may include a firm, labor organizations, partnerships, associations, corporations, legal representative, trusts, trustees in bankruptcy, or receivers. National Labor Relations Act, §2(1).

Definition of the term "person" under Title 26, Subtitle F, Chapter 75, Subchapter D, Sec. Sec. §7343 The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs. A **corporation** is a "person" within the meaning of equal protection and due process provisions of the United States Constitution. **Tertius interveniens** A third party intervening; a third party who comes between the parties to a suit; one who interpleads. Gilbert's Forum Romanum. 47.

Writ of error Coram nobis

A common-law writ, the purpose of which is to correct a judgment in the same court in which it was rendered, on the ground of error of fact, for which it was statutes provides no other remedy, which fact did not appear of record, or was unknown to the court when judgment was pronounced, and which, if known would have prevented the judgment, and which was unknown, and could of reasonable diligence in time to have been otherwise presented to the court, unless he was prevented from so presenting them by duress, fear, or other sufficient cause. "A writ of error ***Coram nobis*** is a common-law writ of ancient origin devised by the judiciary, which constitutes a remedy for setting aside a judgment which for a valid reason should never have been rendered." 24 C.J.S., Criminal Law. § 1610 (2004)."The principal function of the **writ of error *Coram nobis*** is to afford to the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered, and which could not have been presented by a motion for a new trial, appeal or other existing statutory proceeding." Black's Law Dictionary., 3rd ed., p. 1861; 24 C.J.S., Criminal Law, § 1606 b., p. 145; *Ford v. Commonwealth*, 312 Ky. 718, 229 S.W.2d 470.At common law in England, it issued from the Court of Kings Bench to a judgment of that court. Its principal aim is to afford the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered. It is also said that at common law it lay to correct purely ministerial errors of the officers of the court.

Furthermore, the above-mentioned "real party in interest" demands the strict adherence to Article IV, section one of the National Constitution so that in all matters before this court, the Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; and to Article IV of the Articles of Confederation, still in force pursuant to Article VI of the National Constitution, so that "Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State," selective incorporation notwithstanding. The *lex domicilii* shall also depend upon the Natural Domicile of the above-mentioned "real party in interest." The *lex domicilii,* involves the "law of the domicile" in the Conflict of Laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

DECLARATION OF STATUS AND RIGHT OF AVOIDANCE

The above-mentioned Petitioner, "the real party in interest" hereby declares the status of a "foreign state" as defined in 28 USC 1331(b)(1), as "a separate legal person, corporate or otherwise," (in the instant case, "otherwise"), (b)(2), "an organ (a vital part) of a foreign state" and (b)(3), "neither a citizen of a State of the United States as defined in section 1332(c)" (a corporation, an insurer, or the legal representative of a decedent, an infant or an incompetent), "nor created under the laws of any third country." Furthermore, the above-mentioned "real party in interest" is not an artificial, corporate "person" as defined and created by PUBLIC STATUTES, and is not a juristic person which may be "affected" by PUBLIC STATUTES; but, is invested with and bears the status, condition and character of "a sovereign without subjects." The above-mentioned "real party in interest" is always and at all times present in his / her "asylum home state," which is "the common case of the place of birth, *domicilium originis,*" also referred to as Natural Domicile, which is "the same as domicile of origin or domicile by birth," (See *Johnson v. Twenty-One Bales,* 13 Fed.Cas. 863; Black's Law Dictionary, 4th edition), which is the source and the seat of her sovereignty and immunity. Accordingly, the above-mentioned "real party in interest" exercises his /her Right of Avoidance and hereby rejects the offered commercial venture and declines to fuse with or to animate the above-mentioned Defendant in Error, or to stand as STRAWMAN "PERSON," which is defined in Barron's Law Dictionary, 4th edition, (1996), as "a term referred to in commercial and property contexts when a transfer is made to a third party, the strawman "person", simply for the purpose of retransferring to the transferror in order to accomplish some purpose not otherwise permitted," *i.e.,* obtaining jurisdiction over the above-mentioned "real party in interest" or relying upon the rebuttable presumption that the above-mentioned "real party in interest" is a corporation. The definition also contains the admonition to "See dummy," which, at that entry is therein defined as "a strawman; a sham." The above-mentioned party is, NOT a strawman, NOT a sham, and is certainly NOT a dummy. This DECLARATION OF STATUS constitutes a conclusive presumption, of which the court is bound to take NOTICE, that the "real party in interest" is NOT a corporation; and, the court can exercise no jurisdiction whatsoever over the "real party in interest" or in the above-captioned case, but is duty-bound according to the due process of the

law, to which the above-mentioned “real party in interest” is a belligerent claimant, and by the Rule of Law to DISMISS AND REVERSE it.

TABLE OF AUTHORITIES – PERSON

"This word ‘person’ and its scope and bearing in the law, involving, as it does, legal fictions and also apparently natural beings, it is difficult to understand; but it is absolutely necessary to grasp, at whatever cost, a true and proper understanding to the word in all the phases of its proper use . . . A person is here not a physical or individual person, but the status or condition with which he is invested . . . not an individual or physical person, but the status, condition or character borne by physical persons . . . The law of persons is the law of status or condition." --American Law and Procedure, Vol. 13, page 137, 1910.

The following case citation declares the undisputed distinction in fact and at law of the distinction between the term “persons,” which is the plural form of the term “person,” and the word “People” which is NOT the plural form of the term “person.” The above-mentioned “real party in interest” is NOT a subordinate “person,” “subject,” or “agent,” but is a “constituent,” in whom sovereignty abides, a member of the “Posterity of We, the People,” in whom sovereignty resides, and from whom the government has emanated: "The sovereignty of a state does not reside in the **persons** who fill the different departments of its government, but in the **People**, from whom the government emanated; and they may change it at their discretion. Sovereignty, then in this country, abides with the constituency, and not with the agent; and this remark is true, both in reference to the federal and state government." (Persons are not People).--*Spooner v. McConnell*, 22 F 939, 943: "Our government is founded upon compact. Sovereignty was, and is, in the people" --*Glass v. Sloop Betsey*, supreme Court, 1794. "People of a state are entitled to all rights which formerly belong to the King, by his prerogative." --supreme Court, *Lansing v. Smith,* 1829. “The United States, as a whole, emanates from the people ... The people, in their capacity as sovereigns, made and adopted the Constitution ..." --supreme Court, 4 Wheat 402. "The governments are but trustees acting under derived authority and have no power to delegate what is not delegated to them. But the people, as the original fountain might take away what they have delegated and entrust to whom they

please. ... The sovereignty in every state resides in the people of the state and they may alter and change their form of government at their own pleasure." --*Luther v. Borden*, 48 US 1, 12 LEd 581. "While sovereign powers are delegated to ... the government, sovereignty itself remains with the people" --*Yick Wo v. Hopkins*, 118 U.S. 356, page 370. "There is no such thing as a power of inherent sovereignty in the government of the United States .... In this country sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution entrusted to it: All else is withheld." -- *Julliard v. Greenman*, 110 U.S. 421. "In common usage, the term 'person' does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it." -- *Wilson v. Omaha Indian Tribe* 442 US 653, 667 (1979). "Since in common usage the term 'person' does not include the sovereign, statutes employing that term are ordinarily construed to exclude it." -- *U.S. v. Cooper*, 312 US 600,604, 61 SCt 742 (1941). "In common usage, the term 'person' does not include the sovereign and statutes employing it will ordinarily not be construed to do so." -- *U.S. v. United Mine Workers of America*, 330 U.S. 258, 67 SCt 677 (1947). "Since in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it." -- *US v. Fox* 94 US 315. "In common usage the word 'person' does not include the sovereign, and statutes employing the word are generally construed to exclude the sovereign." -- *U.S. v. General Motors Corporation*, D.C. Ill, 2 F.R.D. 528, 530: The following two case citations declare the undisputed doctrine, in fact and at law, that the word (term of art) "person" is a "general word," and that the "people," of whom the above-mentioned "real party in interest" is one, "are NOT bound by general words in statutes." Therefore, statutes do not apply to, operate upon or affect the above-mentioned "real party in interest:" "**The word `person' in legal terminology is perceived as a *general word*** which normally includes in its scope a variety of entities other than human beings., --*Church of Scientology v. US Department of Justice* 612 F2d 417, 425 (1979). "**The people, or sovereign are not bound by *general words* in statutes**, restrictive of prerogative right, title or interest, unless expressly named. Acts of limitation do not bind the King or the people. The people have been ceded all the rights of the King, the former sovereign ... It is a maxim of the common law, that when an act is made for the common good and to prevent injury, the King shall be bound, though not named, but when a statute is general and prerogative right would be divested or taken from the King (or the People) he shall

not be bound." -- *The People v. Herkimer*, 4 Cowen (NY) 345, 348 (1825): "In the United States, sovereignty resides in people." --*Perry v. U.S.* (294 US 330). "A Sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal Right as against the authority that makes the law on which the Right depends." --*Kawananakoa v. Polyblank*, 205 U.S. 349, 353, 27 S. Ct. 526, 527, 51 L. Ed. 834 (1907).

TABLE OF AUTHORITIES — LACK OF SUBJECT MATTER JURISDICTION

In a court of limited jurisdiction, whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc*., 168 Ill.App.3d 558, 522 N.E.2d 841(1988)("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge under court decisions has immediately lost subject-matter jurisdiction. In a court of limited jurisdiction, the court must proceed exactly according to the law or statute under which it operates. *Flake v Pretzel*, 381 Ill. 498, 46 N.E.2d 375 (1943) ("the actions, being statutory proceedings, ...were void for want of power to make them.") ("The judgments were based on orders which were void because the court exceeded its jurisdiction in entering them. Where a court, after acquiring jurisdiction of a subject matter, as here, transcends the limits of the jurisdiction conferred, its judgment is void."); *Armstrong v Obucino*, 300 Ill. 140, 143, 133 N.E. 58 (1921) ("The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgment or decree the law or statute

which is applicable to it." *In Interest of M.V.*, 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997) ("Where a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction, and courts exercising jurisdiction over such matters must proceed within the strictures of the statute."); *In re Marriage of Milliken*, 199 Ill.App.3d 813, 557 N.E.2d 591 (1st Dist. 1990) ("The jurisdiction of a court in a dissolution proceeding is limited to that conferred by statute."); *Vulcan Materials Co. v. Bee Const. Co., Inc.,* 101 Ill.App.3d 30, 40, 427 N.E.2d 797 (1st Dist. 1981) ("Though a court be one of general jurisdiction, when its power to act on a particular matter is controlled by statute, the court is governed by the rules of limited jurisdiction."). "There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215. "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest,* 127 P2d 934, 937. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739. "the fact that the petitioner was released on a promise to appear before a magistrate for an arraignment, that fact is circumstance to be considered in determining whether in first instance there was a probable cause for the arrest." *Monroe v. Papa*, DC, Ill. 1963, 221 F Supp 685. “Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter.” See *McNutt v. GMAC*, 298 US 178. The origins of this doctrine of law may be found in *Maxfield's Lessee v. Levy*, 4 US 308. "A court has no jurisdiction to

determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army* v. *Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo* v. *US*, 505 F2d 1026. "The law provides that once State and Federal jurisdiction has been challenged, it must be proven." --*Main v. Thiboutot*, 100 S. Ct. 2502 (1980). "Once jurisdiction is challenged, it must be proven." --*Hagens v. Lavine*, 415 U.S. 533. "Where there is absence of jurisdiction, all administrative and judicial proceedings are a nullity and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." --*Thompson v. Tolmie*, 2 Pet. 157, 7 L.Ed. 381; *Griffith v. Frazier*, 8 Cr. 9, 3L. Ed. 471.

"No sanctions can be imposed absent proof of jurisdiction." --*Standard v. Olsen*, 74 S. Ct. 768; Title 5 U.S.C., Sec. 556 and 558 (b).

"The proponent of the rule has the burden of proof." --Title 5 U.S.C., Sec. 556 (d). "Jurisdiction can be challenged at any time, even on final determination." --*Basso v. Utah Power & Light Co*., 495 2nd 906 at 910. "Mere good faith assertions of power and authority (jurisdiction) have been abolished." --*Owens v. The City of Independence,* "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." --*Wuest* v. *Wuest*, 127 P2d 934, 937. "In a court of limited jurisdiction, whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction." --*Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). "Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction."--*Loos v American Energy Savers, Inc*., 168 Ill.App.3d 558, 522 N.E.2d 841(1988)("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden

upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge under court decisions has immediately lost subject-matter jurisdiction. In a court of limited jurisdiction, the court must proceed exactly according to the law or statute under which it operates. --*Flake v Pretzel*, 381 Ill. 498, 46 N.E.2d 375 (1943) ("the actions, being statutory proceedings, ...were void for want of power to make them.") ("The judgments were based on orders which were void because the court exceeded its jurisdiction in entering them. Where a court, after acquiring jurisdiction of a subject matter, as here, transcends the limits of the jurisdiction conferred, its judgment is void."); *Armstrong v Obucino*, 300 Ill. 140, 143, 133 N.E. 58 (1921) "The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not transcend in the extent and character of its judgment or decree the law or statute which is applicable to it." *In Interest of M.V.*, 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997) ("Where a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction, and courts exercising jurisdiction over such matters must proceed within the strictures of the statute."); *In re Marriage of Milliken*, 199 Ill.App.3d 813, 557 N.E.2d 591 (1st Dist. 1990) ("The jurisdiction of a court in a dissolution proceeding is limited to that conferred by statute."); *Vulcan Materials Co. v. Bee Const. Co., Inc.,* 101 Ill.App.3d 30, 40, 427 N.E.2d 797 (1st Dist. 1981) ("Though a court be one of general jurisdiction, when its power to act on a particular matter is controlled by statute, the court is governed by the rules of limited jurisdiction.").

TABLE OF AUTHORITIES – LACK OF JUDICIAL IMMUNITY

Thus, neither Judges nor Government attorneys are above the law. See *United States v. Isaacs*, 493 F. 2d 1124, 1143 (7th Cir. 1974). In our judicial system, few more serious threats to individual liberty can be imagined than a corrupt judge or judges acting in collusion outside of their judicial authority with the Executive Branch to deprive a citizen of his rights. In *The Case of the Marshalsea*, 77 Eng. Rep. 1027 (K.B. 1613), Sir Edward Coke found that Article 39 of the Magna Carta restricted the power of judges to act outside of their jurisdiction such proceedings

would be void, and actionable.
When a Court has (a) jurisdiction of the cause, and proceeds *inverso ordine* or erroneously, there the party who sues, or the officer or minister of the Court who executes the precept or process of the Court, no action lies against them. But (b) when the Court has not jurisdiction of the cause, there the whole proceeding is before a person who is not a judge, and actions will lie against them without any regard of the precept or process . . . Id. 77 Eng. Rep. at 1038-41.

A majority of states including Virginia (see, Va. Code §8.01-195.3(3)), followed the English rule to find that a judge had no immunity from suit for acts outside of his judicial capacity or jurisdiction. Robert Craig Waters, 'Liability of Judicial Officers under Section 1983' 79 Yale L. J. (December 1969), pp. 326-27 and 29-30).

Also as early as 1806, in the United States there were recognized restrictions on the power of judges, as well as the placing of liability on judges for acts outside of their jurisdiction. In *Wise v. Withers*, 7 U.S. (3 Cranch) 331 (1806), the Supreme Court confirmed the right to sue a judge for exercising authority beyond the jurisdiction authorized by statute.

In *Stump v. Sparkman*, 435 U.S. 349 at 360 (1978), the Supreme Court confirmed that a judge would be immune from suit only if he did not act outside of his judicial capacity and/or was not performing any act expressly prohibited by statute. See Block, *Stump v Sparkman* and the History of Judicial Immunity, 4980 Duke L.J. 879 (l980). The Circuit Court overturned this case and the judge was liable.

Judicial immunity may only extend to all judicial acts within the court's jurisdiction and judicial capacity, but it does not extend to either criminal acts, or acts outside of official capacity or in the 'clear absence of all jurisdiction.' see *Stump v. Sparkman* 435 U.S. 349 (1978). "When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid Constitutional provisions or valid statutes expressly depriving him of jurisdiction or judicial capacity, judicial immunity is lost." --*Rankin v. Howard* 633 F.2d 844 (1980), *Den Zeller v. Rankin*, 101 S.Ct. 2020 (1981).

As stated by the United States Supreme Court in *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872), 'where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction.' The constitutional requirement of due process of the law is indispensable:"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself**, nor be deprived or life, liberty or property, without due process of law;** nor shall private property be taken for public use without just compensation." Article V, National Constitution. "A judgment can be void . . . where the court acts in a manner contrary to due process." --Am Jur 2d, §29 Void Judgments, p. 404. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." --*Merritt* v. *Hunter*, C.A. Kansas 170 F2d 739. "Moreover, all proceedings founded on the void judgment are themselves regarded as invalid." --*Olson v. Leith* 71 Wyo. 316, 257 P.2d 342. "In criminal cases, certain constitutional errors require **automatic reversal**," see *State v. Schmit*, 273 Minn. 78, 88, 139 N.W.2d 800, 807 (1966).

TABLE OF AUTHORITIES – RECIPROCAL IMMUNITY AND FOREIGN AGENT REGISTRATION

UNITED STATES INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT, PUBLIC LAW 79-291, 29 DECEMBER 1945(Public Law 291-79th Congress) TITLE I Section 2.(b) International organizations, their property and their assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of Judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract. (d) In so far as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of

foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments. Section 9. The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in this title, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: Provided, That nothing contained in this title shall be construed as precluding the Secretary of State from withdrawing the privileges exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States. Also see 22 USC § 611 - FOREIGN RELATIONS AND INTERCOURSE; and, 22 USC § 612, Registration statement, concerning the absolute requirement of registration with the Attorney General as a "foreign principal," due to the undisputed status of the court and its alleged officers and employees as FOREIGN AGENTS, described *supra.* This requirement shall be deemed to include, but is not limited to, an affidavit of non-communist association.

CORPORATION NAMES

DELAWARE CODE TITLE 8, Chapters 6, Section § 617:

CORPORATE NAME

The corporate name of a corporation organized under this chapter shall contain either a word or words descriptive of the professional service to be rendered by the corporation or **shall contain the last names of** 1 or more of its present, prospective or former shareholders or of persons who were associated with a predecessor person, partnership, corporation or other organization or whose name or names appeared in the name of such predecessor organization.

Texas Administrative Code

Subject: 1 TAC § 79.31 CORPORATIONS (ENTITY NAMES)

§ 79.31. Characters of Print Acceptable in Names

(a) Entity names may consist of letters of the Roman alphabet, Arabic numerals, and certain symbols capable of being reproduced on a standard English language typewriter, or combination thereof.

(b) **Only upper case or capitol letters, with no distinction as to type face or font, will be recognized.**

Delaware legislation, March 10 1899
"An Act Providing General Corporate Law" This Act allow the corporation to become a "PERSON"

U.S. G.P.O. STYLE MANUAL

3. Capitalization Rules
(See also Chapter 4 "Capitalization Examples" and Chapter 9 "Abbreviations and Letter Symbols")

Nationalities, etc.
5.22. The table on Demonyms in Chapter 17 "Useful Tables" shows forms to be used for nouns and adjectives denoting nationality.
5.23. In designating the natives of the States, the following forms will be used.

SUPREME COURT RULING ON CORPORATE PERSON

SANTA CLARA COUNTY v. SOUTHERN PAC. R. CO., 118 U.S. 394

A **legal person**, also called **juridical person** or **juristic person**,[1] is a legal entity through which the law allows a group of **natural persons** to act as if they were a single composite **individual** for certain purposes, or in some jurisdictions, for a single person to have a separate legal personality other than their own.[2][3] This **legal fiction** does not mean these entities are

human beings, but rather means that the law allows them to act as **persons** for certain limited purposes

New York Central R. Co. v. United States, 212 U.S. 481 (1909)

United States v. Dotterweich, 320 U.S. 277 (1943)

TITLE 26 > ***Subtitle F*** > ***CHAPTER 75*** > ***Subchapter D*** > ***§ 7343***

Sec. 7343. Definition of the term person.
The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs

ISSUE EIGHT: COURT LACKS JUDICIAL POWER IN LAW OR EQUITY

Petitioner also points out that the Federal or State or County or municipal government can be sued in their corporate capacity when functioning as federal debt collectors under the Fair Debt Collection Practices Act (FDCPA). If the Federal or State government can claim immunity under the 11th Amendment, then the Federal or State or County or municipal government cannot use Law or Equity jurisdiction against the Petitioner or the people in Court, since the people are not subject to a "foreign state" under Title 28 USC, Judicial Procedure, §§1602 -1610. The States are made up of "State Citizens," and under the 11th Amendment, "State Citizens" cannot be sued by a "foreign state."

The Petitioner would like point out to the Federal or State or County or municipal government that Article III section 2 and the 11th Amendment of the Constitution are in

conflict. The court cannot convene under Article III equity jurisdiction and then have its public officers claim 11th amendment immunity. The court is operating in a foreign state capacity against the people once the court officials take their oath, and they cannot have it both ways.

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.

The ratification of the Eleventh Amendment on February 7, 1795 effectively altered Article III Section 2, and now "**All**" public offices are using the Eleventh Amendment as a defence against being sued, whereas, the Eleventh Amendment actually removed protection since judicial power no longer extended to any suit in Law or Equity, and subsequently afforded the people the same protection as any level of government. The people cannot be charged in Law or Equity claims by anyone in the government. The court only has one action as revealed by the Rules of Civil Procedure: "Rule 2—One form of Action : There is only one form of action – the civil action." Civil action can be brought only by the people and not any level of government.

Amendment XI

The judicial power of the United States **shall not be construed to extend to any suit in law or equity**, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

The Petitioner is aware of the **Stripping Doctrine**. But the Constitution was amended again in 1868 to protect various civil rights, and Section 5 of the 14th Amendment granted Congress the power to enforce, by appropriate legislation, the provisions of that amendment. The courts have recognized that this new amendment, again a consensus of the people, abrogates the immunity provided by the 11th Amendment. When Congress enacted legislation under the auspices of Section 5 of the 14th Amendment, they specifically abrogated 11th Amendment immunity, and states can, under such federal statutes be prosecuted in federal court.

The Petitioner will refer the Court's attention to the 1875 Civil Rights Act. The Supreme Court ruled that this Congressional enactment was unconstitutional. **Civil Rights Acts** (1866, 1870, 1875, 1957, 1960, 1964, 1968) US legislation. The *Civil Rights Act (1866)* gave African-Americans citizenship and extended civil rights to all persons born in the USA (except Native Americans). The *1870 Act* was passed to re-enact the previous measure, which was considered to be of dubious constitutionality. In 1883, the US Supreme Court declared unconstitutional the 1870 law. The *1875 Act* was passed to outlaw discrimination in public places because of race or previous servitude. **The act was declared unconstitutional by the Supreme Court (1883–85), (**U.S. Supreme Court Civil Rights Cases, 109 U.S. 3 (1883) Civil Rights Cases Submitted October Term, 1882 Decided October 16th, 1888 109 U.S. 3**) which stated that the 14th Amendment, the constitutional basis of the act, protected individual rights against infringement by the states, not by other individuals**. The *1957 Act* established the

Civil Rights Commission to investigate violations of the 15th Amendment. The *1960 Act* enabled court-appointed federal officials to protect black voting rights. An act of violence to obstruct a court order became a federal offence. The *1964 Act* established as law equal rights for all citizens in voting, education, public accommodations and in federally-assisted programs. The *1968 Act* guaranteed equal treatment in housing and real estate to all citizens

No level of the Executive or Judicial government has ever introduced into any Court action a real party of interest under Rule 17. The Court has no jurisdiction under 12(b) (1), (2), (3) over the Petitioner or people. **Decision and Rationale:** The 8-1 decision of the Court was delivered by Justice Joseph P. Bradley, with John Marshall Harlan of Kentucky alone in dissent. The Court decided that the Civil Rights Act of 1875 was unconstitutional. Neither the 13th nor the 14th amendment empowers the Congress to legislate in matters of racial discrimination in the private sector, Bradley wrote. "The 13th Amendment has respect, not to distinctions of race...but to slavery...." The 14th Amendment, he continued, applied to State, not private, actions; furthermore, the abridgment of rights presented in this case are to be considered as "ordinary civil injuries" rather than the imposition of badges of slavery.

Bradley commented that "individual invasion of individual rights is not the subject-matter of the 14th Amendment. It has a deeper and broader scope. **It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." Therefore, the Court limited the impact of the Equal Protection Clause of the 14th Amendment.**

ISSUE NINE: ADMINISTRATIVE PROCEDURE UNDER TITLE 5 USC, SUBCHAPTER II

The Petitioner reminds the Court that it is an Article I Administrative Court and lacks judicial power for review per the Eleventh Amendment. The Plaintiffs are required to exhaust their administrative remedies before moving to a judicial review on the Petitioner. The Petitioner was denied administrative remedies which violates judicial review and the requirement of honest service, for the Court lacks judicial power to hear this case under the Eleventh Amendment. (Not sure if the words are right.)

If the Court claims it is in fact an Article 3 Court with judicial power under Article 3 section 2, then the Petitioner's constitutionally-protected rights and statutory rights have been violated. The Court has failed to comply with protecting the rights of the Petitioner that a reasonable person would do under the Constitution and under the Bill Rights and the folllowing amendments: first, fourth fifth, seventh (a suit in common law), eighth, ninth, tenth, eleventh, and the fourteenth.

ISSUE TEN: OFFICE OF ATTORNEY GENERAL AND U.S. ATTORNEY ARE ADMINISTRATIVE ONLY

The Judiciary Act of 1789 created the inferior courts and the Office of Attorney General, as well as the position of U. S. Attorney for each district. The history is set forth in the United States Attorneys' Manual: The States Attorney General Office and all whom prosecute in the NAME OF THE STATE come under the same judiciary act which created the inferior Courts of the States.

UNITED STATES ATTORNEYS' MANUAL CHAPTER 3-2.000: United States Attorneys, Assistant United States Attorneys, Special Assistants, and the AGAC

3-2.110 HISTORY

The Office of the United States Attorney was created by the Judiciary Act of 1789 which provided for the appointment "in each district of a meet person learned in the law to act as attorney for the United States ... whose duty it shall be to prosecute in each district all delinquents for crimes and offenses, recognizable under the authority of the United States, and all civil actions in which the United States shall be concerned ..." 1 Stat. 92. Initially, United States Attorneys were not supervised by the Attorney General (1 Op.Att'y Gen. 608) but Congress, in the Act of August 2, 1861, (Ch. 37, 12 Stat. 185) charged the Attorney General with the "general superintendence and direction duties ..." While the precise nature of the superintendence and direction was not defined, the Department of Justice Act of June 22, 1870 (Ch. 150, 16 Stat. 164) and the Act of June 30, 1906 (Ch. 39, 35, 34 Stat. 816) clearly established the power of the Attorney General to supervise criminal and civil proceedings in any district. *See* 22 Op. Att'y Gen. 491; 23 Op. Att'y Gen. 507. Today, as in 1789, the United States Attorney retains, among other responsibilities, the duty to "prosecute for all offenses against the United States." *See* 28 U.S.C. Sec. 547(1). This duty is to be discharged under the supervision of the Attorney General. *See* 28 U.S.C. Sec. 519.

3-2.140 AUTHORITY

Although the Attorney General has supervision over all litigation to which the United States or any agency thereof is a party, and has direction of all United States Attorneys, and their assistants, in the discharge of their respective duties (28 U.S.C. Secs. 514, 515, 519), each United States Attorney, within his/her district, has the responsibility and authority to: (a) prosecute for all offenses against the United States; (b) prosecute or defend, for the government, all civil actions, suits, or proceedings in which the United States is concerned; (c) appear on behalf of the defendants in all civil actions, suits or proceedings pending in the district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to such officers, **and by them paid into the Treasury; (d) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law unless satisfied upon investigation that justice does not require such proceedings;** (e) make such reports as the Attorney General shall direct. 28 U.S.C. Sec. 547.

The Attorney General has limited jurisdiction to prosecute. The jurisdiction derives

from Article 1 section 8, to regulate commerce with foreign nations and among the several states and with Indian Tribes. The Office of Attorney General of the federal and State government and all employees under that office, lacks the authority to bring charges against the people it violate article I section 8 .

Now that it has been shown that the position of Attorney General was created by Congress under the Judiciary Act of 1789, making the Prosecutor's role Judicial, and not Executive / administrative, the Attorney General falls under the 11th amendment:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

The Office of Attorney General, and all employees of the Office of Attorney General, lack the authority to set forth any action in any Court in LAW OR EQUITY, per the 11th amendment, as the Office clearly comes under "Judicial" and not "Executive."

By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United States is a party. They are the principal federal law enforcement officers in their judicial districts. In the exercise of their prosecutorial discretion, United States Attorneys construe and **implement the policy of the Department of Justice**. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of federal law enforcement.

Now, by and through the 11th amendment, the Courts and the position of Attorney General no longer derive Article III Constitutional standing, but now have Article I administrative standing, thereby lacking any authority in Law or Equity, and limited to functioning as administrative review boards to hear cases against agencies, departments, and public officials brought by the people. The Courts and Prosecutors lack jurisdiction in any criminal action against the people, as they are, by Congressional mandate, administrative courts. They have no force in effect in Law or Equity, and any action is a "presumption," which is in direct conflict with the constitution, statutory laws, Congressional mandate and the

procedures, as the facts have been placed before the Court and the prosecution, or if the State, as such, is a defendant, it is then required to rebut or disprove that such Congressional mandate, as laid out in this document, does not exist. The Court's only choice is to rule in favor of the Petitioner / People.

Black's Law Dictionary, Sixth Edition, defines "presumption" as follows:

> A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. ... A legal device which operates in the absence of other proof to require that certain inferences be drawn from the available evidence.

CONCLUSION AND RECTUM ROGARE

The facts and the law contained herein are the Truth; and we hold said Truths to be self-evident; and self-evident Truths are undisputed and incontrovertible, no oral argument is requested, for no words can alter or overcome these Truths; and Truth is Sovereign: She comes from God and bears His message, from whatever quarter her great eyes may look down upon you; Psalms 117:2; John 8:32; II Corinthians. 13:8; THEREFORE; this court must perform its duty under the Rule of Law, do Justice, *Rectum Rogare,* and DISMISS WITH PREJUDICE AND REVERSE the above-alphanumeric code # without delay for "Justice delayed is Justice denied." Rectum Rogare - "to do right; to petition the judge to do right." --Black's Law Dictionary 4th edition.

AMENDATORY RECONSTRUCTION ACT OF MARCH 11, 1868

An Act to amend the act passed March 23, 1867, entitled, "An Act supplementary to 'An act to provide for the more efficient government of the rebel states,' passed March 2, 1867, and to facilitate their restoration.

SUPPLEMENTARY RECONSTRUCTION ACT OF FORTIETH CONGRESS.

An Act supplementary to an act entitled "An act to provide for the more efficient government of the rebel states," passed March second, eighteen hundred and sixty-seven, and to facilitate restoration. "

This act created the 14th amendment federal citizen under section 3 of the federal constitution. All who hold public office fall under this section as UNITED STATES citizens. Those who hold office have knowingly and willingly given up their citizenship to this country under Title 8 Section §1481 to become a foreign state agent under 22 USC. The oath of office to the constitution requires office-holders to uphold and maintain our Constitutional form of government under the people's authority. This right was never surrendered by the people; failure to do so violates 10 USC §333 and 18 USC §1918, chapter 115 §2382, §2383, §1505, §1001, §241, §242, 42 USC §1981 & 31 USC §3729 just to name a few.

The Federal Debt Collection Procedure places all courts under equity and commerce and under the International Monetary Fund. The International Monetary Fund comes under the Uniform Commercial Code under banking and business interest and Trust laws. This makes the Court / Judges trustee over the trust and responsible whether or not the Petitioner understands the trust issue. The 1933 bankruptcy act placed all public officials in a fiduciary position to write off the public debt, since this Nation is not solvent. The TWEA suspended the U.S. Constitution in the court room, and therefore, the standard American flag in the courtroom was replaced with a military Admiralty flag for dealing with alien enemy residents. The people never rescinded their nationality to the real united States of America. Those who hold public office rescinded their nationality to become a foreign agent in order to hold public office. International law requires the judge to uphold the people's Constitutional form of

government as defined in the "Federalist Papers".

Federal Rules of Civil Procedure / Rules of Civil Procedure Rule 2 only allows civil action, and under Rule 17, a real party of interest has to be present in the courtroom in order for there to be any claims of injury or damages against "the people." Any charges under the "UNITED STATES" or "THE STATE OF....." fall under the TWEA Section 23. The people are not subject to this jurisdiction as it is a Foreign State jurisdiction. The people hold 11th amendment immunity to claims in equity and commerce from a foreign state. The courts lack jurisdiction over the Complainant by Congressional mandate. For the aforestated reasons, the Respondent / Court lacks jurisdiction under Rule 4(j) & 12(b) (1), (2), (3), (4), (5), (6) over this Complainant.

Adversarial System; Mack vs. City of Detroit, Chief Justice Cavanagh, No. 118468, 2002.

> "The adversarial system ensures the best presentation of arguments and theories because each party is motivated to succeed. Moreover, the adversarial system attempts to ensure that an active judge refrain from allowing a preliminary understanding of the issues to improperly influence the final decision. This allows the judiciary to keep an open mind until the proofs and arguments have been adequately submitted. In spite of these underlying concerns, the majority today claims that the benefits of full briefing are simply a formality that can be discarded without care. The majority fails to comprehend how the skilled advocates in this case could have added anything insightful in the debate over the proper interpretation of a century's worth of precedent. Whatever its motivation, the majority undermines the foundations of our adversarial system.

The Complainant is covered under Title 18 § 4 Misprision of felony & Title 31 USC §3729 False Claims as Whistle-blowers.

TITLE 18 > PART I > CHAPTER 1

§ 4 Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the

United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

TITLE 31 > SUBTITLE III > CHAPTER 37 > SUBCHAPTER III

§3729. False claims(a) Liability for Certain Acts.—

Any person who— (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

TITLE 31 > SUBTITLE III > CHAPTER 37 > SUBCHAPTER III

§3730 Civil actions for false claims (b) Actions by Private Persons.—

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

These are the laws as we know them—clear, precise and written by those with superior knowledge of the law: "LAWYERS", not the people. The people cannot be held accountable if there is a failure to clarify or if its "incomprehensible, baseless assertions and citations to disjointed and/or irrelevant legal authority, grammatically, logically and legally incomprehensible, frivolous and unintelligible" or a conflict in the laws. This then goes back

to those “LAWYERS” who created this conflict in law to be held accountable. Any failure for the judge to adhere is a violation under 18 USC 1001, 1346 1505, 2331 and 10 USC 333 This now violate the PATRIOT ACT SECTION 800 HOMELAND SECUIRTY and other Departments now has to be notify of domestic terrorism.

Submitted this _____ day of _____, 2010.

_____

PROOF OF SERVICE

I, _____the Petitioner comes with this, **JUDICIAL NOTICE; NOTICE TO THE ADMINISTRATIVE COURT, ALL COURTS ARE OPERATING UNDER THE (1) "TRADING WITH THE ENEMY ACT" AND, (2) TITLE 28 USC, CHAPTER 176 "FEDERAL DEBT COLLECTION PROCEDURE," MAKING THE COURTS "FOREIGN STATES" TO THE PEOPLE BY CONGRESSIONAL MANDATE, & IN VIOLATION OF ADMINISTRATIVE PROCEDURE, JUDICIAL PROCEDURES** being placed before the Clerk of Court of the UNITED STATES DISTRICT COURT OF _____ on this day of _____ and month of_____ in the year of our Lord 2010 AD..

_____

CC

UN Declaration of Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among

the peoples of territories under their jurisdiction.

Article 1.

* All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

* Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

* Everyone has the right to life, liberty and security of person.

Article 4.

* No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

* Everyone has the right to recognition everywhere as a person before the law.

Article 7.

* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

* Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

* No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

* Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

* (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

* (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

* No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

* (1) Everyone has the right to freedom of movement and residence within the borders of each state.

* (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

* (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

* (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

* (1) Everyone has the right to a nationality.

* (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

* (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

* (2) Marriage shall be entered into only with the free and full consent of the intending spouses.

* (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

* (1) Everyone has the right to own property alone as well as in association with others.

* (2) No one shall be arbitrarily deprived of his property.

Article 18.

* Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

* Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

* (1) Everyone has the right to freedom of peaceful assembly and association.

* (2) No one may be compelled to belong to an association.

Article 21.

* (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

* (2) Everyone has the right of equal access to public service in his country.

* (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

* Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

* (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

* (2) Everyone, without any discrimination, has the right to equal pay for equal work.

* (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

* (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

* Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

* (1) Everyone has the right to a standard of living adequate for the health and well-being of

himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

* (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

* (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

* (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

* (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

* (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

* (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

* Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

* (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

* (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

* (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

* Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The Right to Travel

NOTICE AND ADVISORY OF RIGHTS CLAIMED INVIOLATE

Now here comes Joseph Ray Sundarsson one of the *people of the land*, living according to the common law, and makes claim:

1) The right to travel freely, unencumbered, and unfettered with one's family and property is guaranteed as a right and not a mere privilege. That the right to travel is such a basic right it does not even need to be mentioned for it is self-evident by common sense that the right to travel is a basic concomitant of a free society to come and go from length and breath freely unencumbered and unfettered distinguishes the characteristic required for a free people to exist in fact. Please see Shapiro vs. Thomson, 394 u. s. 618. **Further, the right to travel by private conveyance for private purposes upon the common way can not be infringed.**

Further, (your state), is forbidden by law from converting a basic right into a privilege and requiring a license and or a fee charged for the exercise of the basic right. Please see Murdock vs. Pennsylvania, 319 u.s. 105, and if (your state), state does erroneously convert basic rights into privileges and require a license or fee a citizen may ignore the license or fee with total immunity for such exercise of a basic right. Please see Schuttlesworth vs. Birmingham, Alabama, 373 u.s. 262. Now if one of the people exercises a basic right, any law of any State of Country to the contrary of such exercise of that basic right notwithstanding, the said supposed law of any State or Country is a fiction of law and 100% totally unconstitutional, against the UN Declaration of Human Rights and against the common law and no courts are bound to uphold it and no one is required to obey such unconstitutional law, visa, or license requirement. Please see Marbury vs. Madison, 5 u.s. 137 (1803), which has never been overturned in over 194 years, see Shepard's citations.

Now further, if a one of the people relies in good faith on the advice of counsel and or on the decisions of the United States supreme court that individual has a perfect defence to the element of wilfulness and since the burden of proof of said wilfulness is on the prosecution to prove beyond a reasonable doubt, said task or burden being totally impossible to specifically perform there is no cause of action for which relief may be granted by a court of law. Please see U.S. vs. Bishop 412 u.s. 346. Obviously there can be no lawful charge against exercising a basic right to travel under the common law member of the people – This is the law!!! The above named common law individual is immune from any charge to the contrary and any party making such charge should be duly warned of the ***Tort of Trespass*** ! You are trespassing on this common law individual !

2) The undersigned has never willingly and knowingly entered into any contract or contractual agreement giving up any common law rights, the supreme *law of the land*. This common law individual has not harmed any party, has not threatened any party, and that includes has not threatened or caused any endangerment to the safety or well being of any party and would leave any claimant otherwise to their strictest proofs otherwise in a court of law. The above

named individual is merely exercising the basic right to travel unencumbered and unfettered on the common public way – waterway, airway or highway, which is their right to so do ! Please see Zobel vs. Williams, 457 u.s. 55, held the right to travel is constitutionally protected and protected by International Law !

4) Conversion of the right to travel into a privilege and or crime is a fraud -

and is in clear and direct conflict with the United States constitution, the UN Declaration of Human Rights, the ***natural and common law*** **which is the** ***supreme law of the land*** – no matter in which state or country. Laws made by any State or Country, which are clearly in direct conflict or repugnancy with the common law and are unlawful and unconstitutional and are not with ***standing in law*** and are being challenged as such here and thereby are null and ***void of law*** on their face. No courts are bound to uphold such fictions of law and no member of the people is bound to obey such a fiction of law. Such regulation or law operates as a mere nullity or fiction of law as if it never existed in law. None of the people are bound to obey such unconstitutional and unlawful law !

5) The payment for a privilege requires a benefit to be received as the right to travel is already secured it is clearly unlawful to cite any charges without direct damage to the specific party. Nor may a citizen be charged with an offence for the exercise of a constitutional right, in this case the right to travel. Please see Miller vs. United States 230 f2d 486. Nor may a citizen be denied due process of law or equal protection under the law.

6) The undersigned does hereby claim, declare, and certify any and all their inherent and constitutional rights inviolate are from God and secured in the United States constitution and the constitution of the state or country wherein they abode as a sovereign, common law member of the people existing and acting entirely at the common law, and retains all basic rights under the constitution of the United States of America, UN Declaration of Human Rights, Nature and Nature's god and under the laws of God the supreme law giver.

7) Any violator of the above constructive notice and claim is criminally trespassing upon this above named common law individual and **will be prosecuted to the fullest extent** under the supreme *law of the land*. Be warned of the trespass and the attached caveats. also take constructive notice; ignorance of the ***law of the land*** is not an excuse !

Your Right of Defence Against Unlawful Arrest

Part 1

Your Right of Defence Against Unlawful Arrest

“Citizens may resist unlawful arrest to the point of taking an arresting officer's life if necessary.” Plummer v. State, 136 Ind. 306. This premise was upheld by the Supreme Court of the United States in the case: John Bad Elk v. U.S., 177 U.S. 529. The Court stated: “Where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no right. What may be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed.”

“An arrest made with a defective warrant, or one issued without affidavit, or one that fails to allege a crime is within jurisdiction, and one who is being arrested, may resist arrest and break away. lf the arresting officer is killed by one who is so resisting, the killing will be no more than an involuntary manslaughter.” Housh v. People, 75 111. 491; reaffirmed and quoted in State v. Leach, 7 Conn. 452; State v. Gleason, 32 Kan. 245; Ballard v. State, 43 Ohio 349; State v Rousseau, 241 P. 2d 447; State v. Spaulding, 34 Minn. 3621.

“When a person, being without fault, is in a place where he has a right to be, is violently assaulted, he may, without retreating, repel by force, and if, in the reasonable exercise of his right of self defence, his assailant is killed, he is justified.” Runyan v. State, 57 Ind. 80; Miller v. State, 74 Ind. 1.

“These principles apply as well to an officer attempting to make an arrest, who abuses his authority and transcends the bounds thereof by the use of unnecessary force and violence, as they do to a private individual who unlawfully uses such force and violence.” Jones v. State, 26 Tex. App. I; Beaverts v. State, 4 Tex. App. 1 75; Skidmore v. State, 43 Tex. 93, 903.

“**An illegal arrest is an assault and battery.** The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault and battery.” (State v. Robinson, 145 ME. 77, 72 ATL. 260).

“Each person has the right to resist an unlawful arrest. In such a case, the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self- defence.” (State v. Mobley, 240 N.C. 476, 83 S.E. 2d 100).

“One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody, without resistance.” (Adams v. State, 121 Ga. 16, 48 S.E. 910).

“Story affirmed the right of self-defence by persons held illegally. In his own writings, he had admitted that ‘a situation could arise in which the checks-and-balances principle ceased to work and the various branches of government concurred in a gross usurpation.’ There would be no usual remedy by changing the law or passing an amendment to the Constitution, should the oppressed party be a minority. Story concluded, ‘If there be any remedy at all ... it is a remedy never provided for by human institutions.’ That was the ‘ultimate right of all human beings in extreme cases to resist oppression, and to apply force against ruinous injustice.’” (From Mutiny on the Amistad by Howard Jones, Oxford University Press, 1987, an account of the reading of the decision in the case by Justice Joseph Story of the Supreme Court.

As for grounds for arrest: “The carrying of arms in a quiet, peaceable, and orderly manner, concealed on or about the person, is not a breach of the peace. Nor does such an act of itself, lead to a breach of the peace.” (Wharton’s Criminal and Civil Procedure, 12th Ed., Vol.2: Judy v. Lashley, 5 W. Va. 628, 41 S.E. 197)

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And on the issue of actually killing an arresting officer in self defence:

"Citizens may resist unlawful arrest to the point of taking an arresting officer's life if necessary."

Plummer v. State, 136 Ind. 306. This premise was upheld by the Supreme Court of the United States in the case: John Bad Elk v. U.S., 177 U.S. 529

Part 2

THE RIGHT TO SELF DEFENCE

I have often wondered what it was like when communities were small, and everybody knew everybody.

This thought occurred to me while I was driving through Tombstone, Arizona, site of the famous gunfight. As was reported in the papers of the day (not television news), the Earps and Doc Holliday were walking down the street, knowing that the Clantons and Lowery were at the corral. These factions had been at odds with each other for years, and on this day there appeared to be a plan, for as the Earps and Doc walked by the Clantons, the Earps threw some hateful words out. This, apparently, did not provoke the desired action, so Doc pulled his shotgun from under his coat, turned and fired. The Earps then joined in and only two of the others got away.

Similarly, here in Waco, one faction, with color of law, was able to open up on the other in a devastating gunfight that left 9 dead. The color of law was sufficient, at least for the time being, to vindicate the aggressors. In both cases the side with color of law would have, if circumstances warranted, been given time off, with pay, while adjudication occurred. The other side would have been incarcerated until adjudication was completed. Those with color of law would not be charged with a crime, but the others would be charged with serious crimes.

While I was here during the siege I ran across an interesting piece of Texas law. In the Texas Penal Code, Sec. 9.31 (C), reads as follows:

Sec. 9.31 (C) The use of force to resist arrest or search is justified:

(1) If, before the actor offers any resistance, the peace officer (or person acting at his direction)

uses or attempts to use greater force than necessary to make the arrest; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to

protect himself against the peace officer"s (or other person"s) use or attempted use of greater

force than necessary.

There must have been a reason for this law to have been passed, so I went back and reread the definition of:

liberty 1. Exemption from slavery, bondage, imprisonment, or control of another. 2. Freedom from

external restraint or compulsion (Webster"s New Collegiate Dictionary).

LIBERTY Freedom; exemption from extraneous control. The power of the will to follow the

dictates of its unrestricted choice, and to direct the external acts of the individual without restraint,

coercion, or control from other persons. (Black"s Law Dictionary - Third Edition)

It appears, then, that the right for each of us to walk freely, subject to not harming or injuring another person or his property is the concept of liberty that the Founding Fathers spoke of, and we have let our liberty be lost in a myriad of regulation, rule and control.

What gives a "peace officer" the right to take a persons liberty, or property? Obviously the Texas legislators realized that excessive force could be used, unlawfully, justifying lawful retaliation. Perhaps they understood human nature and knew that personal bias might play a part when one person, operating under color of law, might exceed lawful exertion of force. Understanding that abuse of power might occur, isn't it possible that both time and extension of power might result in "law enforcement" officers exerting an authority that is beyond lawful authority?

Wondering how, and why, the scope of law enforcement may have changed, I began searching further and ran into an interesting account of a significant change that came as a result of a major trauma in the history of the United States of America. During World War II, especially with the troops being an occupation army after the armistices, there was a rather carefree attitude among those who thought they may never see home again. To control the servicemen the Military Police had to impose arbitrary authority under the maritime jurisdiction that all soldiers were subject to.

Meanwhile, back in the states, police officers approaching retirement during the war tended to stay on to help out in the war effort. As the MP"s began returning stateside (literally tens of thousands of them) they began to fill the ranks of local law enforcement, filing in the gap made by those now retiring. The attitude of arbitrary enforcement was ingrained in the returnees, and, although tempered by training as they joined the local ranks, still became a prevalent attitude which began a change of servant to master.

I looked further (American's Bulletin, September 1993 http://the.americansbulletin.org/) and found an interesting article, portions of which follow:

This fundamental premise was upheld by the Supreme court of the United States in the case of John Bad Elk v. U.S., 177 U.S. 529 (1900) when the court stated: "...where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction when the officer had the right to make the arrest, from what it does if the officer had no right. What might be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed.

"an arrest made with a defective warrant; or one issued without affidavit; or one that fails to allege a crime is without jurisdiction, and one who is being arrested may resist arrest and break away. If the arresting officer is killed by one who is resisting, the killing will be no more than involuntary manslaughter.

In reviewing the case we find that:

"The court charged the jury: "The deceased, John Kills Back, had been ordered to arrest the defendant; hence he had a right to go and make the attempt to arrest the defendant. The defendant had no right to resist him. .. In this connection I desire to say to you, gentlemen of the jury, that the deceased, being an officer of the law, had a right to be armed, and for the purpose of arresting the defendant [John Bad Elk] he would have the right to show his revolver. He would have had the right to use only so much force as necessary to take his prisoner, and the fact that he was using no more force than was necessary to take his prisoner would not be sufficient justification for the defendant to shoot him and kill him. The defendant would only

be justified in killing the deceased when you should find that the circumstances showed that the deceased had so far forgot his duties as an officer and had gone beyond the force necessary to arrest the defendant, and was about to kill him or to inflict great bodily injury upon him, which was not necessary for the purpose of making the arrest.

The jury, relying on these instructions, convicted John Bad Elk of murder and the case went to the higher court on error. The higher court stated:

"We think the court clearly erred in charging that the policeman had the right to arrest the plaintiff [John Bad Elk] in error, and to use such force as was necessary to accomplish the arrest, and that the plaintiff had no right to resist it.

"At common law, if a party resisted arrest by an officer without a warrant, and who had no right to arrest him, and if in the course of resistance the officer was killed, the offence of the party resisting arrest would be reduced from what would have been murder, if the officer had the right to arrest, to manslaughter. .. So we can clearly see that something has happened that has had the affect of allowing us to be arrested (lose our liberty) by the design of a law enforcement officer when the Supreme Court has held that the officer has no right unless certain procedures (constitutional protections) are adhered to.

Part 3

Perhaps we have been led to believe that law enforcement has superhuman rights. Perhaps the Founding Fathers, and those that followed recognized that no special privilege could be granted to normal humans who took a job that put them at risk. Perhaps arrest cannot be made, unless by indictment, properly obtained information or if a serious crime, not minor, is committed in the presence of the officer, and, perhaps not even in this last case unless property or lives are at stake.

As a general rule we have accepted the fact that we may shoot another person to protect our lives, property or money. But what is property or money if not a previous conversion of time. The time exerted to achieve the money or property surely had value. When someone attempts to "steal" that time prior to conversion are we not able to understand that even more is being taken away than when property is? Just because a man is wearing a badge gives him no right to take from us what we would not allow to be taken by someone without a badge. Why have we come to a point that we accept authority, such as that which invaded Mt. Carmel Center, Waco, Texas, without question? However, when the matter comes to life or death we are willing to protect our property, by any means necessary, when just the property jeopardized.

The Natural & Common Law Right of Self Defence

"Common as the event may be, it is a serious thing to arrest a citizen, and it is a more serious thing to search his person; and he who accomplishes it, must do so in conformity to the law of the land. There are two reasons for this; one to avoid bloodshed, and the other to preserve the liberty of the citizen. Obedience to the law is the bond of society, and the officers set to enforce the law are not exempt from its mandates." Town of Blacksburg v. Bean 104 S.C. 146. 88 S.E. 441 (1916): Allen v. State, 197 N.W. 808, 810-11 (Wis 1924)

"Where officers do not conform to the 'law of the land' they have no authority and the right to resist them exists. A Public Officer, as with a citizen, who unlawfully threatens life or liberty, is susceptible to be injured or killed; for by such acts 'they draw their own blood upon themselves' As stated in some cases, 'where a peace officer has no right to make an arrest without warrant he is a trespasser and acts at his own peril." 6A CJS., "Arrest" Section 16 page 30; A sheriff who "acts without process," or "under a process void on its face, in doing such act, he is not to be considered an officer but a personal trespasser." Roberts v. Dean, 187 So. 571, 575 (Fla. 1939)

"A person has a lawful right to resist an arrest by an unlawful authority, i.e., an officer without a valid warrant." Franklin,118 Ga. 860, 45 S.E. 698 (1903)

"What of the resistance to the arrest? The authorities are in agreement that since the right of personal property is one of the fundamental rights guaranteed by the Constitution, any unlawful interference with it may be resisted and every person has a right to resist an unlawful arrest. * * * and, in preventing such illegal restraint of his liberty, he may use such force as may be necessary." City of Columbus v. Holmes, 152 N.W. 2d, 301, 306 (Ohio App. 1058)

"It is the law of self defence and self preservation that is applicable. "One has and "unalienable" right to protect his life, liberty or property from unlawful attack or harm." "* * * it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody without resistance." Adarns v. State, 121 Ga 163, 48 S.E. 910 (1904)

"An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right, and only the same right to use force in defending himself as he would in repelling any other assault and battery." State v. Robinson, 145 Me. 77, 72 Atl, 2nd.260, 262 (1950)

"A citizen illegally arrested "cannot initiate the use of force" and neither do "words alone

justify an assault." However, "when the officer initiates the assault by physical contact, which is usually the case, and there is an unlawful arrest, the citizen has the right to protect his liberty to the extent of killing the officer." See Green v. Kennedy, 48 N.Y. Rep. 653, 654 (1871) and/or Hicks v. Matthews, 266 S.W. 2nd. 846, 849 (Tex. 1954)

"What rights then has a citizen in resisting an unlawful arrest? An arrest without warrant is a trespass, an unlawful assault upon the person, and how far one thus unlawfully assaulted may go in resistance is to be determined as in other cases of assault. Life and liberty are regarded as standing substantially on one foundation; life being useless without liberty, and the authorities are uninformed that where one is about to be unlawfully deprived of his liberty he may resist the aggressions of the officer, to the extent of taking the life of the assailant, if that be necessity to preserve his own life, or prevent infliction upon him of some great bodily harm." State v. Gum, 68 W. Va. 105, 69 S.E. 463, 464 (1910)

"It is the law that a person illegally arrested by an officer may resist that arrest, even to the extent of the taking of life if his own life or any great bodily harm is threatened. State v. Rousseau, 40 Wash. 2nd, 92, 241 P. 2nd. 447, 449 (1952); Porter v. State, 124 Ga. 297, 52 S.E. 283, 287 (1905); see also State v. Mobley, 240 N.C. 476, 83 S.E. 2nd 100, 102 (1954); Wilkinson v. State, 143 Miss. 324, 108 So. 711, 712-13 (1926); American Jurisprudence, 2nd Ed., "Arrest", Section 94, pp. 778-780; Thomas v. State, 91 Ga. 204, 18 S.E. 305 (1892); Presley v. State, 75 Fla. 434, 78 So. 532, 534 (1918); Burkhard v. State, 83 Tex. Crim. 228, 202 S.W. 513; Mullins v. State, 196 Ga. 569, 27 S.E. 2nd. 91 (1943); Ownes v. State, 58 Tex. Crim. 261, 125 S.W. 405 (1910); Caperton v. Commonwealth, 189 Ky. 652, 655, 225 S.W. 481, 481 (1920)

"The United States Supreme Court, and every other court in the past deciding upon the matter, has recognized that "at common Law", a person had the right to "resist the illegal attempt to arrest him." John Bad Elk v. United States, 177 U.S. 529, 534-35 (1899)

1. State v. Robinson, 145 Me 77, 72 Alt. 2d 260, 262 (1950)
2. State v. Gum, 68 W. Va. 105
3. State v. Rouseau, 40 Wash. 2d. 92, 241, 242 P.2d 447, 449 (1952)
4. State v. Mobley, 240 N.C. 446, 83 S.E., 2d 100, 102 (1954)
5. Wilkinson v. State, 143 Miss. 324, 108 So. 711
6. Thomas v. State, 91 Ga. 204, 18 SE 305
7. Presley v. State, 75 Fla. 434, 78 So. 523
8. Burkhardt v. State, 83 Tex Crim 228, 202 S.W. 513
9. Mullis v. State, 196 Ga. 569, 27 SE 2d 91 (1943)

10. Owen v. State, 58 Tex Crim 261, 125 S.W. 405 (1910)
11. Franklin,118 Ga. 860, 45 S.E. 698 (1903)
12. Graham v. State, 143 Ga. 440 85 S.E. 328, 331
13. City of Columbus v. Holmes, 152 N.W. 2d, 301, 306 (Ohio App. 1058)
14. Adams v. State, 121 Ga 163, 48 S.E. 910 (1904)
15. Robertson v. State, 198 S. W2d 633, 635-36 Tenn. (1947)
16. Roberts v. Dean, 187 So. 571, 575 Fla. 1939
17. The State of Connecticut against Leach, 7 Conn, Rep. 452 (1829)
18. Housh v. The People, 75 ILL Rep. 487, 491 (1874)
19. Plummer v. The State, 135 Ind. 308, 313, 334 N.E. 968 (1893)
20. John Bad Elk v. U.S. 177 U.S. 529 (1899)
21. People v. Hevern, 127 Misc. Rep. 141, 215 NY Supp 412
22. U.S. v. Cerciello, 86 NJL 309, 90 Atl.1112, (1914)
23. U.S. v. Kelly, 51 Fed 2d 263 (1931)
24. Bednarik v. Bednarik, 16 A 2d, 80, 90, 18 NJ Misc. 633 (1948)
25. State v. Height, 117 Iowa 650, 91 NW 935
26. People v. Corder, 244 Mich. 274, 221 NW 309
27. Boyd v. U.S., 116 U.S. 616
28. State v. Newcomb, 220 Mo 54 119 SW 405
29. Town of Blacksburg v. Bean, 104 S.C. 146. 88 S.E. 441 (1916)
30. Allen v. State, 197 N.W. 808, 810-11(Wis 1924)
31. Adarns v. State, 121 Ga 163, 48 S.E. 910 (1904) Green v.Kennedy, 48 N.Y. Rep. 653, 654 (1871)
32. Hicks v. Matthews, 266 S.W. 2nd. 846, 849 (Tex. 1954)
33. Porter v. State, 124 Ga. 297, 52 S.E. 283, 287 (1905)
34. Mullins v. State,196 Ga. 569, 27 S.E. 2nd. 91 (1943)
35. Caperton v. Commonwealth, 189 Ky. 652, 655, 225 S.W. 481, 481 (1920)

Magna Carta[82]

Clauses marked (+) are still valid under the charter of 1225, but with a few minor amendments. Clauses marked (*) were omitted in all later reissues of the charter. In the charter itself the clauses are not numbered, and the text reads continuously. The translation sets out to convey the sense rather than the precise wording of the original Latin.

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(2) If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall

82 Text from: http://www.bl.uk/treasures/magnacarta/translation/mc_trans.html

have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'

(3) But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.

(4) The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

(5) For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

(6) Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.

(7) At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the

debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

* (10) If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

* (11) If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

* (12) No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

+ (13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

* (14) To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

* (15) In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.

(16) No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

(17) Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

(18) Inquests of novel disseisin, mort d'ancestor, and darrein presentment shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

(19) If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

(20) For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a villein the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

(21) Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

(22) A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.

(23) No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

(24) No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

* (25) Every county, hundred, wapentake, and riding shall remain at its ancient rent, without increase, except the royal demesne manors.

(26) If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for

them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man’s will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

* (27) If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

(28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

(29) No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this service.

(30) No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

(32) We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

(34) The writ called precipe shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

(35) There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russet, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

(36) In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

(37) If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

+ (39) 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.

+ (40) To no one will we sell, to no one deny or delay right or justice.

(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

* (42) In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.

(43) If a man holds lands of any 'escheat' such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other 'escheats' in our hand that are baronies, at his death his heir shall give us only the 'relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the 'escheat' in the same manner as the baron held it.

(44) People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

* (45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

(46) All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

(47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

*(48) All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

* (49) We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

* (50) We will remove completely from their offices the kinsmen of Gerard de Athée, and in future they shall hold no offices in England. The people in question are Engelard de Cigogné, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.

* (51) As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.

* (52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for securing the peace. In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother

King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

* (53) We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first afforested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

* (55) All fines that have been given to us unjustly and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgement of the twenty-five barons referred to below in the clause for securing the peace together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgement shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

(56) If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgement of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgement of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

* (57) In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgement of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

* (58) We will at once return the son of Llywelyn, all Welsh hostages, and the charters delivered to us as security for the peace.

* (59) With regard to the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights, we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgement of his equals in our court.

(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

* (61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

* (62) We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

* (63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the above-mentioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

The Coronation Charter of King Henry I[83]

The Charter of Liberties, AD 1100

Henry, king of the English, to Samson, bishop [of Worcester], and to Urse d'Abetot,[1] and to all his barons and faithful men of Worcestershire, both French and English, greeting.

I. Know that by the mercy of God, and by the common counsel of the barons of the whole kingdom of England, I have been crowned king of the same kingdom. And since the kingdom has been oppressed by unjust exactions, I, through fear of God and through the love that I have for you all, in the first place make the Holy Church of God free, so that I will neither sell nor put at farm nor, on the death of an archbishop, bishop, or abbot, take anything from the demesne of a church, or from its men, until a successor enters upon it.[2] And I henceforth remove all the bad customs through which the kingdom of England has been unjustly oppressed; which bad customs I here in part set down.

2. If any one of my barons, earls, or other men who hold of me dies, his heir shall not redeem his land as he did in the time of my brother, but he shall relieve it by a just and legitimate relief. In the same way, furthermore, the men of my barons shall relieve their lands from their lords by just and legitimate reliefs.

3. And if any one of my barons or other men wishes to give in marriage his daughter, sister, niece, or [other] female relative, let him talk with me about the matter; but I will neither take anything from his property for this permission nor prohibit him from giving her [in marriage], unless he wishes to wed her to an enemy of mine. And if, on the death of a baron or other man of mine, a daughter remains as heiress, I will give her [in marriage], together with her land, by the counsel of my barons. And if, on the death of a husband, his wife survives and is without children, she shall have her dowry and marriage portion,[3] and I will not give her to a husband unless it is in accord with her own wish.

4. If, moreover, the wife survives with children, she shall yet have her dowry and marriage portion so long as she keeps her body legitimately, and I will not give her [in marriage] except in accord with her wish. And the guardian of the land and the children shall be either the widow or another one of the relatives who more rightly ought to be [in that position]. And I command that my barons shall conduct themselves in the same way toward the sons or daughters or wives of their men.

5. The common *monetagium*,[4] which has been collected throughout the cities and counties, and which did not exist in the time of King Edward, I utterly abolish for the future. If [however] any one, whether a moneyer or some one else, is taken with false money, let justice be done in the matter.

6. I pardon all pleas and debts that were owed to my brother, except my lawful farms and except those [payments] which were agreed on for the sake of others' inheritances or of those things that more rightly affected others.[5] But if any one has pledged anything for the sake of

83 http://www.constitution.org/sech/sech_023.htm

his own inheritance, that I pardon, as well as all reliefs that have been agreed on for the sake of rightful inheritances.

7. And if any one of my barons or men becomes infirm, as he himself may bestow his chattels or provide [by will] for their bestowal, so, I grant, shall they be bestowed. But if he, prevented by arms or infirmity, has not bestowed his chattels or provided [by will] for their bestowal, his widow or his children or his relatives or his liegemen shall divide them for the good of his soul as may seem to them best.

8. If any one of my barons or men commits an offence, he shall not [be declared] in mercy [and required to] give a pledge from his chattels,[6] as he was in the time of my father and my brother; but he shall pay compensation according to the measure of the offence, as was done before the time of my father, in the time of my other predecessors. But if he is convicted of treason or disgraceful crime,[7] let him make amends as is just.

9. I also pardon all murders[8] [committed] before that day on which I was crowned king, and those that have been committed afterwards are to be paid for by just compensation according to the law of King Edward.

10. By the common counsel of my barons, I have kept in my hands the forests as they were held by my father.[9]

11. To knights who hold their lands by military service (*per loricas*) I grant, of my own gift, the lands of their demesne ploughs[10] quit of all gelds and of all work; so that, inasmuch as they are thus relieved of a heavy burden, they may the better provide themselves with arms and horses, to be fit and ready for my service and the defence of my kingdom.

12. I establish my firm peace throughout the whole kingdom and command that it be henceforth maintained.

13. I restore to you the law of King Edward, together with those amendments by which my father, with the counsel of his barons, amended it.[11]

14. If any one, since the death of my brother William, has taken anything from my property or from the property of any one else, let him at once restore it without penalty; but if any one keeps anything [of that sort], he on whom it may be found shall pay me heavy compensation.

Witnesses: Maurice, bishop of London; William, bishop elect of Winchester; Gerard, bishop of Hereford; Henry, earl [of Warwick]; Simon, earl [of Northampton]; Walter Giffard, Robert de Montfort, Roger Bigot, Odo the Steward, Robert Fitz-Hamon, Robert Malet. At Westminster, when I was crowned. Farewell!

(Latin) Liebertnann, *Gesetse*, I, 521 f.

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[1] Sheriff of Worcester. Other forms of address were of course used for the other counties.

[2] For examples of this feudal usage and of many others abolished or restricted in the Coronation Charter, see Henry's own pipe roll (no. 25).

[3] The marriage portion (*maritagium*) was the land conferred on a woman by her father or other relative; the dowry that given her by her husband. To the former she had an absolute title if she survived her husband; in the latter she had only a life estate. Cf. no. 27E, G.

[4] The *monetagium*, which is obscurely referred to in Domesday, was an exaction introduced in England by William I. On the continent it was usually a tax on sales, paid for a term of years on condition that, during such time, no change in the coinage would be made.

[5] Presumably payments made to secure lands and perquisites that had reverted to the crown through escheat or forfeiture. But the clause might also refer to a sum paid by one man to advance the claim of another. For examples see Henry's pipe roll.

[6] This was a promise to abolish the system of amercement, or arbitrary fine, introduced by the Conqueror, and to revert to the older system of *bot* and *wite*, but it was not kept; see Pollock and Maitland, II, 513 f. Many examples of amercement will be found in the following documents.

[7] *Perfidiae vel sceleris* — offences for which there was no lawful compensation in money; cf. Alfred, 4 (above, p. 10), and the subsequent dooms.

[8] See above, p. 36, n. 2.

[9] See no. 35 and the references there given.

[10] Cf. no. 22A. If carried out, the reform would have been equivalent to a heavy reduction of hidage on all baronial manors.

[11] Cf. no. 18, art. 7.

The Affidavit of John Harris

"On the 22nd day of March 2008 I personally went to Buckingham Palace to serve an Affidavit on Her Majesty the Queen. My Oath, (which has been signed and sealed by a solicitor) states quite clearly, that I now give Her Majesty 40 days to dismiss the traitors that reside in the Parliament of this country.

I, John James Harris now declare my right under Common Law of England to Withdraw And Withhold all allegiance & obedience to the Person and Crown of Our Sovereign Lady, Elizabeth the Queen, and those who falsely claim to speak &/or to act in Her Name, and by such action, I will remove myself entirely from the authority of those Evil Persons who now seek to abuse & misuse me in the name of Elizabeth, the Queen and in absolute violation of the Common Law of the People to which I belong.

I hereby place on record of all persons that after said 40 days have expired, being the 1st day of May 2008 and the corrections I seek have not been made, by way of the dismissal of the Traitors in the House of Commons, then I John James Harris, will enter into Lawful rebellion under article 61 of Magna Carta 1215 and therefore will become a Freeman of England within the Freedom of Common Law.

I will then declare myself free from all chastisement, Laws, taxes accorded to the state and any obligations there unto, by way of second and final Lawful Affidavit signed, sealed and served."

Affidavit One

In Pursuit of Justice and Right, And in Full Exercise Of My Undoubted & Lawful Duty to My Sovereign Lady, Elizabeth the Queen -

I, JOHN JAMES HARRIS, now resident at (address supplied to her Majesty) and being the son of John James Harris (also known as Jack Harris) deceased, formerly resident at (address supplied to her Majesty) who was during his lifetime a loyal and true servant of the Crown and who was during his lifetime employed as a Personal Chauffeur to Sir David and Lady Bowes Lyons and Her Majesty the Queen, from time to time -

MAKE OATH AND SAY AS FOLLOWS "

IT BEING APPARENT TO ME and to a multitude of others that divers evil persons have falsely and unlawfully induced Our Sovereign Lady to believe that they alone are the true representatives of the people placed in Her Majesty's Care by Almighty God -

AND IT BEING APPARENT TO ME and to a multitude of others that these same evil persons have unlawfully and falsely induced Our Sovereign Lady to give an unlawful effect to legislation that has violated and continues to violate the Common Law: Which legislation further serves to undermine; deny and destroy the Absolute Supremacy of Her Majesty's Imperial Crown, all to the prejudice of Her Majesty's People, and in absolute contravention of the right of the people to live in accordance with their own laws and customs (as evidenced by the terms of the Oath that was undertaken by Our Sovereign Lady before Almighty God at the time of her Coronation) -

AND IT BEING FURTHER APPARENT TO ME and to a multitude of others that the entirely lawful authority of Our Sovereign Lady the Queen to Uphold & Defend Her People is now so reduced &/or destroyed by the many processes of Treason that have been and are now being employed against Her Majesty's Authority from within the ranks of those evil persons who have been and are now entrusted with authority to manage the affairs of Her Majesty's Parliament & Government of the United Kingdom “

That my Security and Safety under the Rule of those Laws that are my inalienable birthright are now threatened to my personal detriment and danger and to the detriment and danger of my family; my people and my country in their entirety “

AND IT BEING FINALLY APPARENT TO ME that I can achieve no redress to those many grievances that I now have and which result entirely from the Unlawful Conduct of those Evil Persons who now surround the Person and Throne of my Lawful Sovereign, except by means of the lawful process that I now intend “

I NOW PLACE ON THE RECORD of All Persons who now claim to assert a lawful authority over me in the name of Elizabeth the Queen that unless there is correction to the many processes of misgovernment & abuse that have been and are now being imposed on me; with such process of correction being commenced; undertaken; evidenced and given a first and lasting effect within a period of 40 days from this present date “

SUCH PROCESS OF CORRECTION being fully evidenced by Her Majesty's dismissal of the Assembly of Traitors that is now falsely describing itself as the Representation of the People within the House of Commons AND WITH SUCH DISMISSAL providing the entirety of the People themselves with full opportunity to speak and to act on their own behalf in the election of representatives that are truly loyal to the purposes of Her Majesty's Throne & People -

THEN I WILL WITHDRAW And withhold all allegiance & obedience to the Person and Crown of Our Sovereign Lady, Elizabeth the Queen, and those who falsely claim to speak &/or to act in

Her Name, and by such action, I will remove myself entirely from the authority of those Evil Persons who now seek to abuse & misuse me in the name of Elizabeth, the Queen and in absolute violation of the Common Law of the People to which I belong "

AND I GIVE NOTICE that I will return to my full allegiance to the Person; Estate & Imperial Crown of Elizabeth the Queen only when Her Majesty the Queen is released from the bondage that now prevents her from the free exercise of her lawful authority and duty to Uphold the Common Law that is my birthright and to ensure for all time to come that the government of my country is conducted in full accordance with the laws and customs of my people.

May God in His Mercy, Defend the Right & May God Save the Queen from those who now hold her in an Unlawful Captivity.

Affidavit Two

I, JOHN JAMES HARRIS DO DECLARE that as from and including this present date, and for all such time as may now be required to restore Elizabeth the Queen to Her Freedom and to The Lawful Dignity & Authority of her Crown, I DENY AND WITHHOLD ALL ALLEGIANCE AND OBEDIENCE TO ELIZABETH THE QUEEN, to the precise purpose of providing some defence to Her Majesty's Person; Royal Estate and Freedoms, by the process of denying all and any lawful recognition to those Evil Persons who now hold Her Majesty captive to their own Treasons; Evil Designs and Unlawful Purposes, contrary to law "

I NOW DECLARE to All Persons claiming a legal authority to exercise the power of government, in the name of Elizabeth the Queen that their authority to govern me in any way whatsoever is both DENIED and ENDED.

I HEREBY PLACE ON RECORD of all persons that I, John James Harris after said lawful process have entered into Lawful rebellion, which is my right under article 61 of Magna Carta 1215 and therefore have become, from this 1st day of May 2008, a Freeman of England within the Freedom of Common Law.

I NOW DECLARE MYSELF (which is my right after said lawful process) FREE from all Chastisement, Laws, Taxes accorded to the state and any obligations there unto "

- SECOND AFFIDAVIT OF JOHN HARRIS –

WHEREAS It Is Now Made Plain To Me that Elizabeth the Queen has been entirely deposed from her Freedoms; Crown; Authority & Dignity, by the devious machinations of traitors and by all of those evil persons who have formerly or do now support the enterprises of treason, contrary to the Laws of God and contrary to the known laws and customs of the kingdom and people of England -

AND WHEREAS the said Elizabeth the Queen is now entirely deposed from her lawful power and authority to Govern the Nations & Peoples of the United Kingdom, with Northern Ireland “

AND WHEREAS the said Elizabeth the Queen has been and is now unlawfully restrained from providing a full and adequate response to the content and requirements of an affidavit that I have served upon her in a lawful manner “

NOW I, JOHN HARRIS currently resident at (address supplied to Her Majesty), being the son of John James Harris (also known as Jack Harris) deceased, formerly resident at (address supplied to Her Majesty) who was during his lifetime a loyal and true servant of the Crown and who was during his lifetime employed as a Personal Chauffeur to Sir David and Lady Bowes Lyons and to Her Majesty the Queen, from time to time -

MAKE OATH AND SAY AS FOLLOWS “

FOR THE REASONS GIVEN within the content of the preamble to this present document, I Must and Do Now Remove Myself from All and Any Allegiance to Elizabeth the Queen, to the purpose of removing myself at law from the authority of all of those Hateful & Evil Persons who have taken it upon themselves to hold Elizabeth the Queen a prisoner in her own land “ and or who have taken it upon themselves to misgovern the United Kingdom in the Queen's Name, by the process of laying an unlawful claim to the True Authority of Elizabeth the Queen; such claim to the Royal Authority being entirely contrary to the known and most ancient laws and customs of the realm and being most clearly an expression of Treason.

I DECLARE that as from and including this present date, and for all such time as may now be required to restore Elizabeth the Queen to Her Freedom and to The Lawful Dignity & Authority of her Crown, I DENY AND WITHHOLD ALL ALLEGIANCE AND OBEDIENCE TO ELIZABETH THE QUEEN, to the precise purpose of providing some defence to Her Majesty's Person; Royal Estate and Freedoms, by the process of denying all and any lawful recognition to those Evil Persons who now hold Her Majesty captive to their own Treasons; Evil Designs and Unlawful Purposes, contrary to law -

AND TO THE FURTHER PURPOSE that my own Security and Safety under the Rule of those Laws

that are my inalienable birthright may be safeguarded against the threats to Freedom & Liberty now being posed by Divers Evil Persons, contrary to law.

I NOW DECLARE to All Persons claiming a legal authority to exercise the power of government, in the name of Elizabeth the Queen that their authority to govern me in any way whatsoever is both denied and ended.

I FURTHER DECLARE to all such persons that my personal freedom comes directly to me from God Himself, and that the walls and doors of all and any prisons now under the control of Traitors to the Crown & People of the United Kingdom will crack wide and will open at the behest of God Himself, if they should seek to impose penalty upon me for my departure from their mischiefs.

FINALLY, I give Full Notice & Assurance that I will return to my allegiance and obedience to the Person; Estate & Imperial Crown of Elizabeth the Queen when Her Majesty is entirely released from the bondage that now prevents her from the free exercise of her lawful authority and duty to Govern Her Peoples in accordance with their own laws & customs; which authority requires Her to Defend Her Peoples; Her Kingdoms; Her Realms and Her Territories in full accordance with the terms of the Oath that was Sworn before Almighty God & The People on 2nd June, 1953.

THE COMMON LAW OF ENGLAND is my birthright and at any future time of returning to a condition of Full Allegiance and Obedience to the authority of Elizabeth the Queen, I will require and expect to receive The Queen's Own Freely-Given Assurance that the government of my country will from that same time be conducted in full accordance with the laws and customs of my people; which laws and customs require and demand that the activities of all and any parliaments and governments of the United Kingdom be constrained to act within those provisions of the law that provide for the existence of such parliaments and governments.

May God in His Mercy, Defend the Right & May God Save the Queen from those who now hold her in an Unlawful Captivity.

Declaration of Independence

IN CONGRESS, July 4, 1776. [84]

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

84 Text from: http://www.archives.gov/exhibits/charters/declaration_transcript.html

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

The 56 signatures on the Declaration appear in the positions indicated:

Column 1
Georgia:
Button Gwinnett
Lyman Hall
George Walton

Column 2
North Carolina:
William Hooper
Joseph Hewes
John Penn
South Carolina:
Edward Rutledge
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton

Column 3
Massachusetts:
John Hancock
Maryland:
Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton
Virginia:
George Wythe
Richard Henry Lee
Thomas Jefferson

Benjamin Harrison
Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton

Column 4
Pennsylvania:
- Robert Morris
- Benjamin Rush
- Benjamin Franklin
- John Morton
- George Clymer
- James Smith
- George Taylor
- James Wilson
- George Ross

Delaware:
- Caesar Rodney
- George Read
- Thomas McKean

Column 5
New York:
- William Floyd
- Philip Livingston
- Francis Lewis
- Lewis Morris

New Jersey:
- Richard Stockton
- John Witherspoon
- Francis Hopkinson

John Hart
Abraham Clark

Column 6
New Hampshire:
Josiah Bartlett
William Whipple
Massachusetts:
Samuel Adams
John Adams
Robert Treat Paine
Elbridge Gerry
Rhode Island:
Stephen Hopkins
William Ellery
Connecticut:
Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott
New Hampshire:
Matthew Thornton

NO TREASON. No. 1. [85]

BY LYSANDER SPOONER

BOSTON:

PUBLISHED BY THE AUTHOR,

No. 14 Bromfield Street.

1867.

[*iii]

INTRODUCTORY.

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85 http://lysanderspooner.org/node/44

The question of treason is distinct from that of slavery; and is the same that it would have been, if free States, instead of slave States, had seceded.

On the part of the North, the war was carried on, not to liberate slaves, but by a government that had always perverted and violated the Constitution, to keep the slaves in bondage; and was still willing to do so, if the slaveholders could be thereby induced to stay in the Union.

The principle, on which the war was waged by the North, was simply this: That men may rightfully be compelled to submit to, and support, a government that they do not want; and that resistance, on their part, makes them traitors and criminals.

No principle, that is possible to be named, can be more self-evidently false than this; or more self-evidently fatal to all political freedom. Yet it triumphed in the field, and is now assumed to be established. If it really be established, the number of slaves, instead of having been diminished by the war, has been greatly increased; for a man, thus subjected to a government that he does not want, is a slave. And there is no difference, in principle --- but only in degree --- between political and chattel slavery. The former, no less than the latter, denies a man's ownership of himself and the products of his labor; and [*iv] asserts that other men may own him, and dispose of him and his property, for their uses, and at their pleasure.

Previous to the war, there were some grounds for saying that --- in theory, at least, if not in practice --- our government was a free one; that it rested on consent. But nothing of that kind can be said now, if the principle on which the war was carried on by the North, is irrevocably established.

If that principle be not the principle of the Constitution, the fact should be known. If it be the principle of the Constitution, the Constitution itself should be at once overthrown.

[*5]

NO TREASON

No. 1.

I.

Notwithstanding all the proclamations we have made to mankind, within the last ninety years, that our government rests on consent, and that that was the rightful basis on which any government could rest, the late war has practically demonstrated that our government rests upon force --- as much so as any government that ever existed.

The North has thus virtually said to the world: It was all very well to prate of consent, so long as the objects to be accomplished were to liberate ourselves from our connexion with England, and also to coax a scattered and jealous people into a great national union; but now that those purposes have been accomplished, and the power of the North has become consolidated, it is sufficient for us --- as for all governments --- simply to say: Our power is our right.

In proportion to her wealth and population, the North has probably expended more money and blood to maintain her power over an unwilling people, than any other government ever did. And in her estimation, it is apparently the chief glory of her success, and an adequate compensation for all her own losses, and an ample justification for all her devastation and carnage of the South, that all pretence of any necessity for consent to the perpetuity or power of government, is (as she thinks) forever expunged from the minds of the people. In short, the North [*6] exults beyond measure in the proof she has given, that a government, professedly resting on consent, will expend more life and treasure in crushing dissent, than any government, openly founded on force, has ever done.

And she claims that she has done all this in behalf of liberty! In behalf of free government! In behalf of the principle that government should rest on consent!

If the successors of Roger Williams, within a hundred years after their State had been founded upon the principle of free religious toleration, and when the Baptists had become strong on the credit of that principle, had taken to burning heretics with a fury never seen before among men; and had they finally gloried in having thus suppressed all question of the truth of the State religion; and had they further claimed to have done all this in behalf of freedom of conscience, the inconsistency between profession and conduct would scarcely have been greater than that of the North, in carrying on such a war as she has done, to compel men to live under and support a government that they did not want; and in then claiming that she did it in behalf of the of the principle that government should rest on consent.

This astonishing absurdity and self-contradiction are to be accounted for only by supposing, either that the lusts of fame, and power, and money, have made her utterly blind to, or utterly reckless of, he inconsistency and enormity of her conduct; or that she has never even understood what was implied in a government's resting on consent. Perhaps this last explanation is the true one. In charity to human nature, it is to be hoped that it is.

II

What, then, is implied in a government's resting on consent?

If it be said that the consent of the strongest party, in a nation, is all that is necessary to justify the establishment of a government that shall have authority over the weaker party, it [*7] may be answered that the most despotic governments in the world rest upon that very principle, viz: the consent of the strongest party. These governments are formed simply by the consent or agreement of the strongest party, that they will act in concert in subjecting the weaker party to their dominion. And the despotism, and tyranny, and injustice of these governments consist in that very fact. Or at least that is the first step in their tyranny; a necessary preliminary to all the oppressions that are to follow.

If it be said that the consent of the most numerous party, in a nation, is sufficient to justify the establishment of their power over the less numerous party, it may be answered:

First. That two men have no more natural right to exercise any kind of authority over one, than one has to exercise the same authority over two. A man's natural rights are his own, against the whole world; and any infringement of them is equally a crime, whether committed by one man, or by millions; whether committed by one man, calling himself a robber, (or by any other name indicating his true character,) or by millions, calling themselves a government.

Second. It would be absurd for the most numerous party to talk of establishing a government over the less numerous party, unless the former were also the strongest, as well as the most numerous; for it is not to be supposed that the strongest party would ever submit to the rule of the weaker party, merely because the latter were the most numerous. And as a matter of fact, it is perhaps never that governments are established by the most numerous party. They are usually, if not always, established by the less numerous party; their superior strength consisting of their superior wealth, intelligence, and ability to act in concert.

Third. Our Constitution does not profess to have been established simply by the majority; but by "the people;" the minority, as much as the majority. [*8]

Fourth. If our fathers, in 1776, had acknowledged the principle that a majority had the right to rule the minority, we should never have become a nation; for they were in a small minority, as compared with those who claimed the right to rule over them.

Fifth. Majorities, as such, afford no guarantees for justice. They are men of the same nature as minorities. They have the same passions for fame, power, and money, as minorities; and are liable and likely to be equally --- perhaps more than equally, because more boldly --- rapacious, tyrannical and unprincipled, if intrusted with power. There is no more reason, then, why a man should either sustain, or submit to, the rule of the majority, than of a minority. Majorities and minorities cannot rightfully be taken at all into account in deciding questions of justice. And all talk about them, in matters of government, is mere absurdity. Men are dunces for uniting to sustain any government, or any laws, except those in which they are all agreed. And nothing but force and fraud compel men to sustain any other. To say that majorities, as such, have a right to rule minorities, is equivalent to saying that minorities have, and ought to have, no rights, except such as majorities please to allow them.

Sixth. It is not improbable that many or most of the worst of governments --- although established by force, and by a few, in the first place --- come, in time, to be supported by a majority. But if they do, this majority is composed, in large part, of the most ignorant, superstitious, timid, dependent, servile, and corrupt portions of the people; of those who have been over-awed by the power, intelligence, wealth, and arrogance; of those who have been deceived by the frauds; and of those who have been corrupted by the inducements, of the few who really constitute the government. Such majorities, very likely, could be found in half, perhaps nine-tenths, of all the countries on the globe. What do they prove? Nothing but the tyranny and corruption of the very governments that have reduced so large portions of [*9] the people to their present ignorance, servility, degradation, and corruption; an ignorance, servility, degradation, and corruption that are best illustrated in the simple fact that they do sustain governments that have so oppressed, degraded, and corrupted them. They do nothing towards proving that the governments themselves are legitimate; or that they ought to be sustained, or even endured, by those who understand their true character. The mere fact, therefore, that a government chances to be sustained by a majority, of itself proves nothing that is necessary to be proved, in order to know whether such government should be sustained, or not.

Seventh. The principle that the majority have a right to rule the minority, practically resolves all government into a mere contest between two bodies of men, as to which of them shall be masters, and which of them slaves; a contest, that --- however bloody --- can, in the nature of things, never be finally closed, so long as man refuses to be a slave.

III

But to say that the consent of either the strongest party, or the most numerous party, in a nation, is sufficient justification for the establishment or maintenance of a government that shall control the whole nation, does not obviate the difficulty. The question still remains, how

comes such a thing as "a nation" to exist? How do millions of men, scattered over an extensive territory --- each gifted by nature with individual freedom; required by the law of nature to call no man, or body of men, his masters; authorized by that law to seek his own happiness in his own way, to do what he will with himself and his property, so long as he does not trespass upon the equal liberty of others; authorized also, by that law, to defend his own rights, and redress his own wrongs; and to go to the assistance and defence of any [*10] of his fellow men who may be suffering any kind of injustice --- how do millions of such men come to be a nation, in the first place? How is it that each of them comes to be stripped of his natural, God-given rights, and to be incorporated, compressed, compacted, and consolidated into a mass with other men, whom he never saw; with whom he has no contract; and towards many of whom he has no sentiments but fear, hatred, or contempt? How does he become subjected to the control of men like himself, who, by nature, had no authority over him; but who command him to do this, and forbid him to do that, as if they were his sovereigns, and he their subject; and as if their wills and their interests were the only standards of his duties and his rights; and who compel him to submission under peril of confiscation, imprisonment, and death?

Clearly all this is the work of force, or fraud, or both.

By what right, then, did we become "a nation?" By what right do we continue to be "a nation?" And by what right do either the strongest, or the most numerous, party, now existing within the territorial limits, called "The United States," claim that there really is such "a nation" as the United States? Certainly they are bound to show the rightful existence of "a nation," before they can claim, on that ground, that they themselves have a right to control it; to seize, for their purposes, so much of every man's property within it, as they may choose; and, at their discretion, to compel any man to risk his own life, or take the lives of other men, for the maintenance of their power.

To speak of either their numbers, or their strength, is not to the purpose. The question is by what right does the nation exist? And by what right are so many atrocities committed by its authority? or for its preservation?

The answer to this question must certainly be, that at least such a nation exists by no right whatever.

We are, therefore, driven to the acknowledgment that nations and governments, if they can rightfully exist at all, can exist only by consent. [*11]

IV.

The question, then, returns, what is implied in a government's resting on consent?

Manifestly this one thing (to say nothing of the others) is necessarily implied in the idea of a government's resting on consent, viz: the separate, individual consent of every man who is required to contribute, either by taxation or personal service, to the support of the government. All this, or nothing, is necessarily implied, because one man's consent is just as necessary as any other man's. If, for example, A claims that his consent is necessary to the establishment or maintenance of government, he thereby necessarily admits that B's and every other man's are equally necessary; because B's and every other man's right are just as good as his own. On the other hand, if he denies that B's or any other particular man's consent is necessary, he thereby necessarily admits that neither his own, nor any other man's is necessary; and that government need to be founded on consent at all.

There is, therefore, no alternative but to say, either that the separate, individual consent of every man, who is required to aid, in any way, in supporting the government, is necessary, or that the consent of no one is necessary.

Clearly this individual consent is indispensable to the idea of treason; for if a man has never consented or agreed to support a government, he breaks no faith in refusing to support it. And if he makes war upon it, he does so as an open enemy, and not as a traitor that is, as a betrayer, or treacherous friend.

All this, or nothing, was necessarily implied in the Declaration made in 1776. If the necessity for consent, then announced, was a sound principle in favor of three millions of men, it was an equally sound one in favor of three men, or of one man. If the principle was a sound one in behalf of men living on a separate continent, it was an equally sound one in behalf of a man living on a separate farm, or in a separate house. [*12]

Moreover, it was only as separate individuals, each acting for himself, and not as members of organized governments, that the three millions declared their consent to be necessary to their support of a government; and, at the same time, declared their dissent to the support of the British Crown. The governments, then existing in the Colonies, had no constitutional power, as governments, to declare the separation between England and America. On the contrary, those governments, as governments, were organized under charters from, and acknowledged allegiance to, the British Crown. Of course the British king never made it one of the chartered or constitutional powers of those governments, as governments, to absolve the people from their allegiance to himself. So far, therefore, as the Colonial Legislatures acted as revolutionists, they acted only as so many individual revolutionists, and not as constitutional legislatures. And their representatives at Philadelphia, who first declared Independence, were, in the eye of the constitutional law of that day, simply a committee of Revolutionists, and in no

sense constitutional authorities, or the representatives of constitutional authorities.

It was also, in the eye of the law, only as separate individuals, each acting for himself, and exercising simply his natural rights as an individual, that the people at large assented to, and ratified the Declaration.

It was also only as so many individuals, each acting for himself, and exercising simply his natural rights, that they revolutionized the constitutional character of their local governments, (so as to exclude the idea of allegiance to Great Britain); changing their forms only as and when their convenience dictated.

The whole Revolution, therefore, as a Revolution, was declared and accomplished by the people, acting separately as individuals, and exercising each his natural rights, and not by their governments in the exercise of their constitutional powers.

It was, therefore, as individuals, and only as individuals, each acting for himself alone, that they declared that their consent that is, their individual consent for each one could consent only [*13] for himself --- was necessary to the creation or perpetuity of any government that they could rightfully be called on to support.

In the same way each declared, for himself, that his own will, pleasure, and discretion were the only authorities he had any occasion to consult, In determining whether he would any longer support the government under which be had always lived. And if this action of each individual were valid and rightful when he had so many other individuals to keep him company, it would have been, in the view of natural justice and right, equally valid and rightful, if he had taken the same step alone. He had the same natural right to take up arms alone to defend his own property against a single tax-gatherer, that he had to take up arms in company with three millions of others, to defend the property of all against an army of tax-gatherers.

Thus the whole Revolution turned upon, asserted, and, in theory, established, the right of each and every man, at his discretion, to release himself from the support of the government under which he had lived. And this principle was asserted, not as a right peculiar to themselves, or to that time, or as applicable only to the government then existing; but as a universal right of all men, at all times, and under all circumstances.

George the Third called our ancestors traitors for what they did at that time. But they were not traitors in fact, whatever he or his laws may have called them. They were not traitors in fact, because they betrayed nobody, and broke faith with nobody. They were his equals, owing him no allegiance, obedience, nor any other duty, except such as they owed to mankind at large.

Their political relations with him had been purely voluntary. They had never pledged their faith to him that they would continue these relations any longer than it should please them to do so; and therefore they broke no faith in parting with him. They simply exercised their natural right of saying to him, and to the English people, that they were under no obligation to continue their political connexion with them, and that, for reasons of their own, they chose to dissolve it. [*14]

What was true of our ancestors, is true of revolutionists in general. The monarchs and governments, from whom they choose to separate, attempt to stigmatize them as traitors. But they are not traitors in fact; in-much they betray, and break faith with, no one. Having pledged no faith, they break none. They are simply men, who, for reasons of their own --- whether good or bad, wise or unwise, is immaterial --- choose to exercise their natural right of dissolving their connexion with the governments under which they have lived. In doing this, they no more commit the crime of treason --- which necessarily implies treachery, deceit, breach of faith --- than a man commits treason when he chooses to leave a church, or any other voluntary association, with which he has been connected.

This principle was a true one in 1776. It is a true one now. It is the only one on which any rightful government can rest. It is the one on which the Constitution itself professes to rest. If it does not really rest on that basis, it has no right to exist; and it is the duty of every man to raise his hand against it.

If the men of the Revolution designed to incorporate in the Constitution the absurd ideas of allegiance and treason, which they had once repudiated, against which they had fought, and by which the world had been enslaved, they thereby established for themselves an indisputable claim to the disgust and detestation of all mankind.

In subsequent numbers, the author hopes to show that, under the principle of individual consent, the little government that mankind need, is not only practicable, but natural and easy; and that the Constitution of the United States authorizes no government, except one depending wholly on voluntary support.

NO TREASON. No. II. The Constitution.. .

BY LYSANDER SPOONER

BOSTON:

PUBLISHED BY THE AUTHOR,

No. 14 Bromfield Street.

1867.

[*3]

NO TREASON.

NO. II

I.

The Constitution says:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity do ordain and establish this Constitution for the United States of America."

The meaning of this is simply We, the people of the United States, acting freely and voluntarily as individuals, consent and agree that we will cooperate with each other in sustaining such a government as is provided for in this Constitution.

The necessity for the consent of "the people" is implied in this declaration. The whole authority of the Constitution rests upon it. If they did not consent, it was of no validity. Of course it had no validity, except as between those who actually consented. No one's consent could be presumed against him, without his actual consent being given, any more than in the case of any other contract to pay money, or render service. And to make it binding upon any one, his signature, or other positive evidence of consent, was as necessary as in the case of any other-contract. If the instrument meant to say that any of "the people of the United States" would be bound by it, who [*4] did not consent, it was a usurpation and a lie. The most that can be inferred from the form, "We, the people," is, that the instrument offered membership to all "the people of the United States;" leaving it for them to accept or refuse it, at their pleasure.

The agreement is a simple one, like any other agreement. It is the same as one that should say: We, the people of the town of A-----, agree to sustain a church, a school, a hospital, or a theatre, for ourselves and our children.

Such an agreement clearly could have no validity, except as between those who actually consented to it. If a portion only of "the people of the town of A-----," should assent to this contract, and should then proceed to compel contributions of money or service from those who had not consented, they would be mere robbers; and would deserve to be treated as such.

Neither the conduct nor the rights of these signers would be improved at all by their saying to the dissenters: We offer you equal rights with ourselves, in the benefits of the church, school, hospital, or theatre, which we propose to establish, and equal voice in the control of it. It would

be a sufficient answer for the others to say: We want no share in the benefits, and no voice in the control, of your institution; and will do nothing to support it.

The number who actually consented to the Constitution of the United States, at the first, was very small. Considered as the act of the whole people, the adoption of the Constitution was the merest farce and imposture, binding upon nobody.

The women, children, and blacks, of course, were not asked to give their consent. In addition to this, there were, in nearly or quite all the States, property qualifications that excluded probable one half, two thirds, or perhaps even three fourths, of the white male adults from the right of suffrage. And of those who were allowed that right, we know not how many exercised it.

Furthermore, those who originally agreed to the Constitution, could thereby bind nobody that should come after them. They could contract for nobody but themselves. They had no more [*5] natural right or power to make political contracts, binding upon succeeding generations, than they had to make marriage or business contracts binding upon them.

Still further. Even those who actually voted for the adoption of the Constitution, did not pledge their faith for any specific time; since no specific time was named, in the Constitution, during which the association should continue. It was, therefore, merely an association during pleasure; even as between the original parties to it. Still less, if possible, has it been any thing more than a merely voluntary association, during pleasure, between the succeeding generations, who have never gone through, as their fathers did, with so much even as any outward formality of adopting it, or of pledging their faith to support it. Such portions of them as pleased, and as the States permitted to vote, have only done enough, by voting and paying taxes, (and unlawfully and tyrannically extorting taxes from others,) to keep the government in operation for the time being. And this, in the view of the Constitution, they have done voluntarily, and because it was for their interest, or pleasure, and not because they were under any pledge or obligation to do it. Any one man, or any number of men, have had a perfect right, at any time, to refuse his or their further support; and nobody could rightfully object to his or their withdrawal.

There is no escape from these conclusions, if we say that the adoption of the Constitution was the act of the people, as individuals, and not of the States, as States. On the other hand, if we say that the adoption was the act of the States, as States, it necessarily follows that they had the right to secede at pleasure, inasmuch as they engaged for no specific time.

The consent, therefore, that has been given, whether by individuals, or by the States, has been, at most, only a consent for the time being; not an engagement for the future. In truth, in the

case of individuals, their actual voting is not to be taken as proof of consent, even for the time being. On the contrary, it is to be considered that, without his consent having ever been asked, a [*6] man finds himself environed by a government that he cannot resist; a government that forces him to pay money, render service, and forego the exercise of many of his natural rights, under peril of weighty punishments. He sees, too, that other men practise this tyranny over him by the use of the ballot. He sees further that, if he will but use the ballot himself, he has some chance of relieving himself from this tyranny of others, by subjecting them to his own. In short, be finds himself, without his consent, so situated that, if he use the ballot, he may become a master; if he does not use it, he must become a slave. And he has no other alternative than these two. In self-defence, he attempts the former. His case is analogous to that of a man who has been forced into battle, where he must either kill others, or be killed himself. Because, to save his own life in battle, a man attempts to take the lives of his opponents, it is not to be inferred that the battle is one of his own choosing. Neither in contests with the ballot --- which is a mere substitute for a bullet --- because, as his only chance of self-preservation, a man uses a ballot, is it to be inferred that the contest is one into which he voluntarily entered; that he voluntarily set up all his own natural rights, as a stake against those of others, to be lost or won by the mere power of numbers. On the contrary, it is to be considered that, in an exigency, into which he had been forced by others, and in which no other means of self-defence offered, he, as a matter of necessity, used the only one that was left to him.

Doubtless the most miserable of men, under the most oppressive government in the world, if allowed the ballot, would use it, if they could see any chance of thereby ameliorating their condition. But it would not therefore be a legitimate inference that the government itself, that crushes them, was one which they had voluntarily set up, or ever consented to.

Therefore a man's voting under the Constitution of the United States, is not to be taken as evidence that he ever freely assented to the Constitution, even for the time being. Consequently we have no proof that any very large portion, even of the actual [*7] voters of the United States, ever really and voluntarily consented to the Constitution, even for the time being. Nor can we ever have such proof, until every man is left perfectly free to consent, or not, without thereby subjecting himself or his property to injury or trespass from others.

II.

The Constitution says:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

This is the only definition of treason given by the Constitution, and it is to be interpreted, like all other criminal laws, in the sense most favorable to liberty and justice. Consequently the treason here spoken of, must be held to be treason in fact, and not merely something that may have been falsely called by that name.

To determine, then, what is treason in fact, we are not to look to the codes of Kings, and Czars, and Kaisers, who maintain their power by force and fraud; who contemptuously call mankind their "subjects;" who claim to have a special license from heaven to rule on earth; who teach that it is a religious duty of mankind to obey them; who bribe a servile and corrupt priest-hood to impress these ideas upon the ignorant and superstitious; who spurn the idea that their authority is derived from, or dependent at all upon, the consent of their people; and who attempt to defame, by the false epithet of traitors, all who assert their own rights, and the rights of their fellow men, against such usurpations.

Instead of regarding this false and calumnious meaning of the word treason, we are to look at its true and legitimate meaning in our mother tongue; at its use in common life; and at what would necessarily be its true meaning in any other contracts, or articles [*8] of association, which men might voluntarily enter into with each other.

The true and legitimate meaning of the word treason, then, necessarily implies treachery, deceit, breach of faith. Without these, there can be no treason. A traitor is a betrayer --- one who practices injury, while professing friendship. Benedict Arnold was a traitor, solely because, while professing friendship for the American cause, he attempted to injure it. An open enemy, however criminal in other respects, is no traitor.

Neither does a man, who has once been my friend, become a traitor by becoming an enemy, if before doing me an injury, he gives me fair warning that he has become an enemy; and if he makes no unfair use of any advantage which my confidence, in the time of our friendship, had placed in his power.

For example, our fathers --- even if we were to admit them to have been wrong in other respects --- certainly were not traitors in fact, after the fourth of July, 1776; since on that day they gave notice to the King of Great Britain that they repudiated his authority, and should wage war against him. And they made no unfair use of any advantages which his confidence had previously placed in their power.

It cannot be denied that, in the late war, the Southern people proved themselves to be open and avowed enemies, and not treacherous friends. It cannot be denied that they gave us fair warning that they would no longer be our political associates, but would, if need were, fight for

a separation. It cannot be alleged that they made any unfair use of advantages which our confidence, in the time of our friendship, had placed in their power. Therefore they were not traitors in fact: and consequently not traitors within the meaning of the Constitution.

Furthermore, men are not traitors in fact, who take up arms against the government, without having disavowed allegiance to it, provided they do it, either to resist the usurpations of the government, or to resist what they sincerely believe to be such usurpations. [*9]

It is a maxim of law that there can be no crime without a criminal intent. And this maxim is as applicable to treason as to any other crime. For example, our fathers were not traitors in fact, for resisting the British Crown, before the fourth of July, 1776 --- that is, before they had thrown off allegiance to him --- provided they honestly believed that they were simply defending their rights against his usurpations. Even if they were mistaken in their law, that mistake, if an innocent one, could not make them traitors in fact.

For the same reason, the Southern people, if they sincerely believed --- as it has been extensively, if not generally, conceded, at the North, that they did --- in the so-called constitutional theory of "State Rights," did not become traitors in fact, by acting upon it; and consequently not traitors within the meaning of the Constitution.

III.

The Constitution does not say who will become traitors, by "levying war against the United States, or adhering to their enemies, giving them aid and comfort."

It is, therefore, only by inference, or reasoning, that we can know who will become traitors by these acts.

Certainly if Englishmen, Frenchmen, Austrians, or Italians, making no professions of support or friendship to the United States, levy war against them, or adhere to their enemies, giving them aid and comfort, they do not thereby make themselves traitors, within the meaning of the Constitution; and why? Solely because they would not be traitors in fact. Making no professions of support or friendship, they would practice no treachery, deceit, or breach of faith. But if they should voluntarily enter either the civil or military service of the United States, and pledge fidelity to them, (without being naturalized,) and should then betray the trusts reposed in them, either by turning their guns against the United States, or by giving aid [*10] and comfort to their enemies, they would be traitors in fact; and therefore traitors within the meaning of the Constitution; and could be lawfully punished as such.

There is not, in the Constitution, a syllable that implies that persons, born within the territorial limits of the United States, have allegiance imposed upon them on account of their birth in the country, or that they will be judged by any different rule, on the subject of treason, than persons of foreign birth. And there is no power, in Congress, to add to, or alter, the language of the Constitution, on this point, so as to make it more comprehensive than it now is. Therefore treason in fact --- that is, actual treachery, deceit, or breach of faith --- must be shown in the case of a native of the United States, equally as in the case of a foreigner, before he can be said to be a traitor.

Congress have seen that the language of the Constitution was insufficient, of itself to make a man a traitor --- on the ground of birth in this country --- who levies war against the United States, but practices no treachery, deceit, or breach of faith. They have, therefore --- although they had no constitutional power to do so --- apparently attempted to enlarge the language of the Constitution on this point. And they have enacted:

"That if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, * * * such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death." --- Statute, April 30, 1790, Section 1.

It would be a sufficient answer to this enactment to say that it is utterly unconstitutional, if its effect would be to make any man a traitor, who would not have been one under the language of the Constitution alone.

The whole pith of the act lies in the words, "persons owing allegiance to the United States." But this language really leaves the question where it was before, for it does not attempt to [*11] show or declare who does "owe allegiance to the United States;" although those who passed the act, no doubt thought, or wished others to think, that allegiance was to be presumed (as is done under other governments) against all born in this country, (unless possibly slaves).

The Constitution itself, uses no such word as "allegiance," "sovereignty," "loyalty," "subject," or any other term, such as is used by other governments, to signify the services, fidelity, obedience, or other duty, which the people are assumed to owe to their government, regardless of their own will in the matter. As the Constitution professes to rest wholly on consent, no one can owe allegiance, service, obedience, or any other duty to it, or to the government created by it, except with his own consent.

The word allegiance comes from the Latin words ad and ligo, signifying to bind to. Thus a man

under allegiance to a government, is a man bound to it; or bound to yield it support and fidelity. And governments, founded otherwise than on consent, hold that all persons born under them, are under allegiance to them; that is, are bound to render them support, fidelity, and obedience; and are traitors if they resist them.

But it is obvious that, in truth and in fact, no one but himself can bind any one to support any government. And our Constitution admits this fact when it concedes that it derives its authority wholly from the consent of the people. And the word treason is to be understood in accordance with that idea.

It is conceded that a person of foreign birth comes under allegiance to our government only by special voluntary contract. If a native has allegiance imposed upon him, against his will, he is in a worse condition than the foreigner; for the latter can do as he pleases about assuming that obligation. The accepted interpretation of the Constitution, therefore, makes the foreigner a free person, on this point, while it makes the native a slave.

The only difference --- if there be any --- between natives and foreigners, in respect of allegiance, is, that a native has a right --- offered to him by the Constitution --- to come under allegiance to [*12] the government, if be so please; and thus. entitle himself to membership in the body politic. His allegiance cannot be refused. Whereas a foreigner's allegiance can be refused, if the government so please.

IV.

The Constitution certainly supposes that the crime of treason can be committed only by man, as an individual. It would be very curious to see a man indicted, convicted, or hanged, otherwise than as an individual; or accused of having committed his treason otherwise than as an individual. And yet it is clearly impossible that any one can be personally guilty of treason, can be a traitor in fact, unless he, as an individual, has in some way voluntarily pledged his faith and fidelity to the government. Certainly no man, or body of men, could pledge it for him, without his consent; and no man, or body of men, have any right to presume it against him, when he has not pledged it, himself.

V.

It is plain, therefore, that if, when the Constitution says treason, it means treason --- treason in fact, and nothing else --- there is no ground at all for pretending that the Southern people have committed that crime. But if, on the other hand, when the Constitution says treason, it means what the Czar and the Kaiser mean by treason, then our government is, in principle, no better

than theirs; and has no claim whatever to be considered a free government.

VI.

One essential of a free government is that it rest wholly on voluntary support. And one certain proof that a government is not free, is that it coerces more or less persons to support it, against their will. All governments, the worst on earth, and the [*13] most tyrannical on earth, are free governments to that portion of the people who voluntarily support them. And all governments though the best on earth in other respects --- are nevertheless tyrannies to that portion of the people --- whether few or many --- who are compelled to support them against their will. A government is like a church, or any other institution, in these respects. There is no other criterion whatever, by which to determine whether a government is a free one, or not, than the single one of its depending, or not depending, solely on voluntary support.

VII.

No middle ground is possible on this subject. Either "taxation without consent is robbery," or it is not. If it is not, then any number of men, who choose, may at any time associate; call themselves a government; assume absolute authority over all weaker than themselves; plunder them at will; and kill them if they resist. If, on the other hand, taxation without consent is robbery, it necessarily follows that every man who has not consented to be taxed, has the same natural right to defend his property against a taxgatherer, that he has to defend it against a highwayman.

VIII.

It is perhaps unnecessary to say that the principles of this argument are as applicable to the State governments, as to the national one.

The opinions of the South, on the subjects of allegiance and treason, have been equally erroneous with those of the North. The only difference between them, has been, that the South has had that a man was (primarily) under involuntary allegiance to the State government; while the North held that he was (primarily) under a similar allegiance to the United States government; whereas, in truth, he was under no involuntary allegiance to either. [*14]

IX.

Obviously there can be no law of treason more stringent than has now been stated, consistently with political liberty. In the very nature of things there can never be any liberty for the weaker party, on any other principle; and political liberty always means liberty for the weaker party. It is only the weaker party that is ever oppressed. The strong are always free by virtue of their superior strength. So long as government is a mere contest as to which of two parties shall rule the other, the weaker must always succumb. And whether the contest be carried on with ballots or bullets, the principle is the same; for under the theory of government now prevailing, the ballot either signifies a bullet, or it signifies nothing. And no one can consistently use a ballot, unless he intends to use a bullet, if the latter should be needed to insure submission to the former.

X.

The practical difficulty with our government has been, that most of those who have administered it, have taken it for granted that the Constitution, as it is written, was a thing of no importance; that it neither said what it meant, nor meant what it said; that it was gotten up by swindlers, (as many of its authors doubtless were,) who said a great many good things, which they did not mean, and meant a great many bad things, which they dared not say; that these men, under the false pretence of a government resting on the consent of the whole people, designed to entrap them into a government of a part; who should be powerful and fraudulent enough to cheat the weaker portion out of all the good things that were said, but not meant, and subject them to all the bad things that were meant, but not said. And most of those who have administered the government, have assumed that all these swindling intentions were to be carried into effect, in the place of the written Constitution. Of all these swindles, the [*15] treason swindle is the most flagitious. It is the most flagitious, because it is equally flagitious, in principle, with any; and it includes all the others. It is the instrumentality by which all the others are mode effective. A government that can at pleasure accuse, shoot, and hang men, as traitors, for the one general offence of refusing to surrender themselves and their property unreservedly to its arbitrary will, can practice any and all special and particular oppressions it pleases.

The result --- and a natural one --- has been that we have had governments, State and national, devoted to nearly every grade and species of crime that governments have ever practised upon their victims; and these crimes have culminated in a war that has cost a million of lives; a war carried on, upon one side, for chattel slavery, and on the other for political slavery; upon neither for liberty, justice, or truth. And these crimes have been committed, and this war waged, y men, and the descendants of men, who, less than a hundred years ago, said that all men were equal, and could owe neither service to individuals, nor allegiance to governments, except with their own consent.

XI.

No attempt or pretence, that was ever carried into practical operation amongst civilized men --- unless possibly the pretence of a "Divine Right," on the part of some, to govern and enslave others embodied so much of shameless absurdity, falsehood, impudence, robbery, usurpation, tyranny, and villany of every kind, as the attempt or pretence of establishing a government by consent, and getting the actual consent of only so many as may be necessary to keep the rest in subjection by force. Such a government is a mere conspiracy of the strong against the weak. It no more rests on consent than does the worst government on earth.

What substitute for their consent is offered to the weaker party, whose rights are thus annihilated, struck out of existence, [*16] by the stronger? Only this: Their consent is presumed! That is, these usurpers condescendingly and graciously presume that those whom they enslave, consent to surrender their all of life, liberty, and property into the hands of those who thus usurp dominion over them! And it is pretended that this presumption of their consent --- when no actual consent has been given --- is sufficient to save the rights of the victims, and to justify the usurpers! As well might the highwayman pretend to justify himself by presuming that the traveller consents to part with his money. As well might the assassin justify himself by simply presuming that his victim consents to part with his life. As well the holder of chattel slaves to himself by presuming that they consent to his authority, and to the whips and the robbery which he practises upon them. The presumption is simply a presumption that the weaker party consent to be slaves.

Such is the presumption on which alone our government relies to justify the power it maintains over its unwilling subjects. And it was to establish that presumption as the inexorable and perpetual law of this country, that so much money and blood have been expended.

NO TREASON. No. VI. The Constitution of no Authority.

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NO TREASON

NO. VI.

THE CONSTITUTION OF NO AUTHORITY

I.

The Constitution has no inherent authority or obligation. It has no authority or obligation at all, unless as a contract between man and man. And it does not so much as even purport to be a contract between persons now existing. It purports, at most, to be only a contract between persons living eighty years ago. And it can be supposed to have been a contract then only between persons who had already come to years of discretion, so as to be competent to make reasonable and obligatory contracts. Furthermore, we know, historically, that only a small portion even of the people then existing were consulted on the subject, or asked, or permitted to express either their consent or dissent in any formal manner. Those persons, if any, who did give their consent formally, are all dead now. Most of them have been dead forty, fifty, sixty, or

seventy years. And the constitution, so far as it was their contract, died with them. They had no natural power or right to make it obligatory upon their children. It is not only plainly impossible, in the nature of things, that they could bind their posterity, but they did not even attempt to bind them. That is to say, the instrument does not purport to be an agreement between any body but "the people" then existing; nor does it, either ex- [*4] pressly or impliedly, assert any right, power, or disposition, on their part, to bind anybody but themselves. Let us see. Its language is:

"We, the people of the United States (that is, the people then existing in the United States), in order to form a more perfect union, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

It is plain, in the first place, that this language, as an agreement, purports to be only what it at most really was, viz., a contract between the people then existing; and, of necessity, binding, as a contract, only upon those then existing. In the second place, the language neither expresses nor implies that they had any right or power, to bind their "posterity" to live under it. It does not say that their "posterity" will, shall, or must live under it. It only says, in effect, that their hopes and motives in adopting it were that it might prove useful to their posterity, as well as to themselves, by promoting their union, safety, tranquility, liberty, etc.

Suppose an agreement were entered into, in this form:

We, the people of Boston, agree to maintain a fort on Governor's Island, to protect ourselves and our posterity against invasion.

This agreement, as an agreement, would clearly bind nobody but the people then existing. Secondly, it would assert no right, power, or disposition, on their part, to compel, their "posterity" to maintain such a fort. It would only indicate that the supposed welfare of their posterity was one of the motives that induced the original parties to enter into the agreement.

When a man says he is building a house for himself and his posterity, he does not mean to be understood as saying that he has any thought of binding them, nor is it to be inferred that he [*5] is so foolish as to imagine that he has any right or power to bind them, to live in it. So far as they are concerned, he only means to be understood as saying that his hopes and motives, in building it, are that they, or at least some of them, may find it for their happiness to live in it.

So when a man says he is planting a tree for himself and his posterity, he does not mean to be understood as saying that he has any thought of compelling them, nor is it to be inferred that

he is such a simpleton as to imagine that he has any right or power to compel them, to eat the fruit. So far as they are concerned, he only means to say that his hopes and motives, in planting the tree, are that its fruit may be agreeable to them.

So it was with those who originally adopted the Constitution. Whatever may have been their personal intentions, the legal meaning of their language, so far as their "posterity" was concerned, simply was, that their hopes and motives, in entering into the agreement, were that it might prove useful and acceptable to their posterity; that it might promote their union, safety, tranquility, and welfare; and that it might tend "to secure to them the blessings of liberty." The language does not assert nor at all imply, any right, power, or disposition, on the part of the original parties to the agreement, to compel their "posterity" to live under it. If they had intended to bind their posterity to live under it, they should have said that their objective was, not "to secure to them the blessings of liberty," but to make slaves of them; for if their "posterity" are bound to live under it, they are nothing less than the slaves of their foolish, tyrannical, and dead grandfathers.

It cannot be said that the Constitution formed "the people of the United States," for all time, into a corporation. It does not speak of "the people" as a corporation, but as individuals. A corporation does not describe itself as "we," nor as "people," nor as "ourselves." Nor does a corporation, in legal language, [*6] have any "posterity." It supposes itself to have, and speaks of itself as having, perpetual existence, as a single individuality.

Moreover, no body of men, existing at any one time, have the power to create a perpetual corporation. A corporation can become practically perpetual only by the voluntary accession of new members, as the old ones die off. But for this voluntary accession of new members, the corporation necessarily dies with the death of those who originally composed it.

Legally speaking, therefore, there is, in the Constitution, nothing that professes or attempts to bind the "posterity" of those who establish[ed] it.

If, then, those who established the Constitution, had no power to bind, and did not attempt to bind, their posterity, the question arises, whether their posterity have bound themselves. If they have done so, they can have done so in only one or both of these two ways, viz., by voting, and paying taxes.

II.

Let us consider these two matters, voting and tax paying, separately. And first of voting.

All the voting that has ever taken place under the Constitution, has been of such a kind that it not only did not pledge the whole people to support the Constitution, but it did not even pledge any one of them to do so, as the following considerations show.

1. In the very nature of things, the act of voting could bind nobody but the actual voters. But owing to the property qualifications required, it is probable that, during the first twenty or thirty years under the Constitution, not more than one-tenth, fifteenth, or perhaps twentieth of the whole population (black and white, men, women, and minors) were permitted to vote. Consequently, so far as voting was concerned, not more than one-tenth, fifteenth, or twentieth of those then existing, could have incurred any obligation to support the Constitution. [*7]

At the present time, it is probable that not more than one-sixth of the whole population are permitted to vote. Consequently, so far as voting is concerned, the other five-sixths can have given no pledge that they will support the Constitution.

2. Of the one-sixth that are permitted to vote, probably not more than two-thirds (about one-ninth of the whole population) have usually voted. Many never vote at all. Many vote only once in two, three, five, or ten years, in periods of great excitement.

No one, by voting, can be said to pledge himself for any longer period than that for which he votes. If, for example, I vote for an officer who is to hold his office for only a year, I cannot be said to have thereby pledged myself to support the government beyond that term. Therefore, on the ground of actual voting, it probably cannot be said that more than one-ninth or one-eighth, of the whole population are usually under any pledge to support the Constitution.

3. It cannot be said that, by voting, a man pledges himself to support the Constitution, unless the act of voting be a perfectly voluntary one on his part. Yet the act of voting cannot properly be called a voluntary one on the part of any very large number of those who do vote. It is rather a measure of necessity imposed upon them by others, than one of their own choice. On this point I repeat what was said in a former number, viz.:

"In truth, in the case of individuals, their actual voting is not to be taken as proof of consent, even for the time being. On the contrary, it is to be considered that, without his consent having even been asked a man finds himself environed by a government that he cannot resist; a government that forces him to pay money, render service, and forego the exercise of many of his natural rights, under peril of weighty punishments. He sees, too, that other men practice this tyranny over him by the use of the ballot. He sees further, that, if he will but use the ballot [*8] himself, he has some chance of relieving himself from this tyranny of others, by subjecting

them to his own. In short, he finds himself, without his consent, so situated that, if he use the ballot, he may become a master; if he does not use it, he must become a slave. And he has no other alternative than these two. In self-defence, he attempts the former. His case is analogous to that of a man who has been forced into battle, where he must either kill others, or be killed himself. Because, to save his own life in battle, a man takes the lives of his opponents, it is not to be inferred that the battle is one of his own choosing. Neither in contests with the ballot --- which is a mere substitute for a bullet --- because, as his only chance of self- preservation, a man uses a ballot, is it to be inferred that the contest is one into which he voluntarily entered; that he voluntarily set up all his own natural rights, as a stake against those of others, to be lost or won by the mere power of numbers. On the contrary, it is to be considered that, in an exigency into which he had been forced by others, and in which no other means of self-defence offered, he, as a matter of necessity, used the only one that was left to him.

"Doubtless the most miserable of men, under the most oppressive government in the world, if allowed the ballot, would use it, if they could see any chance of thereby meliorating their condition. But it would not, therefore, be a legitimate inference that the government itself, that crushes them, was one which they had voluntarily set up, or even consented to. "Therefore, a man's voting under the Constitution of the United States, is not to be taken as evidence that he ever freely assented to the Constitution, even for the time being. Consequently we have no proof that any very large portion, even of the actual voters of the United States, ever really and voluntarily consented to the Constitution, even for the time being. Nor can we ever have such proof, until every man is left perfectly free to consent, or not, without thereby subjecting himself or his property to be disturbed or injured by others."

As we can have no legal knowledge as to who votes from choice, and who from the necessity thus forced upon him, we can have no legal knowledge, as to any particular individual, that he voted from choice; or, consequently, that by voting, he consented, or pledged himself, to support the government. Legally [*9] speaking, therefore, the act of voting utterly fails to pledge any one to support the government. It utterly fails to prove that the government rests upon the voluntary support of anybody. On general principles of law and reason, it cannot be said that the government has any voluntary supporters at all, until it can be distinctly shown who its voluntary supporters are.

4. As taxation is made compulsory on all, whether they vote or not, a large proportion of those who vote, no doubt do so to prevent their own money being used against themselves; when, in fact, they would have gladly abstained from voting, if they could thereby have saved themselves from taxation alone, to say nothing of being saved from all the other usurpations and tyrannies of the government. To take a man's property without his consent, and then to infer his consent because he attempts, by voting, to prevent that property from being used to his injury, is a very insufficient proof of his consent to support the Constitution. It is, in fact, no proof at all. And as we can have no legal knowledge as to who the particular individuals are, if there are any, who are willing to be taxed for the sake of voting, we can have no legal

knowledge that any particular individual consents to be taxed for the sake of voting; or, consequently, consents to support the Constitution.

5. At nearly all elections, votes are given for various candidates for the same office. Those who vote for the unsuccessful candidates cannot properly be said to have voted to sustain the Constitution. They may, with more reason, be supposed to have voted, not to support the Constitution, but specially to prevent the tyranny which they anticipate the successful candidate intends to practice upon them under color of the Constitution; and therefore may reasonably be supposed to have voted against the Constitution itself. This supposition is the more reasonable, inasmuch as such voting is the only mode allowed to them of expressing their dissent to the Constitution. [*10]

6. Many votes are usually given for candidates who have no prospect of success. Those who give such votes may reasonably be supposed to have voted as they did, with a special intention, not to support, but to obstruct the execution of, the Constitution; and, therefore, against the Constitution itself.

7. As all the different votes are given secretly (by secret ballot), there is no legal means of knowing, from the votes themselves, who votes for, and who votes against, the Constitution. Therefore, voting affords no legal evidence that any particular individual supports the Constitution. And where there can be no legal evidence that any particular individual supports the Constitution, it cannot legally be said that anybody supports it. It is clearly impossible to have any legal proof of the intentions of large numbers of men, where there can be no legal proof of the intentions of any particular one of them.

8. There being no legal proof of any man's intentions, in voting, we can only conjecture them. As a conjecture, it is probable, that a very large proportion of those who vote, do so on this principle, viz., that if, by voting, they could but get the government into their own hands (or that of their friends), and use its powers against their opponents, they would then willingly support the Constitution; but if their opponents are to have the power, and use it against them, then they would not willingly support the Constitution.

In short, men's voluntary support of the Constitution is doubtless, in most cases, wholly contingent upon the question whether, by means of the Constitution, they can make themselves masters, or are to be made slaves.

Such contingent consent as that is, in law and reason, no consent at all.

9. As everybody who supports the Constitution by voting (if there are any such) does so secretly

(by secret ballot), and in a way to avoid all personal responsibility for the acts of his agents or representatives, it cannot legally or reasonably be [*11] said that anybody at all supports the Constitution by voting. No man can reasonably or legally be said to do such a thing as assent to, or support, the Constitution, unless he does it openly, and in a way to make himself personally responsible for the acts of his agents, so long as they act within the limits of the power he delegates to them.

10. As all voting is secret (by secret ballot), and as all secret governments are necessarily only secret bands of robbers, tyrants, and murderers, the general fact that our government is practically carried on by means of such voting, only proves that there is among us a secret band of robbers, tyrants, and murderers, whose purpose is to rob, enslave, and, so far as necessary to accomplish their purposes, murder, the rest of the people. The simple fact of the existence of such a band does nothing towards proving that "the people of the United States," or any one of them, voluntarily supports the Constitution.

For all the reasons that have now been given, voting furnishes no legal evidence as to who the particular individuals are (if there are any), who voluntarily support the Constitution. It therefore furnishes no legal evidence that anybody supports it voluntarily.

So far, therefore, as voting is concerned, the Constitution, legally speaking, has no supporters at all.

And, as a matter of fact, there is not the slightest probability that the Constitution has a single bona fide supporter in the country. That is to say, there is not the slightest probability that there is a single man in the country, who both understands what the Constitution really is, and sincerely supports it for what it really is.

The ostensible supporters of the Constitution, like the ostensible supporters of most other governments, are made up of three classes, viz.: 1. Knaves, a numerous and active class, who see in the government an instrument which they can use for their own aggrandizement or wealth. 2. Dupes --- a large class, no [*12] doubt --- each of whom, because he is allowed one voice out of millions in deciding what he may do with his own person and his own property, and because he is permitted to have the same voice in robbing, enslaving, and murdering others, that others have in robbing, enslaving, and murdering himself, is stupid enough to imagine that he is a "free man," a "sovereign"; that this is "a free government"; "a government of equal rights," "the best government on earth," and such like absurdities. 3. A class who have some appreciation of the evils of government, but either do not see how to get rid of them, or do not choose to so far sacrifice their private interests as to give themselves seriously and earnestly to the work of making a change.

III.

The payment of taxes, being compulsory, of course furnishes no evidence that any one voluntarily supports the Constitution.

1. It is true that the theory of our Constitution is, that all taxes are paid voluntarily; that our government is a mutual insurance company, voluntarily entered into by the people with each other; that that each man makes a free and purely voluntary contract with all others who are parties to the Constitution, to pay so much money for so much protection, the same as he does with any other insurance company; and that he is just as free not to be protected, and not to pay tax, as he is to pay a tax, and be protected.

But this theory of our government is wholly different from the practical fact. The fact is that the government, like a highwayman, says to a man: Your money, or your life." And many, if not most, taxes are paid under the compulsion of that threat.

The government does not, indeed, waylay a man in a lonely place, spring upon him from the roadside, and, holding a pistol [*13] to his head, proceed to rifle his pockets. But the robbery is none the less a robbery on that account; and it is far more dastardly and shameful.

The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use it for your own benefit. He does not pretend to be anything but a robber. He has not acquired impudence enough to profess to be merely a "protector," and that he takes men's money against their will, merely to enable him to "protect" those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. He is too sensible a man to make such professions as these. Furthermore, having taken your money, he leaves you, as you wish him to do. He does not persist in following you on the road, against your will; assuming to be your rightful "sovereign," on account of the "protection" he affords you. He does not keep "protecting" you, by commanding you to bow down and serve him; by requiring you to do this, and forbidding you to do that; by robbing you of more money as often as he finds it for his interest or pleasure to do so; and by branding you as a rebel, a traitor, and an enemy to your country, and shooting you down without mercy, if you dispute his authority, or resist his demands. He is too much of a gentleman to be guilty of such impostures, and insults, and villanies as these. In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave.

The proceedings of those robbers and murderers, who call themselves "the government," are directly the opposite of these of the single highwayman.

In the first place, they do not, like him, make themselves individually known; or, consequently, take upon themselves personally the responsibility of their acts. On the contrary, they secretly (by secret ballot) designate some one of their number [*14] to commit the robbery in their behalf, while they keep themselves practically concealed. They say to the person thus designated:

Go to A_____ B_____, and say to him that "the government" has need of money to meet the expenses of protecting him and his property. If he presumes to say that he has never contracted with us to protect him, and that he wants none of our protection, say to him that that is our business, and not his; that we choose to protect him, whether he desires us to do so or not; and that we demand pay, too, for protecting him. If he dares to inquire who the individuals are, who have thus taken upon themselves the title of "the government," and who assume to protect him, and demand payment of him, without his having ever made any contract with them, say to him that that, too, is our business, and not his; that we do not choose to make ourselves individually known to him; that we have secretly (by secret ballot) appointed you our agent to give him notice of our demands, and, if he complies with them, to give him, in our name, a receipt that will protect him against any similar demand for the present year. If he refuses to comply, seize and sell enough of his property to pay not only our demands, but all your own expenses and trouble beside. If he resists the seizure of his property, call upon the bystanders to help you (doubtless some of them will prove to be members of our band.) If, in defending his property, he should kill any of our band who are assisting you, capture him at all hazards; charge him (in one of our courts) with murder; convict him, and hang him. If he should call upon his neighbors, or any others who, like him, may be disposed to resist our demands, and they should come in large numbers to his assistance, cry out that they are all rebels and traitors; that "our country" is in danger; call upon the commander of our hired murderers; tell him to quell the rebellion and "save the country," cost what it may. Tell him to kill all who resist, though they should be hundreds of thou- [*15] sands; and thus strike terror into all others similarly disposed. See that the work of murder is thoroughly done; that we may have no further trouble of this kind hereafter. When these traitors shall have thus been taught our strength and our determination, they will be good loyal citizens for many years, and pay their taxes without a why or a wherefore.

It is under such compulsion as this that taxes, so called, are paid. And how much proof the payment of taxes affords, that the people consent to "support the government," it needs no further argument to show.

2. Still another reason why the payment of taxes implies no consent, or pledge, to support the government, is that the taxpayer does not know, and has no means of knowing, who the particular individuals are who compose "the government." To him "the government" is a myth, an abstraction, an incorporeality, with which he can make no contract, and to which he can give no consent, and make no pledge. He knows it only through its pretended agents. "The

government" itself he never sees. He knows indeed, by common report, that certain persons, of a certain age, are permitted to vote; and thus to make themselves parts of, or (if they choose) opponents of, the government, for the time being. But who of them do thus vote, and especially how each one votes (whether so as to aid or oppose the government), he does not know; the voting being all done secretly (by secret ballot). Who, therefore, practically compose "the government," for the time being, he has no means of knowing. Of course he can make no contract with them, give them no consent, and make them no pledge. Of necessity, therefore, his paying taxes to them implies, on his part, no contract, consent, or pledge to support them --- that is, to support "the government," or the Constitution.

3. Not knowing who the particular individuals are, who call themselves "the government," the taxpayer does not know whom he pays his taxes to. All he knows is that a man comes to [*16] him, representing himself to be the agent of "the government" --- that is, the agent of a secret band of robbers and murderers, who have taken to themselves the title of "the government," and have determined to kill everybody who refuses to give them whatever money they demand. To save his life, he gives up his money to this agent. But as this agent does not make his principals individually known to the taxpayer, the latter, after he has given up his money, knows no more who are "the government" --- that is, who were the robbers --- than he did before. To say, therefore, that by giving up his money to their agent, he entered into a voluntary contract with them, that he pledges himself to obey them, to support them, and to give them whatever money they should demand of him in the future, is simply ridiculous.

4. All political power, so called, rests practically upon this matter of money. Any number of scoundrels, having money enough to start with, can establish themselves as a "government"; because, with money, they can hire soldiers, and with soldiers extort more money; and also compel general obedience to their will. It is with government, as Caesar said it was in war, that money and soldiers mutually supported each other; that with money he could hire soldiers, and with soldiers extort money. So these villains, who call themselves governments, well understand that their power rests primarily upon money. With money they can hire soldiers, and with soldiers extort money. And, when their authority is denied, the first use they always make of money, is to hire soldiers to kill or subdue all who refuse them more money.

For this reason, whoever desires liberty, should understand these vital facts, viz.: 1. That every man who puts money into the hands of a "government" (so called), puts into its hands a sword which will be used against him, to extort more money from him, and also to keep him in subjection to its arbitrary will. 2. That those who will take his money, without his con- [*17] sent, in the first place, will use it for his further robbery and enslavement, if he presumes to resist their demands in the future. 3. That it is a perfect absurdity to suppose that any body of men would ever take a man's money without his consent, for any such object as they profess to take it for, viz., that of protecting him; for why should they wish to protect him, if he does not wish them to do so? To suppose that they would do so, is just as absurd as it would be to suppose that they would take his money without his consent, for the purpose of buying food or

clothing for him, when he did not want it. 4. If a man wants "protection," he is competent to make his own bargains for it; and nobody has any occasion to rob him, in order to "protect" him against his will. 5. That the only security men can have for their political liberty, consists in their keeping their money in their own pockets, until they have assurances, perfectly satisfactory to themselves, that it will be used as they wish it to be used, for their benefit, and not for their injury. 6. That no government, so called, can reasonably be trusted for a moment, or reasonably be supposed to have honest purposes in view, any longer than it depends wholly upon voluntary support.

These facts are all so vital and so self-evident, that it cannot reasonably be supposed that any one will voluntarily pay money to a "government," for the purpose of securing its protection, unless he first make an explicit and purely voluntary contract with it for that purpose.

It is perfectly evident, therefore, that neither such voting, nor such payment of taxes, as actually takes place, proves anybody's consent, or obligation, to support the Constitution. Consequently we have no evidence at all that the Constitution is binding upon anybody, or that anybody is under any contract or obligation whatever to support it. And nobody is under any obligation to support it. [*18]

IV.

The constitution not only binds nobody now, but it never did bind anybody. It never bound anybody, because it was never agreed to by anybody in such a manner as to make it, on general principles of law and reason, binding upon him.

It is a general principle of law and reason, that a written instrument binds no one until he has signed it. This principle is so inflexible a one, that even though a man is unable to write his name, he must still "make his mark," before he is bound by a written contract. This custom was established ages ago, when few men could write their names; when a clerk --- that is, a man who could write --- was so rare and valuable a person, that even if he were guilty of high crimes, he was entitled to pardon, on the ground that the public could not afford to lose his services. Even at that time, a written contract must be signed; and men who could not write, either "made their mark," or signed their contracts by stamping their seals upon wax affixed to the parchment on which their contracts were written. Hence the custom of affixing seals, that has continued to this time.

The laws holds, and reason declares, that if a written instrument is not signed, the presumption must be that the party to be bound by it, did not choose to sign it, or to bind himself by it. And law and reason both give him until the last moment, in which to decide whether he will sign it,

or not. Neither law nor reason requires or expects a man to agree to an instrument, until it is written; for until it is written, he cannot know its precise legal meaning. And when it is written, and he has had the opportunity to satisfy himself of its precise legal meaning, he is then expected to decide, and not before, whether he will agree to it or not. And if he do not then sign it, his reason is supposed to be, that he does not choose to enter into such a contract. The fact that the instrument was written for him to sign, or with the hope that he would sign it, goes for nothing. [*19]

Where would be the end of fraud and litigation, if one party could bring into court a written instrument, without any signature, and claim to have it enforced, upon the ground that it was written for another man to sign? that this other man had promised to sign it? that he ought to have signed it? that he had had the opportunity to sign it, if he would? but that he had refused or neglected to do so? Yet that is the most that could ever be said of the Constitution. The very judges, who profess to derive all their authority from the Constitution --- from an instrument that nobody ever signed --- would spurn any other instrument, not signed, that should be brought before them for adjudication.

Moreover, a written instrument must, in law and reason, not only be signed, but must also be delivered to the party (or to some one for him), in whose favor it is made, before it can bind the party making it. The signing is of no effect, unless the instrument be also delivered. And a party is at perfect liberty to refuse to deliver a written instrument, after he has signed it. The Constitution was not only never signed by anybody, but it was never delivered by anybody, or to anybody's agent or attorney. It can therefore be of no more validity as a contract, then can any other instrument that was never signed or delivered.

V.

As further evidence of the general sense of mankind, as to the practical necessity there is that all men's important contracts, especially those of a permanent nature, should be both written and signed, the following facts are pertinent. [*20]

For nearly two hundred years --- that is, since 1677 --- there has been on the statute book of England, and the same, in substance, if not precisely in letter, has been re-enacted, and is now in force, in nearly or quite all the States of this Union, a statute, the general object of which is to declare that no action shall be brought to enforce contracts of the more important class, unless they are put in writing, and signed by the parties to be held chargeable upon them.

The principle of the statute, be it observed, is, not merely that written contracts shall be signed, but also that all con- [*21] tracts, except for those specially exempted --- generally

those that are for small amounts, and are to remain in force for but a short time --- shall be both written and signed.

The reason of the statute, on this point, is, that it is now so easy a thing for men to put their contracts in writing, and sign them, and their failure to do so opens the door to so much doubt, fraud, and litigation, that men who neglect to have their contracts --- of any considerable importance --- written and signed, ought not to have the benefit of courts of justice to enforce them. And this reason is a wise one; and that experience has confirmed its wisdom and necessity, is demonstrated by the fact that it has been acted upon in England for nearly two hundred years, and has been so nearly universally adopted in this country, and that nobody thinks of repealing it.

We all know, too, how careful most men are to have their contracts written and signed, even when this statute does not require it. For example, most men, if they have money due them, of no larger amount than five or ten dollars, are careful to take a note for it. If they buy even a small bill of goods, paying for it at the time of delivery, they take a receipted bill for it. If they pay a small balance of a book account, or any other small debt previously contracted, they take a written receipt for it.

Furthermore, the law everywhere (probably) in our country, as well as in England, requires that a large class of contracts, such as wills, deeds, etc., shall not only be written and signed, but also sealed, witnessed, and acknowledged. And in the case of married women conveying their rights in real estate, the law, in many States, requires that the women shall be examined separate and apart from their husbands, and declare that they sign their contracts free of any fear or compulsion of their husbands.

Such are some of the precautions which the laws require, and which individuals --- from motives of common prudence, even in cases not required by law --- take, to put their contracts in writing, and have them signed, and, to guard against all uncertainties [*22] and controversies in regard to their meaning and validity. And yet we have what purports, or professes, or is claimed, to be a contract --- the Constitution --- made eighty years ago, by men who are now all dead, and who never had any power to bind us, but which (it is claimed) has nevertheless bound three generations of men, consisting of many millions, and which (it is claimed) will be binding upon all the millions that are to come; but which nobody ever signed, sealed, delivered, witnessed, or acknowledged; and which few persons, compared with the whole number that are claimed to be bound by it, have ever read, or even seen, or ever will read, or see. And of those who ever have read it, or ever will read it, scarcely any two, perhaps no two, have ever agreed, or ever will agree, as to what it means.

Moreover, this supposed contract, which would not be received in any court of justice sitting

under its authority, if offered to prove a debt of five dollars, owing by one man to another, is one by which --- as it is generally interpreted by those who pretend to administer it --- all men, women and children throughout the country, and through all time, surrender not only all their property, but also their liberties, and even lives, into the hands of men who by this supposed contract, are expressly made wholly irresponsible for their disposal of them. And we are so insane, or so wicked, as to destroy property and lives without limit, in fighting to compel men to fulfill a supposed contract, which, inasmuch as it has never been signed by anybody, is, on general principles of law and reason --- such principles as we are all governed by in regard to other contracts --- the merest waste of paper, binding upon nobody, fit only to be thrown into the fire; or, if preserved, preserved only to serve as a witness and a warning of the folly and wickedness of mankind.

VI.

It is no exaggeration, but a literal truth, to say that, by the Constitution --- not as I interpret it, but as it is interpreted by those [*23] who pretend to administer it --- the properties, liberties, and lives of the entire people of the United States are surrendered unreservedly into the hands of men who, it is provided by the Constitution itself, shall never be "questioned" as to any disposal they make of them.

Thus the Constitution (Art. I, Sec. 6) provides that, "for any speech or debate [or vote,] in either house, they [the senators and representatives] shall not be questioned in any other place."

The whole law-making power is given to these senators and representatives [when acting by a two-thirds vote] ; and this provision protects them from all responsibility for the laws they make.

The Constitution also enables them to secure the execution of all their laws, by giving them power to withhold the salaries of, and to impeach and remove, all judicial and executive officers, who refuse to execute them.

Thus the whole power of the government is in their hands, and they are made utterly irresponsible for the use they make of it. What is this but absolute, irresponsible power?

It is no answer to this view of the case to say that these men are under oath to use their power only within certain limits; for what care they, or what should they care, for oaths or limits, when it is expressly provided, by the Constitution itself, that they shall never be "questioned," or held to any responsibility whatever, for violating their oaths, or transgressing those limits?

Neither is it any answer to this view of the case to say that the men holding this absolute, irresponsible power, must be men chosen by the people (or portions of them) to hold it. A man is none the less a slave because he is allowed to choose a new master once in a term of years. Neither are a people any the less slaves because permitted periodically to choose new masters. What makes them slaves is the fact that they now are, and are always hereafter to be, in the hands of men whose power over them is, and always is to be, absolute and irresponsible. [*24]

The right of absolute and irresponsible dominion is the right of property, and the right of property is the right of absolute, irresponsible dominion. The two are identical; the one necessarily implies the other. Neither can exist without the other. If, therefore, Congress have that absolute and irresponsible law-making power, which the Constitution --- according to their interpretation of it --- gives them, it can only be because they own us as property. If they own us as property, they are our masters, and their will is our law. If they do not own us as property, they are not our masters, and their will, as such, is of no authority over us.

But these men who claim and exercise this absolute and irresponsible dominion over us, dare not be consistent, and claim either to be our masters, or to own us as property. They say they are only our servants, agents, attorneys, and representatives. But this declaration involves an absurdity, a contradiction. No man can be my servant, agent, attorney, or representative, and be, at the same time, uncontrollable by me, and irresponsible to me for his acts. It is of no importance that I appointed him, and put all power in his hands. If I made him uncontrollable by me, and irresponsible to me, he is no longer my servant, agent, attorney, or representative. If I gave him absolute, irre- [*25] sponsible power over my property, I gave him the property. If I gave him absolute, irresponsible power over myself, I made him my master, and gave myself to him as a slave. And it is of no importance whether I called him master or servant, agent or owner. The only question is, what power did I put in his hands? Was it an absolute and irresponsible one? or a limited and responsible one?

For still another reason they are neither our servants, agents, attorneys, nor representatives. And that reason is, that we do not make ourselves responsible for their acts. If a man is my servant, agent, or attorney, I necessarily make myself responsible for all his acts done within the limits of the power I have intrusted to him. If I have intrusted him, as my agent, with either absolute power, or any power at all, over the persons or properties of other men than myself, I thereby necessarily make myself responsible to those other persons for any injuries he may do them, so long as he acts within the limits of the power I have granted him. But no individual who may be injured in his person or property, by acts of Congress, can come to the individual electors, and hold them responsible for these acts of their so-called agents or representatives. This fact proves that these pretended agents of the people, of everybody, are really the agents of nobody.

If, then, nobody is individually responsible for the acts of Congress, the members of Congress are nobody's agents. And if they are nobody's agents, they are themselves individually responsible for their own acts, and for the acts of all whom they employ. And the authority they are exercising is simply their own individual authority; and, by the law of nature --- the highest of all laws --- anybody injured by their acts, anybody who is deprived by them of his property or his liberty, has the same right to hold them individually responsible, that he has to hold any other trespasser individually responsible. He has the same right [*26] to resist them, and their agents, that he has to resist any other trespassers.

VII.

It is plain, then, that on general principles of law and reason --- such principles as we all act upon in courts of justice and in common life --- the Constitution is no contract; that it binds nobody, and never did bind anybody; and that all those who pretend to act by its authority, are really acting without any legitimate authority at all; that, on general principles of law and reason, they are mere usurpers, and that everybody not only has the right, but is morally bound, to treat them as such.

If the people of this country wish to maintain such a government as the Constitution describes, there is no reason in the world why they should not sign the instrument itself, and thus make known their wishes in an open, authentic manner; in such manner as the common sense and experience of mankind have shown to be reasonable and necessary in such cases; and in such manner as to make themselves (as they ought to do) individually responsible for the acts of the government. But the people have never been asked to sign it. And the only reason why they have never been asked to sign it, has been that it has been known that they never would sign it; that they were neither such fools nor knaves as they must needs have been to be willing to sign it; that (at least as it has been practically interpreted) it is not what any sensible and honest man wants for himself; nor such as he has any right to impose upon others. It is, to all moral intents and purposes, as destitute of obligations as the compacts which robbers and thieves and pirates enter into with each other, but never sign.

If any considerable number of the people believe the Constitution to be good, why do they not sign it themselves, and make laws for, and administer them upon, each other; leaving all [*27] other persons (who do not interfere with them) in peace? Until they have tried the experiment for themselves, how can they have the face to impose the Constitution upon, or even to recommend it to, others? Plainly the reason for absurd and inconsistent conduct is that they want the Constitution, not solely for any honest or legitimate use it can be of to themselves or others, but for the dishonest and illegitimate power it gives them over the persons and properties of others. But for this latter reason, all their eulogiums on the Constitution, all their exhortations, and all their expenditures of money and blood to sustain it, would be wanting.

VIII.

The Constitution itself, then, being of no authority, on what authority does our government practically rest? On what ground can those who pretend to administer it, claim the right to seize men's property, to restrain them of their natural liberty of action, industry, and trade, and to kill all who deny their authority to dispose of men's properties, liberties, and lives at their pleasure or discretion?

The most they can say, in answer to this question, is, that some half, two-thirds, or three-fourths, of the male adults of the country have a tacit understanding that they will maintain a government under the Constitution; that they will select, by ballot, the persons to administer it; and that those persons who may receive a majority, or a plurality, of their ballots, shall act as their representatives, and administer the Constitution in their name, and by their authority.

But this tacit understanding (admitting it to exist) cannot at all justify the conclusion drawn from it. A tacit understanding between A, B, and C, that they will, by ballot, depute D as their agent, to deprive me of my property, liberty, or life, cannot at all authorize D to do so. He is none the less a robber, tyrant, and murderer, because he claims to act as their agent, [*28] than he would be if he avowedly acted on his own responsibility alone.

Neither am I bound to recognize him as their agent, nor can he legitimately claim to be their agent, when he brings no written authority from them accrediting him as such. I am under no obligation to take his word as to who his principals may be, or whether he has any. Bringing no credentials, I have a right to say he has no such authority even as he claims to have: and that he is therefore intending to rob, enslave, or murder me on his own account.

This tacit understanding, therefore, among the voters of the country, amounts to nothing as an authority to their agents. Neither do the ballots by which they select their agents, avail any more than does their tacit understanding; for their ballots are given in secret, and therefore in such a way as to avoid any personal responsibility for the acts of their agents.

No body of men can be said to authorize a man to act as their agent, to the injury of a third person, unless they do it in so open and authentic a manner as to make themselves personally responsible for his acts. None of the voters in this country appoint their political agents in any open, authentic manner, or in any manner to make themselves responsible for their acts. Therefore these pretended agents cannot legitimately claim to be really agents. Somebody must be responsible for the acts of these pretended agents; and if they cannot show any open and authentic credentials from their principals, they cannot, in law or reason, be said to have

any principals. The maxim applies here, that what does not appear, does not exist. If they can show no principals, they have none.

But even these pretended agents do not themselves know who their pretended principals are. These latter act in secret; for acting by secret ballot is acting in secret as much as if they were to meet in secret conclave in the darkness of the night. And they are personally as much unknown to the agents they select, [*29] as they are to others. No pretended agent therefore can ever know by whose ballots he is selected, or consequently who his real principles are. Not knowing who his principles are, he has no right to say that he has any. He can, at most, say only that he is the agent of a secret band of robbers and murderers, who are bound by that faith which prevails among confederates in crime, to stand by him, if his acts, done in their name, shall be resisted.

Men honestly engaged in attempting to establish justice in the world, have no occasion thus to act in secret; or to appoint agents to do acts for which they (the principals) are not willing to be responsible.

The secret ballot makes a secret government; and a secret government is a secret band of robbers and murderers. Open despotism is better than this. The single despot stands out in the face of all men, and says: I am the State: My will is law: I am your master: I take the responsibility of my acts: The only arbiter I acknowledge is the sword: If anyone denies my right, let him try conclusions with me.

But a secret government is little less than a government of assassins. Under it, a man knows not who his tyrants are, until they have struck, and perhaps not then. He may guess, beforehand, as to some of his immediate neighbors. But he really knows nothing. The man to whom he would most naturally fly for protection, may prove an enemy, when the time of trial comes.

This is the kind of government we have; and it is the only one we are likely to have, until men are ready to say: We will consent to no Constitution, except such an one as we are neither ashamed nor afraid to sign; and we will authorize no government to do anything in our name which we are not willing to be personally responsible for. [*30]

IX.

What is the motive to the secret ballot? This, and only this: Like other confederates in crime, those who use it are not friends, but enemies; and they are afraid to be known, and to have their individual doings known, even to each other. They can contrive to bring about a sufficient understanding to enable them to act in concert against other persons; but beyond this they

have no confidence, and no friendship, among themselves. In fact, they are engaged quite as much in schemes for plundering each other, as in plundering those who are not of them. And it is perfectly well understood among them that the strongest party among them will, in certain contingencies, murder each other by the hundreds of thousands (as they lately did do) to accomplish their purposes against each other. Hence they dare not be known, and have their individual doings known, even to each other. And this is avowedly the only reason for the ballot: for a secret government; a government by secret bands of robbers and murderers. And we are insane enough to call this liberty! To be a member of this secret band of robbers and murderers is esteemed a privilege and an honor! Without this privilege, a man is considered a slave; but with it a free man! With it he is considered a free man, because he has the same power to secretly (by secret ballot) procure the robbery, enslavement, and murder of another man, and that other man has to procure his robbery, enslavement, and murder. And this they call equal rights!

If any number of men, many or few, claim the right to govern the people of this country, let them make and sign an open compact with each other to do so. Let them thus make themselves individually known to those whom they propose to govern. And let them thus openly take the legitimate responsibility of their acts. How many of those who now support the Constitution, will ever do this? How many will ever dare openly pro- [*31] claim their right to govern? or take the legitimate responsibility of their acts? Not one!

X.

It is obvious that, on general principles of law and reason, there exists no such thing as a government created by, or resting upon, any consent, compact, or agreement of "the people of the United States" with each other; that the only visible, tangible, responsible government that exists, is that of a few individuals only, who act in concert, and call themselves by the several names of senators, representatives, presidents, judges, marshals, treasurers, collectors, generals, colonels, captains, etc., etc.

On general principles of law and reason, it is of no importance whatever that these few individuals profess to be the agents and representatives of "the people of the United States"; since they can show no credentials from the people themselves; they were never appointed as agents or representatives in any open, authentic manner; they do not themselves know, and have no means of knowing, and cannot prove, who their principals (as they call them) are individually; and consequently cannot, in law or reason, be said to have any principals at all.

It is obvious, too, that if these alleged principals ever did appoint these pretended agents, or representatives, they appointed them secretly (by secret ballot), and in a way to avoid all personal responsibility for their acts; that, at most, these alleged principals put these

pretended agents forward for the most criminal purposes, viz.: to plunder the people of their property, and restrain them of their liberty; and that the only authority that these alleged principals have for so doing, is simply a tacit understanding among themselves that they will imprison, shoot, or hang every man who resists the exactions and restraints which their agents or representatives may impose upon them.

Thus it is obvious that the only visible, tangible government we [*32] have is made up of these professed agents or representatives of a secret band of robbers and murderers, who, to cover up, or gloss over, their robberies and murders, have taken to themselves the title of "the people of the United States"; and who, on the pretense of being "the people of the United States," assert their right to subject to their dominion, and to control and dispose of at their pleasure, all property and persons found in the United States.

XI.

On general principles of law and reason, the oaths which these pretended agents of the people take "to support the Constitution," are of no validity or obligation. And why? For this, if for no other reason, viz., that they are given to nobody. There is no privity (as the lawyers say) --- that is, no mutual recognition, consent, and agreement --- between those who take these oaths, and any other persons.

If I go upon Boston Common, and in the presence of a hundred thousand people, men, women and children, with whom I have no contract upon the subject, take an oath that I will enforce upon them the laws of Moses, of Lycurgus, of Solon, of Justinian, or of Alfred, that oath is, on general principles of law and reason, of no obligation. It is of no obligation, not merely because it is intrinsically a criminal one, but also because it is given to nobody, and consequently pledges my faith to nobody. It is merely given to the winds.

It would not alter the case at all to say that, among these hundred thousand persons, in whose presence the oath was taken, there were two, three, or five thousand male adults, who had secretly --- by secret ballot, and in a way to avoid making themselves individually known to me, or to the remainder of the hundred thousand --- designated me as their agent to rule, control, plunder, and, if need be, murder, these hundred thousand [*33] people. The fact that they had designated me secretly, and in a manner to prevent my knowing them individually, prevents all privity between them and me; and consequently makes it impossible that there can be any contract, or pledge of faith, on my part towards them; for it is impossible that I can pledge my faith, in any legal sense, to a man whom I neither know, nor have any means of knowing, individually.

So far as I am concerned, then, these two, three, or five thousand persons are a secret band of robbers and murderers, who have secretly, and in a way to save themselves from all responsibility for my acts, designated me as their agent; and have, through some other agent, or pretended agent, made their wishes known to me. But being, nevertheless, individually unknown to me, and having no open, authentic contract with me, my oath is, on general principles of law and reason, of no validity as a pledge of faith to them. And being no pledge of faith to them, it is no pledge of faith to anybody. It is mere idle wind. At most, it is only a pledge of faith to an unknown band of robbers and murderers, whose instrument for plundering and murdering other people, I thus publicly confess myself to be. And it has no other obligation than a similar oath given to any other unknown body of pirates, robbers, and murderers. For these reasons the oaths taken by members of Congress, "to support the Constitution," are, on general principles of law and reason, of no validity. They are not only criminal in themselves, and therefore void; but they are also void for the further reason that they are given to nobody.

It cannot be said that, in any legitimate or legal sense, they are given to "the people of the United States"; because neither the whole, nor any large proportion of the whole, people of the United States ever, either openly or secretly, appointed or designated these men as their agents to carry the Constitution into effect. The great body of the people --- that is, men, women, and children --- were never asked, or even permitted, to signify, in any [*34] formal manner, either openly or secretly, their choice or wish on the subject. The most that these members of Congress can say, in favor of their appointment, is simply this: Each one can say for himself:

I have evidence satisfactory to myself, that there exists, scattered throughout the country, a band of men, having a tacit understanding with each other, and calling themselves "the people of the United States," whose general purposes are to control and plunder each other, and all other persons in the country, and, so far as they can, even in neighboring countries; and to kill every man who shall attempt to defend his person and property against their schemes of plunder and dominion. Who these men are, individually, I have no certain means of knowing, for they sign no papers, and give no open, authentic evidence of their individual membership. They are not known individually even to each other. They are apparently as much afraid of being individually known to each other, as of being known to other persons. Hence they ordinarily have no mode either of exercising, or of making known, their individual membership, otherwise than by giving their votes secretly for certain agents to do their will. But although these men are individually unknown, both to each other and to other persons, it is generally understood in the country that none but male persons, of the age of twenty-one years and upwards, can be members. It is also generally understood that all male persons, born in the country, having certain complexions, and (in some localities) certain amounts of property, and (in certain cases) even persons of foreign birth, are permitted to be members. But it appears that usually not more than one half, two-thirds, or in some cases, three-fourths, of all who are thus permitted to become members of the band, ever exercise, or consequently prove, their actual membership, in the only mode in which they ordinarily can exercise or prove it, viz., by giving their votes secretly for the officers or agents of the band. The number of these secret [*35] votes, so far as we have any account of them, varies greatly from year to year,

thus tending to prove that the band, instead of being a permanent organization, is a merely pro tempore affair with those who choose to act with it for the time being. The gross number of these secret votes, or what purports to be their gross number, in different localities, is occasionally published. Whether these reports are accurate or not, we have no means of knowing. It is generally supposed that great frauds are often committed in depositing them. They are understood to be received and counted by certain men, who are themselves appointed for that purpose by the same secret process by which all other officers and agents of the band are selected. According to the reports of these receivers of votes (for whose accuracy or honesty, however, I cannot vouch), and according to my best knowledge of the whole number of male persons "in my district," who (it is supposed) were permitted to vote, it would appear that one-half, two-thirds or three-fourths actually did vote. Who the men were, individually, who cast these votes, I have no knowledge, for the whole thing was done secretly. But of the secret votes thus given for what they call a "member of Congress," the receivers reported that I had a majority, or at least a larger number than any other one person. And it is only by virtue of such a designation that I am now here to act in concert with other persons similarly selected in other parts of the country. It is understood among those who sent me here, that all persons so selected, will, on coming together at the City of Washington, take an oath in each other's presence "to support the Constitution of the United States." By this is meant a certain paper that was drawn up eighty years ago. It was never signed by anybody, and apparently has no obligation, and never had any obligation, as a contract. In fact, few persons ever read it, and doubtless much the largest number of those who voted for me and the others, never even saw it, or now pretend to know what it means. Nevertheless, it is often spoken [*36] of in the country as "the Constitution of the United States"; and for some reason or other, the men who sent me here, seem to expect that I, and all with whom I act, will swear to carry this Constitution into effect. I am therefore ready to take this oath, and to co-operate with all others, similarly selected, who are ready to take the same oath.

This is the most that any member of Congress can say in proof that he has any constituency; that he represents anybody; that his oath "to support the Constitution," is given to anybody, or pledges his faith to anybody. He has no open, written, or other authentic evidence, such as is required in all other cases, that he was ever appointed the agent or representative of anybody. He has no written power of attorney from any single individual. He has no such legal knowledge as is required in all other cases, by which he can identify a single one of those who pretend to have appointed him to represent them.

Of course his oath, professedly given to them, "to support the Constitution," is, on general principles of law and reason, an oath given to nobody. It pledges his faith to nobody. If he fails to fulfil his oath, not a single person can come forward, and say to him, you have betrayed me, or broken faith with me.

No one can come forward and say to him: I appointed you my attorney to act for me. I required you to swear that, as my attorney, you would support the Constitution. You promised me that

you would do so; and now you have forfeited the oath you gave to me. No single individual can say this.

No open, avowed, or responsible association, or body of men, [*37] can come forward and say to him: We appointed you our attorney, to act for us. We required you to swear that, as our attorney, you would support the Constitution. You promised us that you would do so; and now you have forfeited the oath you gave to us.

No open, avowed, or responsible association, or body of men, can say this to him; because there is no such association or body of men in existence. If any one should assert that there is such an association, let him prove, if he can, who compose it. Let him produce, if he can, any open, written, or other authentic contract, signed or agreed to by these men; forming themselves into an association; making themselves known as such to the world; appointing him as their agent; and making themselves individually, or as an association, responsible for his acts, done by their authority. Until all this can be shown, no one can say that, in any legitimate sense, there is any such association; or that he is their agent; or that he ever gave his oath to them; or ever pledged his faith to them.

On general principles of law and reason, it would be a sufficient answer for him to say, to all individuals, and to all pretended associations of individuals, who should accuse him of a breach of faith to them:

I never knew you. Where is your evidence that you, either individually or collectively, ever appointed me your attorney? that you ever required me to swear to you, that, as your attorney, I would support the Constitution? or that I have now broken any faith that I ever pledged to you? You may, or you may not, be members of that secret band of robbers and murderers, who act in secret; appoint their agents by a secret ballot; who keep themselves individually unknown even to the agents they thus appoint; and who, therefore, cannot claim that they have any agents; or that any of their pretended agents ever gave his oath, or pledged his faith to them. I repudiate you altogether. My oath was given to others, with whom you have nothing to do; or it was idle wind, given only to the idle winds. Begone!

XII.

For the same reasons, the oaths of all the other pretended agents of this secret band of robbers and murderers are, on [*38] general principles of law and reason, equally destitute of obligation. They are given to nobody; but only to the winds.

The oaths of the tax-gatherers and treasurers of the band, are, on general principles of law and

reason, of no validity. If any tax-gatherer, for example, should put the money he receives into his own pocket, and refuse to part with it, the members of this band could not say to him: You collected that money as our agent, and for our uses; and you swore to pay it over to us, or to those we should appoint to receive it. You have betrayed us, and broken faith with us.

It would be a sufficient answer for him to say to them:

I never knew you. You never made yourselves individually known to me. I never game by oath to you, as individuals. You may, or you may not, be members of that secret band, who appoint agents to rob and murder other people; but who are cautious not to make themselves individually known, either to such agents, or to those whom their agents are commissioned to rob. If you are members of that band, you have given me no proof that you ever commissioned me to rob others for your benefit. I never knew you, as individuals, and of course never promised you that I would pay over to you the proceeds of my robberies. I committed my robberies on my own account, and for my own profit. If you thought I was fool enough to allow you to keep yourselves concealed, and use me as your tool for robbing other persons; or that I would take all the personal risk of the robberies, and pay over the proceeds to you, you were particularly simple. As I took all the risk of my robberies, I propose to take all the profits. Begone! You are fools, as well as villains. If I gave my oath to anybody, I gave it to other persons than you. But I really gave it to nobody. I only gave it to the winds. It answered my purposes at the time. It enabled me to get the money I was after, and now I propose to keep it. If you expected me to pay it over to you, you relied only upon that honor [*39] that is said to prevail among thieves. You now understand that that is a very poor reliance. I trust you may become wise enough to never rely upon it again. If I have any duty in the matter, it is to give back the money to those from whom I took it; not to pay it over to villains such as you.

XIII.

On general principles of law and reason, the oaths which foreigners take, on coming here, and being "naturalized" (as it is called), are of no validity. They are necessarily given to nobody; because there is no open, authentic association, to which they can join themselves; or to whom, as individuals, they can pledge their faith. No such association, or organization, as "the people of the United States," having ever been formed by any open, written, authentic, or voluntary contract, there is, on general principles of law and reason, no such association, or organization, in existence. And all oaths that purport to be given to such an association are necessarily given only to the winds. They cannot be said to be given to any man, or body of men, as individuals, because no man, or body of men, can come forward with any proof that the oaths were given to them, as individuals, or to any association of which they are members. To say that there is a tacit understanding among a portion of the male adults of the country, that they will call themselves "the people of the United States," and that they will act in concert in subjecting the remainder of the people of the United States to their dominion; but that they will keep

themselves personally concealed by doing all their acts secretly, is wholly insufficient, on general principles of law and reason, to prove the existence of any such association, or organization, as "the people of the United States"; or consequently to prove that the oaths of foreigners were given to any such association. [*40]

XIV.

On general principles of law and reason, all the oaths which, since the war, have been given by Southern men, that they will obey the laws of Congress, support the Union, and the like, are of no validity. Such oaths are invalid, not only because they were extorted by military power, and threats of confiscation, and because they are in contravention of men's natural right to do as they please about supporting the government, but also because they were given to nobody. They were nominally given to "the United States." But being nominally given to "the United States," they were necessarily given to nobody, because, on general principles of law and reason, there were no "United States," to whom the oaths could be given. That is to say, there was no open, authentic, avowed, legitimate association, corporation, or body of men, known as "the United States," or as "the people of the United States," to whom the oaths could have been given. If anybody says there was such a corporation, let him state who were the individuals that composed it, and how and when they became a corporation. Were Mr. A, Mr. B, and Mr. C members of it? If so, where are their signatures? Where the evidence of their membership? Where the record? Where the open, authentic proof? There is none. Therefore, in law and reason, there was no such corporation.

On general principles of law and reason, every corporation, association, or organized body of men, having a legitimate corporate existence, and legitimate corporate rights, must consist of certain known individuals, who can prove, by legitimate and reasonable evidence, their membership. But nothing of this kind can be proved in regard to the corporation, or body of men, who call themselves "the United States." Not a man of them, in all the Northern States, can prove by any legitimate evidence, such as is required to prove membership in other legal corporations, that he himself, or any other man whom he can name, is [*41] a member of any corporation or association called "the United States," or "the people of the United States," or, consequently, that there is any such corporation. And since no such corporation can be proved to exist, it cannot of course be proved that the oaths of Southern men were given to any such corporation. The most that can be claimed is that the oaths were given to a secret band of robbers and murderers, who called themselves "the United States," and extorted those oaths. But that is certainly not enough to prove that the oaths are of any obligation.

XV.

On general principles of law and reason, the oaths of soldiers, that they will serve a given

number of years, that they will obey the the orders of their superior officers, that they will bear true allegiance to the government, and so forth, are of no obligation. Independently of the criminality of an oath, that, for a given number of years, he will kill all whom he may be commanded to kill, without exercising his own judgment or conscience as to the justice or necessity of such killing, there is this further reason why a soldier's oath is of no obligation, viz., that, like all the other oaths that have now been mentioned, it is given to nobody. There being, in no legitimate sense, any such corporation, or nation, as "the United States," nor, consequently, in any legitimate sense, any such government as "the government of the United States," a soldier's oath given to, or contract made with, such a nation or government, is necessarily an oath given to, or contract made with, nobody. Consequently such an oath or contract can be of no obligation.

XVI.

On general principles of law and reason, the treaties, so called, which purport to be entered into with other nations, [*42] by persons calling themselves ambassadors, secretaries, presidents, and senators of the United States, in the name, and in behalf, of "the people of the United States," are of no validity. These so-called ambassadors, secretaries, presidents, and senators, who claim to be the agents of "the people of the United States" for making these treaties, can show no open, written, or other authentic evidence that either the whole "people of the United States," or any other open, avowed, responsible body of men, calling themselves by that name, ever authorized these pretended ambassadors and others to make treaties in the name of, or binding upon any one of, "the people of the United States," or any other open, avowed, responsible body of men, calling themselves by that name, ever authorized these pretended ambassadors, secretaries, and others, in their name and behalf, to recognize certain other persons, calling themselves emperors, kings, queens, and the like, as the rightful rulers, sovereigns, masters, or representatives of the different peoples whom they assume to govern, to represent, and to bind.

The "nations," as they are called, with whom our pretended ambassadors, secretaries, presidents, and senators profess to make treaties, are as much myths as our own. On general principles of law and reason, there are no such "nations." That is to say, neither the whole people of England, for example, nor any open, avowed, responsible body of men, calling themselves by that name, ever, by any open, written, or other authentic contract with each other, formed themselves into any bona fide, legitimate association or organization, or authorized any king, queen, or other representative to make treaties in their name, or to bind them, either individually, or as an association, by such treaties.

Our pretended treaties, then, being made with no legitimate or bona fide nations, or representatives of nations, and being [*43] made, on our part, by persons who have no legitimate authority to act for us, have intrinsically no more validity than a pretended treaty

made by the Man in the Moon with the king of the Pleiades.

XVII.

On general principles of law and reason, debts contracted in the name of "the United States," or of "the people of the United States," are of no validity. It is utterly absurd to pretend that debts to the amount of twenty-five hundred millions of dollars are binding upon thirty-five or forty millions of people, when there is not a particle of legitimate evidence --- such as would be required to prove a private debt --- that can be produced against any one of them, that either he, or his properly authorized attorney, ever contracted to pay one cent.

Certainly, neither the whole people of the United States, nor any number of them, ever separately or individually contracted to pay a cent of these debts.

Certainly, also, neither the whole people of the United States, nor any number of them, every, by any open, written, or other authentic and voluntary contract, united themselves as a firm, corporation, or association, by the name of "the United States," or "the people of the United States," and authorized their agents to contract debts in their name.

Certainly, too, there is in existence no such firm, corporation, or association as "the United States," or "the people of the United States," formed by any open, written, or other authentic and voluntary contract, and having corporate property with which to pay these debts.

How, then, is it possible, on any general principle of law or reason, that debts that are binding upon nobody individually, can be binding upon forty millions of people collectively, when, on general and legitimate principles of law and reason, these [*43] forty millions of people neither have, nor ever had, any corporate property? never made any corporate or individual contract? and neither have, nor ever had, any corporate existence?

Who, then, created these debts, in the name of "the United States"? Why, at most, only a few persons, calling themselves "members of Congress," etc., who pretended to represent "the people of the United States," but who really represented only a secret band of robbers and murderers, who wanted money to carry on the robberies and murders in which they were then engaged; and who intended to extort from the future people of the United States, by robbery and threats of murder (and real murder, if that should prove necessary), the means to pay these debts.

This band of robbers and murderers, who were the real principals in contracting these debts, is

a secret one, because its members have never entered into any open, written, avowed, or authentic contract, by which they may be individually known to the world, or even to each other. Their real or pretended representatives, who contracted these debts in their name, were selected (if selected at all) for that purpose secretly (by secret ballot), and in a way to furnish evidence against none of the principals individually; and these principals were really known individually neither to their pretended representatives who contracted these debts in their behalf, nor to those who lent the money. The money, therefore, was all borrowed and lent in the dark; that is, by men who did not see each other's faces, or know each other's names; who could not then, and cannot now, identify each other as principals in the transactions; and who consequently can prove no contract with each other.

Furthermore, the money was all lent and borrowed for criminal purposes; that is, for purposes of robbery and murder; and for this reason the contracts were all intrinsically void; and would have been so, even though the real parties, borrowers and [*45] lenders, had come face to face, and made their contracts openly, in their own proper names.

Furthermore, this secret band of robbers and murderers, who were the real borrowers of this money, having no legitimate corporate existence, have no corporate property with which to pay these debts. They do indeed pretend to own large tracts of wild lands, lying between the Atlantic and Pacific Oceans, and between the Gulf of Mexico and the North Pole. But, on general principles of law and reason, they might as well pretend to own the Atlantic and Pacific Oceans themselves; or the atmosphere and the sunlight; and to hold them, and dispose of them, for the payment of these debts.

Having no corporate property with which to pay what purports to be their corporate debts, this secret band of robbers and murderers are really bankrupt. They have nothing to pay with. In fact, they do not propose to pay their debts otherwise than from the proceeds of their future robberies and murders. These are confessedly their sole reliance; and were known to be such by the lenders of the money, at the time the money was lent. And it was, therefore, virtually a part of the contract, that the money should be repaid only from the proceeds of these future robberies and murders. For this reason, if for no other, the contracts were void from the beginning.

In fact, these apparently two classes, borrowers and lenders, were really one and the same class. They borrowed and lent money from and to themselves. They themselves were not only part and parcel, but the very life and soul, of this secret band of robbers and murderers, who borrowed and spent the money. Individually they furnished money for a common enterprise; taking, in return, what purported to be corporate promises for individual loans. The only excuse they had for taking these so-called corporate promises of, for individual loans by, the same parties, was that they might have some apparent excuse for the future robberies of the band (that is, to pay the debts of [*46] the corporation), and that they might also know what

shares they were to be respectively entitled to out of the proceeds of their future robberies.

Finally, if these debts had been created for the most innocent and honest purposes, and in the most open and honest manner, by the real parties to the contracts, these parties could thereby have bound nobody but themselves, and no property but their own. They could have bound nobody that should have come after them, and no property subsequently created by, or belonging to, other persons.

XVIII.

The Constitution having never been signed by anybody; and there being no other open, written, or authentic contract between any parties whatever, by virtue of which the United States government, so called, is maintained; and it being well known that none but male persons, of twenty-one years of age and upwards, are allowed any voice in the government; and it being also well known that a large number of these adult persons seldom or never vote at all; and that all those who do vote, do so secretly (by secret ballot), and in a way to prevent their individual votes being known, either to the world, or even to each other; and consequently in a way to make no one openly responsible for the acts of their agents, or representatives, --- all these things being known, the questions arise: Who compose the real governing power in the country? Who are the men, the responsible men, who rob us of our property? Restrain us of our liberty? Subject us to their arbitrary dominion? And devastate our homes, and shoot us down by the hundreds of thousands, if we resist? How shall we find these men? How shall we know them from others? How shall we defend ourselves and our property against them? Who, of our neighbors, are members of this secret band of robbers and murderers? How [*47] can we know which are their houses, that we may burn or demolish them? Which their property, that we may destroy it? Which their persons, that we may kill them, and rid the world and ourselves of such tyrants and monsters?

These are questions that must be answered, before men can be free; before they can protect themselves against this secret band of robbers and murderers, who now plunder, enslave, and destroy them.

The answer to these questions is, that only those who have the will and power to shoot down their fellow men, are the real rulers in this, as in all other (so-called) civilized countries; for by no others will civilized men be robbed, or enslaved.

Among savages, mere physical strength, on the part of one man, may enable him to rob, enslave, or kill another man. Among barbarians, mere physical strength, on the part of a body of men, disciplined, and acting in concert, though with very little money or other wealth, may,

under some circumstances, enable them to rob, enslave, or kill another body of men, as numerous, or perhaps even more numerous, than themselves. And among both savages and barbarians, mere want may sometimes compel one man to sell himself as a slave to another. But with (so-called) civilized peoples, among whom knowledge, wealth, and the means of acting in concert, have become diffused; and who have invented such weapons and other means of defense as to render mere physical strength of less importance; and by whom soldiers in any requisite number, and other instrumentalities of war in any requisite amount, can always be had for money, the question of war, and consequently the question of power, is little else than a mere question of money. As a necessary consequence, those who stand ready to furnish this money, are the real rulers. It is so in Europe, and it is so in this country.

In Europe, the nominal rulers, the emperors and kings and parliaments, are anything but the real rulers of their respective countries. They are little or nothing else than mere tools, em- [*48] ployed by the wealthy to rob, enslave, and (if need be) murder those who have less wealth, or none at all.

The Rothschilds, and that class of money-lenders of whom they are the representatives and agents --- men who never think of lending a shilling to their next-door neighbors, for purposes of honest industry, unless upon the most ample security, and at the highest rate of interest --- stand ready, at all times, to lend money in unlimited amounts to those robbers and murderers, who call themselves governments, to be expended in shooting down those who do not submit quietly to being robbed and enslaved.

They lend their money in this manner, knowing that it is to be expended in murdering their fellow men, for simply seeking their liberty and their rights; knowing also that neither the interest nor the principal will ever be paid, except as it will be extorted under terror of the repetition of such murders as those for which the money lent is to be expended.

These money-lenders, the Rothschilds, for example, say to themselves: If we lend a hundred millions sterling to the queen and parliament of England, it will enable them to murder twenty, fifty, or a hundred thousand people in England, Ireland, or India; and the terror inspired by such wholesale slaughter, will enable them to keep the whole people of those countries in subjection for twenty, or perhaps fifty, years to come; to control all their trade and industry; and to extort from them large amounts of money, under the name of taxes; and from the wealth thus extorted from them, they (the queen and parliament) can afford to pay us a higher rate of interest for our money than we can get in any other way. Or, if we lend this sum to the emperor of Austria, it will enable him to murder so many of his people as to strike terror into the rest, and thus enable him to keep them in subjection, and extort money from them, for twenty or fifty years to come. And they say the same in regard to the emperor of Russia, the king of Prussia, the emperor of France, [*49] or any other ruler, so called, who, in their judgment, will be able, by murdering a reasonable portion of his people, to keep the rest in

subjection, and extort money from them, for a long time to come, to pay the interest and the principal of the money lent him.

And why are these men so ready to lend money for murdering their fellow men? Soley for this reason, viz., that such loans are considered better investments than loans for purposes of honest industry. They pay higher rates of interest; and it is less trouble to look after them. This is the whole matter.

The question of making these loans is, with these lenders, a mere question of pecuniary profit. They lend money to be expended in robbing, enslaving, and murdering their fellow men, solely because, on the whole, such loans pay better than any others. They are no respecters of persons, no superstitious fools, that reverence monarchs. They care no more for a king, or an emperor, than they do for a beggar, except as he is a better customer, and can pay them better interest for their money. If they doubt his ability to make his murders successful for maintaining his power, and thus extorting money from his people in future, they dismiss him unceremoniously as they would dismiss any other hopeless bankrupt, who should want to borrow money to save himself from open insolvency.

When these great lenders of blood-money, like the Rothschilds, have loaned vast sums in this way, for purposes of murder, to an emperor or a king, they sell out the bonds taken by them, in small amounts, to anybody, and everybody, who are disposed to buy them at satisfactory prices, to hold as investments. They (the Rothschilds) thus soon get back their money, with great profits; and are now ready to lend money in the same way again to any other robber and murderer, called an emperor or king, who, they think, is likely to be successful in his robberies and murders, and able to pay a good price for the money necessary to carry them on. [*50]

This business of lending blood-money is one of the most thoroughly sordid, cold-blooded, and criminal that was ever carried on, to any considerable extent, amongst human beings. It is like lending money to slave traders, or to common robbers and pirates, to be repaid out of their plunder. And the men who loan money to governments, so called, for the purpose of enabling the latter to rob, enslave, and murder their people, are among the greatest villains that the world has ever seen. And they as much deserve to be hunted and killed (if they cannot otherwise be got rid of) as any slave traders, robbers, or pirates that ever lived.

When these emperors and kings, so-called, have obtained their loans, they proceed to hire and train immense numbers of professional murderers, called soldiers, and employ them in shooting down all who resist their demands for money. In fact, most of them keep large bodies of these murderers constantly in their service, as their only means of enforcing their extortions. There are now, I think, four or five millions of these professional murderers constantly employed by the so-called sovereigns of Europe. The enslaved people are, of course,

forced to support and pay all these murderers, as well as to submit to all the other extortions which these murderers are employed to enforce.

It is only in this way that most of the so-called governments of Europe are maintained. These so-called governments are in reality only great bands of robbers and murderers, organized, disciplined, and constantly on the alert. And the so-called sovereigns, in these different governments, are simply the heads, or chiefs, of different bands of robbers and murderers. And these heads or chiefs are dependent upon the lenders of blood-money for the means to carry on their robberies and murders. They could not sustain themselves a moment but for the loans made to them by these blood-money loan-mongers. And their first care is to maintain their credit with them; for they know [*51] their end is come, the instant their credit with them fails. Consequently the first proceeds of their extortions are scrupulously applied to the payment of the interest on their loans.

In addition to paying the interest on their bonds, they perhaps grant to the holders of them great monopolies in banking, like the Banks of England, of France, and of Vienna; with the agreement that these banks shall furnish money whenever, in sudden emergencies, it may be necessary to shoot down more of their people. Perhaps also, by means of tariffs on competing imports, they give great monopolies to certain branches of industry, in which these lenders of blood-money are engaged. They also, by unequal taxation, exempt wholly or partially the property of these loan-mongers, and throw corresponding burdens upon those who are too poor and weak to resist.

Thus it is evident that all these men, who call themselves by the high-sounding names of Emperors, Kings, Sovereigns, Monarchs, Most Christian Majesties, Most Catholic Majesties, High Mightinesses, Most Serene and Potent Princes, and the like, and who claim to rule "by the grace of God," by "Divine Right" --- that is, by special authority from Heaven --- are intrinsically not only the merest miscreants and wretches, engaged solely in plundering, enslaving, and murdering their fellow men, but that they are also the merest hangers on, the servile, obsequious, fawning dependents and tools of these blood-money loan-mongers, on whom they rely for the means to carry on their crimes. These loan-mongers, like the Rothschilds, laugh in their sleeves, and say to themselves: These despicable creatures, who call themselves emperors, and kings, and majesties, and most serene and potent princes; who profess to wear crowns, and sit on thrones; who deck themselves with ribbons, and feathers, and jewels; and surround themselves with hired flatterers and lickspittles; and whom we suffer to strut around, and palm themselves off, upon fools and slaves, as sovereigns and lawgivers specially appointed by Almighty God; and to hold them- [*52] selves out as the sole fountains of honors, and dignities, and wealth, and power --- all these miscreants and imposters know that we make them, and use them; that in us they live, move, and have their being; that we require them (as the price of their positions) to take upon themselves all the labor, all the danger, and all the odium of all the crimes they commit for our profit; and that we will unmake them, strip them of their gewgaws, and send them out into the world as beggars, or give them over to the

vengeance of the people they have enslaved, the moment they refuse to commit any crime we require of them, or to pay over to us such share of the proceeds of their robberies as we see fit to demand.

XIX.

Now, what is true in Europe, is substantially true in this country. The difference is the immaterial one, that, in this country, there is no visible, permanent head, or chief, of these robbers and murderers who call themselves "the government." That is to say, there is no one man, who calls himself the state, or even emperor, king, or sovereign; no one who claims that he and his children rule "by the Grace of God," by "Divine Right," or by special appointment from Heaven. There are only certain men, who call themselves presidents, senators, and representatives, and claim to be the authorized agents, for the time being, or for certain short periods, of all "the people of the United States"; but who can show no credentials, or powers of attorney, or any other open, authentic evidence that they are so; and who notoriously are not so; but are really only the agents of a secret band of robbers and murderers, whom they themselves do not know, and have no means of knowing, individually; but who, they trust, will openly or secretly, when the crisis comes, sustain them in all their usurpations and crimes.

What is important to be noticed is, that these so-called presidents, senators, and representatives, these pretended agents of all "the people of the United States," the moment their exactions [*53] meet with any formidable resistance from any portion of "the people" themselves, are obliged, like their co-robbers and murderers in Europe, to fly at once to the lenders of blood money, for the means to sustain their power. And they borrow their money on the same principle, and for the same purpose, viz., to be expended in shooting down all those "people of the United States" --- their own constituents and principals, as they profess to call them --- who resist the robberies and enslavements which these borrowers of the money are practising upon them. And they expect to repay the loans, if at all, only from the proceeds of the future robberies, which they anticipate it will be easy for them and their successors to perpetrate through a long series of years, upon their pretended principals, if they can but shoot down now some hundreds of thousands of them, and thus strike terror into the rest.

Perhaps the facts were never made more evident, in any country on the globe, than in our own, that these soulless blood-money loan-mongers are the real rulers; that they rule from the most sordid and mercenary motives; that the ostensible government, the presidents, senators, and representatives, so called, are merely their tools; and that no ideas of, or regard for, justice or liberty had anything to do in inducing them to lend their money for the war. In proof of all this, look at the following facts.

Nearly a hundred years ago we professed to have got rid of all that religious superstition,

inculcated by a servile and corrupt priesthood in Europe, that rulers, so called, derived their authority directly from Heaven; and that it was consequently a religious duty on the part of the people to obey them. We professed long ago to have learned that governments could rightfully exist only by the free will, and on the voluntary support, of those who might choose to sustain them. We all professed to have known long ago, that the only legitimate objects of government were the maintenance of liberty and justice equally for all. All this [*54] we had professed for nearly a hundred years. And we professed to look with pity and contempt upon those ignorant, superstitious, and enslaved peoples of Europe, who were so easily kept in subjection by the frauds and force of priests and kings.

Notwithstanding all this, that we had learned, and known, and professed, for nearly a century, these lenders of blood money had, for a long series of years previous to the war, been the willing accomplices of the slave-holders in perverting the government from the purposes of liberty and justice, to the greatest of crimes. They had been such accomplices for a purely pecuniary consideration, to wit, a control of the markets in the South; in other words, the privilege of holding the slave-holders themselves in industrial and commercial subjection to the manufacturers and merchants of the North (who afterwards furnished the money for the war). And these Northern merchants and manufacturers, these lenders of blood-money, were willing to continue to be the accomplices of the slave-holders in the future, for the same pecuniary considerations. But the slave-holders, either doubting the fidelity of their Northern allies, or feeling themselves strong enough to keep their slaves in subjection without Northern assistance, would no longer pay the price which these Northern men demanded. And it was to enforce this price in the future --- that is, to monopolize the Southern markets, to maintain their industrial and commercial control over the South --- that these Northern manufacturers and merchants lent some of the profits of their former monopolies for the war, in order to secure to themselves the same, or greater, monopolies in the future. These --- and not any love of liberty or justice --- were the motives on which the money for the war was lent by the North. In short, the North said to the slave-holders: If you will not pay us our price (give us control of your markets) for our assistance against your slaves, we will secure the same price (keep control of your markets) by helping your slaves against you, and using them as our tools for main- [*55] taining dominion over you; for the control of your markets we will have, whether the tools we use for that purpose be black or white, and be the cost, in blood and money, what it may.

On this principle, and from this motive, and not from any love of liberty, or justice, the money was lent in enormous amounts, and at enormous rates of interest. And it was only by means of these loans that the objects of the war were accomplished.

And now these lenders of blood-money demand their pay; and the government, so called, becomes their tool, their servile, slavish, villanous tool, to extort it from the labor of the enslaved people both of the North and South. It is to be extorted by every form of direct, and indirect, and unequal taxation. Not only the nominal debt and interest --- enormous as the

latter was --- are to be paid in full; but these holders of the debt are to be paid still further --- and perhaps doubly, triply, or quadruply paid --- by such tariffs on imports as will enable our home manufacturers to realize enormous prices for their commodities; also by such monopolies in banking as will enable them to keep control of, and thus enslave and plunder, the industry and trade of the great body of the Northern people themselves. In short, the industrial and commercial slavery of the great body of the people, North and South, black and white, is the price which these lenders of blood money demand, and insist upon, and are determined to secure, in return for the money lent for the war.

This programme having been fully arranged and systematized, they put their sword into the hands of the chief murderer of the war, and charge him to carry their scheme into effect. And now he, speaking as their organ, says, "Let us have peace."

The meaning of this is: Submit quietly to all the robbery and slavery we have arranged for you, and you can have "peace." But in case you resist, the same lenders of blood-money, who furnished the means to subdue the South, will furnish the means again to subdue you. [*56]

These are the terms on which alone this government, or, with few exceptions, any other, ever gives "peace" to its people.

The whole affair, on the part of those who furnished the money, has been, and now is, a deliberate scheme of robbery and murder; not merely to monopolize the markets of the South, but also to monopolize the currency, and thus control the industry and trade, and thus plunder and enslave the laborers, of both North and South. And Congress and the president are today the merest tools for these purposes. They are obliged to be, for they know that their own power, as rulers, so-called, is at an end, the moment their credit with the blood-money loan-mongers fails. They are like a bankrupt in the hands of an extortioner. They dare not say nay to any demand made upon them. And to hide at once, if possible, both their servility and crimes, they attempt to divert public attention, by crying out that they have "Abolished Slavery!" That they have "Saved the Country!" That they have "Preserved our Glorious Union!" and that, in now paying the "National Debt," as they call it (as if the people themselves, all of them who are to be taxed for its payment, had really and voluntarily joined in contracting it), they are simply "Maintaining the National Honor!"

By "maintaining the national honor," they mean simply that they themselves, open robbers and murderers, assume to be the nation, and will keep faith with those who lend them the money necessary to enable them to crush the great body of the people under their feet; and will faithfully appropriate, from the proceeds of their future robberies and murders, enough to pay all their loans, principal and interest.

The pretense that the "abolition of slavery" was either a motive or justification for the war, is a fraud of the same character with that of "maintaining the national honor." Who, but such usurpers, robbers, and murderers as they, ever established slavery? Or what government, except one resting upon [*57] the sword, like the one we now have, was ever capable of maintaining slavery? And why did these men abolish slavery? Not from any love of liberty in general --- not as an act of justice to the black man himself, but only "as a war measure," and because they wanted his assistance, and that of his friends, in carrying on the war they had undertaken for maintaining and intensifying that political, commercial, and industrial slavery, to which they have subjected the great body of the people, both black and white. And yet these imposters now cry out that they have abolished the chattel slavery of the black man --- although that was not the motive of the war --- as if they thought they could thereby conceal, atone for, or justify that other slavery which they were fighting to perpetuate, and to render more rigorous and inexorable than it ever was before. There was no difference of principle --- but only of degree --- between the slavery they boast they have abolished, and the slavery they were fighting to preserve; for all restraints upon men's natural liberty, not necessary for the simple maintenance of justice, are of the nature of slavery, and differ from each other only in degree.

If their object had really been to abolish slavery, or maintain liberty or justice generally, they had only to say: All, whether white or black, who want the protection of this government, shall have it; and all who do not want it, will be left in peace, so long as they leave us in peace. Had they said this, slavery would necessarily have been abolished at once; the war would have been saved; and a thousand times nobler union than we have ever had would have been the result. It would have been a voluntary union of free men; such a union as will one day exist among all men, the world over, if the several nations, so called, shall ever get rid of the usurpers, robbers, and murderers, called governments, that now plunder, enslave, and destroy them.

Still another of the frauds of these men is, that they are now [*58] establishing, and that the war was designed to establish, "a government of consent." The only idea they have ever manifested as to what is a government of consent, is this --- that it is one to which everybody must consent, or be shot. This idea was the dominant one on which the war was carried on; and it is the dominant one, now that we have got what is called "peace."

Their pretenses that they have "Saved the Country," and "Preserved our Glorious Union," are frauds like all the rest of their pretenses. By them they mean simply that they have subjugated, and maintained their power over, an unwilling people. This they call "Saving the Country"; as if an enslaved and subjugated people --- or as if any people kept in subjection by the sword (as it is intended that all of us shall be hereafter) --- could be said to have any country. This, too, they call "Preserving our Glorious Union"; as if there could be said to be any Union, glorious or inglorious, that was not voluntary. Or as if there could be said to be any union between masters and slaves; between those who conquer, and those who are subjugated. All these cries of having "abolished slavery," of having "saved the country," of having "preserved the union," of

establishing "a government of consent," and of "maintaining the national honor," are all gross, shameless, transparent cheats --- so transparent that they ought to deceive no one --- when uttered as justifications for the war, or for the government that has succeeded the war, or for now compelling the people to pay the cost of the war, or for compelling anybody to support a government that he does not want.

The lesson taught by all these facts is this: As long as mankind continue to pay "National Debts," so-called --- that is, so long as they are such dupes and cowards as to pay for being cheated, plundered, enslaved, and murdered --- so long there will be enough to lend the money for those purposes; and with that [*59] money a plenty of tools, called soldiers, can be hired to keep them in subjection. But when they refuse any longer to pay for being thus cheated, plundered, enslaved, and murdered, they will cease to have cheats, and usurpers, and robbers, and murderers and blood-money loan-mongers for masters.

APPENDIX.

Inasmuch as the Constitution was never signed, nor agreed to, by anybody, as a contract, and therefore never bound anybody, and is now binding upon nobody; and is, moreover, such an one as no people can ever hereafter be expected to consent to, except as they may be forced to do so at the point of the bayonet, it is perhaps of no importance what its true legal meaning, as a contract, is. Nevertheless, the writer thinks it proper to say that, in his opinion, the Constitution is no such instrument as it has generally been assumed to be; but that by false interpretations, and naked usurpations, the government has been made in practice a very widely, and almost wholly, different thing from what the Constitution itself purports to authorize. He has heretofore written much, and could write much more, to prove that such is the truth. But whether the Constitution really be one thing, or another, this much is certain --- that it has either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist.

NOTES

See "No Treason, No. 2" pages 5 and 6.

Suppose it be "the best government on earth," does that prove its own goodness, or only the badness of all other governments?

The very men who drafted it, never signed it in any way to bind themselves by it, as a contract. And not one of them probably ever would have signed it in any way to bind himself by it, as a contract.

I have personally examined the statute books of the following States, viz.: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Michagan, Indiana, Illinois, Wisconsin, Texas, Arkansas, Missouri, Iowa, Minnesota, Nebraska, Kansas, Nveada, California, and Oregon, and find that in all these States the English statute has been re-enacted, sometimes with modifications, but generally enlarging its operations, and is now in force.

The following are some of the provisions of the Massachusetts statute:

"No action shall be brought in any of the following cases, that is to say:

. . . .

"To charge a person upon a special promise to answer for a debt, default, or misdoings of another: . . . .

"Upon a contract for the sale of lands, tenements, hereditaments, or of any interest in, or concerning them; or

"Upon an agreement that is not to be performed within one year from the writing thereof:

"Unless the promise, contract, or agreement, upon which such action is broughtm or some memorandum or note thereof, is in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized: . . . .

"No contract for the sale of goods, wares, or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser accepts and receives part of the goods so sold, or gives something in earnest to bind the bargain, or in part payment; or unless some note or memorandum in writing of the bargain is made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized."

And this two-thirds vote may be but two-thirds of a quorum --- that is two-thirds of a majority --- instead of two-thirds of the whole.

Of what appreciable value is it to any man, as an individual, that he is allowed a voice in choosing these public masters? His voice is only one of several millions.

An Essay on the Trial by Jury

CHAPTER 1. THE RIGHT OF JURIES TO JUDGE THE JUSTICE OF THE LAWS.

SECTION I

For more than six hundred years --- that is, since Magna Carta, in 1215 --- there has been no clearer principle of English or American constitutional law, than that, in criminal cases, it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused; but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.

Unless such be the right and duty of jurors, it is plain that, instead of juries being a “palladium of liberty” --- a barrier against the tyranny and oppression of the government --- they are really mere tools in its hands, for carrying into execution any injustice and oppression it may desire to have executed.

But for their right to judge of the law, and the justice of the law, juries would be no protection to an accused person, even as to matters of fact; for, if the government can dictate to a jury any law whatever, in a criminal case, it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible, and what inadmissible, and also what force or weight is to be given to the evidence admitted. And if the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them [*6] to convict on any evidence whatever that it pleases to offer them.

That the rights and duties of jurors must necessarily be such as are here claimed for them, will be evident when it is considered what the trial by jury is, and what is its object.

"The trial by jury," then, is a "trial by the country" ---that is by the people as distinguished from a trial the government.

It was anciently called "trial per pais" that is, "trial by the country." And now, in every criminal trial, the jury are told that the accused "has, for trial, put himself upon the country; which country you (the jury) are."

The object of this trial "by the country," or by the people, in preference to a trial by the government, is to guard against every species of oppression by the government. In order to effect this end, it is indispensable that the people, or "the country," judge of and determine their own liberties against the government; instead of the government's judging of and determining its own powers over the people. How is it possible that juries can do anything to protect the liberties of the people against the government; if they are not allowed to determine what those liberties are?

Any government, that is its own judge of, and determines authoritatively for the people, what are its own powers over the people, is an absolute government of course. It has all the powers that it chooses to exercise. There is no other --- or at least no more accurate --- definition of a despotism than this.

On the other hand, any people, that judge of, and determine authoritatively for the government, what are their own liberties against the government, of course retain all the liberties they wish to enjoy. And this is freedom. At least, it is freedom to them; because, although it may be theoretically imperfect, it, nevertheless, corresponds to their highest notions of freedom.

To secure this right of the people to judge of their own liberties against the government, the

jurors are taken, (or must be, to make them lawful jurors,) from the body of the people, by lot, or by some process that precludes any previous knowledge, choice, or selection of them, on the part of the government. [*7] This is done to prevent the government's constituting a jury of its own partisans or friends; in other words, to prevent the government's packing a jury, with a view to maintain its own laws, and accomplish its own purposes.

It is supposed that, if twelve men be taken, by lot, from the mass of the people, without the possibility of any previous knowledge, choice, or selection of them, on the part of the government, the jury will be a fair epitome of "the country" at large, and not merely of the party or faction that sustain the measures of the government; that substantially all classes, of opinions, prevailing among the people, will be represented in the jury; and especially that the opponents of the government, (if the government have any opponents,) will be represented there, as well as its friends; that the classes, who are oppressed by the laws of the government, (if any are thus oppressed,) will have their representatives in the jury, as well as those classes, who take sides with the oppressor --- that is, with the government.

It is fairly presumable that such a tribunal will agree to no conviction except such as substantially the whole country would agree to, if they were present, taking part in the trial. A trial by such a tribunal is, therefore, in effect, "a trial by the country." In its results it probably comes as near to a trial by the whole country, as any trial that it is practicable to have, without too great inconvenience and expense. And, as unanimity is require for a conviction, it follows that no one can be convicted, except for the violation of such laws as substantially the whole country wish to have maintained. The government can enforce none of its laws, (by punishing offenders, through the verdicts of juries,) except such as substantially the whole people wish to have enforced. The government, therefore, consistently with the trial by jury, can exercise no powers over the people, (or, what is the same thing, over the accused person, who represents the rights of the people,) except such as substantially the whole people of the country consent that it may exercise. In such a trial, therefore, "the country," or the people, judge of and determine their own liberties against the government, instead of the [*8] government's judging of and determining its own powers over the people.

But all this trial by the country" would be no trial at all "by the country," but only a trial by the government, if the government could either declare who may, and who may not, be jurors, or could dictate to the jury anything whatever, either of law or evidence, that is of the essence of the trial.

If the government may decide who may, and who may not, be jurors, it will of course select only its partisans, and those friendly to its measures. It may not only prescribe who may, and who may not, be eligible to be drawn as jurors; but it may also question each person drawn as a juror, as to his sentiments in regard to the particular law involved in each trial, before suffering him to be sworn on the panel; and exclude him if he be found unfavorable to the

maintenance of such a law. fn1

So, also, if the government may dictate to the jury what laws they are to enforce, it is no longer a trial by the country," [*9] but a trial by the government; because the jury then try the accused, not by any standard of their own --- by their own judgments of their rightful liberties --- but by a standard dictated to them by the government. And the standard, thus dictated by the government, becomes the measure of the people's liberties. If the government dictate the standard of trial, it of course dictates the results of the trial. And such a trial is no trial by the country, but only a trial by the government; and in it the government determines what are its own powers over the people, instead of the people's determining what are their own liberties against the government. In short, if the jury have no right to judge of the justice of a law of the government, they plainly can do nothing to protect the people, against the oppressions of the government; for there are no oppressions which the government may not authorize by law.

The jury are also to judge whether the laws are rightly expounded to them by the court. Unless they judge on this point, they do nothing to protect their liberties against the oppressions that are cable of being practiced under cover of a corrupt exposition of the laws. If the judiciary can authoritatively dictate to a jury any exposition of the law, they can dictate to them the law itself, and such laws as they please; because laws are, in practice, one thing or another, according as they are expounded. [*10]

The jury must also judge whether there really be any such law, (be it good or bad,) as the accused is charged with having transgressed. Unless they judge on this point, the people are liable to have their liberties taken from them by brute force, without any law at all.

The jury must also judge of the laws of evidence. If the government can dictate to a jury the laws of evidence, it can not only shut out any evidence it pleases, tending to vindicate the accused, but it can require that any evidence whatever, that it pleases to offer, be held as conclusive proof of any offence whatever which the government chooses to allege.

It is manifest, therefore, that the jury must judge of and try the whole case, and every part and parcel of the case, free of any dictation or authority on the part of the government. They must judge of the existence of the law; of the true exposition of the law; of the justice of the law; and of the admissibility and weight of all the evidence offered; otherwise the government will have everything its own way; the jury will be mere puppets in the hands of the government; and the trial will be, in reality, a trial by the government, and not a "trial by the country." By such trials the government will determine its own powers over the people, instead of the people's determining their own liberties against the government; and it will be an entire delusion to talk, as for centuries we have done, of the trial by jury, as a "palladium of liberty," or as any protection to the people against the oppression and tyranny of the government.

The question, then, between trial by jury, as thus described, and trial by the government, is simply a question between liberty and despotism. The authority to judge what are the powers of the government, and what the liberties of the people, must necessarily be vested in one or the other of the parties themselves the government, or the people; because there is no third party to whom it can be entrusted. If the authority be vested in the government, the government is absolute, and the people have no liberties except such as the government sees fit to indulge them with. If, on the other hand, that authority be vested in the people, then the people have all liberties, (as against the government,) except such as substantially the whole people (through a jury) choose to disclaim; and the government can exercise no to power except such as substan- [*11] -tially the whole people (through a jury) consent that it may exercise.

SECTION II.

The force and justice of the preceding argument cannot be evaded by saying that the government is chosen by the people; that, in theory, it represents the people; that it is designed to do the will of the people; that its members are all sworn to observe the fundamental or constitutional law instituted by the people; that its acts are therefore entitled to be considered the acts of the people; and that to allow a jury, representing the people, to invalidate the acts of the government, would therefore be arraying the people against themselves.

There are two answers to such an argument.

One answer is, that, in a representative government, there is no absurdity or contradiction, nor any arraying of the people against themselves, in requiring that the statutes or enactments of the government shall pass the ordeal of any number of separate tribunals, before it shall be determined that they are to have the force of laws. Our American constitutions have provided five of these separate tribunals, to wit, representatives, senate, executive, fn2 jury, and judges; and have made it necessary that each enactment shall pass the ordeal of all these separate tribunals, before its authority can be established by the punishment of those who choose to transgress it. And there is no more absurdity or inconsistency in making a jury one of these several tribunals, than there is in making the representatives, or the senate, or the executive, or the judges, one of them. There is no more absurdity in giving a jury a veto upon the laws, than there is in giving a veto to each of these other tribunals. The people are no more arrayed against themselves, when a jury puts its veto upon a statute, which the other tribunals have sanctioned, than they are when the [*12] same veto is exercised by the representatives, the senate, the executive, or the judges.

But another answer to the argument that the people are arrayed against themselves, when a

jury hold an enactment of the government invalid, is, that the government, and all the departments of the government, are merely the servants and agents of the people; not invested with arbitrary or absolute authority to bind the people, but required to submit all their enactments to the judgment of a tribunal more fairly representing the whole people, before they carry them into execution by punishing any individual for transgressing them. If the government were not thus required to submit their enactments to the judgment of "the country," before executing them upon individuals if, in other words, the people had reserved to themselves no veto upon the acts of the government, the government, instead of being a mere servant and agent of the people would be an absolute despot over the people. It would have all power in its own hands; because the power to punish carries all other powers with it. A power that can, of itself, and by its own authority, punish disobedience, can compel obedience and submission, and is above all responsibility for the character of its laws. In short, it is a despotism.

And it is of no consequence to inquire how a government carne by this power to punish, whether by prescription, by inheritance, by usurpation, or by delegation from the people? If it have now but got it, the government is absolute.

It is plain, therefore, that if the people have invested the government with power to make laws that absolutely bind the people, and to punish the people for transgressing those laws, the people have surrendered their liberties unreservedly into the hands of the government.

It is of no avail to say, in answer to this view of the case, that in surrendering their liberties into the hands of the government, the people took an oath from the government, that it would exercise its power within certain constitutional limits; for when did oaths ever restrain a government that was otherwise unrestrained? when did a government fail to determine that all its acts were within the constitutional and authorized [*13] limits of its power, if it were permitted to determine that question for itself?

Neither is it of any avail to say, that, if the government abuse its power, and enact unjust and oppressive laws, the government may be changed by the influence of discussion, and the exercise of the right of suffrage. Discussion can do nothing to prevent the enactment, or procure the repeal, of unjust laws, unless it be understood that the discussion is to be followed by resistance. Tyrants care nothing for discussions that are to end only in discussion. Discussions, which do not interfere with the enforcement of their laws, are but idle wind to them. Suffrage is equally powerless and unreliable. It can be exercised only periodically; and the tyranny must at least be borne until the time for suffrage comes. Besides, when the suffrage is exercised, it gives no guaranty for the repeal of existing laws that are oppressive, and no security against the enactment of new ones that are equally so. The second body of legislators are liable and likely to be just as tyrannical as the first. If it be said that the second body may be chosen for their integrity, the answer is, that the first were chosen for that very reason, and yet

proved tyrants. The second will be exposed to the same temptations as the first, and will be just as likely to prove tyrannical. Who ever heard that succeeding legislatures were, on the whole, more honest than those that preceded them? What is there in the nature of men or things to make them so? If it be said that the first body were chosen from motives of injustice, that fact proves that there is a portion of society who desire to establish injustice; and if they were powerful or artful enough to procure the election of their instruments to compose the first legislature, they will be likely to be powerful or artful enough to procure the election of the same or similar instruments to compose the second. The right of suffrage, therefore, and even a change of legislators, guarantees no change of legislation --- certainly no change for the better. Even if a change for the better actually comes, it comes too late, because it comes only after more or less injustice has been irreparably done.

But, at best, the right of suffrage can be exercised only periodically; and between the periods the legislators are wholly [*14] irresponsible. No despot was ever more entirely irresponsible than are republican legislators during the period for which they are chosen. They can neither be removed from their office, nor called to account while in their office, nor punished after they leave their office, be their tyranny what it may. Moreover, the judicial and executive departments of the government are equally irresponsible to the people, and are only responsible, (by impeachment, and dependence for their salaries), to these irresponsible legislators. This dependence of the judiciary and executive upon the legislature is a guaranty that they will always sanction and execute its laws, whether just or unjust. Thus the legislators hold the whole power of the government in their hands, and are at the same time utterly irresponsible for the manner in which they use it.

If, now, this government, (the three branches thus really united in one), can determine the validity of, and enforce, its own laws, it is, for the time being, entirely absolute, and wholly irresponsible to the people.

But this is not all. These legislators, and this government, so irresponsible while in power, can perpetuate their power at pleasure, if they can determine what legislation is authoritative upon the people, and can enforce obedience to it; for they can not only declare their power perpetual, but they can enforce submission to all legislation that is necessary to secure its perpetuity. They can, for example, prohibit all discussion of the rightfulness of their authority; forbid the use of the suffrage; prevent the election of any successors; disarm, plunder, imprison, and even kill all who refuse submission. If, therefore, the government (all departments united) be absolute for a day --- that is, if it can, for a day, enforce obedience to its own law can, in that day, secure its power for all time --- like the queen, who wished to reign but for a day, but in that day caused the king, her husband, to be slain, and usurped his throne. Nor will it avail to say that such acts would be unconstitutional, and that unconstitutional acts may be lawfully resisted; for everything a government pleases to do will, of course, be determined to be constitutional, if the government itself be permitted to determine the question of the constitutionality of its own acts. Those who are capable of tyranny, are capable

of perjury to sustain it. [*15]

The conclusion, therefore, is, that any government, that can, for a day, enforce its own laws, without appealing to the people, (or to a tribunal fairly representing the people,) for their consent, is, in theory, an absolute government, irresponsible to the people, and can perpetuate its power at pleasure.

The trial by jury is based upon a recognition of this principle, and therefore forbids the government to execute any of its laws, by punishing violators, in any case whatever, without first getting the consent of "the country," or the people, through a jury. In this way, the people, at all times, hold their liberties in their own hands, and never surrender them, even for a moment, into the hands of the government.

The trial by jury, then, gives to any and every individual the liberty, at any time, to disregard or resist any law whatever of the government, if he be willing to submit to the decision of a jury, the questions, whether the law be intrinsically just and obligatory? and whether his conduct, in disregarding or resisting it, were right in itself? And any law, which does not, in such trial, obtain the unanimous sanction of twelve men, taken at random from the people, and judging according to the standard of justice in their own minds, free from all dictation and authority of the government, may be transgressed and resisted with impunity, by whomsoever pleases to transgress or resist it. fn3

The trial by jury authorizes all this, or it is a sham and a hoax, utterly worthless for protecting the people against oppression. If it do not authorize an individual to resist the first and least act of injustice or tyranny, on the part of the government, it does not authorize him to resist the last and the greatest. If it do not authorize individuals to nip tyranny in the bud, it does not authorize them to cut it down when its branches are filled with the ripe fruits of plunder and oppression.

Those who deny the right of a jury to protect an individual in resisting an unjust law of the government, deny him all [*16] legal defence whatsoever against oppression. The right of revolution, which tyrants, in mockery, accord to mankind, is no legal right under a government; it is only a natural right to overturn a government. The government itself never acknowledges this right. And the right is practically established only when and because the government no longer exists to call it in question. The right, therefore, can be exercised with impunity, only when it is exercised victoriously. All unsuccessful attempts at revolution, however justifiable in themselves, are punished as treason, if the government be permitted to judge of the treason. The government itself never admits the injustice of its laws, as a legal defence for those who have attempted a revolution, and failed. The right of revolution, therefore, is a right of no practical value, except for those who are stronger than the

government. So long, therefore, as the oppressions of a government are kept within such limits as simply not to exasperate against it a power greater than its own, the right of revolution cannot be appealed to, and is therefore inapplicable to the case. This affords a wide field for tyranny; and if a jury cannot here intervene, the oppressed are utterly defenceless.

It is manifest that the only security against the tyranny of the government lies in forcible resistance to the execution of the injustice; because the injustice will certainly be executed, unless it be forcibly resisted. And if it be but suffered to be executed, it must then be borne; for the government never makes compensation for its own wrongs.

Since, then, this forcible resistance to the injustice of the government is the only possible means of preserving liberty, it is indispensable to all legal liberty that this resistance should be legalized. It is perfectly self-evident that where there is no legal right to resist the oppression of the government, there can be no legal liberty. And here it is all-important to notice, that, practically speaking, there can be no legal right to resist the oppressions of the government, unless there be some legal tribunal, other than the government, and wholly independent of, and above, the government, to judge between the government and those who resist its oppressions; in other words, to judge what laws of the government are to be [*17] obeyed, and what may be resisted and held for nought. The only tribunal known to our laws, for this purpose, is a jury. If a jury have not the right to judge between the government and those who disobey its laws, and resist its oppressions, the government is absolute, and the people, legally speaking, are slaves. Like many other slaves they may have sufficient courage and strength to keep their masters somewhat in check; but they are nevertheless known to the law only as slaves.

That this right of resistance was recognized as a common law right, when the ancient and genuine trial by jury was in force, is not only proved by the nature of the trial itself, but is acknowledged by history. fn4

This right of resistance is recognized by the constitution of the United States, as a strictly legal and constitutional right. It is so recognized, first by the provision that “the trial of all crimes, except in cases of impeachment, shall be by jury” --- that is, by the country --- and not by the government; secondly, by the provision that “the right of the people to keep and bear arms shall not be infringed.” This constitutional security for “the right to keep and bear arms, implies the right to use themes much as a constitutional security for the right to buy and keep food would have implied the right to eat it. The constitution, therefore, takes it for granted that [*18] the people will judge of the conduct of the government, and that, as they have the right, they will also have the sense, to use arms, whenever the necessity of the xxxcab justifies it. And it is a sufficient and legal defence for a person accused of using arms against the government, if he can show, to the satisfaction of a jury, or even any one of a jury, that the law he resisted was an unjust one.

In the American State constitutions also, this right of resistance to the oppressions of the government is recognized, in various ways, as a natural, legal, and constitutional right. In the first place, it is so recognized by provisions establishing the trial by jury; thus requiring that accused persons shall be tried by "the country," instead of the government. In the second place, it is recognized by many of them, as, for example, those of Massachusetts, Maine, Vermont, Connecticut, Pennsylvania, Ohio, Indiana, Michigan, Kentucky, Tennessee, Arkansas, Mississippi, Alabama, and Florida, by provisions expressly declaring that, the people shall have the right to bear arms. In many of them also, as, for example, those of Maine, New Hampshire, Vermont, Massachusetts, New Jersey, Pennsylvania, Delaware, Ohio, Indiana, Illinois, Florida, Iowa, and Arkansas, by provisions, in their bills of rights, declaring that men have a natural, inherent, and inalienable right of "defending their lives and liberties." This, of course, means that they have a right to defend them against any injustice on the part of the government, and not merely on the part of private individuals; because the object of all bills of rights is to assert the rights of individuals and the people, as against the government, and not as against private persons. It would be a matter of ridiculous supererogation to assert, in a constitution of government, the natural right of men to defend their lives and liberties against private trespassers.

Many of these bills of rights also assert the natural right of all men to protect their property --- that is, to protect it against the government. It would be unnecessary and silly indeed to assert, in a constitution of government, the natural right of individuals to protect their property against thieves and robbers. [*19]

The constitutions of New Hampshire and Tennessee also declare that "The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind."

The legal effect of these constitutional recognitions of the right of individuals to defend their property, liberties, and lives, against the government, is to legalize resistance to all injustice and oppression, of every name and nature whatsoever, on the part of the government.

But for this right of resistance, on the part of the people, all governments would become tyrannical to a degree of which few people are aware. Constitutions are utterly worthless to restrain the tyranny of governments, unless it be understood that the people will, by force, compel the government to keep within the constitutional limits. Practically speaking, no government knows any limits to its power, except the endurance of the people. But that the people are stronger than the government, and will resist in extreme cases, our governments would be little or nothing else than organized systems of plunder and oppression. All, or nearly all, the advantage there is in fixing any constitutional limits to the power of a government, is simply to give notice to the government of the point at which it will meet with resistance. If the

people are then as good as their word, they may keep the government within the bounds they have set for it; otherwise it will disregard them --- as is proved by the example of all our American governments, in which the constitutions have all become obsolete, at the moment of their adoption, for nearly or quite all purposes except the appointment of officers, who at once become practically absolute, except so far as they are restrained by the fear of popular resistance.

The bounds set to the power of the government, by the trial by jury, as will hereafter be shown, are these --- that the government shall never touch the property, person, or natural or civil rights of an individual, against his consent, (except for the purpose of bringing them before a jury for trial,) unless in pursuance and execution of a judgment, or decree, rendered by a jury in each individual case, upon such evidence, and such law, as are satisfactory to their own understandings and consciences, irrespective of all legislation of the government. [*20]

CHAPTER II. THE TRIAL BY JURY, AS DEFINED BY MAGNA CARTA.

That the trial by jury is all that has been claimed for it in the preceding chapter, is proved both by the history and the language of the Great Charter of English Liberties, to which we are to look for a true definition of the trial by jury, and of which the guaranty for that trial is the vital, and most memorable, part.

SECTION I. The History of Magna Carta.

In order to judge of the object and meaning of that chapter of Magna Carta which secures the trial by jury, it is to be borne in mind that, at the time of Magna Carta, the king (with exceptions immaterial to this discussion, but which will appear hereafter) was, constitutionally, the entire government; the sole legislative, judicial, and executive power of the nation. The executive and judicial officers were merely his servants, appointed by him, and removable at his pleasure. In addition to this, “the king himself often sat in his court, which always attended his person. He there heard causes, and pronounced judgment; and though he was assisted by the advice of other members, it is not to be imagined that a decision could be obtained contrary to his inclination or opinion.” fn5 Judges were in those days, and afterwards, such abject servants of the king, that “we find that King Edward I. (1272 to 1307) fined and imprisoned his judges, in the same manner as Alfred the Great, among the Saxons, had done before him, by the sole exercise of his authority.” fn6 [*21]

Parliament, so far as there was a parliament, was a mere council of the king. fn7 It assembled only at the pleasure of the king; sat only during his pleasure; and when sitting had no power, so far as general legislation was concerned, beyond that of simply advising the king. The only legislation to which their assent was constitutionally necessary, was demands for money and

military services for extraordinary occasions. Even Magna Carta itself makes no provisions whatever for any parliaments, except when the king should want means to carry on war, or to meet some other extraordinary necessity. fn8 He had no need of parliaments to raise taxes for the ordinary purposes of government; for his revenues from the rents of the crown lands and other sources, were ample for all except extraordinary occasions. Parliaments, too, when assembled, consisted only of bishops, barons, and other great men of the kingdom, unless the king chose to invite others. fn9 There was no House of Commons at that time, and the people had no right to be heard, unless as petitioners. fn10

Even when laws were made at the time of a parliament, they were made in the name of the king alone. Sometimes it was inserted in the laws, that they were made with the consent or advice of the bishops, barons, and others assembled; but often this was omitted. Their consent or advice was evidently a matter of no legal importance to the enactment or validity of the laws, but only inserted, when inserted at all, with a view of obtaining a more willing submission to them on the part of the people. The style of enactment generally was, either "The King wills and commands," or some other form significant of the sole legislative authority of the king. The king could pass laws at any time when it pleased him. The presence of a parliament was wholly unnecessary. Hume says, "It is asserted by Sir Harry Spelman, as an undoubted fact, that, during the reigns of the Norman princes, every order of the king, issued with the consent of his privy council, had the full force of law." fn11 And other authorities abundantly corroborate this assertion. fn12

The king was, therefore, constitutionally the government; and the only legal limitation upon his power seems to have been simply the Common Law, usually called "the law of the land," which he was bound by oath to maintain; (which oath had about the same practical value as similar oaths have always had.) This "law of the land" seems not to have been regarded at all by many of the kings, except so far as they found it convenient to do so, or were constrained to observe it by the fear of arousing resistance. But as all people are slow in making resistance, oppression and usurpation often reached a great height; and, in the case of John, they had become so intolerable as to enlist the nation almost universally against him; and he was reduced to the necessity of complying with any terms the barons saw fit to dictate to him.

It was under these circumstances, that the Great Charter of [*23] English Liberties was granted. The barons of England, sustained by the common people, having their king in their power, compelled him, as the price of his throne, to pledge himself that he would punish no freeman for a violation of any of his laws, unless with the consent of the peers --- that is, the equals --- of the accused.

The question here arises, Whether the barons and people intended that those peers (the jury) should be mere puppets in the hands of the king, exercising no opinion of their own as to the intrinsic merits of the accusations they should try, or the justice of the laws they should be

called on to enforce? Whether those haughty and victorious barons, when they had their tyrant king at their feet, gave back to him his throne, with full power to enact any tyrannical laws he might please, reserving only to a jury ("the country") the contemptible and servile privilege of ascertaining, (under the dictation of the king, or his judges, as to the laws of evidence), the simple fact whether those laws had been transgressed? Was this the only restraint, which, when they had all power in their hands, they placed upon the tyranny of a king, whose oppressions they had risen in arms to resist? Was it to obtain such a charter as that, that the whole nation had united, as it were, like one man, against their king? Was it on such a charter that they intended to rely, for all future time, for the security of their liberties? No. They were engaged in no such senseless work as that. On the contrary, when they required him to renounce forever the power to punish any freeman, unless by the consent of his peers, they intended those peers should judge of, and try, the whole case on its merits, independently of all arbitrary legislation, or judicial authority, on the part of the king. In this way they took the liberties of each individual --- and thus the liberties of the whole people --- entirely out of the hands of the king, and out of the power of his laws, and placed them in the keeping of the people themselves. And this it was that made the trial by jury the palladium of their liberties.

The trial by jury, be it observed, was the only real barrier interposed by them against absolute despotism. Could this trial, then, have been such an entire farce as it necessarily [*24] must have been, if the jury had had no power to judge of the justice of the laws the people were required to obey? Did it not rather imply that the jury were to judge independently and fearlessly as to everything involved in the charge, and especially as to its intrinsic justice, and thereon give their decision, (unbiased by any legislation of the king,) whether the accused might be punished? The reason of the thing, no less than the historical celebrity of the events, as securing the liberties of the people, and the veneration with which the trial by jury has continued to be regarded, notwithstanding its essence and vitality have been almost entirely extracted from it in practice, would settle the question, if other evidences had left the matter in doubt.

Besides, if his laws were to be authoritative with the jury, why should John indignantly refuse, as at first he did, to grant the charter, (and finally grant it only when brought to the last extremity,) on the ground that it deprived him of all power, and left him only the name of a king? He evidently understood that the juries were to veto his laws, and paralyze his power, at discretion, by forming their own opinions as to the true character of the offences they were to try, and the laws they were to be called on to enforce; and that "the king wills and commands" was to have no weight with them contrary to their own judgments of what was intrinsically right. fn13

The barons and people having obtained by the charter all the liberties they had demanded of the king, it was further [*25] provided by the charter itself that twenty-five barons, should be appointed by the barons, out of their number, to keep special vigilance in the kingdom to see that the charter was observed, with authority to make war upon the king in case of its

violation. The king also, by the charter, so far absolved all the people of the kingdom from their allegiance to him, as to authorize and require them to swear to obey the twenty-five barons, in case they should make war upon the king for infringement of the charter. It was then thought by the barons and people, that something substantial had been done for the security of their liberties.

This charter, in its most essential features, and without any abatement as to the trial by jury, has since been confirmed more than thirty times; and the people of England have always had a traditionary idea that it was of some value as a guaranty against oppression. Yet that idea has been an entire delusion, unless the jury have had the right to judge of the justice of the laws they were called on to enforce.

SECTION II. The Language of Magna Carta.

The language of the Great Charter establishes the same point that is established by its history, viz., that it is the right and duty of the jury to judge of the justice of the laws. [*26]

The chapter guaranteeing the trial by jury is in these words:

“Nullus liber homo capiatur, vel imprisonetur, aut disseisetur, aut utlagetur, aut exultetur, aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae.” fn14

The corresponding chapter in the Great Charter, granted by Henry III., (1225,) and confirmed by Edward I., (1297,) (which charter is now considered the basis of the English laws and constitution,) is in nearly the same words, as follows:

“Nullus liber homo capiatur, vel imprisonetur, aut disseisetur de libero tenemento, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae.”

The most common translation of these words, at the present day, is as follows:

“No freeman shall he arrested, or imprisoned, or deprived of his freehold, or his liberties, or free customs, or outlawed, or exiled, or in any manner destroyed, nor will we (the king) pass upon him, nor condemn him, unless by the judgment of his peers, or the law of the land.”

“Nec super eum ibimus, nec super eum mittemus.”

There has been much confusion and doubt as to the true meaning of the words, “nec super eum ibimus, nec super eum mittemus.” The more common rendering has been, “nor will we pass upon him, nor condemn him.” But some have translated them to mean, “nor will we pass upon him, nor commit him to prison.” Coke gives still a different rendering, to the effect that “No man shall be condemned at the king’s suit, either before the king in his bench, nor before any other commissioner or judge whatsoever.” fn15

But all these translations are clearly erroneous. In the first [*27] place, “nor will we pass upon him,” --- meaning thereby to decide upon his guilt or innocence judicially --- is not a correct rendering of the words, “nec super eum ibimus.” There is nothing whatever, in these latter words, that indicates judicial action or opinion at all. The words, in their common significance, describe physical action alone. And the true translation of them, as will hereafter be seen, is, “nor will we proceed against him,” executively.

In the second place, the rendering, “nor will we condemn him,” bears little or no analogy to any common, or even uncommon, signification of the words “nec super eum mittemus.” There is nothing in these latter words that indicates judicial action or decision. Their common signification, like that of the words nec super eum ibimus, describes physical action alone. “Nor will we send upon (or against) him,” would be the most obvious translation, and, as we shall hereafter see, such is the true translation.

But, although these words describe physical action, on the part of the king, as distinguished from judicial, they nevertheless do not mean, as one of the translations has it, “nor will we commit him to prison;” for that would be a mere repetition of what had been already declared by the words “nec imprisonetur.” Besides, there is nothing about prisons in the words “nec super eum mittemus;” nothing about sending him anywhere; but only about sending (something or somebody) upon him, or against him --- that is, executively.

Coke’s rendering is, if possible, the most absurd and gratuitous of all. What is there in the words, “nec super eum mittemus,” that can be made to mean “nor shall he be condemned before any other commissioner or judge whatsoever?” Clearly there is nothing. The whole rendering is a sheer fabrication. And the whole object of it is to give color for the exercise of a judicial power, by the king, or his judges, which is nowhere given them.

Neither the words, “nec super eum ibimus, nec super eum mittemus,” nor any other words in the whole chapter, authorize, provide for, describe, or suggest, any judicial action whatever, on the part either of the king, or of his judges, or of anybody, except the peers, or jury. There is

nothing about [*28] the king's judges at all. And there is nothing whatever, in the whole chapter, so far as relates to the action of the king, that describes or suggests anything but executive action. fn16

But that all these translations are certainly erroneous, is proved by a temporary charter, granted by John a short time previous to the Great Charter, for the purpose of giving an opportunity for conference, arbitration, and reconciliation between him and his barons. It was to have force until the matters in controversy between them could be submitted to the Pope, and to other persons to be chosen, some by the king, and some by the barons. The words of the charter are as follows:

"Sciatis nos concessisse baronibus nostris qui contra nos sunt quod nec eos nec homines suos capiemus, nec disseisiemus nec super eos per vim vel per arma ibimus nisi per legem regni nostri vel per judicium parium suorum in curia nostra donec consideratio facta fuerit," &c., &c.

That is, "Know that we have granted to our barons who are opposed to us, that we will neither arrest them nor their men, nor disseize them, nor will we proceed against them by force or by arms, unless by the law of our kingdom, or by the judgment of their peers in our court, until consideration shall be had," &c., &c.

A copy of this charter is given in a note in Blackstone's Introduction to the Charters. fn17

Mr. Christian speaks of this charter as settling the true meaning of the corresponding clause of Magna Carta, on the principle that laws and charters on the same subject are to be construed with reference to each other. See 3 Christian's Blackstone, 41, note. [*29]

The true meaning of the words, nec super eum ibimus, nec super eum mittemus, is also proved by the "Articles of the Great Charter of Liberties," demanded of the king by the barons, and agreed to by the king, under seal, a few days before the date of the Charter, and from which the Charter was framed. fn18 Here the words used are these:

"Ne corpus liberi hominis capiatur nec imprisonetur nec disseisetur nec utlagetur nec exuletur nec aliquo modo destruatur nec rex eat vel mittat super eum vi nisi per judicium parium suorum vel per legem terrae."

That is, "The body of a freeman shall not be arrested, nor imprisoned, nor disseized, nor outlawed, nor exiled, nor in any manner destroyed, nor shall the king proceed or send (any one) against him with force unless by the judgment of his peers, or the law of the land."

The true translation of the words nec super eum ibimus, nec super eum mittemus, in Magna Carta, is thus made certain, as follows, “nor will we (the king) proceed against him, nor send (any one) against him with force or arms.” fn19

It is evident that the difference between the true and false translations of the words, nec super eum ibimus, nec super eum mittemus, is of the highest legal importance, in as much as the true translation, nor will we (the king) proceed against him, nor send (any one) against him by force or arms, represents the king only in an executive character, carrying the judgment of the peers and “the law of the land” into execution; whereas the false translation, nor will we pass upon him, nor condemn him, gives color for the exercise of a judicial power, on the [*30] part of the king, to which the king had no right, but which, according to the true translation, belongs wholly to the jury.

“Per legale judicium parium suorum.”

The foregoing interpretation is corroborated, (if it were not already too plain to be susceptible of corroboration,) by the true interpretation of the phrase “per legale judicium parium suorum.”

In giving this interpretation, I leave out, for the present, the word legale, which will be defined afterwards.

The true meaning of the phrase, per judicium parium suorum, is, according to the sentence of his peers. The word judicium, judgment, has a technical meaning in the law, signifying the decree rendered in the decision of a cause. In civil suits this decision is called a judgment; in chancery proceedings it is called a decree; in criminal actions it is called a sentence, or judgment, indifferently. Thus, in a criminal suit, “a motion in arrest of judgment,” means a motion in arrest of sentence. fn20

In cases of sentence, therefore, in criminal suits, the words sentence and judgment are synonymous terms. They are, to this day, commonly used in law books as synonymous terms. And the phrase per judicium parium suorum, therefore, implies that the jury are to fix the sentence.

The word per means according to. Otherwise there is no sense in the phrase per judicium parium suorum. There [*31] would be no sense in saying that a king might imprison, disseize, outlaw, exile, or otherwise punish a man, or proceed against him, or send any one against him,

by force or arms, by a judgment of his peers; but there is sense in saying that the king may imprison, disseize, and punish a man, or proceed against him, or send any one against him, by force or arms, according to a judgment, or sentence, of his peers; cause in that case the king would be merely carrying the sentence or judgment of the peers into execution.

The word per, in the phrase “per judicium parium suorum,” of course means precisely what it does in the next phrase, “per legem terrae;” where it obviously means according to, and not by, as it is usually translated. There would be no sense in saying that the king might proceed against a man by force or arms, by the law of the land; but there is sense in saying that he may proceed against him, by force or arms, according to the law of the land; because the king would then be acting only as an executive officer, carrying the law of the land into execution. Indeed, the true meaning of the word by as used in similar cases now, always is according to; as, for example, when we say a thing was done by the government, or by the executive, by law, we mean only that it was done by them according to law; that is, that they merely executed the law.

Or, if we say that the word by signifies by authority of, the result will still be the same; for nothing can be done by authority of law, except what the law itself authorizes or directs [*32] to be done; that is, nothing can be done by authority of law, except simply to carry the law itself into execution. So nothing could be done by authority of the sentence of the peers, or by authority of “the law of the land,” except what the sentence of the peers, or the law of the land, themselves authorized or directed to be done; nothing, in short, but I to carry the sentence of the peers, or the law of the land, themselves into execution.

Doing a thing by law, or according to law, is only carrying the law into execution. And punishing a man by or according to, the sentence or judgment of his peers, is only carrying that sentence or judgment into execution.

If these reasons could leave any doubt that the word per is to be translated according to, that doubt would be removed by the terms of an antecedent guaranty for the trial by jury, granted by the Emperor Conrad, of Germany, fn21 two hundred years before Magna Carta. Blackstone cites it as follows: --- (3 Blackstone, 350)

“Nemo beneficium suum perdat, nisi secundum consuetudinem antecessorum nostrorum, et judicium parium suorum.” That is, No one shall lose his estate, fn22 unless according to (“secundum”) the custom (or law) of our ancestors, and (according to) the sentence (or judgment) of his peers.

The evidence is therefore conclusive that the phrase per judicium parium suorum means

according to the sentence of his peers; thus implying that the jury, and not the government, are to fix the sentence.

If any additional proof were wanted that juries were to fix the sentence, it would be found in the following provisions of Magna Carta, viz.:

"A freeman shall not be amerced for a small crime, (delicto,) but according to the degree of the crime; and for a great crime in proportion to the magnitude of it, saving to him his contene-[*33]-ment; fn23 and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his waynage, fn24 if he fall under our mercy; and none of the aforesaid amercements shall be imposed, (or assessed, ponatur,) but the oath of honest men of the neighborhood. Earls and Barons shall not be amerced but by their peers, and according to the degree of their crime." fn25

Pecuniary punishments were the most common punishments at that day, and the foregoing provisions of Magna Carta show that the amount of those punishments was to be fixed by the jury.

Fines went to the king, and were a source of revenue; and if the amounts of the fines had been left to be fixed by the king, he would have had a pecuniary temptation to impose unreasonable and oppressive ones. So, also, in regard to other punishments than fines. If it were left to the king to fix the punishment, he might often have motives to inflict cruel and oppressive ones. As it was the object of the trial by jury to protect the people against all possible oppression from the king, it was necessary that the jury, and not the king, should fix the punishments. fn26

"Legale"

The word "legale," in the phrase "per legal judicium [*34] parium suorum," doubtless means two things. 1. That the sentence must he given in a legal manner; that is, by the legal number of jurors, legally empanelled and sworn to try the cause; and that they give their judgment or sentence after a legal trial, both in form and substance, has been had. 2. That the sentence shall be for a legal cause or offence. If, therefore, a jury should convict and sentence a man, either without giving him a legal trial, or for an act that was not really and legally criminal, the sentence itself would not be legal; and consequently this clause forbids the king to carry such a sentence into execution; for the clause guarantees that he will execute no judgment or sentence, except it be legale judicium, a legal sentence. Whether a sentence be a legal one, would have to be ascertained by the king or his judges, on appeal, or might be judged of informally by the king himself.

The word “legale” clearly did not mean that the judicium parium suorum (judgment of his peers) should be a sentence which any law (of the king), should require the peers to pronounce; for in that case the sentence would not sentence of the peers, but only the sentence of the law, (that is, of the king); and the peers would be only a mouthpiece of the law, (that is, of the king,) in uttering it.

“Per legem terrae.”

One other phrase remains to be explained, viz., “per legem terrae,” “by the law of the land.”

All writers agree that this means the common law. Thus, Sir Matthew Hale says:

“The common law is sometimes called, by way of eminence, lex terrae, as in the statute of Magna Carta, chap. 29, where certainly the common law is principally intended by those words, aut per legem terrae; as appears by the exposition thereof in several subsequent statutes; and particularly in the statute of 28 Edward III.” chap. 3 which is but an exposition and explanation of that statute. Sometimes it is called lex Angliae, as in the statute of Merton, cap. 9, “Nolumus leges Angliae mutari,” &c., (We will that the laws of England be not changed). Sometimes it is called lex et consuetudo regni (the law and custom of the kingdom); as in all commissions of oyer and terminer; and in the statutes of 18 Edward I., cap. --, and de quo warranto, and divers others. But most [*35] commonly it is called the Common Law, or the Common Law of England; as in the statute Articuli super Chartas, cap. 15, in the statute 25 Edward III., cap. 5, (4,) and infinite more records and statutes.” --- 1 Hale’s History of the Common Law, 128.

This common law, or “law of the land,” the king was sworn to maintain. This fact is recognized by a statute made at Westminster, in 1346, by Edward III., which commences in this manner:

“Edward, by the Grace of God, &c., &c., to the Sheriff of Stafford, Greeting: Because that by divers complaints made to us, we have perceived that the law of the land, which we by oath are bound to maintain,” &c. --- St. 20 Edward III.

The foregoing authorities are cited to show to the unprofessional reader, what is well known to the profession, that legem terrae, the law of the land, mentioned in Magna Carta, was the common, ancient, fundamental law of the land, which the kings were bound by oath to observe; and that it did not include any statutes or laws enacted by the king himself, the legislative power of the nation.

If the term legem terrae had included laws enacted by the king himself, the whole chapter of

Magna Carta, now under discussion, would have amounted to nothing as a protection to liberty; because it would have imposed no restraint whatever upon the power of the king. The king could make laws at any time, and such ones as he pleased. He could, therefore, have done anything he pleased, by the law of the land, as well as in any other way, if his own laws had been "the law of the land." If his own laws had been "the law of the land," within the meaning of that term as used in Magna Carta, this chapter of Magna Carta would have been sheer nonsense, inasmuch as the whole purport of it would have been simply that "no man shall he arrested, imprisoned, or deprived of his freehold, or his liberties, or free customs, or outlawed, or exiled, or in any manner destroyed (by the king); nor shall the king proceed against him, nor send any one against him with force and arms, unless by the judgment of his peers, or unless the king shall please to do so."

This chapter of Magna Carta would, therefore, have imposed not the slightest restraint upon the power of the king, or [*36] afforded the slightest protection to the liberties of the people, if the laws of the king had been embraced in the term legem terrae. But if legem terrae was the common law, which the king was sworn to maintain, then a real restriction was laid upon his power, and a real guaranty given to the people for their liberties.

Such, then, being the meaning of legem terrae, the fact is established that an accused person entirely out of the hands of the legislative power, that is, of the king; and placed him in the power and under the protection of his peers, and the common law alone; that, in short, Magna Carta suffered no man to be punished for violating any enactment of the legislative power, unless the peers or equals of the accused freely consented to it, or the common law authorized it; that the legislative power, of itself, was wholly incompetent to require the conviction or punishment of a man for any offence whatever.

Whether Magna Carta allowed of any other trial than by jury.

The question here arises, whether "legem terrae" did not allow of some other mode of trial than that by jury.

The answer is, that, at the time of Magna Carta, it is not probable, (for the reasons given in the note,) that legem terrae authorized, in criminal cases, any other trial than the trial by jury; but, if it did, it certainly authorized none but the trial by battle, the trial by ordeal, and the trial by compurgators. These were the only modes of trial, except by jury, that had been known in England, in criminal cases, for some centuries previous to Magna Carta. All of them had become nearly extinct at the time of Magna Carta, and it is not probable that they were included in "legem terrae," as that term is used in that instrument. But if they were included in it, they have now been long obsolete, and were such as neither this nor any future age will ever return to. fn27 For all practical purposes of [*37] the present day, therefore, it may be asserted that

Magna Carta allows no trial whatever but trial by jury.

Whether Magna Carta allowed sentence to be fixed otherwise than by jury.

Still another question arises on the words legem terrae, viz., whether, in cases where the question of guilt was determined by the jury, the amount of punishment may not have been fixed by legem terrae, the Common Law, instead of its being fixed by the jury.

I think we have no evidence whatever that, at the time of Magna Carta, or indeed at any other time, lex terrae, the com-[*38]-mon law, fixed the punishment in cases where the question of guilt was tried by a jury; or, indeed, that it did in any other case. Doubtless certain punishments were common and usual for certain offences; but I do not think it can be shown that the common law, in the lex terrae, which the king was sworn to maintain, required any one specific punishment, or any precise amount of punishment, for any one specific offence. If such a thing be claimed, it must be shown, for it cannot be presumed. In fact the contrary must be presumed, because, in the nature of things, the amount of punishment proper to be inflicted in any particular case, is a matter requiring the exercise of discretion at the time, in order to adapt it to the moral quality of the offence, which is different in each case, varying with the mental and moral constitutions of the offenders, and the circumstances of temptation or provocation. And Magna Carta recognizes this principle distinctly, as has before been shown, in providing that freemen, merchants, and villeins, “shall not be amerced for a small crime, but according to the degree of the crime; and for a great crime in proportion to the magnitude of it;” and that “none of the aforesaid amercements shall be imposed (or assessed) but by the oaths of honest men of the neighborhood;” and that “earls and barons shall not be amerced but by their peers, and according to the quality of the offence.”

All this implies that the moral quality of the offence was to be judged of at the trial, and that the punishment was to be fixed by the discretion of the peers, or jury, and not by any such unvarying rule as a common law rule would be.

I think, therefore, it must he conceded that, in all cases, tried by a jury, Magna Carta intended that the punishment should he fixed by the jury, and not by the common law, for these several reasons.

1. It is uncertain whether the common law fixed the punishment of any offence whatever.

2. The words “per judicium parium suorum,” according to the sentence of his peers, imply that the jury fixed the sentence in some cases tried by them; and if they fixed the sentence in some cases, it must be presumed they did in all, unless the contrary be clearly shown. [*39]

3. The express provisions of Magna Carta, before adverted to, that no amercements, or fines, should he imposed upon freemen, merchants, or villeins, “but by oath of honest men of the neighborhood,” and “according to the degree of the crime,” and that “earls and barons should not be amerced but by their peers, and according to the quality of the offence,” proves that, at least, there was no common law fixing the amount of fines, or, if there were, that it was to he no longer in force. And if there was no common law fixing the amount of fines, or if it was to he no longer in force, it is reasonable to infer, (in the absence of all evidence to the contrary,) either that the common law did not fix the amount of any other punishment, or that it was to be no longer in force for that purpose. fn28

Under the Saxon laws, fines, payable to the injured party, seem to have been the common punishments for all offences. Even murder was punishable by a fine payable to the relatives of the deceased. The murder of the king even was punishable [*40] by fine. When a criminal was unable to pay his fine, his relatives often paid it for him. But if it were not paid, he was put out of the protection of the law, and the injured parties, (or, in the case of murder, the kindred of the deceased,) were allowed to inflict such punishment as they pleased. And if the relatives of the criminal protected him, it was lawful to take vengeance on them also. Afterwards the custom grew up of exacting fines also to the king as a punishment for offences. fn29 And this latter was, doubtless, the usual punishment at the time of Magna Carta, as is evidenced by the fact that for many years immediately following Magna Carta, nearly or quite all statutes that prescribed any punishment at all, prescribed that the offender should “be grievously amerced,” or “pay a great fine to the king,” or a “grievous ransom,” --- with the alternative in some cases (perhaps understood in all) of imprisonment, banishment, or outlawry, in case of non-payment. fn30 [*41]

Judging, therefore, from the special provisions in Magna Carta, requiring fines, or amercements, to be imposed only by juries, (without mentioning any other punishments;) judging; also, from the statutes which immediately followed Magna Carta, it is probable that the Saxon custom of punishing all, or nearly all, offences by fines, (with the alternative to the criminal of being imprisoned, banished, or outlawed, and exposed to private vengeance, in case of non-payment,) continued until the time of Magna Carta; and that in providing expressly that fines should be fixed by the juries, Magna Carta provided for nearly or quite all the punishments that were expected to be inflicted; that if there were to be any others, they were to be fixed by the juries; and consequently that nothing was left to be fixed by “legem terrae.”

But whether the common law fixed the punishment of any offences, or not, is a matter of little or no practical importance at this day; because we have no idea of going back to any common law punishments of six hundred years ago, if, indeed, there were any such at that time. It is enough for us to known --- and this is what it material for us to know --- that the jury fixed the punishments, in all cases, unless they were fixed by the common law; that Magna Carta allowed [*42] no punishments to be prescribed by statute --- that is, by the legislative power --- nor in

any other manner by the king; or his judges, in any case whatever; and, consequently, that all statutes prescribing particular punishments for particular offences, or giving the king's judges any authority to fix punishments, were void.

If the power to fix punishments had been left in the hands of the king, it would have given him a power of oppression, which was liable to be greatly abused; which there was no occasion to leave with him; and which would have been incongruous with the whole object of this chapter of Magna Carta; which object was to take all discretionary or arbitrary power over individuals entirely out of the hands of the king, and his laws, and entrust it only to the common law, and the peers, or jury --- that is, the people.

What lex terrae did authorize.

But here the question arises, What then did "legem terrae" authorize the king, (that is, the government,) to do in the case of an accused person, if it neither authorized any other trial than that by jury, nor any other punishments than those fixed by juries?

The answer is, that, owing to the darkness of history on the point, it is probably wholly impossible, at this day, to state, with any certainty or precision, anything whatever that the legem terrae of Magna Carta did authorize the king, (that is, the government,) to do, (if, indeed, it authorized him to do anything,) in the case of criminals, other than to have them tried and sentenced by their peers, for common law crimes; and to carry that sentence into execution.

The trial by jury was a part of legem terrae, and we have the means of knowing what the trial by jury was. The fact that the jury were to fix the sentence, implies that they were to try the accused; otherwise they could not know what sentence, or whether any sentence, ought to be inflicted upon him. Hence it follows that the jury were to judge of everything involved in the trial; that is, they were to judge of the nature of the offence, of the admissibility and weight of testimony, and of everything else whatsoever that was of the essence of [*43] the trial. If anything whatever could be dictated to them, either of law or evidence, the sentence would not be theirs, but would be dictated to them by the power that dictated to them the law or evidence. The trial and sentence, then, were wholly in the hands of the jury.

We also have sufficient evidence of the nature of the oath administered to jurors in criminal cases. It was simply, that they would neither convict the innocent, nor acquit the guilty. This was the oath in the Saxon times, and probably continued to be until Magna Carta.

We also know that, in case of conviction, the sentence of the jury was not necessarily final; that the accused had the right of appeal to the king and his judges, and to demand either a new

trial, or an acquittal, if the trial or conviction had been against law.

So much, therefore, of the legem terrae of Magna Carta, we know with reasonable certainty.

We also know that Magna Carta provides that "No bailiff (balivus) shall hereafter put any man to his law, (put him on trial,) on his single testimony, without credible witnesses brought to support it." Coke thinks "that under this word balivus, in this act, is comprehended every justice, minister of the king; steward of the king; steward and bailiff." (2 Inst. 44.) And in support of this idea he quotes from a very ancient law book, called the Mirror of Justices, written in the time of Edward I., within a century after Magna Carta. But whether this were really a common law principle, or whether the provision grew out of that jealousy of the government which, at the time of Magna Carta, had reached its height, cannot perhaps now be determined.

We also know that, by Magna Carta, amercements, or fines, could not be imposed to the ruin of the criminal; that, in the case of a freeman, his contenement, or means of subsisting in the condition of a freeman, must be saved to him; that, in the case of a merchant, his merchandise must be spared; and in the case of a villein, his waynage, or plough-tackle and carts. This also is likely to have been a principle of the common law, inasmuch as, in that rude age, when the means of getting employment as laborers were not what they are [*44] now, the man and his family would probably have been liable to starvation, if these means of subsistence had been taken from him.

We also know, generally, that, at the time of Magna Carta, all acts intrinsically criminal, all trespasses against persons and property, were crimes, according to lex terrae, or the common law.

Beyond the points now given, we hardly know anything; probably nothing with certainty, as to what the "legem terrae" of Magna Carta did authorize, in regard to crimes. There is hardly anything extant that can give us any real light on the subject.

It would seem, however, that there were, even at that day, some common law principles governing arrests; and some common law forms and rules as to holding a man for trial, (by bail or imprisonment;) putting him on trial, such as by indictment or complaint; summoning and empanelling jurors, &c., &c. Whatever these common law principles were, Magna Carta requires them to be observed; for Magna Carta provides for the whole proceedings, commencing with the arrest, ("no freeman shall be arrested," &c.,) and ending with the execution of the sentence. And it provides that nothing shall be done, by the government, from beginning to end, unless according to the sentence of the peers, or "legem terrae," the common

law. The trial by peers was a part of legem terrae, and we have seen that the peers must necessarily have governed the whole proceedings at the trial. But all the proceedings for arresting the man, and bringing him to trial, must have been had before the case could come under the cognizance of the peers, and they must, therefore, have been governed by other rules than the discretion of the peers. We may conjecture, although we cannot perhaps know with much certainty, that the lex terrae, or common law, governing these other proceedings, was somewhat similar to the common law principles, on the same points, at the present day. Such seem to be the opinions of Coke, who says that the phrase nisi per legem terrae means unless by due process of law.

Thus, he says:

“Nisi per legem terrae. But by the law of the land. For [*45] the true sense and exposition of these words, see the statute of 37 Edw. III., cap. 8, where the words, by the law of the land, are rendered without due process of law; for there it is said, though it be contained in the Great Charter, that no man be taken, imprisoned, or put out of his freehold, without process of the law; that is, by indictment or presentment of good and lawful men, where such deeds be done in due manner, or by writ original of the common law.

“Without being brought in to answer but by due process of the common law.

“No man be put to answer without presentment before justices, or thing of record, or by due process, or by writ original, according to the old law of the land.” --- 2 Inst. 50.

The foregoing interpretations of the words nisi per legem terrae are corroborated by the following statutes, enacted in the next century after Magna Carta.

“That no man, from henceforth, shall be attached by any accusation, nor forejudged of life or limb, nor his land, tenements, goods, nor chattels, seized into the king’s hands, against the forms of the Great Charter, and the law of the land.” --- St. 5 Edward III., Ch. 9. (1331.)

“Whereas it is contained in the Great Charter of the franchises of England, that none shall be imprisoned, nor put out of his freehold, nor of his franchises, nor free customs, unless it be by the law of the land; it is accorded, assented, and established, that from henceforth none shall be taken by petition, or suggestion made to our lord the king, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighborhood where such deeds be done in due manner, or by process made by writ original at the common law; nor that none be put out of his franchises, nor of his freehold, unless he be duly brought into answer, and forejudged of the same by the course of the law; and if anything be done against the me, it

shall be redressed and holden for none." --- St. 25 Edward III., Ch. 4. (1350.)

"That no man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law." --- St. 28 Edward III., Ch. 3. (1354.)

"That no man be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land. And if anything from henceforth be done to the contrary, it shall be void in law, and holden for error." --- St. 42 Edward III., Ch.3. (1368.) [*46]

The foregoing interpretation of the words nisi per legem terrae ---- that is, by process of law --- including indictment, &c., has been adopted as the true one by modern writers and courts; as, for example, by Kent, (2 Comm. 13,) Story, (3 Comm. 661,) and the Supreme Court of New York, (19 Wendell, 676; 4 Hill, 146.)

The fifth amendment to the constitution of the United States seems to have been framed on the same idea, inasmuch as it provides that "no person shall be deprived of life, liberty, or property, without due process of law. fn31

Whether the word VEL should be or rendered by OR, or by AND.

Having thus given the meanings, or rather the applications, which the words vel per legem terrae will reasonably, and perhaps must necessarily, bear, it is proper to suggest, that it has been supposed by some that the word vel, instead of being rendered by or, as it usually is, ought to be rendered by and, inasmuch as the word vel is often used for et, and the whole phrase nisi per judicium parium suorum, vel per legem terrae, (which would then read, unless by the sentence of his peers, and the law of the land,) would convey a more intelligible and harmonious meaning than it otherwise does.

Blackstone suggests that this may be the true reading. (Charters, p.41.) Also Mr. Hallam, who says:

"Nisi per legale judicium parium suorum, vel per legem terrae. Several explanations have been offered of the alternative clause; which some have referred to judgment by default, or demurrer; others to the process of attachment for contempt. Certainly there are many legal procedures besides trial by jury, through which a pads goods or person may be taken. But one may doubt whether these were in contemplation of the framers of Magna Carta. In an entry of

the Charter of 1217 by a contemporary hand, preserved in the Town-clerk's office in London, called Liber Custumarum et Regum antiquarum, a various reading, et per legem terrae, occurs. Blackstone's Charters, p.42 (41.) And the word vel is so frequently used for et, that I am not wholly free from a suspicion that it [*47] was so intended in this place. The meaning will be, that no person shall be disseized, &c., except upon a lawful cause of action, found by the verdict of a jury. This really seems as good as any of the disjunctive interpretations; but I do not offer it with much confidence." --- 2 Hallam's Middle Ages, Ch. 8, Part 2, p.449, note. fn32 [*48]

The idea that the word vel should be rendered by and, is corroborated, if not absolutely confirmed, by the following passage in Blackstone, which has before been cited. Speaking of the trial by jury, as established by Magna Carta, he calls it,

"A privilege which is in almost same words [*49] with that of the Emperor Conrad two hundred years before: 'nemo beneficium suum perdat, nisi secundum consuetudinem antecessorum nostrorum, et judicium parium suorum.'" (No one shall lose his estate unless according to the custom of our ancestors, and the judgment of his peers.) --- 3 Blackstone, 350.

If the word vel be rendered by and, (as I think it must be, at least in some cases,) this chapter of Magna Carta will then read that no freeman shall be arrested or punished, "unless according to the sentence of his peers, and the law of the land."

The difference between this reading and the other is important. In the one case, there would be, at first view, some color of ground for saying that a man might be punished in either of two ways, viz., according to the sentence of his peers, or according to the law of the land. In the other case, it requires both the sentence of his peers and the law of the land (common law) to authorize his punishment.

If this latter reading be adopted, the provision would seem to exclude all trials except trial by jury, and all causes of action except those of the common law.

But I apprehend the word vel must be rendered both by and, and by or; that in cases of a judgment, it should be rendered by and, so as to require the concurrence both of "the judgment of the peers and the law of the land," to authorize the king to make execution upon a parks goods or person; but that in cases of arrest and imprisonment, simply for the purpose of bringing a man to trial, vel should be rendered by or, because there can have been no judgment of a jury in such a case, and "the law of the land" must therefore necessarily be the only guide to, and restraint upon, the king. If this guide and restraint were taken away, the king would be invested with an arbitrary and most dangerous power in making arrests, and confining in prison, under pretence of an intention to bring to trial.

Having thus examined the language of this chapter of Magna Carta, so far as it relates to criminal cases, its legal import may be stated as follows, viz.:

No freeman shall be arrested, or imprisoned, or deprived of his freehold, or his liberties, or free customs, or be outlawed, [*50] or exiled, or in any manner destroyed, (harmed,) nor will we (the king) proceed against him, nor send any one against him, by force or arms, unless according to (that is, in execution of) the sentence of his peers, and (or or, as the case may require) the Common law of England, (as it was at the time of Magna Carta, in 1215.) [*51]

CHAPTER III. ADDITIONAL PROOFS OF THE RIGHTS AND DUTIES OF JURORS.

If any evidence, extraneous to the history and language of Magna Carta, were needed to prove that, by that chapter which guaranties the trial by jury, all was meant that has now been ascribed to it, and that the legislation of the king was to be of no authority with the jury beyond what they chose to allow to it, and that the juries were to limit the punishments to be inflicted, we should find that evidence in various sources, such as the laws, customs, and characters of their ancestors on the continent, and of the northern Europeans generally; in the legislation and customs that immediately succeeded Magna Carta; in the oaths that have at different times been administered to jurors, &c., &c. This evidence can be exhibited here but partially. To give it all would require too much space and labor.

SECTION 1. Weakness of the Regal Authority.

Hughes, in his preface to his translation of Horne's "Mirror of Justices," (a book written in the time of Edward I., 1272 to 1307,) giving a concise view of the laws of England generally, says:

"Although in the Saxon's time I find the usual words of the acts then to have been edicitim, (edict,) constitutio, (statute,) little mention being made of the commons, yet I further find that, tum demum leges vim et vigorem habuerunt, cum fuerunt non modo institutae sed firmatae appobatione communitatis." (The laws had force and vigor only when they were not only enacted, but confirmed by the approval of the community.)[*52]

The Mirror of Justices itself also says, (ch. 1, sec. 3,) n speaking "Of the first Constitutions of the Ancient Kings:"

"Many ordinances were made by many kings, until the time of the King that now is (Edward I.);

the which ordinances were abused, or not used by many, nor very current, because they were not put in writing, and certainly published." --- Mirror of Justices, p. 6.

Hallam says:

"The Franks, Lombards, and Saxons seem alike to have been jealous of judicial authority; and averse to surrendering what concerned every man's private right, out of the hands of his neighbors and equals." --- 1 Middle Ages, 271.

The "judicial authority," here spoken of, was the authority of the kings, (who at that time united the office of both legislators and judges,) and not of a separate department of government, called the judiciary, like what has existed in more modern times. fn33

Hume says:

"The government of the Germans, and that of all the northern nations, who established themselves on the ruins of Rome, was always extremely free; and those fierce people, accustomed to independence and inured to arms, were more guided by persuasion, than authority, in the submission which they paid to their princes. The military despotism, which had taken place in the Roman empire, and which, previously to the irruption of those conquerors, had sunk the genius of men, and destroyed every noble principle of science and virtue, was unable to resist the vigorous efforts of a free people, and Europe, as from a new epoch, rekindled her ancient spirit, and shook off the base servitude to arbitrary will and authority under which she had so long labored. The free constitutions then established, however impaired by the encroachments of succeeding princes, still preserve an air of independence and legal administration, which distinguished the European nations; and if that part of the globe maintain sentiments [*53] of liberty, honor, equity, and valor, superior to the rest of mankind, it owes these advantages chiefly to the seeds implanted by those generous barbarians.

"The Saxons, who subdued Britain, as they enjoyed great liberty in their own country, obstinately retains that invaluable possession in their new settlement; and they imported into this island the same principles of independence, which they inherits from their ancestors. The chieftains, (for such they were, more than kings or princes,) who commanded them in those military expeditions, still possessed a very limited authority; and as the Saxons exterminated, rather than subdued the ancient inhabitants, they were, indeed, transplanted into a new territory, but preserved unaltered all their civil and military institutions. The language was pure Saxon; even the names of places, which often remain while the tongue entirely changes, were almost all affixed by the conquerors; the manners and customs were wholly German; and

the same picture of a fierce and bold liberty, which is drawn by the masterly pen of Tacitus, will suit those founders of the English government. The king, so far from being invested with arbitrary power, was only considered as the first among the citizens; his authority depended more on his personal qualities than on his station; he was even so far on a level with the people, that a stated price was fixed for his head, and a legal fine was levied upon his murderer, which though proportionate to his station, and superior to that paid for the life of a subject, was a sensible mark of his subordination to the community." --- 1 Hume, Appendix, 1.

Stuart says:

"The Saxons brought along with them into Britain their own customs, language, and civil institutions. Free in Germany, they renounced not their independence, when they had conquered. Proud from victory, and with their swords in their hands, would they surrender their liberties to a private man? Would temporary leaders, limited in their powers, and unprovided in resources, ever think to usurp an authority over warriors, who considered themselves as their equals, were impatient of control, and attached with devoted zeal to their privileges? Or, would they find leisure to form resolutions, or opportunities to put them in practice, amidst the tumult and confusion of those fierce and bloody wars, which their nations first waged with the Britons, and then engaged in among themselves? Sufficiently flattered in leading the armies of their countrymen, the ambition of commanders could as little suggest such designs, as the liberty of the people could submit to them. The conquerors of Britain retained their independ- [*54] -ence; and this island saw itself again in that free state in which the Roman arms had discovered it.

"The same firmness of character, and generosity of manners, which, in general, distinguished the Germans, were possessed in an eminent degree by the Saxons; and while we endeavor to unfold their political institutions, we must perpetually turn our observation to that masterly picture in which the Roman historian has described these nations. In the woods of Germany shall we find the principles which directed the state of land, in the different Kingdoms of Europe; and there shall we find the foundation of those ranks of men, and of those civil arrangements, which the barbarians everywhere established; and which the English alone have had the good fortune, or the spirit, to preserve." --- Stuart on the Constitution of England, p. 59-61.

"Kings they (the Germans) respected as the first magistrates of the state; but the authority possessed by them was narrow and limited. --- Ditto, p. 134.

"Did he, (the King,) at any time, relax his activity and martial ardor, did he employ his abilities to the prejudice of his nation, or fancy he was superior to the laws; the same power which raised him to honor, humbled and degraded him. The customs and councils of his country

pointed out to him his duty; and if he infringed on the former, or disobeyed the latter, a fierce people set aside his authority. * * *

“His long hair was the only ornament he affected, and to be foremost to attack an enemy was his chief distinction. Engaged in every hazardous expedition, he was a stranger to repose; and, rivalled by half the heroes of his tribe, he could obtain little power. Anxious and watchful for the public interest, he felt every moment his dependence, and gave proofs of his submission.

“He attended the general assembly of his nation, and was allowed the privilege to harangue it first; but the arts of persuasion, though known and respected by a rude people, were unequally opposed to the prejudices and passions of men.” --- Ditto, p. 135-6.

“The authority of a Saxon monarch was not more considerable. The Saxons submitted not to the arbitrary rule of princes. They administered an oath to their sovereigns, which bound them to acknowledge the laws, and to defend the rights of the church and the people; and if they forgot this obligation, they forfeited their office. In both countries, a price was affixed on kings, a fine expiated their murder, as well as that of the meanest citizen; and the smallest violation of ancient usage, [*55] or the least step towards tyranny, was always dangerous, and often fatal to them.” --- Ditto, p. 139-40.

“They were not allowed to impose taxes on the kingdom.” --- Ditto, P. 146.

“Like the German monarchs, they deliberated in the general assembly of the nation; but their legislative authority was not much respected; and their assent was considered in no better light than as a form. This, however, was their chief prerogative; and they employed it to acquire an ascendant in the state. To art and insinuation they turned, as their only resource, and flattered a people whom they could not awe; but address, and the abilities to persuade, were a weak compensation for the absence of real power.

“They declared war, it is said, and made peace. In both cases, however, they acted as the instruments of the state, and put in execution the resolutions which its councils had decreed. If, indeed, an enemy had invaded the Kingdom, and its glory and its safety were concerned, the great lords took the field at the call of their sovereign. But had a sovereign declared war against a neighboring state, without requiring their advice, or if he meant to revenge by arms an insult offered to him by a subject, a haughty and independent nobility refused their assistance. These they considered as the quarrels of the King, and not of the nation; and in all such emergencies he could only be assisted by his retainers and dependents.” --- Ditto, p. 147-8.

“Nor must we imagine that the Saxon, any more than the German monarchs, succeeded each

other in a lineal descent, fn34 or that they did posed of the crown at their pleasure. In both countries, the free election of the people filled the throne; and their choice was the only rule by which princes reigned. The succession, accordingly, of their Kings was often broken and succession interrupted, and their depositions were frequent and groundless. The will of a prince whom they had long respected, and the favor they naturally transferred to his descendant, made them often advance him to the royal dignity; but the crown of his ancestor he considered as the gift of the people, and neither expected nor claimed it as a right." --- Ditto, p. 151-3.

In Germany "It was the business of the great to command in war, and in peace they distributed justice. * * * [*56]

"The princes in Germany were earls in England. The great contended in both countries in the number of their retainers, and in that splendor and magnificence which are so alluring to a rude people; and though they joined to set bounds to regal power, they were often animated against each other with the fiercest hatred. To a proud and impatient nobility it seemed little and unsuiting to give or accept compositions for the injuries they committed or received; and their vassals adopting their resentment and passions, war and bloodshed alone could terminate their quarrels. What necessarily resulted from their situation in society, was continued as a privilege and the great, in both countries, made war, of their private authority, on their enemies. The Saxon earls even carried their arms against their sovereigns; and, surrounded with retainers or secure in fortresses and castles, they despised their resentment, and defied their power.

"The judges of the people, they presided in both countries in courts of law. fn35 The particular districts over which they exerted their authority were marked out in Germany by the council of the state; and in England their jurisdiction extended over the fiefs and other territories they possessed. All causes, both civil and criminal, were tried before them; and they judged, except in cases of the utmost importance, without appeal. They were even allowed to grant pardon to criminals, and to correct by their clemency the rigors of justice. Nor did the sovereign exercise any authority in their lands. In these his officers formed no courts, and his writ was disregarded. * * *

"They had officers, as well as the King, who collected their revenues and added to their greatness; and the inhabitants of their lands they distinguished by the name of subjects.

"But to attend the general assembly of their nation was the chief prerogative of the German and Saxon princes; and as they consulted the interest of their country, and deliberated concerning matters of state, so in the king's court, of which also they were members, they assisted to pronounce judgment in the complaints and appeals which were lodged in it. ---

Ditto, p. 158 to 165.

Henry says:

“Nothing can be more evident than this important truth; that our Anglo-Saxon Kings were not absolute monarchs; but [*57] that their powers and prerogatives were limited by the laws and customs of the country. Our Saxon ancestors had been governed by limited monarchs in their native seats on the continent, and there is not the least appearance or probability that they relinquished their liberties, and submitted to absolute government in their new settlements in this island. It is not to be imagined that men, whose reigning passion was the love of liberty, would willingly resign it; and their new sovereigns, who had been their fellow-soldiers, had certainly no power to compel them to such a resignation.” --- 3 Henry’s History of Great Britain, 358.

Mackintosh says: “The Saxon chiefs, who were called kings, originally acquired power by the same natural causes which have gradually, and everywhere, raised a few men above their fellows. They were, doubtless, more skilful, more brave, or more beautiful, than those who followed them. * * A king was powerful in war by the lustre of his arms, and the obvious necessity of obedience. His influence in peace fluctuated with his personal character. In the progress of usage his power became more fixed and more limited. * * It would be very unreasonable to suppose that the northern Germans who had conquered England, had so far changed their characteristic habits from the age of Tacitus, that the victors became slaves, and that their generals were converted into tyrants. --- Mackintosh’s Hist. of England, Ch. 2. 45 Lardner’s Cab. Cyc., 73-4.

Rapin, in his discourse on the “Origin and Nature of the English Constitution,” says:

“There are but two things the Saxons did not think proper to trust their kings with; for being of like passions with other men, they might very possibly abuse them; namely, the power of changing the laws enacted by consent of king and people; and the power of raising illegal taxes at pleasure. From these two articles sprung numberless branches concerning the liberty and property of the subject, which the king cannot touch, without breaking the constitution, and they are the distinguishing character of the English monarchy. The prerogatives of the crown, and the rights and privileges of the people, flowing from the two fore-mentioned articles, are the ground of all the laws that from time to time have been made by unanimous consent of king and people. The English government consists in the strict union of the King’s prerogatives with the people’s liberties. * * But when kings arose, as some there were, that aimed at absolute power, by changing the old, and making new laws, at pleasure; by imposing illegal [*58] taxes on the people; this excellent government being, in a manner, dissolved by these destructive measures, confusion and civil wars ensued, which some very wrongfully ascribe to the fickle

and restless temper of the English." --- Rapin's Preface to his History of England.

Hallam says that among the Saxons, "the royal authority was weak." --- 2 Middle Ages, 403.

But although the king himself had so little authority, that it cannot be supposed for a moment that his laws were regarded as imperative by the people, it has nevertheless been claimed, in modern times, by some who seem determined to find or make a precedent for the present legislative authority of parliament, that his laws were authoritative, when assented to by the Witena-gemote, or assembly of wise men --- that is, the bishops and barons. But this assembly evidently had no legislative power whatever. The king would occasionally invite the bishops and barons to meet him for consultation on public affairs, simply as a council, and not as a legislative body. Such as saw fit to attend, did so. If they were agreed upon what ought to be done, the king would pass a law accordingly, and the barons and bishops would then return and inform the people orally what laws had been passed, and use their influence with them to induce them to conform to the law of the king, and the recommendation of the council. And the people no doubt were much more likely to accept a law of the king, if it had been approved by this council, than if it had not. But it was still only a law of the king, which they obeyed or disregarded according to their own notions of expediency. The numbers who usually attended this council were too small to admit of the supposition that they had any legislative authority whatever, to impose laws upon the people against their will.

Lingard says:

"It was necessary that the king should obtain the assent of these (the members of the Witena-gemotes) to all legislative enactments; because, without their acquiescence and support, it was impossible to carry them into execution. To many charters (laws) we have the signatures of the Witan. They seldom exceed thirty in number; they never amount to sixty." --- 1 Lingard, 486. [*59]

It is ridiculous to suppose that the assent of such an assembly gave any authority to the laws of the king, or had any influence in securing obedience to them, otherwise than by way of persuasion. If this body had had any real legislative authority, such as is accorded to legislative bodies of the present day, they would have made themselves at once the most conspicuous portion of the government, and would have left behind them abundant evidence of their power, instead of the evidence simply of their assent to a few laws passed by the king.

More than this. If this body had had any real legislative authority, they would have constituted an aristocracy, having, in conjunction with the king, absolute power over the people. Assembling voluntarily, merely on the invitation of the king; deputed by nobody but

themselves; representing nobody but themselves; responsible to nobody but themselves; their legislative authority, if they had had any, would of necessity have made the government the government of an aristocracy merely, and the people slaves, of course. And this would necessarily have been the picture that history would have given us of the Anglo-Saxon government, and of Anglo-Saxon liberty.

The fact that the people had no representation in this assembly, and the further fact that, through their juries alone, they nevertheless maintained that noble freedom, the very tradition of which (after the substance of the thing itself has ceased to exist) has constituted the greatest pride and glory of the nation to this day, prove that this assembly exercised no authority which juries of the people acknowledged, except at their own discretion. fn36 [*60]

There is not a more palpable truth, in the history of the Anglo-Saxon government, than that stated in the Introduction to Gilbert's History of the Common Pleas, fn37 viz.,"that the County and Hundred Courts," (to which should have been added the other courts in which juries sat, the courts-baron and court-leet,) "in those times were the real and only Parliaments of the kingdom." And why were they the real and only parliaments of the kingdom? Solely because, as will be hereafter shown, the juries in those courts tried causes on their intrinsic merits, according to their own ideas of justice, irrespective of the laws agreed upon by kings, priests, and barons; and whatever principles they uniformly, or perhaps generally, enforced, and none others, became practically the law of the land as matter of course. fn38

Finally, on this point. Conclusive proof that the legislation of the king was of little or no authority, is found in the fact that the kings enacted so few laws. If their laws had been received as authoritative, in the manner that legislative enactments are at this day, they would have been making laws continually. Yet the codes of the most celebrated kings are very small, and were little more than compilations of immemorial customs. The code of Alfred would not fill twelve [*61] pages of the statute book of Massachusetts, and was little or nothing else than a compilation of the laws of Moses, and the Saxon customs, evidently collected from considerations of convenience, rather than enacted on the principle of authority. The code of Edward the Confessor would not fill twenty pages of the statute book of Massachusetts, and, says Blackstone, "seems to have been no more than a new edition, or fresh promulgation of Alfred's code, or dome-book, with such additions and improvements as the experience of a century and a half suggested." --- 1 Blackstone, 66. fn39 [*62]

The Code of William the Conqueror fn40 would fill less than seven pages of the statute book of Massachusetts; and most of the laws contained in it are taken from the laws of the preceding kings, and especially of Edward the Confessor (whose laws William swore to observe); but few of his own being added.

The codes of the other Saxon and Norman kings were, as a general rule, less voluminous even than these that have been named; and probably did not exceed them in originality. fn41 The Norman princes, from William the Conqueror to John, I think without exception, bound themselves, and, in order to maintain their thrones, were obliged to bind themselves, to observe the ancient laws and customs, in other words, the "lex terrae," or "common law" of the kingdom. Even Magna Carta contains hardly anything other than this in same "common law," with some new securities for its observance. [*63]

How is this abstinence from legislation, on the part of the ancient kings, to be accounted for, except on the supposition that the people would accept, and juries enforce, few or no new laws enacted by their kings? Plainly it can accounted for in no other way. In fact, all history informs us that anciently the attempts of the kings to introduce or establish new laws, met with determined resistance from the people, and generally resulted in failure. "Nolumus Leges Angliae mutari," (we will that the laws of England not be changed,) was a determined principle with the Anglo-Saxons, from which they seldom departed, up to the time of Magna Carta, and indeed until long after. fn42

SECTION II. The Ancient Common Law Juries mere Court of Conscience.

But it is in the administration of justice, or of law, that the freedom or subjection of a people is tested. If this administration be in accordance with the arbitrary will of the legislator --- that is, if his will, as it appears in his statutes, be the highest rule of decision known to the judicial tribunals, --- the government is a despotism, and the people are slaves. If, on the other hand, the rule of decision be those principles of natural equity and justice, which constitute, or at least are embodied in, the general conscience of mankind, the people are free in just so far as that conscience is enlightened.

That the authority of the king was of little weight with the judicial tribunals, must necessarily be inferred from the fact already stated, that his authority over the people was but weak. If the authority of his laws had been paramount in the judicial tribunals, it would have been paramount with the people, of course; because they would have had no alternative [*64] but submission. The fact, then, that his laws were not authoritative with the people, is proof that they were not authoritative with the tribunal, in other words, that they were not, as matter of course, enforced by the tribunals.

But we have additional evidence that, up to the time of Magna Carta, the laws of the king were not binding upon the judicial tribunals; and if they were not binding before that time, they certainly were not afterwards, as has already been shown from Magna Carta itself. It is manifest from all the accounts we have of the courts in which juries sat, prior to Magna Carta, such as the court-baron, the hundred court, the court-leet, and the county court, that they

were mere courts of conscience, and that the juries were the judges, deciding causes according to their own notions of equity, and not according to any laws of the king, unless they thought them just.

These courts, it must be considered, were very numerous, and held very frequent sessions. There were probably seven, eight, or nine hundred courts a month, in the kingdom; the object being, as Blackstone says, "to bring justice home to every man's door." (3 Blackstone, 30.) The number of the county courts of course, corresponded to the number of counties, (36.) The court-leet was the criminal court for a district less than a county. The hundred court was the court for one of those districts anciently called a hundred, because, at the time of their first organization for judicial purposes, they comprised (as is supposed) but a hundred families. fn43 The court-baron was the court for a single manor, and there was a court for every manor in the kingdom. All these courts were holden as often as once in three or five weeks; the county court once a month. The king's judges were present at none of these courts; the only officers in attendance being sheriffs, bailiffs, and stewards, merely ministerial, and not judicial, officers; doubtless incompetent, and, if not incompetent, untrustworthy, for giving the juries any reliable information in with matters of law, beyond what was already known to the jurors themselves. [*65] And yet these were the courts, in which was done all the judicial business, the both civil and criminal, of the nation, except appeals, and some of the more important and difficult cases. fn44 It is plain that the juries, in these courts, must, of necessity, have been the sole judges of all matters of law whatsoever; because there was no one present, but sheriffs, bailiffs, and stewards, to give them any instructions; and surely it will not be pretended that the jurors were bound to take their law from such sources as these.

In the second place, it is manifest that the principles of law, by which the juries determined causes, were, as a general rule, nothing else than their own ideas of natural equity, and not any laws of the king; because but few laws were enacted, and many of those were not written, but only agreed upon in council. fn45 Of those that were written, few copies only were made, (printing being then unknown,) and not enough to supply all, or any considerable number, of these numerous courts. aide and beyond all this, few or none of the jurors could have read the laws, if they had been written; because few or none of the common people could, at that time, read. Not only were the common people unable to read their own language, but, at the time of Magna Carta, the laws were written in Latin, a language that could be read by few persons except the priests, who were also the lawyers of the nation. Mackintosh says," the first act of the House of Commons composed and recorded in the English tongue," was in 1415, two centuries after Magna Carta.fn46 Up to this time, and for some seventy years later, the laws were generally written [*66] either in Latin or French; both languages incapable of being read by the common people, as well Normans as Saxons; and one of them, the Latin, not only incapable of being read by them, but of being even understood when it was heard by them.

To suppose that the people were bound to obey, and juries to enforce, laws, many of which were unwritten, none of which they could read, and the larger part of which (those written in

Latin) they could not translate, or Understand when they heard them read, is equivalent to supposing the nation sunk in the most degrading slavery, instead of enjoying a liberty of their own choosing.

Their knowledge of the laws passed by the king was, of course, derived only from oral information; and "the good laws," as some of them were called, in contradistinction to others --- those which the people at large esteemed to be good laws --- were doubtless enforced by the juries, and the others, as a general thing, disregarded. fn47

That such was the nature of judicial proceedings, and of the power of juries, up to the time of Magna Carta, is further shown by the following authorities.

"The sheriffs and bailiffs caused the free tenants of their bailiwics to meet at their counties and hundreds; at which justice was so done, that every one so judged his neighbor by such judgment as a mart could not elsewhere receive in the like cases, until such times as the customs of the realm were put in writing, and certainly published.

"And although a freeman commonly was not to serve (as a juror or judge) without his assent, nevertheless it was assented unto that free tenants should meet together in the counties and hundreds, and lords courts, if they were not specially exempted to do such suits, and there judged their neighbors." --- Mirror of Justices, p. 7, 8. [*67]

Gilbert, in his treatise on the Constitution of England, says:

"In the county courts, if the debt was above forty shillings, there issued a justicies (a commission) to the sheriff, to enable him to hold such a plea, where the suitors (jurors) are judges of the law and fact." --- Gilbert's Cases in Law and Equity, &c., &c, 456.

All the ancient writs, given in Glanville, for summoning jurors, indicate that the jurors judged of everything, on their consciences only. The writs are in this form:

"Summon twelve free and legal men (or sometimes twelve knights) to be in court, prepared upon their oaths to declare whether A or by have the greater right to the land (or other thing) in question." See Writs in Beames' Glanville, p. 54 to 70, and 233-306 to 332.

Crabbe, speaking of the time of Henry I., (1100 to 1135,) recognizes the fact that the jurors were the judges. He says:

“By one law, every one was to be tried by his peers, who were of the same neighborhood as himself. * * By another law, the judges, for so the jury were called, to be chosen by the party impleaded of the Danish nembas; by which, probably, is to be understood that the defendant had the liberty of taking exceptions to, or challenging the jury, as it was afterwards called.” --- Crabbe’s History of the English Law, p.55.

Reeve says:

“The great court for civil business was the county court; held once every four weeks. Here the sheriff presided; but the suitors of the court, as they were called, that is, the freemen or landholders of the county, were the judges; and the sheriff was to execute the judgment. * * *

“The hundred court was held before some bailiff; the leet before the lord of the manor’s steward. fn48 * *

“Out of the county court was derived an inferior court of civil jurisdiction, called the court-baron. This was held from three weeks to three weeks, and was in every respect like the country court;” (that is, the jurors were judges in it;) only the lord to whom this franchise was granted, or his steward, [*68] presided instead of the sheriff.” --- 1 Reeve’s History of the English Law, p. 7.

Chief Baron Gilbert says:

“Besides the tenants of the King, which held per baroniam, (by the right of a baron,) and did suit and service (served as judges) at his own court; and the burghers and tenants in ancient demesne, that did suit and service (served as jurors or judges) in their own court in person, and in the king’s by proxy, there was also a set of freeholders, that did suit and service (served as jurors) at the county court. These were such as anciently held of the lord of the county, and by the escheats of earldoms had fallen to the king; or such as were granted out by service to hold of the king, but with particular reservation to do suit and service (serve as jurors) before the king’s bailiff; because it was necessary the sheriff, or bailiff of the king, should have suitors (jurors) at the county court that the business might be despatched. These suitors are the pares (peers) of the county court, and indeed the judges of it; as the pares (peers) were the judges in every court-baron; and therefore the king’s bailiff having a court before him, there must be pares or judges, for the sheriff himself is not a judge; and though the style of the court is Curia prima Comitatus E. C. Milit.’ vicecom’ Comitat’, proed’ Tent’ apud B., &c. (First Court of the county, E. C. knight, sheriff of the aforesaid county, held at B. &c); by which it appears that the court was the sheriff’s; yet, by the old feudal constitutions, the lord was not judge, but pares

(peers) only; so that, even in a justices, which was a commission to the sheriff to hold plea of more than was allowed by the natural jurisdiction of a county court, the pares (peers, jurors) only were judges, and not the sheriff; because it was to hold plea in the same manner as they used to do in that (the lord's) court." --- Gilbert on the Court of Exchequer, ch. 5, p. 61-2.

"It is a distinguishing feature of the feudal system, to make civil jurisdiction necessarily, and criminal jurisdiction ordinarily, coextensive with tenure; and accordingly there is inseparably incident to every manor a court-baron (curia baronum), being a court in which the freeholders of the manor are the sole judges, but in which the lord, by himself, or more commonly by his steward, presides. --- Political Dictionary, word Manor.

The same work, speaking of the county court, says: "The judges were the freeholders who did suit to the court." See word Courts.

"In the case of freeholders attending as suitors, the county [*69] court or court-baron, (as in the case of the ancient tenants per baroniam attending Parliament,) the suitors are the judges of the court, both for law and for fact, and the sheriff or the under sheriff in the county court, and the lord or his steward in the court-room, are only presiding officers, with no judicial authority." --- Political Dictionary, word Suit.

"COURT, (curtis, curia aula); the space enclosed by the walls of a feudal residence, in which the followers of a lord used to assemble in the middle ages, to administer justice, and decide respecting affairs of common interest, &c. It was next used for those who stood in immediate connexion with the lord and master, the pares curiae, (peers of the court,) the limited portion of the general assembly, to which was entrusted the pronouncing of judgment, &c. --- Encyclopedia Americana, word Court.

"In court-barons or county courts the steward was not judge, but the pares (peers, jurors); nor was the speaker in the House of Lords judge, but the barons only." --- Gilbert on the Court of Exchequer, ch. 3, p. 42.

Crabbe, speaking of the Saxon times, says:

"The sheriff presided at the hundred court...and sometimes sat in the place of the alderman (earl) in the county court." --- Crabbe, 23.

The sheriff afterwards became the sole presiding officer of the county court.

Sir Thomas Smith, Secretary of State to Queen Elizabeth, writing more than three hundred years after Magna Carta, in describing the difference between the Civil law and the English Law, says:

"Judex is of us called Judge, but our fashion is so divers, that they which give the deadly stroke, and either condemn or acquit the man for guilty or not guilty, are not called judges, but the twelve men. And the same order as well in civil matters and pecuniary, as in matters criminal." --- Smith's Commonwealth of England, ch. 9, p. 53, Edition of 1621.

Court-Leet: "That the leet is the most ancient court in the land for criminal matters, (the court-baron being of no less antiquity in civil,) has been pronounced by the highest legal authority. * * Lord Mansfield states that this court was coeval with the establishment of the Saxons here, and its activity marked very visibly both among the Saxons and Danes. * * The leet is a court of record for the cognizance of criminal matters, or pleas of the crown; and necessarily belongs to the King; though a subject, usually the lord [*70] of the manor, may be, and is, entitled to the profits, consisting of the essoign pence, fines, and amerciaments.

"It is held bye the steward, or was, in ancient times, before the bailiff, of the lord." --- Tomlin's Law Dict., word Court-Leet.

Of course the jury were the judges in this court, where only a "steward" or "bailiff " of a manor presided.

"No cause of consequence was determined without the king's writ; for even in the county courts, of the debts, which were above forty shillings, it here issued a Justicies (commission) to the sheriff, to enable him to hold such plea, where the suitors are judges of the law and fact." --- Gilbert's History of the Common Pleas, Introduction, p. 19.

"This position" (that "the matter of law was decided by the King's Justices, but the matter of fact by the pares") "is wholly incompatible with the common law, for the Jurata (jury) were the sole judges both of the law and the fact." --- Gilbert's History of the Common Pleas, p. 70, note.

"We come now to the challenge; and of old the suitors in court, who were judges, could not be challenged; nor by the feudal law could the pares be even challenged, Pares qui ordinariam jurisdictionem habent recusari non possunt; (the peers who have ordinary jurisdiction cannot he rejected;) "but those suitors who are judges of the court, could not be challenged; and the reason is, that there are several qualifications required by the writ, viz., that they be liberos et

legales homines de vincineto (free and legal men of the neighborhood) of the place laid in the declaration," &c., &c. --- Ditto, 93.

"Ad questionem juris non respondent Juratores." (To the question of law the jurors do not answer.) "The Annotist says, that this is indeed a maxim in the Civil-Law Jurisprudence, but it does not bind an English jury, for by the common law of the land the jury are judges as well of the matter of law, as of the fact, with this difference only, that the (a Saxon word) or judge on the bench is to give them no assistance in determining the matter of fact, but if they have any doubt among themselves relating to matter of law, they may then request him to explain it to them, which when he hath done, and they are thus become well informed, they, and they only, become competent judges of the matter of law. And this is the province of the judge on the bench, namely, to show, or teach the law, but not to take upon him the trial of the delinquent, either in matter of fact or in matter of law." (Here various Saxon laws are quoted.) "In neither of these funda- [*71] mental laws is there the least word, hint, or idea, that the earl or alderman (that is to say, the Prepositus (presiding officer) of the court, which is tantamount to the judge on the bench) is to take upon him to judge the delinquent in any sense whatever, the sole purport of his office is to teach the secular or worldly law." ---- Ditto, p. 57, note.

"The administration of justice was carefully provided for; it was not the caprice of their lord, but the sentence of their peers, that they obeyed. Each was the judge of his equals, and each by his equals was judged." --- Introduction to Gilbert on Tenures, p. 12.

Hallam says: "A respectable class of free socagers, having, in general, full rights of alienating their lands, and holding them probably at a small certain rent from the lord of the manor, frequently occur in Domes-day Book. * * They undoubtedly were suitors to the court-baron of the lord, to whose soc, or right of justice, they belonged. They were consequently judges in civil causes, determined before the manorial tribunal." --- 2 Middle Ages, 481.

Stephens adopts as correct the following quotations from Blackstone:

"The Court-Baron is a court incident to every manor in the Kingdom, to be holden by the steward within the said manor." * * It "is a court of common law, and it is the court before the freeholders who owe suit and service to the manor," (are bound to serve as jurors in the courts of the manor,) "the steward being rather the registrar than the judge. * * The freeholders' court was composed of the lord's tenants, who were the pares (equals) of each other, and were bound by their feudal tenure to assist their lord in the dispensation of domestic justice. This was formerly held every three weeks; and its most important business was to determine, by writ of right, all controversies relating to the right of lands within the manor." --- 3 Stephens' Commentaries, 392-3. 3 Blackstone, 32-3.

“A Hundred Court is only a larger court-baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors (jurors) are here also the judges, and the steward the register.” --- 3 Stephens, 394. 3 Blackstone, 33.

“The County Court is a court incident to the jurisdiction of the sheriff. * * The freeholders of the county are the real judges in this court, and the sheriff is the ministerial officer.” --- 3 Stephens, 395-6. 3 Blackstone, 35-6. [*71]

Blackstone describes these courts, as courts “wherein injuries were redressed in an and editious manner, by the surge of neighbors and friends.” --- 3 Blackstone, 30.

“When we read of a certain number of freemen chosen by the parties to decide in a dispute --- all bound by oath to vote in foro conscientia --- and that their decision, not the will of the judge presiding, ended the suit, we at once perceive that a great improvement has been made in the old form of compurgation improvement which impartial observation can have no hesitation to pronounce as identical in its main features with the trial by jury.” --- Dunham’s Middle Ages, Sec. 2,B. 2, Ch. l. 57 Lardner’s Cab. Cyc., 60.

“The bishop and the earl, or, in his absence, the gerefa, (sheriff,) and sometimes both the earl and the gerefa, presided at the schyre-mote (county court); the gerefa (sheriff) usually alone presided at the mote (meeting or court) of the hundred. In the cities and towns which were not within any peculiar jurisdiction, there was held, at regular stated intervals, a burgh mote, (borough court,) for the administration of justice, at which a gerefa, or a magistrate appointed by the king, presided. --- Spence’s Origin of the Laws and Political Institutions of Modern Europe, p. 444.

“The right of the plaintiff and defendant, and of the prosecutor and criminal, to challenge the judices, (judges,) or assessors,fn49 appointed to try the cause in civil matters, and to decide upon the guilt or innocence of the accused in criminal matters, is recognized in the treatise called the Laws of Henry the First; but I cannot discover, from the Anglo-Saxon laws or histories, that before the Conquest the parties had any general right of challenge; indeed, had such right existed, the injunctions to all persons standing in the situation of judges (jurors) to do right according to their conscience, would scarcely have been so frequently and anxiously repeated.” --- Spence, 456.

Hale says:

“The administration of the common justice of the kingdom seems to be wholly dispensed in the county courts, hundred courts, and courts-baron; except some of the greater crimes reformed

by the laws of King Henry I., and that part thereof which was sometimes taken up by the Justitiarius Angliae. [*73] This doubtless bred great inconvenience, uncertainty, and variety in the laws, viz.:

“First, by the ignorance of the judges, which were the freeholders of the county. * *

“Thirdly, a third inconvenience was, that all the business of any moment was carried by parties and factions. For the freeholders being generally the judges, and conversing one among another, and being as it were the chief judges, not only of the fact but of the law; every man that had a suit there, sped according as he could make parties.” --- Hale’s History of the Common Law, p. 246.

“In all these tribunals,” (county court, hundred court, &c.,) “the judges were the free tenants, owing suit to the court, and afterwards called its peers.” --- Lingard’s History of England, 488.

Henry calls the twelve jurors “assessors,” and says:

“These assessors, who were in reality judges, took a solemn oath, that they would faithfully discharge the duties of their office, and not suffer an innocent man to be condemned, nor any guilty person to be acquitted.” --- 3 Henry’s History of Great Britain, 346.

Tyrrell says:

“Alfred cantoned his Kingdom, first into Trihings and Lathes, as they are still called in Kent and other places, consisting of three or four Hundreds; in which, the freeholders being judges, such causes were brought as could not be determined in the Hundred court.” --- Tyrrell’s Introduction to the History of England, p. 80.

Of the Hundred Court he says:

“In this court anciently, one of the principal inhabitants, called the alderman, together with the barons of the Hundred fn50 --- id est the freeholders --- was judge.” --- Ditto, p. 80.

Also he says:

“By a law of Edward the Elder, ‘Every sheriff shall con- [*74] -vene the people once a month, and do, equal right to all, putting an end to controversies at times appointed.” --- Ditto, p. 86.

“A statute, emphatically termed the ‘Grand Assize,’ enabled the defendant, if he thought proper, to abide by the testimony of the twelve good and lawful knights, chosen by four others of the vicinage, and whose oaths gave a final decision to the contested claim.” --- Palgrave’s Rise and Progress of the English Commonwealth, 261.

“From the moment when the crown became accustomed to the ‘Inquest,’ a restraint was imposed upon every branch of the prerogative. The king could never be informed of his rights, but through the medium of the people. Every ‘extent’ by which he claimed the profits and advantages resulting from the casualties of tenure, every process by which he repressed the usurpations of the baronage, depended upon the ‘good men and true’ who were impanelled to ‘pass’ between the subject and the sovereign; and the thunder of the Exchequer at Westminster might be silenced by the honesty, the firmness, or the obstinacy, of one sturdy knight or yeoman in the distant shire.

Taxation was controlled in the same manner by the voice of those who were most liable to oppression. * * A jury was impanelled to adjudge the proportion due to the sovereign; and this course was not essentially varied, even after the right of granting aids to the crown was fully acknowledged to be vested in the parliament of the realm. The people taxed themselves; and the collection of the grants was checked and controlled, and, perhaps, in many instances evaded, by these virtual representatives of the community.

The principle of the jury was, therefore, not confined to its mere application as a mode of trying contested facts, whether in civil or criminal cases; and, both in its form and in its consequences, it had a very material influence upon the general, constitution of the realm. * * The main-spring of the machinery of remedial justice existed in the franchise of the lower and lowest orders of the political hierarchy. Without the suffrage of the yeoman, the burgess, and the churl, the sovereign could not exercise the most important and most essential function of royalty; from them he received the power of life and death; he could not wield the sword of justice until the humblest of his subjects placed the weapon in his hand. --- Palgrave’s Rise and Progress of the English Constitution, 274-7. [*75]

Coke says, “The court of the county is no court of record, fn51 and the suitors are the judges thereof.” --- 4 Inst., 266.

Also, “The court of the Hundred is no court of record, and the suitors be thereof judges.” --- 4 Inst., 267.

Also, “The court-baron is a court incident to every manor, and is not of record, and the suitors be thereof judges.” --- 4 Inst., 268.

Also, “The court of ancient demesne is in the nature of a court-baron, wherein the suitors are judges, and is no court of record.” 4 Inst., 269.

Millar says, “Some authors have thought that jurymen were originally compurgators, called by a defendant to swear that they believed him innocent of the facts with which he was charged. . . But . . compurgators were merely witnesses; jurymen were, in reality, judges. The former were called to confirm the oath of the party by swearing, according to their belief, that he had told the truth, (in his oath of purgation;) the latter were appointed to try, by witnesses, and by all other means of proof, whether he was innocent or guilty. . . . Juries were accustomed to ascertain the truth of facts, by the defendants oath of purgation, together with that of his compurgators. . . Both of them (jurymen and compurgators) were obliged to swear that they would tell the truth. . . According to the simple idea of our forefathers, guilt or innocence was regarded as a mere matter of fact; and it was thought that no man, who knew the real circumstances of a case, could be at a loss to determine whether the culprit ought to be condemned or acquitted.” --- 1 Millar’s Hist. View of Eng. Gov., ch 12,p. 332-4.

Also, “The same form of procedure, which took place in the administration of justice among the vassals of a barony, was gradually extended to the courts held in the trading towns.” --- Same, p. 335.

Also, “The same regulations, concerning the distribution of justice by the intervention of juries, . . were introduced into the barons of the king, as into those of the nobility, or such of his subjects as retained their allodial property.” ---- Same, p. 337.

Also, “This tribunal” (the aula regis, or king’s court, afterwards divided into the courts of King’s Bench, Common [*76] Pleas, and Exchequer) “was properly the ordinary baron-court of the King; and, being in the same circumstances with the baron courts of the nobility, it was under the same necessity of trying causes by the intervention of a jury.” --- Same, vol. 2, p. 292.

Speaking of the times of Edward the First, (1272 to 1307,) Millar says:

“What is called the petty jury was therefore introduced into these tribunals, (the King’s Bench, the Common Pleas, and the Exchequer,) as well as into their auxiliary courts employed to distribute justice in the circuits; and was thus rendered essentially necessary in determining

causes of every sort, whether civil, criminal, or fiscal." --- Same, vol. 2, p. 294

Also, "That this form of trial (by jury) obtained universally in all the feudal governments, as well as in that of England, there can be no reason to doubt. In France, in Germany, and in other European countries, where we have any accounts of the constitution and procedure of the feudal courts, it appears that lawsuits of every sort concerning the freemen or vassals of a barony, were determined by the pares curiae (peers of the court;) and that the judge took little more upon him then to regulate the method of proceeding, or to declare the verdict of the jury." --- Same, vol. 1, ch. 12, p. 329.

Also, "Among the Gothic nations of modern Europe, the custom of deciding lawsuits by a jury seems to have prevailed universally; first in the allodial courts of the county, or of the hundred, and afterwards in the baron-courts of every feudal superior." --- Same, vol. 2, p. 296.

Palgrave says that in Germany "The Graff (gerefa, sheriff) placed himself in the seat of judgment, and gave the charge to the assembled free Echevins, warning them to pronounce judgment according to right and justice." --- 2 Palgrave, 147.

Also, that, in Germany, "The Echevins were composed of the villanage, somewhat obscured in their functions by the learning of the grave civilian who was associated to them, and somewhat limited by the encroachments of modern feudality; but they were still substantially the judges of the court." --- Same, 148.

Palgrave also says, "Scotland, in like manner, had the laws of Burlaw, or Birlaw, which were made and determined by the neighbors, elected by common consent, in the Burlaw or Birlaw courts, wherein knowledge was taken of complaints between neighbor and neighbor, which men, so chosen, were judges, and arbitrators, and called Birlaw men. ---- Palgrave's Rise, &c., p. 80. [*77]

But, in order to understand the common law trial by jury, as it existed prior to Magna Carta, and as it was guaranteed by that instrument, it is perhaps indispensable to understand more fully the nature of the courts in which juries sat, and the extent of the powers exercised by juries in those courts. I therefore give in a note extended extracts, on these points, from Stuart on the Constitution of England, and from Blackstone's Commentaries. fn52 [*78]

That all these courts were mere courts of conscience, in which the juries were sole judges, administering justice according to their own ideas of it, is not only shown by the extracts [*79] already given, but is explicitly acknowledged in the following one, in which the modern "courts of conscience" are compared with the ancient hundred and count courts, and the preference

[*80] given to the latter, on the ground that the duties of the jurors in the one case, and of the commissioners in the other, are the same, and that the consciences of a jury are a safer and purer [*81] tribunal than the consciences of individuals specially appointed, and holding permanent offices.

"But there is one species of courts constituted by act of Parliament, in the city of London, and other trading and populous districts, which, in their proceedings, so vary from the course of the common law, that they deserve a more particular consideration. I mean the court of requests, or courts of conscience, for the recovery of small debts. The first of these was established in London so early as the reign of Henry VIII., by an act of their common council; which, however, was certainly insufficient for that purpose, and illegal, till confirmed by statute 3 Jac. I., ch. 15, which has since been explained and amended by statute 14 Go. II., ch. 10. The constitution is this: two aldermen and four commoners sit twice a week to hear all causes of debt not exceeding the value of forty shillings; which they examine in a summary way, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good conscience. * * * Divers trading towns and other districts have obtained acts of Parlia- [*82] -ment, for establishing in them courts of conscience upon nearly the same plan as that in the city of London.

"The anxious desire that has been shown to obtain these several acts, proves clearly that the nation, in general, is truly sensible of the great inconvenience arising from the disuse of the ancient county and hundred courts, wherein causes of this small value were always formerly decided with very little trouble and expense to the parties. But it is to be feared that the general remedy, which of late hath been principally applied to this inconvenience, (the erecting these new jurisdictions,) may itself be attended in time with very ill consequences; as the method of proceeding therein is entirely in derogation of the common law; and their large discretionary powers create a petty tyranny in a set of standing commissioners; and as the disuse of the trial by jury may tend to estrange the minds of the people from that valuable prerogative of Englishmen, which has already been more than sufficiently excluded in many instances. How much rather is it to be wished that the proceedings in the county and hundred courts could be again [*83] revived, without burdening is the freeholders with too frequent and tedious attendances; and at the same time removing the delays that have insensibly crept into their proceedings, and the power that either party has of transferring at pleasure their suits to the courts at Westminster! And we may, with satisfaction, observe, that this experiment has been actually tried, and has succeeded in the populous county of Middlesex, which might serve as an example for others. For by statute 23 Geo. II., ch. 33, it is enacted:

1. That a special county court shall be held at least once in a month, in every hundred of the county of Middlesex, by the county clerk.

2. That twelve freeholders of that hundred, qualified to serve on juries, and struck by the

sheriff, shall be summoned to appear at such court by rotation; so as none shall be summoned oftener than once a year.

3. That in all causes not exceeding the value of forty shillings, the county clerk and twelve suitors (jurors) shall proceed in a summary way, examining the parties and witnesses on oath, without the formal process anciently used; and shall make such order therein as they shall judge agreeable to conscience." --- 3 Blackstone, 81-83.

What are these but courts of conscience? And yet Blackstone tells us they are a revival of the ancient hundred and county courts. And what does this fact prove, but that the ancient common law courts, in which juries sat, were mere courts of conscience?

It is perfectly evident that in all these courts the jurors were the judges, and determined all questions of law for themselves; because the only alternative to that supposition is, that the jurors look their law from sheriff, and stewards, of which there is not the least evidence in history, nor the least probability in reason. It is evident, also, that they judged independently of the laws of the king, for the reasons before given, viz., that the authority of the king was held in very little esteem; and, secondly, that the laws of the king (not being printed, and the people being unable to read them if they had been printed) must have been in a great measure unknown to them, and could have been received by them only on the authority of the sheriff, bailiff, or steward. If laws were to be received by them on the authority of these officers, [*84] the latter would have imposed such laws upon the people as they pleased.

These courts, that have now been described, were continued in full power long after Magna Carta, no alteration being made in them by that instrument, nor in the mode of administering justice in them.

There is no evidence whatever, so far as I am aware, that the juries had any less power in the courts held by the king's justices, than in those held by and stewards; and there is no probability whatever that they had. All the difference between the former courts and the latter undoubtedly was, that, in the former, the juries had the benefit of the advice and assistance of the justices, which would, of course, be considered valuable in difficult cases, on account of the justices being regarded as more learned, not only in the laws of the king, but also in the common law, or "law of the land."

The conclusion, therefore, I think, inevitably must be, that neither the laws of the king, nor the instructions of his justices, had any authority over jurors beyond what the latter saw fit to accord to them. And this view is confirmed by this remark of Hallam, the truth of which all will acknowledge:

"The rules of legal decision, among a rude people, are always very simple; not serving much to guide, far less to control the feelings of natural equity." --- 2 Middle Ages, ch. 8, part 2, p. 465.

It is evident that it was in this way, by the free and concurrent judgments of juries, ang and enfoycing certain laws and rules of conduct, corresponding to their notions of right and justice, that the laws and customs, which, for the most part, made up the common law, and were called, at that day, "the good laws, and good customs," and "the law of the land," were established. How otherwise could they ever have become established, as Blackstone says they were, "by long and immemorial usage, and by their universal reception throughout the kingdom," fn53 when, as the Mirror says, "justice was so done, that everyone so judged his neighbor, by such judgment as a man could not elsewhere receive in the like cases, until such [*85] times as the customs of the realm were put in writing and certainly published?"

The fact that, in that dark age, so many of the principles of natural equity, as those then embraced in the Common Law, should have been so uniformly recognized and enforced by juries, as to have become established by general consent as "the law of the land;" and the further fact that this "law of the land" was held so sacred that even the king could not lawfully infringe or alter it, but was required to swear to maintain it, are beautiful and impressive illustrations of the truth that men's minds, even in the comparative infancy of other knowledge, have clear and coincident ideas of the elementary principles, and the paramount obligation, of justice. The same facts also prove that the common mind, and the general, or, perhaps, rather, the universal conscience, as developed in the untrammelled judgments of juries, may be safely relied upon for the preservation of individual rights in civil society; and, that there is no necessity or excuse for that deluge of arbitrary legislation, with which the present age is overwhelmed, under the pretext that unless laws be made, the law will not be known; a pretext, by the way, almost universally used for overturning, instead of establishing, the principles of justice.

SECTION III. The Oaths of Jurors.

The oaths that have been administered to jurors, in England, and which are their legal guide to their duty, all (so far as I have ascertained them) corroborate the idea that the jurors are to try all cases on their intrinsic merits, independently of any laws that they deem unjust or oppressive. It is probable that an oath was never administered to a jury in England, either in a civil or criminal case, to try it according to law.

The earliest oath that I have found prescribed by law to be administered to jurors is in the laws of Ethelred, (about the year 1015,) which require that the jurors "shall swear, with their hands upon a holy thing, that they will condemn no man [*86] that is innocent, nor acquit any that is

guilty." --- 4 Blackstone, 302. 2 Turner's History of the Anglo-Saxons, 155. Wilkins' Laws of the Anglo-Saxons, 117. Spelman's Glossary, word Jurata.

Blackstone assumes that this was the oath of the grand jury (4 Blackstone, 302); but there was but one jury at the time this oath was ordained. The institution of two juries, grand and petit, took place after the Norman Conquest.

Hume, speaking of the administration of justice in the time of Alfred, says that, in every hundred,

"Twelve freeholders were chosen, who, having sworn, together with the hundreder, or presiding magistrate of that division, to administer impartial justice, proceeded to the examination of that cause which was submitted to their jurisdiction." --- Hume, ch. 2.

By a law of Henry II., in 1164, it was directed that the sheriff "faciet jurare duodecim dies homines de vicineto seu de villa, quod inde veritatem secundum conscientiam suam manifestabunt," (shall make twelve legal men from the neighborhood to swear that they will make known the truth according to their conscience.) ---Crabbe's History of the English Law, 119. 1 Reeves, 87. Wilkins, 321-323.

Glanville, who wrote within the half century previous to Magna Carta, says:

"Each of the knights summoned for this purpose (as jurors) ought to swear that he will neither utter that which is false, nor knowingly conceal the truth." --- Beames' Glanvillenle, 65.

Reeve calls the trial by jury "the trial twelve men sworn to speak the truth." --- 1 Reeve's History of the English Law, 87.

Henry says that the jurors "took a solemn oath, that they would faithfully discharge the duties of their office, and not suffer an innocent man to be condemned, nor any guilty person to be acquitted." --- 3 Henry's Hist. of Great Britain, 346.

The Mirror of Justices, (written within a century after Magna Carta,) in the chapter on the abuses of the Common Law, says:

"It is abuse to use the words, to their knowledge, in their oaths, to make the jurors speak upon

thoughts, since the chief word of their oaths be that they speak the truth." --- p. 249. [*87]

Smith, writing in the time of Elisabeth, says that, in civil suits, the jury "be sworn to declare the truth of that issue according to the evidence, and their conscience." --- Smith's Commomwealth of England, edition of 1621, p. 73.

In criminal trials, he says:

"The clerk giveth the juror an oath to go uprightly betwixt the prince and the prisoner." --- Ditto, p. 90. fn54 [*88]

Hale says:

"Then twelve, and no less, of such as are indifferent and are returned upon the principal panel, or the tales, are sworn to try the same according to the evidence." --- 2 Hale's History' of the Common Law, 141.

It appears from Blackstone that, even at this day, neither in civil nor criminal cases, are jurors in England sworn to try causes according to law. He says that in civil suits the jury are

"Sworn well and truly to try the issue between the parties, and a true verdict to give according to the evidence." --- 3 Blackstone, 365.

"The issue" to be tried is whether A owes B anything, and if so, how much? or whether A has in his possession anything that belongs to B; or whether A has wronged B, and ought to make compensation; and if so, how much?

No statute passed by a legislature, simply as a legislature, can alter either of these "issues" in hardly any conceivable case, perhaps in none. No unjust law could ever alter them in any. They are all mere questions of natural justice, which legislatures have no power to alter, and with which they have no right to interfere, further than to provide for having them settled by the most competent and impartial tribunal that it is practicable to have, and then for having all just decisions enforced. And any tribunal, whether judge or jury, that attempts to try these issues, has no more moral right to be swerved from the line of justice, by the will of a legislature, than by the will of any other body of men whatever. And this oath does not require or permit a jury to be so swerved.

In criminal cases, Blackstone says the oath of the jury in England is:

"Well and truly to try, and true deliverance make, between our sovereign lord, the king, and the prisoner whom they have in charge, and a true verdict to give, according to the evidence." --- 4 Blackstone, 355.

"The issue" to be tried, in a criminal case, is "guilty," or "not guilty." The laws passed by a legislature can rarely, if ever, have anything to do with this heissue. "Guilt" is an [*89] intrinsic quality of actions, and can neither be created, destroyed, nor changed by legislation. And no tribunal that attempts to try this issue can have any moral right to declare a man guilty, for an act that is intrinsically innocent, at the bidding of a legislature, any more than at the bidding of anybody else. And this oath does not require or permit a jury to do so.

The words, "according to the evidence," have doubtless been introduced into the above oaths in modern times. They are unquestionably in violation of the Common law, and of Magna Carta, if by them be meant such evidence only as the government sees fit to allow to go to the jury. If the government can dictate the evidence, and require the jury to decide according to that evidence, it necessarily dictates the conclusion to which they must arrive. In that case the trial is really a trial by the government, and not by the jury. The jury cannot try an issue, unless they determine what evidence shall be admitted. The ancient oaths, it will be observed, say nothing about "according to the evidence." They obviously take it for granted that the jury try the whole tecase; and of course that they decide what evidence shall be admitted. It would be intrinsically an immoral and criminal act for a jury to declare a man guilty, or to declare that one man owed money to another, unless all the evidence were admitted, which they thought ought to be admitted, for ascertaining the truth. fn55

Grand Jury. --- If jurors are bound to enforce all laws passed by the legislature, it is a very remarkable fact that the oath of grand juries does not require them to be governed by the laws in finding indictments. There have been various forms of oath administered to grand jurors; but by none of them that I recollect ever to have seen, except those of the States [*90] of Connecticut and Vermont, are they sworn to present men according to law. The English form, as given in the essay on Grand Juries, written near two hundred years ago, and supposed to have been written by Lord Somers, is as follows:

"You shall diligently inquire, and true presentment make, of all such articles, matters, and things, as shall given you in charge, and of all other matters and things as shall come to your knowledge touching this present service. The king's council, your fellows, and your own, you shall keep secret. You shall present no person for hatred or malice; neither shall you leave any one unpresented for favor, or affection, for love or gain, or any hopes thereof; but in all things

you shall present the truth, the whole truth, and nothing but the truth, to the best of your knowledge. So help you God."

This form of oath is doubtless quite ancient, for the essay says "our ancestors appointed" it. --- See Essay, p. 33-34.

On the obligations of this oath, the essay says:

"If it be asked how, or in what manner, the (grand) juries shall inquire, the answer is ready, according to the best of understandings. They only, not the judges, are sworn to search diligently to find out all treasons, &c., within their charge, and they must and ought to use their own discretion in the way and manner of their inquiry. No directions can legally be imposed upon them by any court or judges; an honest jury will thankfully accept good advice from judges, as their assistants; but they are bound by their oaths to present the truth, the whole truth, and nothing but the truth, to the best of their own, not the judge's, knowledge. Neither can they, without breach of that oath, resign their consciences, or blindly submit to the dictates of others; and therefore ought to receive or reject such advices, as they judge them good or bad. * * Nothing can be more plain and express than the words of the oath are to this purpose. The jurors need not search the law books, nor tumble over heaps of old records, for the explanation of them. Our greatest lawyers may from hence learn more certainly our ancient law in this case, than from all the books in their studies. The language wherein the oath is penned is known and understood by every man, and the words in it have the same signification as they have wheresoever else they are used. The judges, without assuming to themselves a legislative power, cannot put a new sense upon them, other than according to their genuine, common meaning. They cannot magisterially impose their opinions upon the jury, and make them forsake the direct [*91] words of their oath, to pursue their glosses. The grand inquest are bound to observe alike strictly every part of their oath, and to use all just and proper ways which may enable them to perform it; otherwise it were to say, that after men had sworn to inquire diligently after the truth, according to the best of their knowledge, they were bound to forsake all the natural and proper means which their understandings suggest for the discovery of it, if it be commanded by the judges." --- Lord Somers' Essay on Grand Juries, p. 38.

What is here said so plainly and forcibly of the oath and obligations of grand juries, is equally applicable to the oath and obligations of petit juries. In both cases the simple oaths of the jurors, and not the instructions of the judges, nor the statutes of kings nor legislatures, are their legal guides to their duties. fn56

SECTION IV. The Right of Juries to fix Sentence..

The nature of the common law courts existing prior to Magna Carta, such as the county courts, the hundred courts, the court leet, and the court-baron, all prove, what had already been proved from Magna Carta, that, in jury trials, the juries fixed the sentence; because, in those courts, there was no one but the sheriff, bailiff, or steward; and no one will pretend that it was fixed by them. The juries unquestionably gave the "judgment" in both civil and criminal cases.

The juries were to fix the sentence under Magna Carta, is also shown by statutes subsequent to Magna Carta.

A statute passed fifty-one years after Magna Carta, says that a baker, default in the wieght of his bread, "debeat amerciari vel subire judicium pillorae," --- that is, "ought to be amaerced, or suffer the sentence of the pillory." And that a brewer, for "selling ale, contrary to the assize," "debeat amerciari, vel pati judicium tumbrelli;" that is, "ought to be [*92] amerced, or suffer judgment of the tumbrell." --- 51 Henry III., st. 6. (1266.)

If the king (the legislative power) had had authority to fix the punishments of these offences imperatively, he would naturally said these offenders shall be amerced, and shall suffer judgment of the pillory and tumbrel, instead of thus simply expressing the opinion that they ought to be punished in that manner.

The statute of Westminister, passed sixty years after Magna Carta, provides that,

"No city, borough, nor town, nor any man, be amerced, without reasonable cause, and according to the quantity of the trespass; that is to say, every freeman saving his freehold, a merchant saving his merchandise, a villein his waynage, and that by his or their peers." --- 3 Edward I, ch. 6. (1275.)

The same statute (ch. 18) provides further, that,

"Forasmuch as the common fine and amercement of the whole county in Eyre of the justices for false judgments, or for other trespass, is unjustly assessed by sheriffs and baretors in the shires, so that the sum is many times increased, and the parcels otherwise assessed than they ought to be, to the damage of the people, which be many times paid to the sheriffs and baretors, which do not acquit the payers; it is provided, and the king wills, that from henceforth such sums shall be assessed before the justices in Eyre, afore their departure, by the oath of knights and other honest men, upon all such as ought to pay; and the justices shall cause the parcels to be put to their estreats, which shall be delivered up unto the exchequer, and not th whole sum." --- St. 3 Edward I, ch. 18, (1275.) fn57

The following statute passed in 1341, one hundred and twenty-five years after Magna Carta, providing for the trial of peers of the realm, and the king's ministers, contains a re- [*93] cognition of the principle of Magna Carta, that the jury are to fix the sentence.

"Whereas before this time the peers of the land have been arrested and imprisoned, and their temporalities, lands, and tenements, goods and cattels, asseized in the king's hands, and some put to death without judgment of their peers: It is accorded and assented, that no peer of the land, officer, nor other, because of his office, nor of things touching his office, nor by any other cause, shall be be brought in judgment to lose his temporalities, lands, tenements, goods and cattels, nor to be arrested, imprisoned, outlawed, exiled, nor forejudged, nor put to answer, nor be judged, but by award (sentence) of the said peers in Parliament." --- 15 Edward III., st. 1, sec. 2.

Secton 4 of the statute provides,

"That in every Parliament, at the third day of every Parliament, the king shall take in his hands the offices of all the ministers aforesaid," (that is, "the chancellor, treasurer, barons, and chancellor of the exchequer, the justices of one bench and of the other, justices assigned in the country, stewart and chamberlain of the king's house, keeper of the privy seal, treasurer of the wardrobe, controllers, and they that be chief deputed to abide nigh by the king's son, Duke of Cornwall,") "and so they shall abide four or five days; except the offices of justices of the one place or the other, justices assigned, barons of exchequer; so always that they and all other ministers be put to answer to every complaint; and if default be found in any of the said ministers, by complaint or other manner, and of that atttainted in Parliament, he shall be punished by judgment of the peers, and put out of his office, and another convenient put in his place. And upon the same our said sovereign lord the king shall do (cause) to be pronounced and made execution without delay, according to the judgment (sentence) of the said peers in the Parliament."

Here is an admission that the peers were to fix the sentence, or judgment, and the king promises to make execution "according to" that sentence.

An this appears to be the law, under which peers of the realm and the great officers of the crown were tried and sentenced, for four hundred years after its passage, and, for aught I know, until this day.

The first case given in Hargrave's collection of English State Trials, is that of Alexander Nevil, Archbishop of York, [*94] Robert Vere, Duke of Ireland, Michael de la Pole, Earl of Suffolk, and

Robert Treslian, Lord Chief Justice of England, with several others, convicted of treason, before "the Lords of Parliament," in 1388. The sentences in these cases were adjudged by the "Lords of Parliament," in the following terms, as they are reported.

"Wherefore the said Lords of Parliament, there present, as judges in Parliament, in this case, by assent of the king, pronounced their sentence, and did adjudge the said archbishop, duke, and earl, with Robert Tresilian, so appealed, as aforesaid, to be guilty, and convicted of treason, and to be drawn and hanged, as traitors and enemies to the king and kingdom; and that their heirs should be disinherited forever, and their lands and tenements, goods and chattels, forfeited to the king, and that the temporalities of the Archbishop of York should be taken into the king's hands."

Also, in the same case, Sir John Holt, Sir William Burgh, Sir John Cary, Sir Roger Fulthorpe, and John Locton, "were by the lords temporal, by the assent of the king, adjudged to be drawn and hanged, as traitors, their heirs disinherited, and their lands and tenements, goods and chattels, to be forfeited to the king."

Also, in the same case, John Blake, "of council for the king," and Thomas Uske, under sheriff of Middlesex, having been convicted of treason,

"The lords awarded, by assent of the king, that they should both be hanged and drawn as traitors, as open enemies to the king and kingdom, and their heirs disinherited forever, and their lands, and tenements, goods and chattels, forfeited to the king."

Also, "Simon Burleigh, the king's chamberlain," being convicted of treason, "by joint consent of the king and the lords, sentence was pronounced against the said Simon Burleigh, that he should be drawn from the town to Tyburn, and there be hanged till he be dead, and then have his head struck from his body."

Also, "John Beauchamp, steward of the household to the king, James Beroverse, and John Salisbury, knights, gentlemen of the privy chamber, were in like manner condemned." --- 1 Hargrave's State Trials, first case.

Here the sentences were all fixed by the peers, with the assent of the king. But that the king should be consulted, and of his assent obtained to the sentence pronounced by the peers, [*95] does not imply any deficiency of power on their part to fix the sentence independently of the king. There are obvious reasons why they might choose to consult the king, and obtain his approbation of the sentence they were about to impose, without supposing any legal necessity for their so doing.

So far as we can gather from the reports of state trials, peers of the realm hatwere usually sentenced by those who tried them, with the assent of the king. But in some instances no mention is made of the assent of the king, as in the case of "Lionel, Earl of Middlesex, Lord High Treasurer of England," in 1624, (four hundred years after Magna Carta,) where the sentence was as follows:

"This High Court of Parliament doth adjudge, that Lionel, Earl of ddlesex, now Lord Treasurer of England, shall lose all his offices which he holds in this kingdom, and shall, hereafter, be made incapable of any office, place, or employment in the state and commonwealth. That he shall be imprisoned in the tower of London, during the king's pleasure. That he shall pay unto our sovereign lord the king a fine of 50,000 pounds. That he shall never sit in Parliament any more, and that he shall never come within the verge of the court." --- 2 Howell's State Trials, 1250.

Here was a peer of the realm, and a minister of the king, of the highest grade; and if it were ever necessary to obtain the assent of the king to sentences pronounced by the peers, it would unquestionably have been obtained in this instance, and his assent would have appeared in the sentence.

Lord Bacon was sentenced by the House of Lords, (1620,) no mention being made of the assent of the king. The sentence is in these words:

"And, therefore, this High Court doth adjudge, That the Lord Viscount St. Albans, Lord Chancellor of England, shall undergo fine and ransom of 40,000 pounds. That he shall be imprisoned in the tower during the the king's pleasure. That he shall forever be incapable of any office, place, or employment in the state or commonwealth. That he shall never sit in Parliament, nor come within the verge of the court."

And when it was demanded of him, before sentence, whether it were his hand that was subscribed to his confession, and [*96] whether he would stand to it; he made the following answer, which implies that the lords were the ones to determine his sentence.

"My lords, it is my act, my hand, my heart. I beseech your lords to be merciful to a broken reed." --- 1 Hargrave's State Trials, 386-7.

The sentence against Charles the First, (1648,) after reciting the grounds of his condemnation, concludes in this form:

“For all which treasons and crimes, this court doth adjudge, that he, the said Charles Stuart, as a tyrant, traitor, murderer, and public enemy to the good people of this nation, shall be put to death by the severing his head from his body.”

The report then adds:

“This sentence being read, the president (of the court) spake as followeth: This sentence now read and published, is the act, sentence, judgment and resolution of the whole court.’” --- 1 Hargrave’s State Trials, 1037.

Unless it had been the received “law of the land” that those who tried a man should fix his sentence, it would have required an act of Parliament to fix the sentence of Charles, and his sentence would have been declared to be “the sentence of the law,” instead of “the act, sentence, judgment, and resolution of the court.”

But the report of the proceedings in “the trial of Thomas, Earl of Macclesfield, Lord High Chancellor of Great Britain, before the House of Lords, for high crimes and misdemeanors,” in 1725, is so full on this point, and shows so clearly that it rested wholly with the lords to fix the sentence, and that the assent of the king was wholly unnecessary, that I give the report somewhat at length.

After being found guilty, the earl addressed the lords, for a mitigation of sentence, as follows:

“ ‘I am now to expect your lordships’ judgment; and I hope that you will be pleased to consider that I have suffered no small matter already in the trial, in the expense I have been at, the fatigue, and what I have suffered otherways. * * I have paid back 10,800 pounds of the money already; I have lost my office; I have undergone the censure of both houses of Parliament, which is in itself a severe punishment,’ ” &c., &c.[*97]

On being interrupted, he proceeded:

“ ‘My lords, I submit whether this be not proper in mitigation of your lordships’ sentence; but whether it be or not, I leave myself to your lordships’ justice and mercy; I am sure neither of them will be wanting, and I entirely submit.’ * *

“Then the said earl, as also the managers, were directed to withdraw; and the House (of Lords) ordered Thomas, Earl of Macclesfield, to be committed to the custody of the gentleman usher of the black rod; and then proceeded to the consideration of what judgment, (that is, sentence, for he had already been found guilty,) “to give upon the impeachment against the said earl.” * *

“The next day, the Commons, with their speaker, being present at the bar of the House (of Lords), * * the speaker of the House of Commons said as follows:

“ ‘My lords, the knights, citizens, and burgesses in Parliament assembled, in the name of themselves, and of all the commons of Great Briin, did at this bar impeach Thomas, Earl of Macclesfield, of high crimes and misdemeanors, and did exhibit articles of impeachment against him, and have made good their charge. I do, therefore, in the name of the knights, citizens, and burgesses, in Parliament assembled, and of all the commons of Great Britain, demand judgment (sentence) of your lordships against Thomas, Earl of Macclesfield, for the high crimes and misdemeanors.’

“Then the Lord Chief Justice King, Speaker of the House of Lords, said: ‘Mr. Speaker, the Lords are now ready to proceed to judgment in the case by you mentioned.

“ ‘Thomas, Earl of Macclesfield, the Lords have unanimously found you guilty of high crimes and misdemeanors, charged on you by the impeachment of the House of Commons, and do now, according to law, proceed to judgment against you, which I am ordered to pronounce. Their lordships’ judgment is, and this high court doth adjudge, that you, Thomas, Earl of Macclesfield, be fined in the sum of thirty thousand pounds unto our sovereign lord the king; and that you shall be imprisoned in the tower of London, and there kept in safe custody, until you shall pay the said fine.’ ” --- 6 Hargrave’s State Trials, 762-3-4.

This case shows that the principle of Mana Carta, that a man should be sentenced only by his peers, was in force, and acted upon as law, in England, so lately as 1725), (five hundred years after Magna Carta,) so far as it applied to a peer of the realm.[*98]

But the same principle, on this point, that applies to a peer of the realm, applies to every freeman. The only difference between the two is, that the peers of the realm have had influence enough to preserve their constitutional rights; while the constitutional rights of the people have been trampled upon and rendered obsolete by the usurpation and corruption of the government and the courts.

SECTION V. The Oaths of Judges.

As further proof that the legislation of the king, whether enacted with or Iwithout the assent and advice of his parliaments, was of no authority unless it were consistent with the common law, and unless juries and judges saw fit to enforce t it may be mentioned that it is probable that no judge in England was ever sworn to observe the laws enacted either by the king alone, or by the king with the advice and consent of parliament.

The judges were sworn to "do equal law, and execution of right, to all the king's subjects, rich and poor, without hang regard to any person;" and that they will "deny no man common right;" fn58 but they were not sworn to obey or execute any statutes of the king, or of the king and parliament. Indeed, they are virtually sworn not to obey any statutes that are against "common right," or contrary to "the common law," or "law of the land;" but to "certify the king thereof" --- that is, notify him that his statutes are against the common law; --- and then proceed to execute the common law, notwithstanding such legislation to the contrary. The words of the oath on this point are these:

"That ye deny no man common right by (virtue of) the king's letters, no none other man's, nor for none other cause; and in case any letters come to you contrary to the law, (that is, the common law, as will be seen on reference to the entire oath given in the note,) that ye do noting by such letters, but [*99] certify the king thereof, and proceed to execute the law, (that is, the common law,) notwithstanding the same letters.

When it is considered that the king was the sole legislative power, and that he exercised this power, to a great extent, by orders in council, and by writs and "letters" addressed oftentimes to some sheriff, or other person, and that his commands, when communicated to his justices, or any other person, "by letters," or writs, under seal, had as much legal authority as laws promulgated in any other form whatever, it will be seen that this oath of the justices absolutely required that they disregard any legislation that was contrary to "common right," or "the common law," and notify the king that it was contrary to common right, or the common law, and then proceed to execute the common law, notwithstanding such legislation. fn59

If there could be any doubt that such was the meaning of this oath, that doubt would be removed by a statute passed by the king two years afterwards, which fully explains this oath, as follows:

"Edward, by the Grace of God, &c., to the Sheriff of Stafford, greeting: Because that by divers complaints made to us, we have perceived that the law of the land, which we by our oath are bound to maintain, is the less well kept, and the execution of the same disturbed many times by maintenance and procurement, as well in the court as in the country; we [*100] greatly moved of conscience in this matter, and for this cause desiring as much for the pleasure of God, and

ease and quietness of our subjects, as to save our conscience, and for to save and keep our said oath, by the assent of the great men and other wise men of our council, we have ordained these things following:

"First, we have commanded all our justices, that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor, without having regard to any person, and without omitting to do right for any letters or commandments which may come to them from us, or from any other, or by any other cause. And if that any letters, writs, or commandments come to the justices, or to other deputed to do law and right according to the usage of the realm, in disturbance of the law, or of the execution of the same, or of right to the parties, the justices and other aforesaid shall proceed and hold their courts and processes, where the pleas and matters be depending before them, as if no such letters, writs, or commandments were come to them; and they shall certify us and our council of such commandments which be contrary to the law, (that is, "the law of the land," or common law,) as afore is said." fn60 And to the intent that our justices shall do even right to all people in the manner aforesaid, without more favor showing to one than to another, we have ordained and caused our said justices to be sworn, that they shall not from henceforth, as long as they shall be in the office of justice, take fee nor robe of any man, but of ourself, and that they shall take no gift nor reward by themselves, nor by other, privily nor [*101] apertly of any man that hath to do before them by any way, except meat and drink, and that of small value; and that they shall give no counsel to great men or small, in case where we be party, or which do or may touch us in any point, upon pain to be at our will, body, lands, and goods, to do thereof as shall please us, in case they do contrary. And for this cause we have increased the fees of the same, our justices, in such manner as ought reasonably to suffice them." --- 20 Edward III., ch. 1. (1346.)

Other statutes of similar tenor have been enacted, as follows:

"It is accorded and established, that it shall not be commanded by the great seal, nor the little seal, to disturb or delay common right; and though such commandments do come, the justices shall not therefore leave (omit) to do right in any point." --- St. 2 Edward III., ch. 8. (1328.)

"That by commandment of the great seal, or privy seal, no point of this statute shall be put in delay; nor that the justices of whatsoever place it be shall let (omit) to do the common by commandment, which shall come to them under the great seal, or the privy seal." --- 14 Edward III., st. 1, ch. 14. (1340.)

"It is ordained and established, that neither letters of the signet, nor of the king's privy seal, shall be from henceforth sent in damage or prejudice of the realm, nor in disturbance of the law" (the common law). --- 11 Richard II., ch. 10. (1387.)

It is perfectly apparent from these statutes, and from the oath administered to the justices, that it was a matter freely confessed by the king himself, that his statutes were of no validity, if contrary to the common law, or "common right."

The oath of the justices, before given, is, I presume, the same that has been administered to judges in England from the day when it was first prescribed to them, (1344,) until now. I do not find from the English statutes that the oath has ever been changed. The Essay on Grand Juries, before referred to, and supposed to have been written by Lord Somers, mentions this oath (page 73) as being still administered to judges, that is, in the time of Charles II., more than three hundred years after the oath was first ordained. If the oath has never been changed, it follows that judges have not only never been sworn to support any statutes whatever of [*102] the king, or of parliament, but that, for five hundred years past, they actually have been sworn to treat as invalid all statutes that were contrary to the common law.

SECTION VI. The Coronation Oath.

That the legislation of the king was of no authority over a jury, is further proved by the oath taken by the kings at their coronation. This oath seems to have been substantially the same, from the time of the Saxon kings, down to the seventeenth century, as will be seen from the authorities hereafter given.

The purport of the oath is, that the king swears to maintain the law of the land --- that is, the common law. In other words, be swears "to concede and preserve to the English people the laws and customs conceded to them by the ancient, just, and pious English kings, * * and especially the laws, customs, and liberties conceded to the clergy and people by the illustrious king Edward;" * * and "the just laws and customs which the common people have chosen, (quas vulgus elegit)."

These are the same laws and customs which were called by the general name of "the law of the land," or "the common law," and, with some slight additions, were embodied in Magna Carta.

This oath not only forbids the king to enact any statutes contrary to the common law, but it proves that his statutes could be of no authority over the consciences of a jury; since, as has already been sufficiently shown, it was one part of this very common law itself, --- that is, of the ancient "laws, customs, and liberties, mentioned in the oath, --- that juries should judge of all questions that came before them, according to their own consciences, independently of the legislation of the king.

It was impossible that this right of the jury could subsist consistently with any right, on the

part of the king, to impose any authoritative legislation upon them. His oath, therefore, [*103] to maintain the law of the land, or the ancient "laws, customs, and liberties," was equivalent to an oath that he would never assume to impose laws upon juries, as imperative rules of decision, or take from them the right to try all cases according to their own consciences. It is also an admission that he had no constitutional power to do so, if he should ever desire it. This oath, then, is conclusive proof that his legislation was of no authority with a jury, and that they were under no obligation whatever to enforce it unless it coincided with their own ideas of justice.

The ancient coronation oath is printed with the Statutes of the Realm, vol. i., p. 168, and is as follows: fn61

TRANSLATION.

"From of the Oath of the King of England, on his Coronation.

(The Archbishop of Cnterbury, to whom, of right and custom of the Church of Canterbury, ancient and approved, it pertains to anoint and crown the kings of England, on the day of the coronation of the king, and before the king is crowned, shall propound the underwritten questions to the king.)

The laws and customs, conceded to the English people by the ancient, just, and pious English kings, will you concede and preserve to the same people, with the confirmation of an oath? and especially the laws, customs, and liberties conceded to the clergy and people by the illustrious king Edward?[*104]

(And the king shall answer,) I do concede, and will preserve them, and confirm them by my oath.

Will you preserve to the church of God, the clergy, and the people, entire peace and harmony in God, according to your powers?

(And the king shall answer,) I will.

In all your judgments, will you cause equal and right justice and discretion to be done, in mercy and truth, according to your powers?

(And the king shall answer,) I will.

Do you concede that the laws and customs, which the common people have chosen, shall be preserved; and do you promise that they shall be Iprotected by you, and strengthened to the honor of God, according to your powers?

(And the king shall answer,) I concede and promise.

The language used in the last of these questions, “Do you concede that the just laws and customs, which the common people have chosen, (quas vulgus elegit,) shall be preserved?” &c., is worthy of especial notice, as showing that the laws, which were to be preserved, were not necessarily all the laws which the kings enacted, but only such of them as the common people had selected or approved.

And how had the common people made known their approbation or selection of these laws? Plainly, in no other way than this --- that the juries composed of the common people had voluntarily enforced them. The common people had no other legal form of making known their approbation of particular laws.

The word “concede,” too, is an important word. In the English statutes it is usually translated grant --- as if with an intention to indicate that “the laws, customs, and liberties” of the English people were mere privileges, granted to them by the king; whereas it should be translated concede, to indicate simply an acknowledgment, on the part of the king, that such were the laws, customs, and liberties, which had been chosen and established by the people themselves, and of right belonged to them, and which he was bound to respect.

I will now give some authorities to show that the foregoing oath has, in substance, been the coronation oath from the times of William the Conqueror, (1066,) down to the time of James the First, and probably until 1688.[*105]

It will be noticed, in the quotation from Kelham, that he says this oath (or the oath of William the Conqueror) is “in sense and substance the very same with that which the Saxon kings used to take at their coronations.”

Hale says:

“Yet the English were very zealous for them,” (that is, for the laws of Edward the Confessor,)

"no less or otherwise than they are at this time for the Great Charter; insomuch that they were never satisfied till the said laws were reenforced, and mingled, for the most part, with the coronation oath of king William I., and some of his successors." --- 1 Hale's History of Common Law, 157.

Also, "William, on his coronation, had sworn to govern by the laws of Edward the Confessor, some of which had been reduced into writing, but the greater part consisted of the immemorial customs of the realm." --- Ditto, p. 202, note L.

Kelham says:

"Thus stood the laws of England at the entry of William I., and it seems plain that the laws, commonly called the laws of Edward the Confessor, were at that time the standing laws of the kingdom, and considered the great rule of their rights and liberties; and that the English were so zealous for them, "that they were never satisfied till the said laws were reinforced, and mingled, for the most part, with the coronation oath." Accordingly, we find that this great conqueror, at his coronation on the Christmas day succeeding his victory, took an oath at the altar of St. Peter, Westminster, in sense and substance the very same with that which the Saxon kings used to take at their coronations. * * And at Barkhamstead, in the fourth year of his reign, in the presence of Lanfranc, Archbishop of Canterbury, for the quieting of the people, he swore that he would or inviolably observe the good and approved ancient laws which had been made by the devout and pious kings of England, his ancestors, and chiefly by King Edward; and we are told that the people then departed in good humor. --- Kelham's Preliminary Discourse to the Laws of William the of Conqueror. See, also, 1 Hale's History of the Common Law, 186.

Crabbe says that William the Conqueror "solemnly swore that he would observe the good and approved laws of Edward the Confessor." --- Crabbe's History of the English Law, p.43.

The successors of William, up to the time of Magna Carta, [*106] probably all took the same oath, according to the custom of the kingdom; although there may be no historical accounts extant of the oath of each separate king. But history tells us specially that Henry I., Stephen, and Henry II., confirmed these ancient laws and customs. It appears, also, that the barons desired of John (what he afterwards granted by Magna Carta) "that the laws and liberties of King Edward, with other privileges granted to the kingdom and church of England, might be confirmed, as they were contained in the charters of Henry the First; further alleging, that at the time of his absolution, he promised by his oath to observe these very laws and liberties." --- Echard's History of England, p. 105-6.

It would appear, from the following authorities, that since Magna Carta the form of the

coronation oath has been "to maintain the law of the land," --- meaning that law as embodied in Magna Carta. Or perhaps it is more probable that the ancient form has been still observed, but that, as its substance and purport were "to maintain the law of the land," this latter form of expression has been used, in the instances here cited, from motives of brevity and convenience. This supposition is the more probable, from the fact that I find no statute prescribing a change in the form of the oath until 1688.

That Magna Carta was considered as embodying "the law of the land," or "common law," is shown by a statute passed by Edward I., wherein he "grants," or concedes,

"That the Charter of Liberties and the Charter of the Forest * * shall be kept in every point, without breach, * * and that our justices, sheriffs, mayors, and other ministers, which, under us, have the laws of our land fn62 to guide, shall allow the said charters pleaded before them in judgment, 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 the realm.

"And we will, that if any judgment be given from henceforth, contrary to the points of the charters aforesaid, by the justices, or by any other our ministers that hold plea before them against the points of the charters, it shall be undone, and holden for naught." --- 25 Edward I, ch. 1 and 2. (1297.)[*107]

Blackstone also says:

"It is agreed by all our historians that the Great Charter of King John was, for the most part, compiled from the ancient customs of the realm, or the laws of Edward the Confessor; by which they usually mean the old common law which was established under our Saxon princes." --- Blackstone's Introduction to the Charters. See Blackstone's Law Tracts, 289.

Crabbe says:

"It is admitted, on all hands, that it (Magna Carta) contains nothing but what was confirmatory of the common law, and the ancient usages of the realm, and is, properly speaking, only an enlargement of the charter of Henry I., and his successors." --- Crabbe's History of the English Law, p. 127.

That the coronation oath of the kings subsequent to Magna Carta was, in substance, if not in form, "to maintain this law the land, or common law," is shown by a statute of Edward Third, commencing as follows:

"Edward, by the Grace of God, &c., &c., to the Sheriff of Stafford, Greeting: Because that by divers complaints made to us, we have perceived that the law of the land, which we by oath are bound to maintain," &c. --- St. 20 Edward III. (1346.)

The following extract from Lord Somers' tract on Grand Juries shows that the coronation oath continued the same as late as 1616, (four hundred years after Magna Carta.) He says:

"King James, in his speech to the judges, in the Star Chamber, Anno 1616, told them, 'That he had, after many years, resolved to renew his oath, made at his coronation, concerning justice, and the promise therein contained for maintaining the law of the land.' And, in the next page save one, says, 'I was sworn to maintain the law of the land, and therefore had been perjured if I had broken it. God is my judge, I never intended it.'" --- Sommers on Grand Juries, p. 82.

In 1688, the coronation oath was changed by act of Parliament, and the the king was made to swear:

"To govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same." --- St. 1 William and Mary, ch. 6. (1688.) [*108]

The effect and legality of this oath will hereafter be considered. For the present it is sufficient to show, as has been already sufficiently done, that from the Saxon times until at least as lately as 1616, the coronation oath has been, in substance, to maintain the law of the land, or the common law, meaning thereby the ancient Saxon customs, as embodied in the laws of Affred, of Edward the Confessor, and finally in Magna Carta.

It may here be repeated that this oath plainly proves that the statutes of the king were of no authority over juries, if inconsistent with their ideas of right; because it was one part of the common law that juries should try all causes according to their own consciences, any legislation of the king to the contrary notwithstanding. fn63 [*110]

CHAPTER IV. THE RIGHTS AND DUTIES OF JURIES IN CIVIL SUITS.

The evidence already given in the preceding chapters proves that the rights and duties of jurors, in civil suits, were anciently the same as in criminal ones; that the laws of the king were

of no obligation upon the consciences of the jurors, any further than the laws were seen by them to be just; that very few laws were enacted applicable to civil suits; that when a new law was enacted, the nature of it could have been known to the jurors only by report, and was very likely not to be known to them at all; that nearly all the law involved in civil suits was unwritten; that there was usually no one in attendance upon juries who could possibly enlighten them, unless it were sheriffs, stewards, and bailiffs, who were unquestionably too ignorant and untrustworthy to instruct them authoritatively; that the jurors must therefore necessarily have judged for themselves of the whole case; and that, as a general rule, they could judge of it by no law but the law of nature, or the principles of justice as they existed in their own minds.

The ancient oath of jurors in civil suits, viz., that "they would make known the truth according to their consciences," implies that the jurors were above the authority of all legislation. The modern oath, in England, viz.viz., that they "will well and truly try' the issue between the parties, and a true verdict give, according to the evidence," implies the same thing. If the laws of the king had been binding upon a jury, they would have been sworn to try the cases according to law, or according to the laws.

The ancient writs, in civil suits, as given in Glanville, (within the half century before Magna Carta,) to wit," Summon twelve free and legal men, (or sometimes twelve knights,) to be in court, prepared upon their oaths to declare whether A [*111] or by have the greater right to the land in question," indicate that the jurors judged of the whole matter on their consciences only.

The language of Magna Carta, already discussed, establishes the same point; for, although some of the words, such as "outlawed," and "exiled," would apply only to criminal cases, nearly the whole chapter applies as well to civil as to criminal suits. For example, how could the payment of a debt ever be enforced against an unwilling debtor, if he could neither be "arrested, imprisoned, nor deprived of his freehold," and if the king could neither proceed against him, nor send any one against him, by force or arms"? Yet Magna Carta as much forbids that any of these things shall be done against a debtor, as against a criminal, except according to, or in execution of, "a judgment of -his peers, or the law of the land," --- provision which, it has been shown, gave the jury the free and absolute right to give or withhold "judgment" according to their consciences, irrespective of all legislation.

The following provisions, in the Magna Carta of John, illustrate the custom of referring the most important matters of a civil nature, even where king was a party, to the determination of the peers, or of twelve men, acting by no rules but their own consciences. These examples at least show that there is nothing improbably or unnatural in the idea that juries should try all civil suits according to their own judgments, independently of all laws of the king.

Chap. 65. “If we have disseized or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, they shall be immediately restored to them. And if any dispute arises upon this head, the matter shall be determined in the Marches, fn64 by the judgment of their peers,” &c.

Chap. 68. “We shall treat with Alexander, king of Scots, concerning the restoring of his sisters, and hostages, and right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the engagements, which his father William, late King of Scots, hath entered into with us, it ought to be otherwise; and this shall be left to the determination of his peers in our court.” [*112]

Chap. 56. “All evil customs concerning forests, warrens, and foresters, warreners, sheriffs, and their officers, rivers and their keepers, shall forthwith be inquired into in each county, by twelve knights of the same shire, chosen by the most creditable persons in the same county, and upon oath; and within forty days after the said inquest, be utterly abolished so as never to be restored.

There is substantially the same reason why a jury ought to judge of the justice of laws, and hold all unjust laws invalid, in civil suits, as in criminal ones. That reason is the necessity of guarding against the tyranny of the government. Nearly the same oppressions can be practised in civil suits as in criminal ones. For example, individuals may be deprived of their liberty, and robbed of their property, by judgments rendered in civil suits, as well as in criminal ones. If the laws of the king were imperative upon a jury in civil suits, the king might enact laws giving one man’s property to another, or confiscating it to the king himself, and authorizing civil suit to obtain possession of it. Thus a man might be robbed of his property at the arbitrary pleasure of the king. In fact, all the property of the kingdom would be placed at the arbitrary disposal of the king, through the judgments of juries in civil suits, if the laws of the king were imperative upon a jury in such suits. fn65 [*113]

Furthermore, it would be absurd and inconsistent to make a jury paramount to legislation in criminal suits, and subordinate to it in civil suits; because an individual, by resisting the execution of a civil judgment, founded an unjust [*114] law, could give rise to a criminal suit, in which the jury would bound to hold the same law invalid. So that, if an unjust law were binding upon a jury in civil suits, a defendant, by resisting the execution of the judgment, could, in effect, convert the civil action into a criminal one, in which the jury would be paramount to the same legislation, to which, in the civil suit, they were subordinate. In other words, in the criminal suit, the jury would be obliged to justify the defendant in resisting a law, which, in the civil suit, they had said he was bound to submit to.

To make this point plain to the most common mind --- suppose a law be enacted that the

property of A shall be given to B. by brings a civil action to obtain possession of it. If the jury, in this civil suit, are bound to hold the law obligatory, they render a judgment in favor of B, that he be put in possession of the property; thereby declaring that A is bound to submit to a law depriving him of his property. But when the execution of that judgment comes to be attempted --- that is, when the sheriff comes to take the property for the purpose of delivering it to B --- A acting, as he has a natural right to do, in defence of his property, resists and kills the sheriff. He is thereupon indicted for murder. On this trial his plea is, that in killing the sheriff, he was simply exercising his natural right of defending his property against an unjust law. The jury, not being bound, in a criminal case, by the authority of an unjust law, judge the act on its merits, and acquit the defendant --- thus declaring that he was not bound to submit to the same law which the jury, in the civil suit, had, by their judgment, declared that he was bound to submit to. Here is a contradiction between the two judgments. In the civil suit, the law is declared to be obligatory upon A; in the criminal suit, the same law is declared to be of no obligation. [*115]

It would be a solecism and absurdity in government to allow such consequences as these. Besides, it would be practically impossible to maintain government on such principles; for no government could enforce its civil judgments, unless it could support them by criminal ones, in case of resistance. A jury must therefore be paramount to legislation in both civil and criminal cases, or in neither. If they are paramount in neither, they are no protection to liberty. If they are paramount in both, then all legislation goes only for what it may chance to be worth in the estimation of a jury.

Another reason why Mana Carta makes the discretion and consciences of juries paramount to all legislation in civil suits, is, that if legislation were binding upon a jury; the jurors --- (by reason of their being unable to read, as jurors in those days were, and also by reason of many of the statutes being unwritten, or at least not so many copies written as that juries could be supplied with them) --- would have been necessitated --- at least in those courts in which the king's justices sat --- to take the word of those justices as to what the laws of the king really were. In other words, they would have been necessitated to take the law from the court, as jurors do now.

Now there were two reasons why, as we rnay rationally suppose, the people did not wish juries to take their law from the king's judges. One was, that, at that day, the people probably had sense enough to see, (what we, at this day, have not sense enough to see, although we have the evidence of it every day before our eyes,) that those judges, being dependent upon the legislative power, (the king,) being appointed by it, paid by it, and removable by it at pleasure, would be mere tools of that power, and would hold all its legislation obligatory, whether it were just or unjust. This was one reason, doubtless, why Magna Carta made juries, in civil suits, pararnount to all instructions of the king's judges. The reason was precisely the same as that for making them paramount to all instructions of judges in criminal suits, viz., that the people did not choose to subject their rights of property, and all other rights involved in civil suits, to

the operation of such laws as the king might please to enact. It was seen that to allow the king's judges to dictate the law to the jury would be equiv- [*116] -alent to making the legislation of the king imperative upon the jury.

Another reason why the people did not wish juries, in civil suits, to take their law from the king's judges, doubtless was, that, knowing the dependence of the judges upon the king, and knowing that the king would, of course, tolerate no judges who were not subservient to his will, they necessarily inferred that the king's judges would be as corrupt, in the administration of justice, as was the king himself, or as he wished them to be. And how corrupt that was, may be inferred from the following historical facts.

Hume says:

"It appears that the ancient kings of England put themselves entirely upon the footing of the barbarous Eastern princes, whom no man must approach without a present, who sell all their good offices, and who intrude themselves into every business that they may have a pretence for extorting money. Even justice was avowedly bought and sold; the king's court itself, though the supreme judicature of the kingdom, was open to none that brought not presents to the king; the bribes given for expedition, delay, suspension, and doubtless for the perversion of justice, were entered in the public registers of the myal revenue, and remain as monuments of the perpetual iniquity and tyranny of the times. The barons of the exchequer, for instance, the first nobility of the kingdom, were not ashamed to insert, as an article in their records, that the county of Norfolk paid a sum that they might be fairly dealt with; the borough of Yarmouth, that the kinds charters, which they have for their liberties, might not be violated, Richard, son of Gilbert, for the king's helping him to recover his debt from the Jews; * * Serlo, son of Terlavaston, that he might be permitted to make his defence, in case he were accused of a certain homicide; Walter de Burton, for free law, if accused of wounding another; Robert de Essart, for having an inquest to find whether Roger, the butcher, and Wace and Humphrey, accused him of robbery and theft of envy and ill-will, or not; William Buhurst, for having an inquest to find whether he were accused of the death of one Godwin, out of ill-will, or for just cause. I have selected these few instances from a great number of the like kind, which Madox had selected from a still greater number, preserved in the ancient rolls of the exchequer.

Sometimes a party litigant offered the king a certain por- [*117] -tion, a half, a third, a fourth, payable out of the debts which he, as the executor of justice, should assist in recovering. Theophania de Westland agreed to pay the half of two hundred and twelve marks, that she might recover that sum against James de Fughleston; Solomon, the Jew, engaged to Ipay one mark out of every seven that he should recover against Hugh de la Hose; Nicholas Morrel promised to pay sixty pounds, that the Earl of Flanders might be distrained to pay him three hundred and forty-three pounds, which the earl had taken from him; and these sixty pounds were to be paid out of the first money that Nicholas should recover from the earl." --- Hume,

Appendix 2.

“In the reign of Henry II., the best and most just of these (the Norman) princes, * * Peter, of Blois , a judicious and even elegant writer, of that age, gives a pathetic description of the venality of justice, and the oppressions of the poor, * * and he scruples not to complain to the king himself of these abuses. We may judge what the case would be under the government of worse princes.” --- Hume, Appendix 2.

Carte says:

“The crown exercised in those days an exorbitant and inconvenient power, ordering the justices of the king’s court, in suits about lands, to turn out, put, and keep in possession, which of the litigants they pleased; to send contradictory orders; and take large sums of money from each; to respite proceedings; to direct sentences; and the judges, acting by their commission, conceived themselves bound to observe such orders, to the great delay, interruption, and preventing of justice; at least, this was John’s practice.” --- Carte’s History of England, vol. 1, p. 832.

Hallam says:

“But of all the abuses that deformed the Anglo-xon government, none was so flagitious as the sale of judicial redress. The king, we are often told, is the fountain of justice; but in those ages it was one which gold alone could unseal. Men fined (paid fines) to have right done them; to sue in a certain court; to implead a certain person; to have restitution of land which they had recovered at law. From the sale of that justice which every citizen has a right to demand, it was an easy transition to withhold or deny it. Fines were received for the king’s help against the adverse suitor; that is, for perversion of justice, or for delay. Sometimes they were paid by opposite parties, and, of course, for opposite ends.” --- 2 Middle Ages, 438. [*118]

In allusion to the provision of the Magna Carta on this subject Hallam says:

“A law which enacts that justice shall neither be sold, denied, nor delayed, stamps with infamy that government under which it had become necessary.” --- 2 Middle Ages, 451.

Lingard, speaking of the times of Henry II., (say 1184,) says:

“It was universally understood that money possessed greater influence than justice in the royal

courts, and instances are on record, in which one party has made the king a present to accelerate, and the other by a more valuable offer has succeeded in retarding a decision. * * But besides the fines paid to the sovereigns, the judges often exacted presents for themselves, and loud complaints existed against their venality and injustice." --- 2 Lingard, 231.

In the narrative of "The costs and charges which I, Richard de Anesty, bestowed in recovering the land of William, my uncle," (some fifty years before Magna Carta,) are the following items:

"To Ralph, the king's physician, I gave thirty-six marks and one half; to the king an hundred marks; and to the queen one mark of gold." The result is thus stated. "At last, thanks to our lord the king, and by judgment of his court, my uncle's land was adjudged to me." -- 2 Palsgrave's Rise and Progress of the English Commonwealth, p. 9 and 24.

Palgrave also says:

"The precious ore was cast into the scales of justice, even when held by the most conscientious of our Anglo-Saxon kings. A single case will exemplify the practices which prevailed. Alfric, the heir of 'Aylwin, the black,' seeks to set aside the death-bed bequest, by which his kinsman bestowed four rich and fertile manors upon St. Benedict. Alfric, the claimant, was supported by extensive and powerful connexions; and Abbot Alfwine, the defendant, was well aware that there would be danger in the discussion of the dispute in public, or before the Folkmoot, (people's meeting, or county court); or, in other words, that the Thanes of the shire would do their best to give a judgment in favor of their compeer. The plea being removed into the Royal Court, the abbot acted with that prudence which so often calls forth the praises of the monastic scribe. He gladly emptied twenty marks of gold into the sleeve of the Confessor, (Edward,) and five marks of gold presented to Edith, the Fair, encouraged her to aid the [*119] bishop, and to exercise her gentle influence in his favor. Alfric, with equal wisdom, withdrew from prosecuting the hopeless cause, in which his opponent might possess an advocate in the royal judge, and a friend in the king's consort. Both parties, therefore, found it desirable to come to an agreement." --- 1 Palgrave's Rise and Progress, &c., p.650.

But Magna Carta has another provision for the trial of civil suits, that obviously had its origin in the corruption of the king's judges. The provision is, that four knights, to be chosen in every county, by the people of the county, shall sit with the king's judges, in the Common Pleas, in jury trials, (assizes,) on the trial of three certain kinds of suits, that were among the most important that were tried at all. The reason for this provision undoubtedly was, that the corruption and subserviency of the king's judges were so well known, that the people would not even trust them to sit alone in a jury trial of any considerable importance. The provision is this:

Chap. 22, (of John's Charter.) "Common Pleas shall not follow our court, but shall be holden in some certain place. Trials upon the writ of novel disseisin, and of Mort d'Ancester, and of Darrein Presentment, shall be taken but in their proper counties, and after this manner: We, or, if we be out of our realm, our chief justiciary, shall send two justiciaries through every county four times a year; fn66 who, with four knights chosen out of every shire, by the people, shall hold the assizes (juries) in the county, on the day and at the place appointed."

It would be very unreasonable to suppose that the king's judges were allowed to dictate the law to the juries, when the people would not even stiffer them to sit alone in jury trials, but themselves chose four men to sit with them, to keep them honest. fn67 [*120]

This practice of sending the king's judges into the counties to preside at jury trials, was introduced by the Norman kings. Under the Saxons it was not so. No officer of the king was allowed to preside at a jury trial; but only magistrates chosen by the people. fn68

But the following chapter of John's charter, which immediately succeeds the one just quoted, and refers to the same suits, affords very strong, not to say conclusive, proof, that juries judged of the law in civil suit --- that is, made the law, so far as their deciding according to their own notions of justice could make the law.

Chap. 23. "And if, on the county day, the aforesaid assizes cannot be taken, so many knights and freeholders shall remain, of those who shall have been present on said day, as that the judgments may be rendered by them, whether the business be more or less."[*121]

The meaning of this chapter is, that so many of the civil suits, as could not be tried on the day when the king's justices were present, should be tried afterwards, by the four knights before mentioned, and the freeholders, that is, the jury. It must be admitted, of course, that the juries, in these cases, judged the rnatters of law, as well as fact, unless it be presumed that the knights dictated the law to the jury — thing of which there is no evidence at all.

As a final proof on this point, there is a statute enacted seventy years after Magna Carta, which, although it is contrary to the common law, and there Ifore void, is nevertheless good evidence, inasmuch as it contains an acknowIledgment, on the part of the king himself, that juries had a right to judge of the whole matter, law and fact, in civil suits. The provision is this:

"It is ordained, that the justices assigned to take the assizes, shall not compel the jurors to say precisely whether it be disseisin, or not, so that they do show the truth of the deed, and seek aid of the justices. But if they will, of their own acconl, say that it is disseisin, or not, their verdict shall be admitted at their own peril." --- 13 Edward I., st. 1, ch. 3, sec. 2. (1285.)

The question of "disseisin, or not," was a question of law, as well as fact. This statute, therefore, admits that the law, as well as the fact, was in the hands of the jury. The statute is nevertheless void, because the king had no authority to give jurors a dispensation from the obligation imposed upon them by their oaths and the" law of the land," that they should "rnake known the truth according their (own) consciences." This they were hound to do, and there was no power in the king to absolve them from the duty. And the attempt of the king thus to absolve them, and authorize them to throw the case into the hands of the judges for decision, was simply an illegal and unconstitutional attempt to overturn the "law of the land, which he was sworn to maintain, and gather power into his own hands, through his judges. He had just as much constitutional power to enact that the jurors should not be compelled to declare the facts, but that they might leave them to be determined by the kinds judges, as he had to enact that they [*122] should not be compelled to declare the law, but might leave it to be decided by the king's judges. It was as much the legal duty of the jury to decide the law as to decide the fact; and no law of the king could affect their obligation to do either. And this statute is only one example of the numberless contrivances and usurpations which have been resorted to, for the purpose of destroying the original and genuine trial by jury.

CHAPTER V. OBJECTIONS ANSWERED.

The following objections will be made to the doctrines and the evidence presented in the preceding chapters.

1. That it is a maxim of the law, that the judges respond to the question of law, and juries only to the question of fact.

The answer to this objection is, that, since Magna Carta, judges have had more than six centuries in which to invent and promulgate pretended maxims to suit themselves; and this is one of them. Instead of expressing the law, it expresses nothing but the ambitious and lawless will of the judges themselves, and of those whose instruments they are. fn69

2. It will be asked, Of what use are the justices, if the jurors judge both of law and fact?

The answer is, that they are of use, l. To assist and enlighten the jurors, if they can, by their advice and information; such advice and information to be received only for what they may chance to be worth in the estimation of the jurors. 2. To do anything that may be necessary in regard to granting appeals and new trials.

3. It is said that it would be absurd that twelve ignorant men should have power to judge of the law, while justices learned in the law should be compelled to sit by and see the law decided erroneously.

One answer to this objection is, that the powers of juries [*124] are not granted to them on the supposition that they know the law better than the justices; but on the ground that the justices are untrustworthy, that they are exposed to bribes, are themselves fond of power and authority, and are also the dependent and subservient creatures of the legislature; and that to allow them to dictate the law, would not only expose the rights of parties to be sold for money, but would be equivalent to surrendering all the property, liberty, and rights of the people, unreseruedly into the hands of arbitrary power, (the legislature,) to be disposed of at its pleasure. The powers of juries, therefore, not only place a curb upon the powers of legislators and judges, but imply also an imputation upon their integrity and trustworthiness; and these are the reasons why legislators and judges have formerly entertained the intensest hatred of juries, and, so fast as they could do it without alarming the people for their liberties, have, by indirection, denied, undermined, and practically destroyed their power. And it is only since all the real power of juries has been destroyed, and they have become mere tools in the hands of legislators and judges, that they have become favorites with them.

Legislators and judges are necessarily exposed to all the temptations of money, fame, and power, to induce them to disregard justice between parties, and sell the rights, and violate the liberties of the people. Jurors, on the other hand, are exposed to none of these temptations. They are not liable to bribery, for they are unknown to the parties until they come into the jury-box. They can rarely gain either fame, power, or money, by giving erroneous decisions. Their offices are temporary, and they know that when they shall have executed them, they must return to the people, to hold all their own rights in life subject to the liability of such judgments, by their successors, as they themselves have given an example for. The laws of human nature do not permit the supposition that twelve men, taken by lot from the mass of the people, and acting under such circumstances, will all prove dishonest. It is a supposable case that they may not be sufficiently enlightened to know and do their whole duty, in all cases whatsoever; but that they should all prove dishonest, is not within [*125] the range of probability. A jury, therefore, insures to us –– what no other court does --- that first and indispensable requisite in a judicial tribunal, integrity.

4. It is alleged that if juries are allowed to judge of the law, they decide the law absolutely; that their decision must necessarily stand, be it right or wrong; and that this power of absolute decision would be dangerous in their hands, by reason of their ignorance of the law.

One answer is, that this power, which juries have of judging of the law, is not a power of absolute decision in all cases. For example, it is a power to declare imperatively that a man's property, liberty, or life, shall not be taken from him; but it is not a power to declare

imperatively that they shall be taken from him.

Magna Carta does not provide that the judgments of the peers shall be executed; but only that no other than their judgments shall ever be executed, so far as to take a party's goods, rights, or person, thereon.

A judgment of the peers may be reviewed, and invalidated, and a new trial granted. that practically a jury has no absolute power to take a party's goods, rights, or person. They have only an absolute veto upon their being taken by the government. The government is not bound to do everything that a jury may adjudge. It is only prohibited from doing anything --- (that is, from taking a party's goods, rights, or person) –– unless a jury have first adjudged it to be done.

But it will, perhaps, be said, that if an erroneous judgment of one jury should be reaffirmed by another, on a new trial, it must then be executed. But Magna Carta does not command even this although it might, perhaps, have been reasonably safe for it to have done --- for if two juries unanimously affirm the same thing, after all the light and aid that judges and lawyers can afford them, that fact probably furnishes as strong a presumption in favor of the correctness of their opinion, as can ordinarily be obtained in favor of a judgment, by any measures of a practical character for the administration of justice. Still, there is nothing in Magna Carta that compels the execution of even a second judgment of a jury. The only injunction of Magna Carta upon the [*126] government, as to what it shall do, on this point, is that it shall "do justice and right," without sale, denial, or delay. But this leaves the government all power of determining what is justice and right, except that it shall not consider anything as justice and rights –– so far as to carry it into execution against the goods, rights, or person of a party –– unless it be something which a jury have sanctioned.

If the government had no alternative but to execute all judgments of a jury indiscriminately, the power of juries would unquestionably be dangerous; for there is no doubt that they may sometimes give hasty and erroneous judgments. But when it is considered that their judgments can be reviewed, and new trials granted, this danger is, for all practical purposes, obviated.

If it be said that juries may successively give erroneous judgments, and that new trials cannot be granted indefinitely, the answer is, that so far as Magna Carta is concerned, there is nothing to prevent the granting of new trials indefinitely, if the judgments of juries are contrary to "justice and right." So that Magna Carta does not require any judgment whatever to be executed –– so far as to take a party's goods, rights, or person, thereon –– unless it be concurred in by both court and jury.

Nevertheless, we may, for the sake of the argument, suppose the existence of a practical, if not

legal, necessity, for executing some judgment or other, in cases where juries persist in disagreeing with the courts. In such cases, the principle of Magna Carta unquestionably is, that the uniform judgments of successive juries shall prevail over the opinion of the court. And the reason of this principle is obvious, viz., that it is the will of the country, and not the will of the court, or the government, that must determine what laws shall be established and enforced; that the concurrent judgments of successive juries, given in opposition to all the reasoning which judges and lawyers can offer to the contrary, must necessarily be presumed to be a truer exposition of the will of the country, than are the opinions of the judges.

But it may be said that, unless jurors submit to the control of the court, in matters of law, they may disagree among [*127] themselves, and never come to any judgment; and thus justice fail to be done.

Such a case is perhaps possible; but, if possible, it can occur but rarely; because, although one jury may disagree, a succession of juries are not likely to disagree — that is, on matters of natural law, or abstract justice. fn70 If such a thing should occur, it would almost certainly be owing to the attempt of the court to mislead them. It is hardly possible that any other cause should be adequate to produce such an effect; because justice comes very near to being a self-evident principle. The mind perceives it almost intuitively. If, in addition to this, the court be uniformly on the side of justice, it is not a reasonable supposition that a succession of juries should disagree about it. If, therefore, a succession of juries do disagree on the law of any case, the presumption is, not that justice fails of being done, but that injustice is prevented --- that injustice, which would be done, if the opirion of the court were suffered to control the jury.

For the sake of the argument, however, it may be admitted to be possible that justice should sometimes fail of being done through the disagreements of jurors, notwithstanding all the light which judges and lavyers can throw upon the question in issue. If it be asked what provision the trial by jury makes for such cases, the answer is, it makes none, and justice must fail being done, from the want of its being made sufficiently intelligible.

Under the trial by jury, justice can never be don --- that is, by a judgment that shall take a party's goods, rights, or person --- until that justice can be made intelligible or perceptible to the minds of all the jurors; or, at least, until it obtain the voluntary assent of all — an assent, which ought not to be given until the justice itself shall have become perceptible to all.[*128]

The principles of the trial by jury, then, are these:

1. That, in criminal cases, the accused is presumed innocent.

2. That, in civil cases, possession is presumptive proof of property; or, in other words, every man is presumed to be the rightful proprietor of whatever he has in his possession.

3. That these presumptions shall be overcome, in a court of justice, only by evidence, the sufficiency of which, and by law, the justice of which, are satisfactory to the understanding and consciences of all the jurors.

These are the bases on which the trial by jury places the property, liberty, and rights of every individual.

But some one will say, if these are the principles of the trial by jury, then it is plain that justice must often fail to be done. Admitting, for the sake of the argument, that this may be true, the compensation for it is, that positive injustice will also often fail to be done; whereas otherwise it would be done frequently. The very precautions used to prevent injustice being done, may often have the effect to prevent justice being done. But are we, therefore, to take no precautions against injustice? By no means, all will agree. The question then arise --- Does the trial by jury, as here explained, involve such extreme and unnecessary precautions against injustice, as to interpose unnecessary obstacles to the doing of justice? Men of different minds may very likely answer this question differently, according as they have more or less confidence in the wisdom and justice of legislators, the integrity and independence of judges, and the intelligence of jurors. This much, however, may be said in favor of these precautions, viz., that the history of the past, as well as our constant present experience, prove how much injustice may, and certainly will, be done, systematically and continually, for the want of these precautions — that is, while the law is authoritatively made and expounded by legislators and judges. On the other hand, we have no such evidence of how much justice may fail to be done, by reason of these precautions — that is, by reason of the law being left to the judgments and consciences of jurors. We can determine the former point --- that is, how much positive injustice is done under the first of these two [*129] systems --- because the system is in full operation; but we cannot determine how much justice would fail to be done under the latter system, because we have, in modern times, had no experience of the use of the precautions themselves. In ancient times, when these precautions were nominally in force, such was the tyranny of kings, and such the poverty, ignorance, and the inability of concert and resistance, on the part of the people, that the system had no full or fair operation. It, nevertheless, under all these disadvantages, impressed itself upon the understandings, and imbedded itself in the hearts, of the people, so as no other system of civil liberty has ever done.

But this view of the two systems compares only the injustice done, and the justice omitted to be done, in the individual cases adjudged, without looking beyond them. And some persons might, on first thought, argue that, if justice failed of being done under the one system, oftener than positive injustice were done under the other, the balance was in favor of the latter system. But such a weighing of the two systems against each other gives no true idea of their comparative

merits or demerits; for, possibly, in this view alone, the balance would not be very great in favor of either. To compare, or rather to contrast, the two, we must consider that, under the jury system, the failures to do justice would be only rare and exceptional cases; and would be owing either to the intrinsic difficulty of the questions, or to the fact that the parties had transacted their business in a manner unintelligible to the jury, and the effects would be confined to the individual or individuals interested in the particular suits. No permanent law would be established thereby destructive of the rights of the people in other like cases. And the people at large would continue to enjoy all their natural rights as before. But under the other system, whenever an unjust law is enacted by the legislature, and the judge imposes it upon the jury as authoritative, and they give a judgment in accordance therewith, the authority of the law is thereby established, and the whole people are thus brought under the yoke of that law; because they then understand that the law will be enforced against them in future, if they presume to exercise their rights, or [*130] refuse to comply with the exactions of the law. In this manner all unjust laws are established, and made operahve against the rights of the people.

The difference, then, between the two systems is this: Under the one system, a jury, at distant intervals, would (not enforce any positive injustice, but only) fail of enforcing justice, in a dark and difficult case, or in consequence of the parties not having transacted their business in a manner intelligible to a jury; and the plaintiff would thus fail of obtaining what was rightfully due him. And there the matter would end, for evil, though not for good; for thenceforth parties, warned of the danger of losing their rights, would be careful to transact their business in a more clear and intelligible manner. Under the other system --- the system of legislative and judicial authority --- positive injustice is not only done in every suit arising under unjust laws, --- that is, men's property, liberty, or lives are not only unjustly taken on those particular judgments, --- but the rights of the whole people are struck down by the authority of the laws thus enforced, and a wide-sweeping tyranny at once put in operation.

But there is another ample and conclusive answer to the argument that justice would often fail to be done, if jurors were allowed to be governed by their own consciences, instead of the direction of the justices, in matters of law. That answer is this:

Legitimate government can be formed only by the voluntary association of all who contribute to its support. As a voluntary association, it can have for its objects only those things in which the members of the association are all agreed. If, therefore, there be any justice, in regard to which all the parties to the government are not agreed, the objects of the association do not extend to it. fn71 [*131]

If any of the members wish more than this, — if they claim to have acquired a more extended knowledge of justice than is common to all, and wish to have their pretended discoveries carried into effect, in reference to themselves, — they must either form a separate association

for that purpose, or be content to wait until they can make their views intelligible to the people at large. They cannot claim or expect that the whole people shall practise the folly of taking on trust their pretended superior knowledge, and of committing blindly into their hands all their own interests, liberties, and rights, to be disposed of on principles, the justness of which the people themselves cannot comprehend.

A government of the whole, therefore, must necessarily confine itself to the administration of such principles of law as all the people, who contribute to the support of the government, can comprehend and see the justice of. And it can be confined within those limits only by allowing the jurors, who represent all the parties to the compact, to judge of the law, and the justice of the law, in all cases whatsoever. And if any justice be left undone, under these circumstances, it is a justice for which the nature of the association does not provide, which the association does not undertake to do, and which, as an association, it is under no obligation to do.

The people at large, the unlearned and common people, have certainly an indisputable right to associate for the establishment and maintenance of such a government as they themselves see the justice of, and feel the need of, for the promotion of their own interests, and the safety of their own rights, without at the same time surrendering all their property, liberty, and rights into the hands of men, who, under the pretence of a superior and incomprehensible knowledge of justice, may dispose of such property, liberties, and rights, in a manner to suit their own selfish and dishonest purposes. [*132]

If a government were to be established and supported solely by that portion of the people who lay claim to superior knowledge, there would be some consistency in their saying that the common people should not be received as jurors, with power to judge of the justice of the laws. But so long as the whole people (or all the male adults) are presumed to be voluntary parties to the government, and voluntary contributors to it support, there is no consistency in refusing to any one of them more than to another the right to sit as juror, with full power to decide for himself whether any law that is proposed to be enforced in any particular case, be within the objects of the association.

The conclusion, therefore, is, that, in a government formed by voluntary association, or on the theory of voluntary association, and voluntary support, (as all the North American governments are,) no law can rightfully be enforced by the association in its corporate capacity, against the goods, rights, or person of any individual, except it be such as all the members of the association agree that it may enforce. To enforce any other law, to the extent of taking a man's goods, rights, or person, would be making some of the parties to the association accomplices in what they regard as acts of injustice. It would also be making them consent to what they regard as the destruction of their own rights. These are things which no legitimate system or theory of government can require of any of the parties to it.

The mode adopted, by the trial by jury, for ascertaining whether all the parties to the government do approve of a particular law, is to take twelve men at random from the whole people, and accept their unanimous decision as representing the opinions of the whole. Even this mode is not theoretically accurate; for theoretical accuracy would require that every man, who was a party to the government, should individually give his consent to the enforcement of every law in every separate case. But such a thing would be impossible in practice. The consent of twelve men is therefore taken instead; with-the privilege of appeal, and (in case of error found by the appeal court) a new trial, to guard against possible mistakes. This system, it is assumed, will ascertain the sense of [*133] the whole people — "the country" — with sufficient accuracy for all practical purposes, and with as much accuracy as is practicable without too great inconvenience and expense.

5. Another objection that will perhaps be made to allowing jurors to judge of the law, and the justice of the law, is, that the law would be uncertain.

If, by this objection, it be meant that the law would be uncertain to the minds of the people at large, so that they would not know what the juries would sanction and what condemn, and would not therefore know practically what their own rights and liberties were under the law, the objection is thoroughly baseless and false. No system of law that was ever devised could be so entirely intelligible and certain to the minds of the people at large as this. Compared with it, the complicated systems of law that are compounded of the law of nature, of constitutional grants, of innumerable and incessantly changing legislative enactments, and of countless and contradictory judicial decisions, with no uniform principle of reason or justice running through them, are among the blindest of all the mazes in which unsophisticated minds were ever bewildered and lost. The uncertainty of the law under these systems has become a proverb. So great is this uncertainty, that nearly all men, learned as well as unlearned, shun the law as their enemy, instead of resorting to it for protection. They usually go into courts of justice, so called, only as men go into battle — when there is no alternative left for them. And even then they go into them as men go into dark labyrinths and caverns — with no knowledge of their own, but trusting wholly to their guides. Yet, less fortunate than other adventurers, they can have little confidence even in their guides, for the reason that the guides themselves know little of the mazes they are threading. They know the mode and place of entrance; but what they will meet with on their way, and what will be the time, mode, place, or condition of their exit; whether they will emerge into a prison, or not; whether wholly naked and destitute, or not; whether with their reputations left to them, or not; and whether in time or eternity; experienced and honest guides rarely venture to predict. Was there ever such fatuity as that of a nation of men [*134] madly bent on building up such labyrinths as these, for no other purpose than that of exposing all their rights of reputation, property, liberty, and life, to the hazards of being lost in them, instead of being content to live in the light of the open day of their own understandings?

What honest, unsophisticated man ever found himself involved in a lawsuit, that he did not

desire, of all things, that his cause might be judged of on principles of natural justice, as those principles were understood by plain men like himself? He would then feel that he could foresee the result. These plain men are the men who pay the taxes, and support the government. Why should they not have such an administration of justice as they desire, and can understand?

If the jurors were to judge of the law, and the justice of the law, there would be something like certainty in the administration of justice, and in the popular knowledge of the law, and men would govern themselves accordingly. There would be something like certainty, because every man has himself something like definite and clear opinions, and also knows something of the opinions of his neighbors, on matters of justice. And he would know that no statute, unless it were so clearly just as to command the unanimous assent of twelve men, who should be taken at random from the whole community, could be enforced so as to take from him his reputation, property, liberty, or life. What greater certainty can men require or need, as to the laws under which they are to live? If a statute were enacted by a legislature, a man, in order to know what was its true interpretation, whether it were constitutional, and whether it would be enforced, would not be under the necessity of waiting for years until some suit had arisen and been carried through all the stages of judicial proceeding, to a final decision. He would need only to use his own reason as to its meaning and its justice, and then talk with his neighbors on the same points. Unless he found them nearly unanimous in their interpretation and approbation of it, he would conclude that juries would not unite in enforcing it, and that it would consequently be a dead letter. And he would be safe in coming to this conclusion.

There would be something like certainty in the administra- [*135] tion of justice, and in the popular knowledge of the law, for the further reason that there would be little legislation, and men's rights would be left to stand almost solely upon the law of nature, or what was once called in England "the common law," (before so much legislation and usurpation had become incorporated into the common law,) in other words, upon the principles of natural justice. Of the certainty of this law of nature, or the ancient English common law, I may be excused for repeating here what, I have said on another occasion.

"Natural law, so far from being uncertain, when compared with statutory and constitutional law, is the only thing that gives any certainty at all to a very large portion of our statutory and constitutional law. The reason is this. The words in which statutes and constitutions are written are susceptible of so many different meanings, meanings widely different from, often directly opposite to, each other, in their bearing upon men's rights, that, unless there were some rule of interpretation for determining which of these various and opposite meanings are the true ones, there could be no certainty at all as to the meaning of the statutes and constitutions themselves. Judges could make almost anything they should please out of them. Hence the necessity of a rule of interpretation. And this rule is, that the language of statutes and constitutions shall be construed, as nearly as possible, consistently with natural law.

The rule assumes, what is true, that natural law is a thing certain in itself; also that it is capable of being learned. It assumes, furthermore, that it actually is understood by the legislators and judges who make and interpret the written law. Of necessity, therefore, it assumes further, that they (the legislators and judges) are incompetent to make and interpret the written law, unless they previously understand the natural law applicable to the same subject. It also assumes that the people must understand the natural law, before they can understand the written law.

It is a principle perfectly familiar to lawyers, and one that must be perfectly obvious to every other man that will reflect a moment, that, as a general rule, no one can know what the written law is, until he knows what it ought to be; that men are liable to be constantly misled by the various and conflicting senses of the same words, unless they perceive the true legal sense in which the words ought to be taken. And this true legal sense is the sense that is most nearly consistent with natural law of any that the words can be made to bear, consistently with [*136] the laws of language, and appropriately to the subjects to which they are applied.

Though the words contain the law, the words themselves are not the law. Were the words themselves the law, each single written law would be liable to embrace many different laws, to wit, as many different laws as there were different senses, and different combinations of senses, in which each and all the words were capable of being taken.

Take, for example, the Constitution of the United States. By adopting one or another sense of the single word "free," the whole instrument is changed. Yet the word free is capable of some ten or twenty different senses. So that, by changing the sense of that single word, some ten or twenty different constitutions could be made out of the same written instrument. But there are, we will suppose, a thousand other words in the constitution, each of which is capable of from two to ten different senses. So that, by changing the sense of only a single word at a time, several thousands of different constitutions would be made. But this is not all. Variations could also be made by changing the senses of two or more words at a time, and these variations could be run through all the changes and combinations of senses that these thousand words are capable of. We see, then, that it is no more than a literal truth, that out of that single instrument, as it now stands, without altering the location of a single word, might be formed, by construction and interpretation, more different constitutions than figures can well estimate.

But each written law, in order to be a law, must be taken only in some one definite and distinct sense; and that definite and distinct sense must be selected from the almost infinite variety of senses which its words are capable of. How is this selection to be made? It can be only by the aid of that perception of natural law, or natural justice, which men naturally possess.

Such, then, is the comparative certainty of the natural and the written law. Nearly all the

certainty there is in the latter, so far as it relates to principles, is based upon, and derived from, the still greater certainty of the former. In fact, nearly all the uncertainty of the laws under which we live, — which are a mixture of natural and written laws, arises from the difficulty of construing, or, rather, from the facility of misconstruing, the written law; while natural law has nearly or quite the same certainty as mathematics. On this point, Sir William Jones, one of the most learned judges that have ever lived, learned in Asiatic as well as European law, says, — and [*137] the fact should be kept forever in mind, as one of the most important of all truths: "It is pleasing to remark, the similarity, or, rather, the identity of those conclusions which pure, unbiased reason, in all ages; and nations, seldom fails to draw, in such juridical inquiries as are not fettered and manacled by positive institutions." fn72 In short, the simple fact that the written law must be interpreted by the natural, is, of itself, a sufficient confession of the superior certainty of the latter.

The written law, then, even where it can be construed consistently with the natural, introduces labor and obscurity, instead of shutting them out. And this must always be the case, because words do not create ideas, but only recall them; and the same word may recall many different ideas. For this reason, nearly all abstract principles can be seen by the single mind more clearly than they can be expressed by words to another. This is owing to the imperfection of language, and the different senses, meanings, and shades of meaning, which different individuals attach to the same words, in the same circumstances. fn73

Where the written law cannot be construed consistently with the natural, there is no reason why it should ever be enacted at all. It may, indeed, be sufficiently plain and certain to be easily understood; but its certainty and plainness are but a poor compensation for its injustice. Doubtless a law forbidding men to drink water, on pain of death, might be made so intelligible as to cut off all discussion as to its meaning; but would the intelligibleness of such a law be any equivalent for the right to drink water? The principle is the same in regard to all unjust laws. Few persons could [*138] reasonably feel compensated for the arbitrary destruction of their rights, by having the order for their destruction made known beforehand, in terms so distinct and unequivocal as to admit of neither mistake nor evasion. Yet this is all the compensation that such laws offer.

Whether, therefore, written laws correspond with, or differ from, the natural, they are to be condemned. In the first case, they are useless repetitions, introducing labor and obscurity. In the latter case, they are positive violations of men's rights. There would be substantially the same reason in enacting mathematics by statute, that there is in enacting natural law. Whenever the natural law is sufficiently certain to all men's minds to justify its being enacted, it is sufficiently certain to need no enactment. On the other hand, until it be thus certain, there is danger of doing injustice by enacting it; it should, therefore, be left open to be discussed by anybody who may be disposed to question it, and to be judged of by the proper tribunal, the judiciary. fn74

It is not necessary that legislators should enact natural law in order that it may be known to the people, because that would be presuming that the legislators already understand it better than the people, — a fact of which I am not aware that they have ever heretofore given any very satisfactory evidence. The same sources of knowledge on the subject are open to the people that are open to the legislators, and the people must be presumed to know it as well as they.

The objections made to natural law, on the ground of obscurity, are wholly unfounded. It is true, it must be learned, like any other science; but it is equally true that it is very easily learned. Although as illimitable in its applications as the infinite relations of men to each other, it is, nevertheless, made up of simple elementary principles, of the truth and justice of which every ordinary mind has an almost intuitive perception. It is the science of justice, — and almost all men have the same perceptions of what constitutes justice, or of what justice requires, when they understand alike the facts from which their inferences are to be drawn. Men living in contact with each other, and having intercourse together, cannot avoid learning [*139] natural law, to a very great extent, even if they would. The dealings of men with men, their separate possessions, and their individual wants, are continually forcing upon their minds the questions, — Is this act just? or is it unjust? Is this thing mine? or is it his? And these are questions of natural law; questions, which, in regard to the great mass of cases, are answered alike by the human mind everywhere.

Children learn many principles of natural law at a very early age. For example: they learn that when one child has picked up an apple or a flower, it is his, and that his associates must not take it from him against his will. They also learn that if he voluntarily exchange his apple or flower with a playmate, for some other article of desire, he has thereby surrendered his right to it, and must not reclaim it. These are fundamental principles of natural law, which govern most of the greatest interests of individuals and society; yet children learn them earlier than they learn that three and three are six, or five and five, ten. Talk of enacting natural law by statute, that it may be known! It would hardly be extravagant to say, that, in nine cases in ten, men learn it before they have learned the language by which we describe it. Nevertheless, numerous treatises are written on it, as on other sciences. The decisions of courts, containing their opinions upon the almost endless variety of cases that have come before them, are reported; and these reports are condensed, codified, and digested, so as to give, in a small compass, the facts, and the opinions of the courts as to the law resulting from them. And these treatises, codes, and digests are open to be read of all men. And a man has the same excuse for being ignorant of arithmetic, or any other science, that he has for being ignorant of natural law. He can learn it as well, if he will, without its being enacted, as he could if it were.

If our governments would but themselves adhere to natural law, there would be little occasion to complain of the ignorance of the people in regard to it. The popular ignorance of law is attributable mainly to the innovations that have been made upon natural law by legislation; whereby our system has become an incongruous mixture of natural and statute law, with no

uniform principle pervading it. To learn such a system, if system it can be called, and if learned it can be, is a matter of very similar difficulty to what it would be to learn a system of mathematics, which should consist of the mathematics of nature, interspersed with such other mathematics as might be created by legislation, in violation of all the natural principles of numbers and quantities.

But whether the difficulties of learning natural law be [*140] greater or less than here represented, they exist in the nature of things, and cannot be removed. Legislation, instead of removing, only increases them. This it does by innovating upon natural truths and principles, and introducing jargon and contradiction, in the place of order, analogy, consistency, and uniformity.

Further than this; legislation does not even profess to remove the obscurity of natural law. That is no part of its object. It only professes to substitute something arbitrary in the place of natural law. Legislators generally have the sense to see that legislation will not make natural law any clearer than it is. Neither is it the object of legislation to establish the authority of natural law. Legislators have the sense to see that they can add nothing to the authority of natural law, and that it will stand on its own authority, unless they overturn it. The whole object of legislation, excepting that legislation which merely makes regulations, and provides instrumentalities for carrying other laws into effect, is to overturn natural law, and substitute for it the arbitrary will of power. In other words, the whole object of it is to destroy men's rights. At least, such is its only effect; and its designs must be inferred from its effect. Taking all the statutes in the country, there probably is not one in a hundred, — except the auxiliary ones just mentioned, — that does not violate natural law; that does not invade some right or other.

Yet the advocates of arbitrary legislation are continually practising the fraud of pretending that unless the legislature make the laws, the laws will not be known. The whole object of the fraud is to secure to the government the authority of making laws that never ought to be known."

In addition to the authority already cited, of Sir William Jones, as to the certainty of natural law, and the uniformity of men's opinions in regard to it, I may add the following:

"There is that great simplicity and plainness in the Common Law, that Lord Coke has gone so far as to assert, (and Lord Bacon nearly seconds him in observing,) that 'he never knew two questions arise merely upon common law; but that they were mostly owing to statutes ill-penned and overladen with provisos.' "— 3 Eunomus, 157-8.

If it still be said that juries would disagree, as to what was natural justice, and that one jury

would decide one way, and another jury another; the answer is, that such a thing is hardly credible, as that twelve men, taken at random from the people [*141] at large, should unanimously decide a question of natural justice one way, and that twelve other men, selected in the same manner, should unanimously decide the same question the other way, unless they were misled by the justices. If, however, such things should sometimes happen, from any cause whatever, the remedy is by appeal, and new trial. [*142]

CHAPTER VI. JURIES OF THE PRESENT DAY ILLEGAL.

It may probably be safely asserted that there are, at this day, no legal juries, either in England or America. And if there are no legal juries, there is, of course, no legal trial, nor "judgment," by jury.

In saying that there are probably no legal juries, I mean that there are probably no juries appointed in conformity with the principles of the common law.

The term jury is a technical one, derived from the common law; and when the American constitutions provide for the trial by jury, they provide for the common law trial by jury; and not merely for any trial by jury that the government itself may chance to invent, and call by that name. It is the thing, and not merely the name, that is guarantied. Any legislation, therefore, that infringes any essential principle of the common law, in the selection of jurors, is unconstitutional; and the juries selected in accordance with such legislation are, of course, illegal, and their judgments void.

It will also be shown, in a subsequent chapter, fn75 that since Magna Carta, the legislative power in England (whether king or parliament) has never had any constitutional authority to infringe, by legislation, any essential principle of the common law in the selection of jurors. All such legislation is as much unconstitutional and void, as though it abolished the trial by jury altogether. In reality it does abolish it.

What, then, are the essential principles of the common law, controlling the selection of jurors?

They are two. [*143]

1. That all the freemen, or adult male members of the state, shall be eligible as jurors. fn76

Any legislation which requires the selection of jurors to be made from a less number of

freemen than the whole, makes the jury selected an illegal one.

If a part only of the freemen, or members of the state, are eligible as jurors, the jury no longer represent "the country," but only a part of "the country."

If the selection of jurors can be restricted to any less number of freemen than the whole, it can be restricted to a very small proportion of the whole; and thus the government be taken out of the hands of " the country," or the whole people, and be thrown into the hands of a few.

That, at common law, the whole body of freemen were eligible as jurors, is sufficiently proved, not only by the reason of the thing, but by the following evidence:

1. Everybody must be presumed eligible, until the contrary be shown. We have no evidence, that I am aware of, of a prior date to Magna Carta, to disprove that all freemen were eligible as jurors, unless it be the law of Ethelred, which requires that they be elderly fn77 men. Since no specific age is given, it is probable, I think, that this statute meant nothing more than that they be more than twenty-one years old. If it meant anything more, it was probably contrary to the common law, and therefore void.

2. Since Magna Carta, we have evidence showing quite conclusively that all freemen, above the age of twenty-one years, were eligible as jurors.

The Mirror of Justices, (written within a century after Magna Carta,) in the section "Of Judges" — that is, jurors — says:

"All those who are not forbidden by law may be judges [*144] (jurors). To women it is forbidden by law that they be judges; and thence it is, that feme coverts are exempted to do suit in inferior courts. On the other part, a villein cannot be a judge, by reason of the two estates, which are repugnants; persons attainted of false judgments cannot be judges, nor infants, nor any under the age of twenty-one years, nor infected persons, nor idiots, nor madmen, nor deaf, nor dumb, nor parties in the pleas, nor men excommunicated by the bishop, nor criminal persons. * * And those who are not of the Christian faith cannot be judges, nor those who are out of the king's allegiance." — Mirror of Justices, 59-60.

In the section "Of Inferior Courts," it is said:

"From the first assemblies came consistories, which we now call courts, and that in divers

places, and in divers manners: whereof the sheriffs held one monthly, or every five weeks according to the greatness or largeness of the shires. And these courts are called county courts, where the judgment is by the suitors, if there be no writ, and is by warrant of jurisdiction ordinary. The other inferior courts are the courts of every lord of the fee, to the likeness of the hundred courts. * * There are other inferior courts which the bailiffs hold in every hundred, from three weeks to three weeks, by the suitors of the freeholders of the hundred. All the tenants within the fees are bounden to do their suit there, and that not for the service of their persons, but for the service of their fees. But women, infants within the age of twenty-one years, deaf, dumb, idiots, those who are indicted or appealed of mortal felony, before they be acquitted, diseased persons, and excommunicated persons are exempted from doing suit." — Mirror of Justices, 50-51.

In the section "Of the Sheriff's Turns," it is said:

"The sheriff's by ancient ordinances hold several meetings twice in the year in every hundred; where all the freeholders within the hundred are bound to appear for the service of their fees." — Mirror of Justices, 50.

The following statute was passed by Edward I., seventy years after Magna Carta:

"Forasmuch also as sheriffs, hundreders, and bailiffs of liberties, have used to grieve those which be placed under them, putting in assizes and juries men diseased and decrepit, and having continual or sudden disease; and men also that dwelled not in the country at the time of the summons; and summon also an unreasonable number of jurors, for to extort [*145] money from some of them, for letting them go in peace, and so the assizes and juries pass many times by poor men, and the rich abide at home by reason of their bribes; it is ordained that from henceforth in one assize no more shall be summoned than four and twenty; and old men above three score and ten years, being continually sick, or being diseased at the time of the summons, or not dwelling in that country, shall not be put in juries of petit assizes." St. 13 Edward I., ch. 38. (1285.)

Although this command to the sheriff's and other officers, not to summon, as jurors, those who, from age and disease, were physically incapable of performing the duties, may not, of itself, afford any absolute or legal implication, by which we can determine precisely who were, and who were not, eligible as jurors at common law, yet the exceptions here made nevertheless carry a seeming confession with them that, at common law, all male adults were eligible as jurors.

But the main principle of the feudal system itself, shows that all the full and free adult male

members of the state — that is, all who were free born, and had not lost their civil rights by crime, or otherwise — must, at common law, have been eligible as jurors. What was that principle? It was, that the state rested for support upon the land, and not upon taxation levied upon the people personally. The lands of the country were considered the property of the state, and were made to support the state in this way. A portion of them was set apart to the king, the rents of which went to pay his personal and official expenditures, not including the maintenance of armies, or the administration of justice. War and the administration of justice were provided for in the following manner. The freemen, or the free-born adult male members of the state — who had not forfeited their political rights — were entitled to land of right, (until all the land was taken up,) on condition of their rendering certain military and civil services, to the state. The military services consisted in serving personally as soldiers, or contributing an equivalent in horses, provisions, or other military supplies. The civil services consisted, among other things, in serving as jurors (and, it would appear, as witnesses) in the courts of justice. For these services [*146] they received no compensation other than the use of their lands. In this way the state was sustained; and the king had no power to levy additional burdens or taxes upon the people. The persons holding lands on these terms were called freeholders — in later times freemen — meaning free and full members of the state.

Now, as the principle of the system was that the freeholders held their lands of the state, on the condition of rendering these military and civil services as rents for their lands, the principle implies that all the freeholders were liable to these rents, and were therefore eligible as jurors. Indeed, I do not know that it has ever been doubted that, at common law, all the freeholders were eligible as jurors. If all had not been eligible, we unquestionably should have had abundant evidence of the exceptions. And if anybody, at this day, allege any exceptions, the burden will be on him to prove them. The presumption clearly is that all were eligible.

The first invasion which I find made, by the English statutes, upon this common law principle, was made in I285, seventy years after Magna Carta. It was then enacted as follows:

"Nor shall, any be put in assizes or juries, though they ought to be taken in their own shire, that hold a tenement of less than the value of twenty shillings yearly. And if such assizes and juries be taken out of the shire, no one shall be placed in them who holds a tenement of less value than forty shillings yearly at the least, except such as be witnesses in deeds or other writings, whose presence is necessary, so that they be able to travel." — St. 13. Edward I., ch. 38. (1285.)

The next invasion of the common law, in this particular, was made in 1414, about two hundred years after Magna Carta, when it was enacted:

"That no person shall be admitted to pass in any inquest upon trial of the death of a man, nor

in any inquest betwixt party and party in plea real, nor in plea personal, whereof the debt or the damage declared amount to forty marks, if the same person have not lands or tenements of the yearly value of forty shillings above all charges of the same." — 2 Henry V., st. 2, ch. 3. (1414.) [*147]

Other statutes on this subject of the property qualifications of jurors, are given in the note. fn78 [*148]

From these statutes it will be seen that, since 1285, seventy years after Magna Carta, the common law right of all free British subjects to eligibility as jurors has been abolished, and the qualifications of jurors have been made a subject of arbitrary legislation. In other words, the government has usurped the authority of selecting the jurors that were to sit in judgment upon its own acts. This is destroying the vital principle of the trial by jury itself, which is that the legislation of the government shall be subjected to the judgment of a tribunal, taken indiscriminately from the whole people, without any choice by the government, and over which the government can exercise no control. If the government can select the jurors, it will, of course, select those whom it supposes will be favorable to its enactments. And an exclusion of any of the freemen from eligibility is a selection of those not excluded.

It will be seen, from the statutes cited, that the most absolute authority over the jury box -- that is, over the right of the people to sit in juries -- has been usurped by the govern- [*149] ment; that the qualifications of jurors have been repeatedly changed, and made to vary from a freehold of ten shillings yearly, to one of "twenty pounds by the year at least above reprises." They have also been made different, in the counties of Southampton, Surrey, and Sussex, from what they were in the other counties; different in Wales from what they were in England; and different in the city of London, and in the county of Middlesex, from what they were in any other part of the kingdom.

But this is not all. The government has not only assumed arbitrarily to classify the people, on the basis of property, but it has even assumed to give to some of its judges entire and absolute personal discretion in the selection of the jurors to be impaneled in criminal cases, as the following statutes show.

"Be it also ordained and enacted by the same authority, that all panels hereafter to be returned, which be not at the suit of any party, that shall be made and put in afore any justice of gaol delivery or justices of peace in their open sessions to inquire for the king, shall hereafter be reformed by additions and taking out of names of persons by discretion of the same justices before whom such panel shall be returned; and the same justices shall hereafter command the sheriff, or his ministers in his absence, to put other persons in the same panel by their discretions; and that panel so hereafter to be made, to be good and lawful. This act to

endure only to the next Parliament " 11 Henry VII., ch. 24, sec. 6. (1495.)

This act was continued in force by 1 Henry VIII, ch. 11, (1509,) to the end of the then next Parliament.

It was reenacted, and made perpetual, by 3 Henry VIII., ch. 12. (1511.)

These acts gave unlimited authority to the king's' justices to pack juries at their discretion; and abolished the last vestige of the common law right of the people to sit as jurors, and judge of their own liberties, in the courts to which the acts applied.

Yet, as matters of law, these statutes were no more clear violations of the common law, the fundamental and paramount "law of the land," than were those statutes which affixed the property qualifications before named; because, if the king, or the government, can select the jurors on the ground of property, it can select them on any other ground whatever. [*150]

Any infringement or restriction of the common law right of the whole body of the freemen of the kingdom to eligibility as jurors, was legally an abolition of the trial by jury itself. The juries no longer represented "the country," but only a part of the country; that part, too, on whose favor the government chose to rely for the maintenance of its power, and which it therefore saw fit to select as being the most reliable instruments for its purposes of oppression towards the rest. And the selection was made on the same principle, on which tyrannical governments generally select their supporters, viz., that of conciliating those who would be most dangerous as enemies, and most powerful as friends that is, the wealthy. fn79

These restrictions, or indeed any one of them, of the right of eligibility as jurors, was, in principle, a complete abolition of the English constitution; or, at least, of its most vital and valuable part. It was, in principle, an assertion of a right, on the part of the government, to select the individuals who were to determine the authority of its own laws, and the extent of its own powers. It was, therefore, in effect, the assertion of a right, on the part of the government itself, to determine its own powers, and the authority of its own legislation, over the people; and a denial of all right, on the part of the people, to judge of or determine their own liberties against the government. It was, therefore, in reality, a declaration of entire absolutism on the part of the government. It was an act as purely despotic, in principle, as would have been the express abolition of all juries whatsoever. By "the law of the land," which the kings were sworn to maintain, every free adult male British subject was eligible to the jury box, with full power to exercise his own judgment as to the authority and obligation of every statute of the king, which might come [*151] before him. But the principle of these statutes (fixing the qualifications of jurors) is, that nobody is to sit in judgment upon the acts or legislation of the king, or the

government, except those whom the government itself shall select for that purpose. A more complete subversion of the essential principles of the English constitution could not be devised.

The juries of England are illegal for another reason, viz., that the statutes cited require the jurors (except in London and a few other places) to be freeholders. All the other free British subjects are excluded; whereas, at common law, all such subjects are eligible to sit in juries, whether they be freeholders or not.

It is true, the ancient common law required the jurors to be freeholders; but the term freeholder no longer expresses the same idea that it did in the ancient common law; because no land is now holden in England on the same principle, or by the same tenure, as that on which all the land was held in the early times of the common law.

As has heretofore been mentioned, in the early times of the common law the land was considered the property of the state; and was all holden by the tenants, so called, (that is, holders,) on the condition of their rendering certain military and civil services to the state, (or to the king as the representative of the state,) under the name of rents. Those who held lands on these terms were called free tenants, that is, free holders meaning free persons, or members of the state, holding lands to distinguish them from villeins, or serfs, who were not members of the state, but held their lands by a more servile tenure, and also to distinguish them from persons of foreign birth, outlaws, and all other persons, who were not members of the state.

Every freeborn adult male Englishman (who had not lost his civil right" by crime or otherwise) was entitled to land of right; that is, by virtue of his civil freedom, or membership of the body politic. Every member of the state was therefore a freeholder; and every freeholder was a member of the state. And the members of the state were therefore called freeholders. But what is material to be observed, is, that a man's right to [*152] land was an incident to his civil freedom; not his civil freedom an incident to his right to land. He was a freeholder because he was a freeborn member of the state; and not a freeborn member of the state because he was a freeholder; for this last would be an absurdity.

As the tenures of lands changed, the term freeholder lost its original significance, and no longer described a man who held land of the state by virtue of his civil freedom, but only one who held it in fee-simple that is, free of any liability to military or civil services. But the government, in fixing the qualifications of jurors, has adhered to the term freeholder after that term has ceased to express the thing originally designated by it.

The principle, then, of the common law, was, that every freeman, or freeborn male Englishman, of adult age, &c;., was eligible to sit in juries, by virtue of his civil freedom, or his being a

member of the state, or body politic. Rut the principle of the present English statutes is, that a man shall have a right to sit in juries because he owns lands in fee-simple. At the common law a man was born to the right to sit in juries. By the present statutes he buys that right when he buys his land. And thus this, the greatest of all the political rights of an Englishman, has become a mere article of merchandise; a thing that is bought and sold in the market for what it will bring.

Of course, there can be no legality in such juries as these; but only in juries to which every free or natural born adult male Englishman is eligible.

The second essential principle of the common law, controlling the selection of jurors, is, that when the selection of the actual jurors comes to be made, (from the whole body of male adults,) that selection shall be made in some mode that excludes the possibility of choice on the part of the government.

Of course, this principle forbids the selection to be made by any officer of the government.

There seem to have been at least three modes of selecting the jurors, at the common law. 1. By lot. fn80 2. Two knights, or other freeholders, were appointed, (probably by the sheriff,) [*153] to select the jurors. 3. By the sheriff, bailiff, or other person, who held the court, or rather acted as its ministerial officer. Probably the latter mode may have been the most common, although there may be some doubt on this point.

At the common law the sheriff's, bailiffs, and other officers were chosen by the people, instead of being appointed by the king. (4 Blackstone, 413. Introduction to Gilbert's History of the Common Pleas, p. 2; note, and p. 4.) This has been shown in a former chapter. fn81 At common law, therefore, jurors selected by these officers were legally selected, so far as the principle now under discussion is concerned; that is, they were not selected by any officer who was dependent on the government.

But in the year 1315, one hundred years after Magna Carta, the choice of sheriff's was taken from the people, and it was enacted:

"That the sheriffs shall henceforth be assigned by the chancellor, treasurer, barons of the exchequer, and by the justices. And in the absence of the chancellor, by the treasurer, barons and justices." 9 Edward II., st. 2. (1315.)

These officers, who appointed the sheriffs, were themselves appointed by the king, and held

their offices during his pleasure. Their appointment of sheriffs was, therefore, equivalent to an appointment by the king himself. And the sheriffs, thus appointed, held their offices only during the pleasure of the king, and were of course mere tools of the king; and their selection of jurors was really a selection by the king himself. In this manner the king usurped the selection of the jurors who were to sit in judgment upon his own laws.

Here, then, was another usurpation, by which the common law trial by jury was destroyed, so far as related to the county courts, in which the sheriff's presided, and which were the most important courts of the kingdom. From this cause alone, if there were no other, there has not been a legal jury in a county court in England, for more than five hundred years.

In nearly or quite all the States of the United States the juries are illegal, for one or the other of the same reasons that make the juries in England illegal. [*154]

In order that the juries in the United States may be legal that is, in accordance with the principles of the common law it is necessary that every adult male member of the state should have his name in the jury box, or be eligible as a juror. Yet this is the case in hardly a single state.

In New Jersey, Maryland, North Carolina, Tennessee, and Mississippi, the jurors are required to be freeholders. But this requirement is illegal, for the reason that the term freeholder, in this country, has no meaning analogous to the meaning it had in the ancient common law.

In Arkansas, Missouri, Indiana, and Alabama, jurors are required to be "freeholders or householders." Each of these requirements is illegal.

In Florida, they are required to be "householders."

In Connecticut, Maine, Ohio, and Georgia, jurors are required to have the qualifications of "electors."

In Virginia, they are required to have a property qualification of one hundred dollars.

In Maine, Massachusetts, Vermont, Connecticut, New York, Ohio, Indiana, Michigan, and Wisconsin, certain civil authorities of the towns, cities, and counties are authorized to select, once in one, two, or three years, a certain number of the people a small number compared with the whole from whom jurors are to be taken when wanted; thus disfranchising all except, the

few thus selected.

In Maine and Vermont, the inhabitants, by vote in town meeting, have a veto upon the jurors selected by the authorities of the town.

In Massachusetts, the inhabitants, by vote in town meeting, can strike out any names inserted by the authorities, and insert others; thus making jurors elective by the people, and, of course, representatives only of a majority of the people.

In Illinois, the jurors are selected, for each term of court, by the county commissioners.

In North Carolina, "the courts of pleas and quarter sessions shall select the names of such persons only as are freeholders, and as are well qualified to act as jurors, &c;.; thus giving the courts power to pack the juries." (Revised Statutes, 147.) [*155]

In Arkansas, too, "It shall be the duty of the county court of each county * to make out and cause to be delivered to the sheriff a list of not less than sixteen, nor more than twenty-three persons, qualified to serve as grand jurors;" and the sheriff is to summon such persons to serve as grand jurors.

In Tennessee, also, the jurors are to be selected by the county courts.

In Georgia, the jurors are to be selected by "the justices of the inferior courts of each county, together with the sheriff and clerk, or a majority of them."

In Alabama, "the sheriff; judge of the county court, and clerks of the circuit and county courts," or "a majority of" them, select the jurors.

In Virginia, the jurors are selected by the sheriffs; but the sheriff's are appointed by the governor of the state, and that is enough to make the juries illegal. Probably the same objection lies against the legality of the juries in some other states.

How jurors are appointed, and what are their qualifications, in New Hampshire, Rhode Island, Pennsylvania, Delaware, South Carolina, Kentucky, Iowa, Texas, and California, I know not. There is little doubt that there is some valid objection to them, of the kinds already suggested, in all these states.

In regard to jurors in the courts of the United States, it is enacted, by act of Congress:

"That jurors to serve in the courts of the United States, in each state respectively, shall have the like qualifications and be entitled to the like exemptions, as jurors of the highest court of law of such state now have and are entitled to, and shall hereafter, from time to time, have and be entitled to, and shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries now practised and hereafter to be practised therein, in so far as such mode may be practicable by the courts of the United States, or the officers thereof; and for this purpose, the said courts shall have power to make all necessary rules and regulations for conforming the designation and empanelling of jurors, in substance, to the laws and usages now in force in such state; and, further, shall have power, by role or order, from time to time, to conform the same to any change in these respects which may be hereafter adopted by the legislatures of the respective states for the state courts." St. 1840, ch. 47, Statutes at Large, vol. 5, p. 394. [*156]

In this corrupt and lawless manner, Congress, instead of taking care to preserve the trial by jury, so far as they might, by providing for the appointment of legal juries incomparably the most important of all our judicial tribunals, and the only ones on which the least reliance can be placed for the preservation of liberty have given the selection of them over entirely to the control of an indefinite number of state legislatures, and thus authorized each state legislature to adapt the juries of the United States to the maintenance of any and every system of tyranny that may prevail in such state.

Congress have as much constitutional right to give over all the functions of the United States government into the hand of the state legislatures, to be exercised within each state in such manner as the legislature of such state shall please to exercise them, as they have to thus give up to these legislatures the selection of juries for the courts of the United States.

There has, probably, never been a legal jury, nor a legal trial by jury, in a single court of the United States, since the adoption of the constitution.

These facts show how much reliance can be placed in written constitutions, to control the action of the government, and preserve the liberties of the people.

If the real trial by jury had been preserved in the courts of the United States that is, if we had had legal juries, and the jurors had known their rights it is hardly probable that one tenth of the past legislation of Congress would ever have been enacted, or, at least, that, if enacted, it could have been enforced.

Probably the best mode of appointing jurors would be this: Let the names of all the adult [male] [9] members of the state, in each township, be kept in a jury box, by the officers of the township; and when a court is to be held for a county or other district, let the officers of a sufficient number of townships be required (without seeing the names) to draw out a name from their boxes respectively, to be returned to the court as a juror. This mode of appointment would guard against collusion and selection; and juries so appointed would be likely to be a fair epitome of "the country." [*157]

CHAPTER VII. ILLEGAL JUDGES.

It is a principle of Magna Carta, and therefore of the trial by jury, (for all parts of Magna Carta must be construed together,) that no judge or other officer appointed by the king, shall preside in jury trials, in criminal cases, or "pleas of the crown."

This provision is contained in the great charters of both John and Henry, and is second in importance only to the provision guaranteeing the trial by jury, of which it is really a part. Consequently, without the observance of this prohibition, there can be no genuine or legal that is, common law trial by jury. At the common law, all officers who held jury trials, whether in civil or criminal cases, were chosen by the people. fn82[*158]

But previous to Magna Carta, the kings had adapted the practice of sending officers of their own appointment, called justices, into the counties, to hold jury trials in some cases; and Magna Carta authorizes this practice to be continued so far as it relates to three kinds of civil actions, to wit: "novel disseisin, mort de ancestor, and darrein presentment;" fn83 but specially forbids its being extended to criminal cases, or pleas of the crown.

This prohibition is in these words:

"Nullus vicecomes, constabularius, coronator, vel alii balivi nostri, teneant placita coronae nostrae." (No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of our crown.) John's Charter, ch. 53, Henry's ditto, ch. 17.

Some persons seem to have supposed that this was a prohibition merely upon officers bearing the specific names of "sheriffs, constables, coroners and bailiffs," to hold criminal trials. But such is not the meaning. If it were, the name [*159] could be changed, and the thing retained; and thus the prohibition be evaded. The prohibition applies (as will presently be seen) to all officers of the king whatsoever; and it sets up a distinction between officers of the king, ("our

bailiffs,") and officers chosen by the people.

The prohibition upon the king's justices sitting in criminal trials, is included in the words "vel alii balivi nostri," (or other our bailiffs.) The word bailif was anciently a sort of general name for judicial officers and persons employed in and about the administration of justice. In modern times its use, as applied to the higher grades of judicial officers, has been superseded by other words; and it therefore now, more generally, if not universally, signifies an executive or police officer, a servant of courts, rather than one whose functions are purely judicial.

The word is a French word, brought into England by the Normans.

Coke says, "Baylife is a French word, and signifies an officer concerned in the administration of justice of a certain province; and because a sheriff hath an office concerning the administration of justice within his county, or bailiwick, therefore be called his county baliva sua, (his bailiwick.)

"I have heard great question made what the true exposition of this word balivus is. In the statute of Magna Carta, cap. 28, the letter of that statute is, nullus balivus de eaetero ponat aliqnem ad legem manifestam nec ad juramentum simplici loquela sua sine testibus fidelibus ad hoc inductis." (No bailiff from henceforth shall put any one to his open law, nor to an oath (of self-exculpation) upon his own simple accusation, or complaint, without faithful witnesses brought in for the same.) "And some have said that balivus in this statute signifieth any judge; for the law must be waged and made before the judge. And this statute (say they) extends to the courts of common pleas, king's bench, &c;., for they must bring with them fideles testes, (faithful witnesses,) &c;., and so hath been the usage to this day." 1 Coke's Inst., 168 b.

Coke makes various references, in his margin to Bracton, Fleta, and other authorities, which I have not examined, but which, I presume, support the opinion expressed in this quotation.

Coke also, in another place, under the head of the chapter [*160] just cited from Magna Carta, that "no bailiff shall put any man to his open law," &c;., gives the following commentary upon it, from the Mirror of Justices, from which it appears that in the time of Edward I., (1272 to 1307,) this word balivus was understood to include all judicial, as well as all other, officers of the king.

The Mirror says: "The point which forbiddeth that no bailiff put a freeman to his oath without suit, is to be understood in this manner, that no justice, no minister of the king, nor other steward, nor bailiff, have power to make a freeman make oath, (of self-exculpation,) without the king's command, fn84 nor receive any plaint, without witnesses present who testify the

plaint to be true." Mirror of Justices, ch. 5, sec. 2, p. 257.

Coke quotes this commentary, (in the original French,) and then endorses it in these words:

"By this it appeareth, that under this word balivus, in this act, is comprehended every justice, minister of the king, steward, and bailiff." 2 Inst., 44.

Coke also, in his commentary upon this very chapter of Magna Carta, that provides that "no sheriff; constable; coroner, or other our bailiffs, shall hold pleas of our crown," expresses the opinion that it "is a general law," (that is, applicable to all officers of the king,) " by reason of the words vel alii balivi nostri, (or other our bailiffs,) under which words are comprehended all judges or justices of any courts of justice. "And he cites a decision in the king's bench, in the 17th year of Edward I., (1289,) as authority; which decision he calls "a notable and leading judgment." 2 Inst., 30 1.

And yet Coke, in flat contradiction of this decision, which he quotes with such emphasis and approbation, and in flat contradiction also of the definition he repeatedly gives of the word balivus showing that it embraced all ministers of the king whatsoever, whether high or low, judicial or executive, fabricates an entirely gratuitous interpretation of this chapter [*161] of Magna Carta, and pretends that after all it only required that felonies should he tried before the king's justices, on account of their superior learning; and that it permitted all lesser offenses to be tried before inferior officers, (meaning of course the king's inferior officers.) 2 Inst., 30.

And thus this chapter of Magna Carta, which, according to his own definition of the word balivus, applies to all officers of the king; and which, according to the common and true definition of the term "pleas of the crown," applies to all criminal cases without distinction, and which, therefore, forbids any officer or minister of the king to preside in a jury trial in any criminal case whatsoever, he coolly and gratuitously interprets into a mere senseless provision for simply restricting the discretion of the king in giving names to his own officers who should preside at the trials of particular offences; as if the king, who made and unmade all his officers by a word, could not defeat the whole object of the prohibition, by appointing such individuals as he pleased, to try such causes as he pleased, and calling them by such names as he pleased, if he were but permitted to appoint and name such officers at all; and as if it were of the least importance what name an officer bore, whom the king might appoint to a particular duty. fn85 [*162]

Coke evidently gives this interpretation solely because, as he was giving a general commentary on Magna Carta, he was bound to give some interpretation or other to every chapter of it; and

for this chapter he could invent, or fabricate, (for it is [*163] a sheer fabrication,) no interpretation better suited to his purpose than this. It seems never to have entered his mind, (or if it did, he intended that it should never enter the mind of anybody else,) that the object of the chapter could be to deprive the king of the power of putting his creatures into criminal courts, to pack, cheat, and browbeat juries, and thus maintain his authority by procuring the conviction of those who should transgress his laws, or incur his displeasure.

This example of Coke tends to show how utterly blind, or how utterly corrupt, English judges, (dependent upon the crown and the legislature), have been in regard to everything in Magna Carta, that went to secure the liberties of the people, or limit the power of the government.

Coke's interpretation of this chapter of Magna Carta is of a piece with his absurd and gratuitous interpretation of the words "nec super eum ibimus, nec super eum mittemus," which was pointed out in a former article, and by which he attempted to give a judicial power to the king and his judges, where Magna Carta had given it only to a jury. It is also of a piece with his pretence that there was a difference between [*164] fine and amercement, and that fines might be imposed by the king, and that juries were required only for fixing amercements.

These are some of the innumerable frauds by which the English people have been cheated out of the trial by jury.

Ex uno disce omnes. From one judge learn the characters of all. fn86

I give in the note additional and abundant authorities for [*165] the meaning ascribed to the word bailiff. The importance of the principle involved will be a sufficient excuse for such an accumulation of authorities as would otherwise be tedious and perhaps unnecessary. fn87

The foregoing interpretation of the chapter of Magna Carta now under discussion, is corroborated by another chapter of [*166] Magna Carta, which specially provides that the king's justices shall "go through every county" to "take the assizes" (hold jury trials) in three kinds of civil actions, to wit, "novel disseisin, mort de ancestor, and darrein presentment;" but makes no mention whatever of their holding jury trials in criminal cases, an omission wholly unlikely to be made, if it were [*167] designed they should attend the trial of such causes. Besides, the here spoken of (in John's charter) does not allow these justices to sit alone in jury trials, even in civilactions; but provides that four knights, chosen by the county, shall sit [*168] with them to keep them honest. When the king's justices were known to be so corrupt and servile that the people would not even trust them to sit alone, in jury trials, in civil actions, [*169] how preposterous is it to suppose that they would not only suffer them to sit, but to sit alone, in criminal ones.

It is entirely incredible that Magna Carta, which makes such careful provision in regard to the king's justices sitting in civil actions, should make no provision whatever as to their sitting in criminal trials, if they were to be allowed to sit in them at all. Yet Magna Carta has no provision whatever on the subject. fn88 [*170]

But what would appear to make this matter ahsolute1y certain is, that unless the prohibition that "no bailiff, &c;., of ours shall hold pleas of our crown," apply to all officers of the king, justices as well as others, it would be wholly nugatory for any practical or useful purpose, because the prohibition could be evaded by the king, at any time, by simply changing the titles of his officers. Instead of calling them "sheriffs, coroners, constables and bailiffs," he could call them "justices," or anything else he pleased; and this prohibition, so important to the liberty of the people, would then be entirely defeated. The king also could make and unmake "justices" at his pleasure; and if he could appoint any officers whatever to preside over juries in criminal trials, he could appoint any tool that he might at any time find adapted to his purpose. It was as easy to make justices of Jeffreys and Scroggs, as of any other material; and to have prohibited all the king's officers, except his justices, from presiding in criminal trials, would therefore have been mere fool's play.

We can all perhaps form some idea, though few of us will be likely to form any adequate idea, of what a different thing [*171] the trial by jury would have been in practice, and of what would have been the difference to the liberties of England, for five hundred years last past, had this prohibition of Magna Carta, upon the king's officers sitting in the trial of criminal cases, been observed.

The principle of this chapter of Magna Carta, as applicable to the governments of the United States of America, forbids that any officer appointed either by the executive or legislative power, or dependent upon them for their salaries, or responsible to them by impeachment, should preside over a jury in criminal trials. To have the trial a legal (that is, a common law) and true trial by jury, the presiding officers must be chosen by the people, and be entirely free from all dependence upon, and all accountability to, the executive and legislative branches of the government. fn89 [*172]

CHAPTER VIII. THE FREE ADMINISTRATION OF JUSTICE. .

The free administration of justice was a principle of the common law; and it must necessarily be a part of every system of government which is not designed to be an engine in the hands of the rich for the oppression of the poor.

In saying that the free administration of justice was a principle of the common law, I mean only that parties were subjected to no costs for jurors, witnesses, writs, or other necessaries for the trial, preliminary to the trial itself. Consequently, no one could lose the benefit of a trial, for the want of means to defray expenses. But after the trial, the plaintiff or defendant was liable to be amerced, (by the jury, of course,) for having troubled the court with the prosecution or defence of an unjust suit. fn90 But it is not likely that the losing party was subjected to an amercement as a matter of course, but only in those cases where the injustice of his cause was so evident as to make him inexcusable in bringing it before the courts.

All the freeholders were required to attend the courts, that they might serve as jurors and witnesses, and do any other service that could legally be required of them; and their attendance was paid for by the state. In other words, their attendance and service at the courts were part of the rents which they paid the state for their lands.

The freeholders, who were thus required always to attend [*173] the courts, were doubtless the only witnesses who were usually required in civil causes. This was owing to the fact that, in those days, when the people at large could neither write nor read, few contracts were put in writing. The expedient adopted for proving contracts, was that of making them in the presence of witnesses, who could afterwards testify to the transactions. Most contracts in regard to lands were made at the courts, in the presence of the freeholders there assembled. fn91

In the king's courts it was specially provided by Magna Carta that "justice and right" should not be "sold;" that is, that the king should take nothing from the parties for administering justice.

The oath of a party to the justice of his cause was all that was necessary to entitle him to the benefit of the courts free of all expense; (except the risk of being amerced after the trial, in case the jury should think he deserved it. fn92)

This principle of the free administration of justice connects itself necessarily with the trial by jury, because a jury could not rightfully give judgment against any man, in either a civil or criminal case, if they had any reason to suppose he had been unable to procure his witnesses.

The true trial by jury would also compel the free administration of justice from another necessity, viz., that of preventing private quarrels; because, unless the government enforced a man's rights and redressed his wrongs, free of expense to him, a jury would be bound to protect him in taking the law into his own hands. A man has a natural right to enforce his own rights and redress his own wrongs. If one man owe another a debt, and refuse to pay it, the creditor has a natural right to seize sufficient property of the debtor, wherever he [*174] can find it, to satisfy the debt. If one man commit a trespass upon the person, property or character

of another, the injured party has a natural right, either to chastise the aggressor, or to take compensation for the injury out of his property. But as the government is an impartial party as between these individuals, it is more likely to do exact justice between them than the injured individual himself would do. The government, also, having more power at its command, is likely to right a man's wrongs more peacefully than the injured party himself could do it. If, therefore, the government will do the work of enforcing a man's rights, and redressing his wrongs, promptly, and free of expense to him, he is under a moral obligation to leave the work in the hands of the government; but not otherwise. When the government forbids him to enforce his own rights or redress his own wrongs, and deprives him of all means of obtaining justice, except on the condition of his employing the government to obtain it for him, and of paying the government for doing it, the government becomes itself the protector and accomplice of the wrong-doer. If the government will forbid a man to protect his own rights, it is bound, to do it for him, free of expense to him. And so long as government refuses to do this, juries, if they knew their duties, would protect a man in defending his own rights.

Under the prevailing system, probably one half of the community are virtually deprived of all protection for their rights, except what the criminal law affords them. Courts of justice, for all civil suits, are as effectually shut against them, as though it were done by bolts and bars. Being forbidden to maintain their own rights by force, as, for instance, to compel the payment of debts, and being unable to pay the expenses of civil suits, they have no alternative but submission to many acts of injustice, against which the government is bound either to protect them, free of expense, or allow them to protect themselves.

There would be the same reason in compelling a party to pay the judge and jury for their services, that there is in compelling him to pay the witnesses, or any other necessary charges. fn93 [*175]

This compelling parties to pay the expenses of civil suits is one of the many cases in which government is false to the fundamental principles on which free government is based. What is the object of government, but to protect men's rights? On what principle does a man pay his taxes to the government, except on that of contributing his proportion towards the necessary cost of protecting the rights of all? Yet, when his own rights are actually invaded, the government, which he contributes to support, instead of fulfilling its implied contract, becomes his enemy, and not only refuses to protect his rights, (except at his own cost,) but even forbids him to do it himself.

All free government is founded on the theory of voluntary association; and on the theory that all the parties to it voluntarily pay their taxes for its support, on the condition of receiving protection in return. But the idea that any poor man would voluntarily pay taxes to build up a government, which will neither protect his rights, (except at a cost which he cannot meet,) nor suffer himself to protect them by such means as may be in his power, is absurd.

Under the prevailing system, a large portion of the lawsuits determined in courts, are mere contests of purses rather than of rights. And a jury, sworn to decide causes "according to the evidence" produced, are quite likely, for aught they themselves can know, to be deciding merely the comparative length of the parties' purses, rather than the intrinsic strength of their respective rights. Jurors ought to refuse to decide a cause at all, except upon the assurance that all the evidence, necessary [*176] to a full knowledge of the cause, is produced. This assurance they can seldom have, unless the government itself produces all the witnesses the parties desire.

In criminal cases, the atrocity of accusing a man of crime, and then condemning him unless he prove his innocence at his own charges, is so evident that a jury could rarely, if ever, be justified in convicting a man under such circumstances.

But the free administration of justice is not only indispensable to the maintenance of right between man and man; it would also promote simplicity and stability in the laws. The mania for legislation would be, in an important degree, restrained, if the government were compelled to pay the expenses of all the suits that grew out of it.

The free administration of justice would diminish and nearly extinguish another great evil, that of malicious civil suits It is an old saying, that "multi litigant in foro, non ut aliquid lucentur, sed ut vexant alios." (Many litigate in court, not that they may gain anything, but that they may harass others.) Many men, from motives of revenge and oppression, are willing to spend their own money in prosecuting a groundless suit, if they can thereby compel their victims, who are less able than themselves to bear the loss, to spend money in the defence. Under the prevailing system, in which the parties pay the expenses of their suits, nothing but money is necessary to enable any malicious man to commence and prosecute a groundless suit, to the terror, injury, and perhaps ruin, of another man. In this way, a court of justice, into which none but a conscientious plaintiff certainly should ever be allowed to enter, becomes an arena into which any rich and revengeful oppressor may drag any man poorer than himself, and harass, terrify, and impoverish him, to almost any extent. It is a scandal and an outrage, that government should suffer itself to be made an instrument, in this way, for the gratification of private malice. We might nearly as well have no courts of justice, as to throw them open, as we do, for such flagitious uses. Yet the evil probably admits of no remedy except a free administration of justice. Under a free system, plaintiffs could rarely be influenced by motives of this kind; because they could put their victim to little or no expense, neither [*177] pending the suit, (which it is the object of the oppressor to do,) nor at its termination. Besides, if the ancient common law practice should be adopted, of amercing a party for troubling the courts with groundless suits, the prosecutor himself would, in the end, be likely to be amerced by the jury, in such a manner as to make courts of justice a very unproitable place for a man to go to seek revenge.

In estimating the evils of this kind, resulting from the present system, we are to consider that they are not, by any means, confined to the actual suits in which this kind of oppression is practised; but we are to include all those cases in which the fear of such oppression is used as a weapon to compel men into a surrender of their rights. [*178]

CHAPTER IX.

THE CRIMINAL INTENT

It is a maxim of the common law that there can be no crime without a criminal intent. And it is a perfectly clear principle, although one which judges have in a great measure overthrown in practice, that jurors are to judge of the moral intent of an accused person, and hold him guiltless, whatever his act, unless they find him to have acted with a criminal intent; that is, with a design to do what he knew to be criminal.

This principle is clear, because the question for a jury to determine is, whether the accused be guilty, or not guilty. Guilt is a personal quality of the actor, not necessarily involved in the act, but depending also upon the intent or motive with which the act was done. Consequently, the jury must find that he acted from a criminal motive, before they can declare him guilty.

There is no moral justice in, nor any political necessity for, punishing a man for any act whatever that he may have committed, if he have done it without any criminal intent. There can be no moral justice in punishing for such an act, because, there having been no criminal motive, there can have been no other motive which justice can take cognizance of, as demanding or justifying punishment. There can be no political necessity for punishing, to warn against similar acts in future, because, if one man have injured another, however unintentionally, he is liable, and justly liable, to a civil suit for damages; and in this suit he will be compelled to make compensation for the injury, notwithstanding his innocence of any intention to injure. He must bear the consequences of his own act, instead of throwing them upon another, however innocent [*179] he may have been of any intention to do wrong. And the damages he will have to pay will be a sufficient warning to him not to do the like act again.

If it be alleged that there are crimes against the public, (as treason, for example, or any other resistance to government,) for which private persons can recover no damages, and that there is a political necessity for punishing for such offences, even though the party acted conscientiously, the answer is, the government must bear with all resistance that is not so clearly wrong as to give evidence of criminal intent. In other words, the government, in all its acts, must keep itself so clearly within the limits of justice, as that twelve men, taken at random, will all agree that it is in the right, or it must incur the risk of resistance, without any power to punish it. This is the mode in which the trial by jury operates to prevent the government from falling into the hands of a party, or a faction, and to keep it within such

limits as all, or substantially all, the people are agreed that it may occupy.

This necessity for a criminal intent, to justify conviction, is proved by the issue which the jury are to try, and the verdict they are to pronounce. The "issue" they are to try is, "guilty,"or "not guilty." And those are the terms they are required to use in rendering their verdicts. But it is a plain falsehood to say that a man is "guilty," unless he have done an act which he knew to be criminal.

This necessity for a criminal intent -- in other words, for guilt -- as a preliminary to conviction, makes it impossible that a man can be rightfully convicted for an act that is intrinsically innocent, though forbidden by the government; because guilt is an intrinsic quality of actions and motives, and not one that can be imparted to them by arbitrary legislation. All the efforts of the government, therefore, to "make offences by statute," out of acts that are not criminal by nature, must necessarily be ineffectual, unless a jury will declare a man "guilty" for an act that is really innocent.

The corruption of judges, in their attempts to uphold the arbitrary authority of the government, by procuring the conviction of individuals for acts innocent in themselves, and forbidden only by some tyrannical statute, and the commission [*180] of which therefore indicates no criminal intent, is very apparent.

To accomplish this object, they have in modern times held it to be unnecessary that indictments should charge, as by the common law they were required to do, that an act was done "wickedly," "feloniously," "with malice aforethought," or in any other manner that implied a criminal intent, without which there can be no criminality; but that it is sufficient to charge simply that it was done "contrary to the form of the statute in such case made and provided." This form of indictment proceeds plainly upon the assumption that the government is absolute, and that it has authority to prohibit any act it pleases, however innocent in its nature the act may be. Judges have been driven to the alternative of either sanctioning this new form of indictment, (which they never had any constitutional right to sanction,) or of seeing the authority of many of the statutes of the government fall to the ground; because the acts forbidden by the statutes were so plainly innocent in their nature, that even the government itself had not the face to allege that the commission of them implied or indicated any criminal intent.

To get rid of the necessity of showing a criminal intent, and thereby further to enslave the people, by reducing them to the necessity of a blind, unreasoning submission to the arbitrary will of the government, and of a surrender of all right, on their own part, to judge what are their constitutional and natural rights and liberties, courts have invented another idea, which they have incorporated among the pretended maxims, upon which they act in criminal trials,

viz., that "ignorance of the law excuses no one." As if it were in the nature of things possible that there could be an excuse more absolute and complete. What else than ignorance of the law is it that excuses persons under the years of discretion, and men of imbecile minds? What else than ignorance of the law is it that excuses judges themselves for all their erroneous decisions? Nothing. They are every day committing errors, which would be crimes, but for their ignorance of the law. And yet these same judges, who claim to be learned in the law, and who yet could not hold their offices for a day, but for [*181] the allowance which the law makes for their ignorance, are continually asserting it to be a "maxim" that "ignorance of the law excuses no one;" (by which, of course, they really mean that it excuses no one but themselves; and especially that it excuses no unlearned man, who comes before them charged with crime.)

This preposterous doctrine, that "ignorance of the law excuses no one," is asserted by courts because it is an indispensable one to the maintenance of absolute power in the government. It is indispensable for this purpose, because, if it be once admitted that the people have any rights and liberties which the government cannot lawfully take from them, then the question arises in regard to every statute of the government, whether it be law, or not; that is, whether it infringe, or not, the rights and liberties of the people. Of this question every man must of course judge according to the light in his own mind. And no man can be convicted unless the jury find, not only that the statute is law, -- that it does not infringe the rights and liberties of the people, -- but also that it was so clearly law, so clearly consistent with the rights and liberties of the people, as that the individual himself, who transgressed it, knew it to be so, and therefore had no moral excuse for transgressing it. Governments see that if ignorance of the law were allowed to excuse a man for any act whatever, it must excuse him for transgressing all statutes whatsoever, which he himself thinks inconsistent with his rights and liberties. But such a doctrine would of course be inconsistent with the maintenance of arbitrary power by the government; and hence governments will not allow the plea, although they will not confess their true reasons for disallowing it.

The only reasons, (if they deserve the name of reasons), that I ever knew given for the doctrine that ignorance of the law excuses no one, are these:

1. "The reason for the maxim is that of necessity. It prevails, 'not that all men know the law, but because it is an excuse which every man will make, and no man can tell how to confute him.' -- Selden, (as quoted in the 2d edition of Starkie on Slander, Prelim. Disc., p. 140, note.)" -- Law Magazine, (London,) vol. 27, p. 97.[*182]

This reason impliedly admits that ignorance of the Law is, intrinsically, an ample and sufficient excuse for a crime; and that the excuse ought to be allowed, if the fact of ignorance could but be ascertained. But it asserts that this fact is incapable of being ascertained, and that therefore there is a necessity for punishing the ignorant and the knowing that is, the innocent and the guilty without discrimination. This reason is worthy of the doctrine it is used to uphold; as if a

plea of ignorance, any more than any other plea, must necessarily be believed simply because it is urged; and as if it were not a common and every-day practice of courts and juries, in both civil and criminal cases, to determine the mental capacity of individuals; as, for example, to determine whether they are of sufficient mental capacity to make reasonable contracts; whether they are lunatic; whether they are compotes mentis, "of sound mind and memory," &. &. And there is obviously no more difficulty in a jury's determining whether an accused person knew the law in a criminal case, than there is in determining any of these other questions that are continually determined in regard to a man's mental capacity. For the question to be settled by the jury is not whether the accused person knew the particular penalty attached to his act, (for at common law no one knew what penalty a jury would attach to an offence,) but whether he knew that his act was intrinsically criminal. If it were intrinsically criminal, it was criminal at common law. If it was not intrinsically criminal, it was not criminal at common law. (At least, such was the general principle of the common law. There may have been exceptions in practice, owing to the fact that the opinions of men, as to what was intrinsically. criminal, may not have been in all cases correct.)

A jury, then, in judging whether an accused person knew his act to be illegal, were bound first to use their own judgments, as to whether the act were intrinsically criminal. If their own judgments told them the act was intrinsically and clearly criminal, they would naturally and reasonably infer that the accused also understood that it was intrinsically criminal, (and consequently illegal,) unless it should appear that he was either below themselves in the scale of intellect, or had [*183] had less opportunities of knowing what acts were criminal. In short, they would judge, from any and every means they might have of judging; and if they had any reasonable doubt that he knew his act to be criminal in itself, they would be bound to acquit him.

The second reason that has been offered for the doctrine that ignorance of the law excuses no one, is this:

"Ignorance of the municipal law of the kingdom, or of the penalty thereby inflicted on offenders, doth not excuse any that is of the age of discretion and compos mentis, from the penalty of the breach of it; because every person, of the age of discretion and compos mentis, is bound to know the law, and presumed to do so. "Ignorantia eorum,, quae quis scire tenetur non excusat." (Ignorance of those things which every one is bound to know, does not excuse.) -- 1 Hale's Pleas of the Crown, 42. Doctor and Student, Dialog. 2, ch. 46. Law Magazine, (London,) vol. 27, p. 97.

The sum of this reason is, that ignorance of the law excuses no one, (who is of the age of discretion and is compos mentis,) because every such person "is bound to know the law." But this is giving no reason at all for the doctrine, since saying that a man "is bound to know the law," is only saying, in another form, that "ignorance of the law does not excuse him." There is

no difference at all in the two ideas. To say, therefore, that "ignorance of the law excuses no one, because every one is bound to know the law," is only equivalent to saying that "ignorance of the law excuses no one, because ignorance of the law excuses no one." It is merely reasserting the doctrine, without giving any reason at all.

And yet these reasons, which are really no reasons at all, are the only ones, so far as I know, that have ever been offered for this absurd and brutal doctrine.

The idea suggested, that " the age of discretion" determines the guilt of a person, -- that there is a particular age, prior to which all persons alike should be held incapable of knowing any crime, and subsequent to which all persons alike should be held capable of knowing all crimes, -- is another of this most ridiculous nest of ideas. All mankind acquire their knowledge of crimes, as they do of other things, gradually. Some they learn at an early age; others not till a later one. One individ- [*184] -ual acquires a knowledge of crimes, as he does of arithmetic, at an earlier age than others do. And to apply the same presumption to all, on the ground of age alone, is not only gross injustice, but gross folly. A universal presumption might, with nearly or quite as much reason, be founded upon weight, or height, as upon age. fn94

This doctrine, that "ignorance of the law excuses no one," is constantly repeated in the form that "every one is bound to know the law." The doctrine is true in civil matters, especially in contracts, so far as this: that no man, who has the ordinary capacity to make reasonable contracts, can escape the consequences of his own agreement, on the ground that he did not know the law applicable to it. When a man makes a contract, he gives the other party rights; and he must of necessity judge for himself, and take his own risk, as to what those rights are, -- otherwise the contract would not be binding, and men could not make contracts that would convey rights to each other. Besides, the capacity to make reasonable con- [*185] -tracts, implies and includes a capacity to form a reasonable judgment as to the law applicable to them. But in criminal matters, where the question is one of punishment, or not; where no second party has acquired any right to have the crime punished, unless it were committed with criminal intent, (but only to have it compensated for by damages in a civil suit;) and when the criminal intent is the only moral justification for the punishment, the principle does not apply, and a man is bound to know the law only as well as he reasonably may. The criminal law requires neither impossibilities nor extraordinaries of any one. It requires only thoughtfulness and a good conscience. It requires only that a man fairly and properly use the judgment he possesses, and the means he has of learning his duty. It requires of him only the same care to know his duty in regard to the law, that he is morally bound to use in other matters of equal importance. And this care it does require of him. Any ignorance of the law, therefore, that is unnecessary, or that arises from indifference or disregard of one's duty, is no excuse. An accused person, therefore, may be rightfully held responsible for such a knowledge of the law as is common to men in general, having no greater natural capacities than himself, and no greater opportunities for learning the law. And he can rightfully be held to no greater knowledge of the law than this. To hold him responsible for a greater knowledge of the law

than is common to mankind, when other things are equal, would be gross injustice and cruelty. The mass of mankind can give but little of their attention to acquiring a knowledge of the law. Their other duties in life forbid it. Of course, they cannot investigate abstruse or difficult questions. All that can rightfully be required of each of them, then, is that he exercise such a candid and conscientious judgment as it is common formankind generally to exercise in such matters. If he have done this, it would be monstrous to punish him criminally for his errors; errors not of conscience, but only of judgment. It would also be contrary to the first principles of a free government (that is, a government formed by voluntary association) to punish men in such cases, because it would be absurd to suppose that any man would voluntarily assist to establish or support a govern- [*186] -ment that would punish himself for acts which he himself did not know to be crimes. But a man may reasonably unite with his fellow-men to maintain a government to punish those acts which he himself considers criminal, and may reasonably acquiesce in his own liability to be punished for such acts. As those are the only grounds on which any one can be supposed to render any voluntary support to a government, it follows that a government formed by voluntary association, and of course having no powers except such as all the associates have consented that it may have, can have no power to punish a man for acts which he did not himself know to be criminal.

The safety of society, which is the only object of the criminal law, requires only that those acts which are understood by mankind at large to be intrinsically criminal, should he punished as crimes. The remaining few (if there are any) may safely be left to go unpunished. Nor does the safety of society require that any individuals, other than those who have sufficient mental capacity to understand that their acts are criminal, should be criminally punished. All others may safely be left to their liability, under the civil law, to compensate for their unintentional wrongs.

The only real object of this absurd and atrocious doctrine, that "ignorance of the law (that is, of crime) excuses no one," and that "everyone is bound to know the criminal law," (that is, bound to know what is a crime,) is to maintain an entirely arbitrary authority on the part of the government, and to deny to the people all right to judge for themselves what their own rights and liberties are. In other words, the whole object of the doctrine is to deny to the people themselves all right to judge what statutes and other acts of the government are consistent or inconsistent with their own rights and liberties; and thus to reduce the people to the condition of mere slaves to a despotic power, such as the people themselves would never have voluntarily established, and the justice of whose laws the people themselves cannot understand.

Under the true trial by jury all tyranny of this kind would be abolished. A jury would not only judge what acts were really criminal, but they would judge of the mental capacity of an accused person, and of his opportunities for understand- [*187] -ing the true character of his conduct. In short, they would judge of his moral intent from all the circumstances of the case, and acquit him, if they had any reasonable doubt that he knew that he was committing a crime.fn95 [*189]

CHAPTER X. MORAL CONSIDERATIONS FOR JURORS

THE trial by jury must, if possible, be construed to be such that a man can rightfully sit in a jury, and unite with his fellows in giving judgment. But no man can rightfully do this, unless he hold in his own hand alone a veto upon any judgment or sentence whatever to be rendered by the jury against a defendant, which veto he must be permitted to use according to his own discretion and conscience, and not bound to use according to the dictation of either legislatures or judges.

The prevalent idea, that a juror may, at the mere dictation of a legislature or a judge, and without the concurrence of his own conscience or understanding, declare a man "guilty," and thus in effect license the government to punish him; and that the legislature or the judge, and not himself, has in that case all the moral responsibility for the correctness of the principles on which the judgment was rendered, is one of the many gross impostures by which it could hardly have been supposed that any sane man could ever have been deluded, but which governments have nevertheless succeeded in inducing the people at large to receive and act upon.

As a moral proposition, it is perfectly self-evident that, unless juries have all the legal rights that have been claimed for them in the preceding chapters, --- that is, the rights of judging what the law is, whether the law be a just one, what evidence is admissible, what weight the evidence is entitled to, whether an act were done with a criminal intent, and the right also to limit the sentence, free of all dictation from any quarter, --- they have no moral right to sit in the trial at all, and cannot do so without making themselves accomplices in any injustice that they may have reason to believe may result from their [*190] verdict. It is absurd to say that they have no moral responsibility for the use that may be made of their verdict by the government, when they have reason to suppose it will be used for purposes of injustice.

It is, for instance, manifestly absurd to say that jurors have no moral responsibility for the enforcement of an unjust law, when they consent to render a verdict of guilty for the transgression of it; which verdict they know, or have good reason to believe, will be used by the government as a justification for inflicting a penalty.

It is absurd, also, to say that jurors have no moral responsibility for a punishment indicted upon a man against law, when, at the dictation of a judge as to what the law is, they have consented to render a verdict against their own opinions of the law.

It is absurd, too, to say that jurors have no moral responsibility for the conviction and punishment of an innocent man, when they consent to render a verdict against him on the

strength of evidence, or laws of evidence, dictated to them by the court, if any evidence or laws of evidence have been excluded, which they (the jurors) think ought to have been admitted in his defence.

It is absurd to say that jurors have no moral responsibility for rendering a verdict of "guilty" against a man, for an act which he did not know to be a crime, and in the commission of which, therefore, he could have had no criminal intent, in obedience to the instructions of courts that "ignorance of the law (that is, of crime) excuses no one."

It is absurd, also, to say that jurors have no moral responsibility for any cruel or unreasonable sentence that may be inflicted even upon a guilty man, when they consent to render a verdict which they have reason to believe will be used by the government as a justification for the infliction of such sentence.

The consequence is, that jurors must have the whole case in their hands, and judge of law, evidence, and sentence, or they incur the moral responsibility of accomplices in any injustice which they have reason to believe will be done by the government on the authority of their verdict.[*191]

The same principles apply to civil cases as to criminal. If a jury consent, at the dictation of the court, as to either law or evidence, to render a verdict, on the strength of which they have reason to believe that a man's property will be taken from him and given to another, against their own notions of justice, they make themselves morally responsible for the wrong.

Every man, therefore, ought to refuse to sit in a jury, and to take the oath of a juror, unless the form of the oath be such as to allow him to use his own judgment, on every part of the case, free of all dictation whatsoever, and to hold in his own hand a veto upon any verdict that can be rendered against a defendant, and any sentence that can be inflicted upon him, even if he be guilty.

Of course, no man can rightfully take an oath as juror, to try a case "according to law," (if by law be meant anything other than his own ideas of justice,) nor "according to the law and the evidence, as they shall be given him." Nor can he rightfully take an oath even to try a case "according to the evidence," because in all cases he may have good reason to believe that a party has been unable to produce all the evidence legitimately entitled to be received. The only oath which it would seem that a man can rightfully take as juror, in either a civil or criminal case, is, that he "will try the case according to his conscience." Of course, the form may admit of variation, but this should be the substance. Such, we have seen, were the ancient common law oaths. [*192]

CHAPTER XI. AUTHORITY OF MAGNA CARTA.

PROBABLY no political compact between king and people was ever entered into in a manner to settle more authoritatively the fundamental law of a nation, than was Magna Carta. Probably no people were ever more united and resolute in demanding from their king a definite and unambiguous acknowledgment of their rights and liberties, than were the English at that time. Probably no king was ever more completely stripped of all power to maintain his throne, and at the same time resist the demands of his people, than was John on the 15th day of June, 1215. Probably no king every consented, more deliberately or explicitly, to hold his throne subject to specific and enumerated limitations upon his power, than did John when he put his seal to the Great Charter of the Liberties of England. And if any political compact between king and people was ever valid to settle the liberties of the people, or to limit the power of the crown, that compact is now to be found in Magna Carta. If, therefore, the constitutional authority of Magna Carta had rested solely upon the compact of John with his people, that authority would have been entitled to stand forever as the supreme law of the land, unless revoked by the will of the people themselves.

But the authority of Magna Carta does not rest alone upon the compact with John. When, in the next year, (1216,) his son, Henry III., came to the throne, the charter was ratified by him, and again in 1217, and again in 1225, in substantially the same form, and especially without allowing any new powers, legislative, judicial, or executive, to the king or his judges, and without detracting in the least from the powers of the jury. And from the latter date to this, the charter has remained unchanged.[*193]

In the course of two hundred years the charter was confirmed by Henry and his successors more than thirty times. And although they were guilty of numerous and almost continual breaches of it, and were constantly seeking to evade it, yet such were the spirit, vigilance and courage of the nation, that the kings held their thrones only on the condition of their renewed and solemn promises of observance. And it was not until 1429, (as will be more fully shown hereafter,) when a truce between themselves, and a formal combination against the mass of the people, had been entered into, by the king, the nobility, and the "forty shilling freeholders," (a class whom Mackintosh designates as "a few freeholders then accounted wealthy," fn96) by the exclusion of all others than such freeholders from all voice in the election of knights to represent the counties in the House of Commons, that a repetition of these confirmations of Magna Carta ceased to be demanded. and obtained.fn97

The terms and the formalities of some of these "confirmations" make them worthy of insertion at length.

Hume thus describes one which took place in the 38th year of Henry III. (1253):

" But as they (the barons) had experienced his (the king's) frequent breach of promise, they required that he should ratify the Great Charter in a manner still more authentic and solemn than any which he had hitherto employed. All the prelates and abbots were assembled. They held burning tapers in their hands. The Great Charter was read before them. They denounced the sentence of excommunication against every one who should thenceforth violate that fundamental law. They threw their tapers on the ground, and exclaimed, May the soul of every one who incurs this sentence so stink and corrupt in hell! The king bore a part in this ceremony, and subjoined, ' So help me God! I will keep all these articles inviolate, as I am a man, as I am a Christian, as I am a knight, and as I am a king crowned and anointed.'" --- Hume, ch. 12. See also [*194] Blackstone's Introd. to the Charters. Black. Law Tracts, Oxford ed., p. 332. Makintosh's Hist. of Eng., ch. 3. Lardner's Cab. Cyc., vol. 45, p. 233 4.

The following is the form of "the sentence of excommunication" referred to by Hume:

"The Sentence of Curse, Given by the Bishops, against the Breakers of the Charters.

"The year of our Lord a thousand two hundred and fifty-three, the third day of May, in the great Hall of the King at Westminster, in the presence, and by the assent, of the Lord Henry, by the Grace of God King of England, and the Lords Richard, Earl of Cornwall, his brother, Roger (Bigot) Earl of Norfolk and Suffolk;, marshal of England, Humphrey, Earl of Hereford, Henry, Earl of Oxford, John, Earl of Warwick, and other estates of the Realm of England: We, Boniface, by the mercy of God Archbishop of Canterbury, Primate of all England, F. of London, H. of Ely, S. of Worcester, F. of Lincoln, W. of Norwich, P. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlisle, W. of Bath, E. of Rochester, T. of Saint David's, Bishops, appareled in Pontificals, with tapers burning, against the breakers of the Church's Liberties, and of the Liberties or free customs of the Realm of England, and especially of those which are contained in the Charter of the Common Liberties of the Realm, and the Charter of the Forest, have solemnly denounced the sentence of Excommunication in this form. By the authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the glorious Mother of God, and perpetual Virgin Mary, of the blessed Apostles Peter and Paul, and of all apostles, of the blessed Thomas, Archbishop and Martyr, and of all martyrs, of blessed Edward of England, and of all Confessors and virgins, and of all the saints of heaven: We excommunicate, accurse, and from the thresholds (liminibus) of our Holy Mother the Church, We sequester, all those that hereafter willingly and maliciously deprive or spoil the Church of her right: And all those that by any craft or wiliness do violate, break, diminish, or change the Church's Liberties, or the ancient approved customs of the Realm, and especially the Liberties and free Customs contained in the Charters of the Common Liberties, and of the Forest, conceded by our Lord the King, to Archbishops, Bishops, and other Prelates of England and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly, or openly, by deed, word, or counsel, do make statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said [*195] Liberties, or any of them, the Writers and

Counselors of said statutes, and the Executors of them, and a11 those that shall presume to judge according to them. All and every which persons before mentioned, that wittingly shall commit anything of the premises, let them well know that they incur the aforesaid sentence, ipso facto, (i. e. upon the deed being done.) And those that ignorantly do so, and be admonished, except they reform themselves within fifteen days after the time of the admonition, and make full satisfaction for that they have done, at the will of the ordinary, shall be from that time forth included in the same sentence. And with the same sentence we burden all those that presume to perturb the peace of our sovereign Lord the King, and of the Realm. To the perpetual memory of which thing, We, the aforesaid Prelates, have put our seals to these presents." --- Statutes of the Realm, vol. 1, p. 6. Ruffhead's Statutes, vol. 1, p. 20.

One of the Confirmations of the Charters, by Edward I., was by statute, in the 25th year of his reign, (1297,) in the following terms. The statute is usually entitled. "Confirmatio Cartarum,"(Confirmation of the Charters.)

Ch. 1. "Edward, by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan, To all those that these presents shall hear or see, Greeting. Know ye, that We, to the honor of Cod, and of Holy Church, and to the profit of our Realm, have granted, for us and our heirs, that the Charter of Liberties, and 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 Sheriff's 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 he contained, that they cause the aforesaid Charters to be published, and to declare to the people that We have confirmed them at all points; and to our Justices, Sheriffs, mayors, and other ministers, which under us have the Laws of our Land to guide, that they allow the same Charters, in all their points, in pleas before them, and in judgment; that is, to wit, the Great Charter as the Common Law, and the Charter of the Forest for the wealth of our Realm.

Ch. 2. "And we will that if any judgment be given from henceforth contrary to the points of the charters aforesaid by the justices, or by any others our ministers that hold plea before them, against the points of the Charters, it shall be undone and holden for naught. [*196]

Ch. 3. "And we will, that the same Charters shall be sent, under our seal, to Cathedral Churches throughout our Realms there to remain, and shall be read before the people two times in the year.

Ch. 4. "And that all Archbishops and Bishops shall pronounce the sentence of excommunication against all those that by word, deed, or counsel, do contrary to the foresaid charters, or that in any point break or undo them. And that the said Curses be twice a year denounced and

published by the prelates aforesaid. And if the same prelates, or any of them, be remiss in the denunciation of the said sentences, the Archbishops of Canterbury and York-, for the time being, shall compel and distrain them to make the denunciation in the form aforesaid." --- St. 25 Edward I., (1297.). Statutes of the Realm, vol. l, p. 123.

It is unnecessary to repeat the terms of the various confirmations, most of which were less formal than those that have been given, though of course equally authoritative. Most of them are brief, and in the form of a simple statute, or promise, to the effect that "The Great Charter, and the Charter of the Forest, shall be firmly kept and maintained in all points." They are to be found printed with the other statutes of the realm. One of them, after having "again granted, renewed and confirmed" the charters, requires as follows:

"That the Charters be delivered to every sheriff of England under the king's seal, to be read four times in the year before the people in the full county," (that is, at the county court,) "that is, to wit, the next county (court) after the feast of Saint Michael, and the next county (court) after Christmas, and at the next county (court) after Easter, and at the next county (court) after the feast of Saint John " --- 28 Edward I., ch. 1, (1300.) v

Lingard says, "The Charter was ratified four times by Henry III., twice by Edward I., fifteen times by Edward III., seven times by Richard II., six times by Henry IV., and once by Henry V.;" making thirty-five times in all. --- 3 Lingard, 50, note, Philad. ed.

Coke says Magna Carta was confirmed thirty-two times. Preface to 2 Inst., p. 6.

Lingard calls these "thirty-five successive ratifications" of the charter, "a sufficient proof how much its provisions were [*197] abhorred by the sovereign, and how highly they were prized by the nation." --- 3 Lingard, 50.

Mackintosh says, "For almost five centuries (that is, until 1688) it (Magna Carta) was appealed to as the decisive authority on behalf of the people, though commonly so far only as the necessities of each case demanded." --- Mackintosh's Hist. of Eng. ch. 3. 45 Lardner's Cab. Cyc., 221.

Coke, who has labored so hard to overthrow the most vital principles of Magna Carta, and who, therefore, ought to be considered good authority when he speaks in its favor, fn98 says:

"It is called Magna Carta, not that it is great in quantity, for there be many voluminous charters commonly passed, specially in these later times, longer than this is; nor comparatively in

respect that it is greater than Charta de Foresta, but in respect of the great importance and weightiness of the matter, as hereafter shall appear; and likewise for the same cause Charta de Foresta; and both of them are called Magnae Chartae Libertatum Angliae, (The Great Charters of the Liberties of England.)

"And it is also called Charta Libertatum regni, (Charter of the liberties of the kingdom;) and upon great reason it is so called of the effect, quia liberos facit, (because it makes men free.) Sometime for the same cause (it is called) communis libertas, (common liberty,) and le chartre des franchises, (the charter of franchises.)

"It was for the most part declaratory of the principal grounds of the fundamental laws of England, and for the residue it is additional to supply some defects of the common law. . . .

"Also, by the said act of 25 Edward I., (called Confirmatio Chartarum,) it is adjudged in parliament that the Great Charter and the Charter of the Forest shall be taken as the common law. . . .

"They (Magna Carta and Carta de Foresta) were, for the most part, but declarations of the ancient common laws of England, to the observation and keeping whereof, the king was bound and sworn. . . .

"After the making of Magna Charta, and Charta de Foresta, divers learned men in the laws, that I may use the words of the record, kept schools of the law in the city of London, and taught such as resorted to them the laws of the realm, [*198] taking their foundation of Magna Charta and Charta de Foresta.

"And the said two charters have been confirmed, established, and commanded to be put in execution by thirty-two several acts of parliament in all.

"This appeareth partly by that which hath been said, for that it hath so often been confirmed by the wise providence of so many acts of parliament.

"And albeit judgments in the king's courts are of high regard in law, and judicia (judgments) are accounted as jurisdicta, (the speech of the law itself,) yet it is provided by act of parliament, that if any judgment be given contrary to any of the points of the Great Charter and Charta de Foresta, by the justices, or by any other of the king's ministers, &c;., it shall be undone, and holden for naught.

"And that both the said charters shall be sent under the great seal to all cathedral churches throughout the realm, there to remain, and shall be read to the people twice every year.

"The highest and most binding laws are the statutes which are established by parliament; and by authority of that highest court it is enacted (only to show their tender care of Magna Carta and Carta de Foresta) that if any statute be made contrary to the Great Charter, or the Charter of the Forest, that shall be holden for none; by which words all former statutes made against either of those charters are now repealed; and the nobles and great officers were to be sworn to the observation of Magna Charta and Charta de Foresta.

"Magna fuit quondam magnae reverentia chartae." (Great was formerly the reverence for Magna Carta.) --- Coke's Proem to 2 Inst., p. 1 to 7.

Coke also says, "All pretence of prerogative against Magna Charta is taken away." --- 2 Inst., 36.

He also says, "That after this parliament (52 Henry III., in 1267) neither Magna Carta nor Carta de Foresta was ever attempted to be impugned or questioned." --- 2 Inst., 102.fn99 [*199]

To give all the evidence of the authority of Magna Carta, it would be necessary to give the constitutional history of England since the year 1215. This history would show that Magna Carta, although continually violated and evaded, was still acknowl- [*200] edged as law by the government, and was held up by the people as the great standard and proof of their rights and liber- [*201] ties. It would show also that the judicial tribunals, whenever it suited their purposes to do so, were in the habit of referring to Magna Carta as authority, in the same manner, and with the same real or pretended veneration, with which American courts now refer to the constitution of the United States, or the constitutions of the states. And, what is equally to the point, it would show that these same tribunals, the mere tools of kings and parliaments, would resort to the same artifices of assumption, precedent, construction, and false interpretation, to evade the requirements of Magna Carta, and to emasculate it of all its power for the preservation of liberty, that are resorted to by American courts to accomplish the same work on our American constitutions.

I take it for granted, therefore, that if the authority of Magna Carta had rested simply upon its character as a compact between the king and the people, it would have been forever binding upon the king, (that is, upon the government, for the king was the government,) in his legislative, judicial, and executive character; and that there was no constitutional possibility of his escaping from its restraints, unless the people themselves should freely discharge him from them.

But the authority of Magna Carta does not rest, either wholly or mainly, upon its character as a compact. For centuries before the charter was granted, its main principles constituted "the Law of the Land," the fundamental and constitutional law of the realm, which the kings were sworn to maintain. And the principal benefit of the charter was, that it contained a written description and acknowledgment, by the king himself, of what the constitutional law of the kingdom was, which his coronation oath bound him to observe. Previous to Magna Carta, this constitutional law rested mainly in precedents, customs, and the memories of the people. And if the king could but make one innovation upon this law, without arousing resistance, and being compelled to retreat from his usurpation, he would cite that innovation as a precedent for another act of the same kind; next, assert a custom; and, finally, raise a controversy as to what the Law of the Land really was. The great object of the barons and people, in demanding from the king a written description and ac- [*202] knowledgment of the Law of the Land, was to put an end to all disputes of this kind, and to put it out of the power of the king to plead any misunderstanding of the constitutional law of the kingdom. And the charter, no doubt, accomplished very much in this way. After Magna Carta, it required much more audacity, cunning, or strength, on the part of the king, than it had before, to invade the people's liberties with impunity. Still, Magna Carta, like all other written constitutions, proved inadequate to the full accomplishment of its purpose; for when did a parchment ever have power adequately to restrain a government, that had either cunning to evade its requirements, or strength to overcome those who attempted its defence? The work of usurpation, therefore, though seriously checked, still went on, to a great extent, after Magna Carta. Innovations upon the Law of the Land are still made by the government. One innovation was cited as a precedent; precedents made customs; and customs became laws, so far as practice was concerned; until the government, composed of the king, the high functionaries of the church, the nobility, a House of Commons representing the "forty shilling freeholders," and a dependent and servile judiciary, all acting in conspiracy against the mass of the people, became practically absolute, as it is at this day.

As proof that Magna Carta embraced little else than what was previously recognized as the common law, or Law of the Land, I repeat some authorities that have been already cited.

Crabbe says, "It is admitted on all hands that it (Magna Carta) contains nothing but what was confirmatory of the common law and the ancient usages of the realm; and is, properly speaking, only an enlargement of the charter of Henry I. and his successors." --- Crabbe's Hist. of the Eng. Law, p. 127.

Blackstone says, "It is agreed by all our historians that the Great Charter of King John was, for the most part, compiled from the ancient customs of the realm, or the laws of Edward the Confessor; by which they mean the old common law which was established under our Saxon princes." --- Blackstone's Introd. to the Charters. See Blackstone's Law Tracts, Oxford ed., p. 289.

Coke says, " The common law is the most general and an- [*203] cient law of the realm. . . .The common law appeareth in the statute of Magna Carta, and other ancient statutes, (which for the most part are affirmations of the common law,) in the original writs, in judicial records, and in our books of terms and years." --- 1 Inst., 115 b.

Coke also says, "It (Magna Carta) was for the most part declaratory of the principal grounds of the fundamental laws of England, and for the residue it was additional to supply some defects of the common law. . . .They (Magna Carta and Carta de Foresta) were, for the most part, but declarations of the ancient common laws of England, to the observation and keeping whereof the king was bound and sworn." --- Preface to 2 Inst., p. 3 and 5.

Hume says, "We may now, from the tenor of this charter, (Magna Carta,) conjecture what those laws were of King Edward, (the Confessor,) which the English nation during so many generations still desired, with such an obstinate perseverance, to have recalled and established. They were chiefly these latter articles of Magna Carta; and the barons who, at the beginning of these commotions, demanded the revival of the Saxon laws, undoubtedly thought that they had sufficiently satisfied the people, by procuring them this concession, which comprehended the principal objects to which they had so long aspired." --- Hume, ch. 11.

Edward the First confessed that the Great Charter was substantially identical with the common law, as far as it went, when he commanded his justices to allow "the Great Charter as the Common Law," " in pleas before them, and in judgment," as has been already cited in this chapter. --- 25 Edward I., ch. 1, (1297.)

In conclusion of this chapter, it may be safely asserted that the veneration, attachment, and pride, which the English nation, for more than six centuries, have felt towards Magna Carta, are in their nature among the most irrefragable of all proofs that it was the fundamental law of the land, and constitutionally binding upon the government; for, otherwise, it would have been, in their eyes, an unimportant and worthless thing. What those sentiments were I will use the words of others to describe, the words, too, of men, who, like all modern authors who have written on the same topic, had utterly inadequate ideas of the true character of the instrument on which they lavished their eulogiums.[*204]

Hume, speaking of the Great Charter and the Charter of the Forest, as they were confirmed by Henry III., in 1217, says: "Thus these famous charters were brought nearly to the shape in which they have ever since stood; and they were, during many generations, the peculiar favorites of the English nation, and esteemed the most sacred rampart to national liberty and independence. As they secured the rights of all orders of men, they were anxiously defended by all, and became the basis, in a manner, of the English monarchy, and a kind of original

contract, which both limited the authority of the king and ensured the conditional allegiance of his subjects. Though often violated, they were still claimed by the nobility and people; and, as no precedents were supposed valid that infringed them, they rather acquired than lost authority, from the frequent attempts made against them in several ages, by regal and arbitrary power." --- Hume, ch. 12.

Mackintosh says, "It was understood by the simplest of the unlettered age for whom it was intended. It was remembered by them... For almost five centuries it was appealed to as the decisive authority on behalf of the people... To have produced it, to have preserved it, to have matured it, constitute the immortal claim of England on the esteem of mankind. Her Bacons arid Shakspeares, her Miltons and Newtons, with all the truth which they have revealed, and all the generous virtues which they have inspired, are of inferior value when compared with the subjection of men and their rulers to the principles of justice; if, indeed, it be not more true that these mighty spirits could not have been formed except under equal laws, nor roused to full activity without the influence of that spirit which the Great Charter breathed over their forefathers." --- Mackintosh's Hist. of Eng., ch. 3. fn100

Of the Great Charter, the trial by jury is the vital part, and the only part that places the liberties of the people in their own keeping. Of this Blackstone says:

"The trial by jury, or the country, per patriam, is also that trial by the peers of every Englishman, which, as the grand bulwark of his liberties, is secured to him by the Great Charter; nullus liber homo capiatur, vel imprisonetur, aut exuletur, aut aliquo modo destruatur, nisi per legale judicial parium suorum, vel per legem terrae....

The liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all [*205] open, attacks, which none will be so hardy as to make, but also from all secret machinations which may sap and undermine it." fn101

"The trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law... It is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbors and equals." fn102

Hume calls the Trial by Jury "An institution admirable in itself, and the best calculated for the preservation of liberty and the administration of justice, that ever was devised by the wit of man." fn103

An old book, called "English Liberties," says: "English Parliaments have all along been most

zealous for preserving this Great Jewel of Liberty, Trials by Juries having no less than fifty-eight several times, since the Norman Conquest, been established and confirmed by the legislative power, no one privilege besides having been ever so often remembered in parliament." fn104

CHAPTER XII. LIMITATIONS IMPOSED UPON THE MAJORITY BY THE TRIAL BY JURY .

The principal objection, that will be made to the doctrine of this essay, is, that under it, a jury would paralyze the power of the majority, and veto all legislation that was not in accordance with the will of the whole, or nearly the whole, people.

The answer to this objection is, that the limitation, which would be thus imposed upon the legislative power, (whether that power be vested in the majority, or minority, of the people,) is the crowning merit of the trial by jury. It has other merits; but, though important in themselves, they are utterly insignificant and worthless in comparison with this.

It is this power of vetoing all partial and oppressive legislation, and of restricting the government to the maintenance of such laws as the whole, or substantially the whole, people are agreed in, that makes the trial by jury "the palladium of liberty." Without this power it would never have deserved that name.

The will, or the pretended will, of the majority, is the last lurking place of tyranny at the present day. The dogma, that certain individuals and families have a divine appointment to govern the rest of mankind, is fast giving place to the one that the larger number have a right to govern the smaller; a dogma, which may, or may not, be less oppressive in its practical operation, but which certainly is no less false or tyrannical in principle, than the one it is so rapidly supplanting. Obviously there is nothing in the nature of majorities, that insures justice at their hands. They have the same passions as minorities, and they have no qualities whatever that should be expected to prevent them from practising the same tyranny [*207] as minorities, if they think it will be for their interest to do so.

There is no particle of truth in the notion that the majority have a right to rule, or to exercise arbitrary power over, the minority, simply because the former are more numerous than the latter. Two men have no more natural right to rule one, than one has to rule two. Any single man, or any body of men, many or few, have a natural right to maintain justice for themselves, and for any others who may need their assistance against the injustice of any and all other men, without regard to their numbers; and majorities have no right to do any more than this. The relative numbers of the opposing parties have nothing to do with the question of right.

And no more tyrannical principle was ever avowed, than that the will of the majority ought to have the force of law, without regard to its justice; or, what is the same thing, that the will of the majority ought always to be presumed to be in accordance with justice. Such a doctrine is only another form of the doctrine that might makes right.

When two men meet one upon the highway, or in the wilderness, have they a right to dispose of his life, liberty, or property at their pleasure, simply because they are the more numerous party? Or is he bound to submit to lose his life, liberty, or property, if they demand it, merely because he is the less numerous party? Or, because they are more numerous than he, is he bound to presume that they are governed only by superior wisdom, and the principles of justice, and by no selfish passion that can lead them to do him a wrong? Yet this is the principle, which it is claimed should govern men in all their civil relations to each other. Mankind fall in company with each other on the highway or in the wilderness of life, and it is claimed that the more numerous party, simply by virtue of their superior numbers, have the right arbitrarily to dispose of the life, liberty, and property of the minority; and that the minority are bound, by reason of their inferior numbers, to practise abject submission, and consent to hold their natural rights, --- any, all, or none, as the case may be, --- at the mere will and pleasure of the majority; as if all a man's natural rights expired, or were suspended by the operation of [*208] a paramount law, the moment he came into the presence of superior numbers.

If such be the true nature of the relations men hold to each other in this world, it puts an end to all such things as crimes, unless they be perpetrated upon those who are equal or superior, in number, to the actors. All acts committed against persons inferior in number to the aggressors, become but the exercise at rightful authority. And consistency with their own principles requires that all governments, founded on the will of the majority, should recognize this plea as a sufficient justification for all crimes whatsoever.

If it be said that the majority should be allowed to rule, not because they are stronger than the minority, but because their superior numbers furnish a probability that they are in the right; one answer is, that the lives, liberties, and properties of men are too valuable to them, and the natural presumptions are too strong in their favor, to justify the destruction of them by their fellow-men on a mere balancing of probabilities, or on any ground whatever short of certainty beyond a reasonable doubt. This last is the moral rule universally recognized to be binding upon single individuals. And in the forum of conscience the same rule is equally binding upon governments, for governments are mere associations of individuals. This is the rule on which the trial by jury is based. And it is plainly the only rule that ought to induce a man to submit his rights to the adjudication of his fellow-men, or dissuade him from a forcible defence of them.

Another answer is, that if two opposing parties could be supposed to have no personal interests or passions involved, to warp their judgments, or corrupt their motives, the fact that one of the

parties was more numerous than the other, (a fact that leaves the comparative intellectual competency of the two parties entirely out of consideration,) might, perhaps, furnish a slight, but at best only a very slight, probability that such party was on the side of justice. But when it is considered that the parties are liable to differ in their intellectual capacities, and that one, or the other, or both, are undoubtedly under the influence of such passions as rivalry, hatred, avarice, and ambition, --- passions that are nearly certain to pervert their [*209] judgments, and very likely to corrupt their motives, all probabilities founded upon a mere numerical majority, in one party, or the other, vanish at once; and the decision of the majority becomes, to all practical purposes, a mere decision of chance. And to dispose of men's properties, liberties, and lives, by the mere process of enumerating such parties, is not only as palpable gambling as was ever practised, but it is also the most atrocious that was ever practised, except in matters of government. And where government is instituted on this principle, (as in the United States, for example,) the nation is at once converted into one great gambling establishment; where all the rights of men are the stakes; a few bold bad men throw the dice (dice loaded with all the hopes, fears, interests, and passions which rage in the breasts of ambitious and desperate men,) and all the people, from the interests they have depending, become enlisted, excited, agitated, and generally corrupted, by the hazards of the game.

The trial by jury disavows the majority principle altogether; and proceeds upon the ground that every man should be presumed to be entitled to life, liberty, and such property as he has in his possession; and that the government should lay its hand upon none of them, (except for the purpose of bringing them before a tribunal for adjudication,) unless it be first ascertained, beyond a reasonable doubt, in every individual case, that justice requires it.

To ascertain whether there be such reasonable doubt, it takes twelve men by lot from the whole body of mature men. If any of these twelve are proved to be under the influence of any special interest or passion, that may either pervert their judgments, or corrupt their motives, they are set aside as unsuitable for the performance of a duty requiring such absolute impartiality and integrity; and others substituted in their stead. When the utmost practicable impartiality is attained on the part of the whole twelve, they are sworn to the observance of justice; and their unanimous concurrence is then held to be necessary to remove that reasonable doubt, which, unremoved, would forbid the government to lay its hand on its victim.

Such is the caution which the trial by jury both practises [*210] and inculcates, against the violation of justice, on the part of the government, towards the humblest individual, in the smallest matter affecting his civil rights, his property, liberty, or life. And such is the contrast, which the trial by jury presents, to that gambler's and robber's rule, that the majority have a right, by virtue of their superior numbers, and without regard to justice, to dispose at pleasure of the property and persons of all bodies of men less numerous than themselves.

The difference, in short, between the two systems, is this. The trial by jury protects person and property, inviolate to their possessors, from the hand of the law, unless justice, beyond a reasonable doubt, require them to be taken. The majority principle takes person and property from their possessors, at the mere arbitrary will of a majority, who are liable and likely to be influenced, in taking them, by motives of oppression, avarice, and ambition.

If the relative numbers of opposing parties afforded sufficient evidence of the comparative justice of their claims the government should carry the principle into its courts of justice; and instead of referring controversies to impartial and disinterested men, to judges and jurors, sworn to do justice, and bound patiently to hear and weigh all the evidence and arguments that can be offered on either side, it should simply count the plaintiff's and defendants in each case, (where there were more than one of either,) and then give the case to the majority; after ample opportunity had been given to the plaintiffs and defendants to reason with, flatter, cheat, threaten, and bribe each other, by way of inducing them to change sides. Such a. process would be just as rational in courts of justice, as in halls of legislation; for it is of no importance to a man, who has his rights taken from him, whether it be done by a legislative enactment, or a judicial decision.

In legislation, the people are all arranged as plaintiff's and defendants in their own causes; (those who are in favor of a particular law, standing as plaintiff's, and those who are opposed to the same law, standing as defendants); and to allow these causes to be decided by majorities, is plainly as absurd as it would be to allow judicial decisions to be determined by the relative number of plaintiffs and defendants.[*211]

If this mode of decision were introduced into courts of justice, we should see a parallel, and only a parallel, to that system of legislation which we witness daily. We should see large bodies of men conspiring to bring perfectly groundless suits, against other bodies of men, for large sums of money, and to carry them by sheer force of numbers; just as we now continually see large bodies of men conspiring to carry, by mere force of numbers, some scheme of legislation that will, directly or indirectly, take money out of other men's pockets, and put it into their own. And we should also see distinct bodies of men, parties in separate suits, combining and agreeing all to appear and be counted as plaintiffs or defendants in each other's suits, for the purpose of ekeing out the necessary majority; just as we now see distinct bodies of men, interested in separate schemes of ambition or plunder, conspiring to carry through a batch of legislative enactments, that shall accomplish their several purposes.

This system of combination and conspiracy would go on, until at length whole states and a whole nation would become divided into two great litigating parties, each party composed of several smaller bodies, having their separate suits, but all confederating for the purpose of making up the necessary majority in each case. The individuals composing each of these two great parties, would at length become so accustomed to acting together, and so well acquainted

with each others' schemes, and so mutually dependent upon each others' fidelity for success, that they would become organized as permanent associations; bound together by that kind of honor that prevails among thieves; and pledged by all their interests, sympathies, and animosities, to mutual fidelity, and to unceasing hostility to their opponents; and exerting all their arts and all their resources of threats, injuries, promises, and bribes, to drive or seduce from the other party enough to enable their own to retain or acquire such a majority as would be necessary to gain their own suits, and defeat the suits of their opponents. All the wealth and talent of the country would become enlisted in the service of these rival associations; and both would at length become so compact, so well organized, so powerful, and yet always so much in need of recruits, [*212] that a private person would be nearly or quite unable to obtain justice in the most paltry suit with his neighbor, except on the condition of joining one of these great litigating associations, who would agree to carry through his cause, on condition of his assisting them to carry through all the others, good and bad, which they had already undertaken. If he refused this, they would threaten to make a similar offer to his antagonist, and suffer their whole numbers to be counted against him.

Now this picture is no caricature, but a true and honest likeness. And such a system of administering justice, would be no more false, absurd, or atrocious, than that system of working by majorities, which seeks to accomplish, by legislation, the same ends which, in the case supposed, would be accomplished by judicial decisions.

Again, the doctrine that the minority ought to submit to the will of the majority, proceeds, not upon the principle that government is formed by voluntary association, and for an agreed purpose, on the part of all who contribute to its support, but upon the presumption that all government must be practically a state of war and plunder between opposing parties; and that in order to save blood, and prevent mutual extermination, the parties come to an agreement that they will count their respective numbers periodically, and the one party shall then be permitted quietly to rule and plunder, (restrained only by their own discretion,) and the other submit quietly to be ruled and plundered, until the time of the next enumeration.

Such an agreement may possibly be wiser than unceasing and deadly conflict; it nevertheless partakes too much of the ludicrous to deserve to be seriously considered as an expedient for the maintenance of civil society. It would certainly seem that mankind might agree upon a cessation of hostilities, upon more rational and equitable terms than that of unconditional submission on the part of the less numerous body. Unconditional submission is usually the last act of one who confesses himself subdued and enslaved. How any one ever came to imagine that condition to be one of freedom, has never been explained. And as for the system being adapted to the main- [*213] tenance of justice among men, it is a mystery that any human mind could ever have been visited with an insanity wild enough to originate the idea.

If it be said that other corporations, than governments, surrender their affairs into the hands

of the majority, the answer is, that they allow majorities to determine only trifling matters, that are in their nature mere questions of discretion, and where there is no natural presumption of justice or right on one side rather than the other. They never surrender to the majority the power to dispose of; or, what is practically the same thing, to determine, the rights of any individual member. The rights of every member are determined by the written compact, to which all the members have voluntarily agreed.

For example. A banking corporation allows a majority to determine such questions of discretion as whether the note of A or of B shall be discounted; whether notes shall be discounted on one, two, or six days in the week; how many hours in a day their banking-house shall be kept open; how many clerks shall be employed; what salaries they shall receive, and such like matters, which are in their nature mere subjects of discretion, and where there are no natural presumptions of justice or right in favor of one course over the other. But no banking corporation allows a majority, or any other number of its members less than the whole, to divert the funds of the corporation to any other purpose than the one to which every member of the corporation has legally agreed that they may be devoted; nor to take the stock of one member and give it to another; nor to distribute the dividends among the stockholders otherwise than to each one the proportion which he has agreed to accept, and all the others have agreed that he shall receive. Nor does any banking corporation allow a majority to impose taxes upon the members for the payment of the corporate expenses, except in such proportions as every member has consented that they may be imposed. All these questions, involving the rights of the members as against each other, are fixed by the articles of the association, --- that is, by the agreement to which every member has personally assented.

What is also specially to be noticed, and what constitutes a [*214] vital difference between the banking corporation and the political corporation, or government, is, that in case of controversy among the members of the banking corporation, as to the rights of any member, the question is determined, not by any number, either majority, or minority, of the corporation itself, but by persons out of the corporation; by twelve men acting as jurors, or by other tribunals of justice, of which no member of the corporation is allowed to be a part. But in the case of the political corporation, controversies among the parties to it, as to the rights of individual members, must of necessity be settled by members of the corporation itself, because there are no persons out of the corporation to whom the question can be referred.

Since, then, all questions as to the rights of the members of the political corporation, must be determined by members of the corporation itself, the trial by jury says that no man's rights, --- neither his right to his life, his liberty, nor his property, --- shall be determined by any such standard as the mere will and pleasure of majorities; but only by the unanimous verdict of a tribunal fairly representing the whole people, --- that is, a tribunal of twelve men, taken at random from the whole body, and ascertained to be as impartial as the nature of the case will admit, and sworn to the observance of justice. Such is the difference in the two kinds of corporations; and the custom of managing by majorities the mere discretionary matters of

business corporations, (the majority having no power to determine the rights of any member,) furnishes no analogy to the practice, adopted by political corporations, of disposing of all the rights of their members by the arbitrary will of majorities.

But further. The doctrine that the majority have a right to rule, proceeds upon the principle that minorities have no rights in the government; for certainly the minority cannot be said to have any rights in a government, so long as the majority alone determine what their rights shall be. They hold everything, or nothing, as the case may be, at the mere will of the majority.

It is indispensable to a "free government," (in the political sense of that term,) that the minority, the weaker party, have [*215] a veto upon the acts of the majority. Political liberty is liberty for the weaker party in a nation. It is only the weaker party that lose their liberties, when a government becomes oppressive. The stronger party, in all governments, are free by virtue of their superior strength. They never oppress themselves.

Legislation is the work of this stronger party; and if, in addition to the sole power of legislating, they have the sole power of determining what legislation shall be enforced, they have all power in their hands, and the weaker party are the subjects of an absolute government.

Unless the weaker party have a veto, either upon the making, or the enforcement of laws, they have no power whatever in the government, and can of course have no liberties except such as the stronger party, in their arbitrary discretion, see fit to permit them to enjoy.

In England and the United States, the trial by jury is the only institution that gives the weaker party any veto upon the power of the stronger. Consequently it is the only institution, that gives them any effective voice in the government, or any guaranty against oppression.

Suffrage, however free, is of no avail for this purpose; because the suffrage of the minority is overborne by the suffrage of the majority, and is thus rendered powerless for purposes of legislation. The responsibility of officers can be made of no avail, because they are responsible only to the majority. The minority, therefore, are wholly without rights in the government, wholly at the mercy of the majority, unless, through the trial by jury, they have a veto upon such legislation as they think unjust.

Government is established for the protection of the weak against the strong. This is the principal, if not the sole, motive for the establishment of all legitimate government. Laws, that are sufficient for the protection of the weaker party, are of course sufficient for the protection of the stronger party; because the strong can certainly need no more protection than the weak. It is, therefore, right that the weaker party should be represented in the tribunal which is

finally to determine what legislation may be enforced; and that no legislation shall [*216] be enforced against their consent. They being presumed to be competent judges of what kind of legislation makes for their safety, and what for their injury, it must be presumed that any legislation, which they object to enforcing, tends to their oppression, and not to their security.

There is still another reason why the weaker party, or the minority, should have a veto upon all legislation which they disapprove. That reason is, that that is the only means by which the government can be kept within the limits of the contract, compact, or constitution, by which the whole people agree to establish government. If the majority were allowed to interpret the compact for themselves, and enforce it according to their own interpretation, they would, of course, make it authorize them to do whatever they wish to do.

The theory of free government is that it is formed by the voluntary contract of the people individually with each other. This is the theory, (although it is not, as it ought to be, the fact,) in all the governments in the United States, as also in the government of England. The theory assumes that each man, who is a party to the government, and contributes to its support, has individually and freely consented to it. Otherwise the government would have no right to tax him for its support, --- for taxation without consent is robbery. This theory, then, necessarily supposes that this government, which is formed by the free consent of all, has no powers except such as all the parties to it have individually agreed that it shall have: and especially that it has no power to pass any laws, except such as all the parties have agreed that it may pass.

This theory supposes that there may be certain laws that will be beneficial to all, --- so beneficial that all consent to be taxed for their maintenance. For the maintenance of these specific laws, in which all are interested, all associate. And they associate for the maintenance of those laws only, in which all are interested. It would be absurd to suppose that all would associate, and consent to be taxed, for purposes which were beneficial only to a part; and especially for purposes that were injurious to any. A government of the whole, therefore, can have no powers except such as all the parties consent that it may have. It can do nothing except what all have con- [*217] sented that it may do. And if any portion of the people, --- no matter how large their number, if it be less than the whole, --- desire a government for any purposes other than those that are common to all, and desired by all, they must form a separate association for those purposes. They have no right, --- by perverting this government of the whole, to the accomplishment of purposes desired only by a part, --- to compel any one to contribute to purposes that are either useless or injurious to himself.

Such being the principles on which the government is formed, the question arises, how shall this government, where formed, be kept within the limits of the contract by which it was established? How shall this government, instituted by the whole people, agreed to by the whole people, supported by the contributions of the whole people, be confined to the accomplishment

of those purposes alone, which the whole people desire? How shall it be preserved from degeneration into a mere government for the benefit of a part only of those who established, and who support it? How shall it be prevented from even injuring a part of its own members, for the aggrandizement of the rest? Its laws must be, (or at least now are,) passed, and most of its other acts performed, by mere agents, --- agents chosen by a part of the people, and not by the whole. How can these agents be restrained from seeking their own interests, and the interests of those who elected them, at the expense of the rights of the remainder of the people, by the passage and enforcement of laws that shall be partial, unequal, and unjust in their operation? That is the great question. And the trial by jury answers it. And how does the trial by jury answer it? It answers it, as has already been shown throughout this volume, by saying that these mere agents and attorneys, who are chosen by a part only of the people, and are liable to be influenced by partial and unequal purposes, shall not have unlimited authority in the enactment and enforcement of laws; that they shall not exercise all the functions of government. It says that they shall never exercise that ultimate power of compelling obedience to the laws by punishing for disobedience, or of executing the laws against the person or property of any man, without first [*218] getting the consent of the people, through a tribunal that may fairly be presumed to represent the whole, or substantially the whole, people. It says that if the power to make laws, and the power also to enforce them, were committed to these agents, they would have all power, --- would be absolute masters of the people, and could deprive them of their rights at pleasure. It says, therefore, that the people themselves will hold a veto upon the enforcement of any and every law, which these agents may enact, and that whenever the occasion arises for them to give or withhold their consent, inasmuch as the whole people cannot assemble, or devote the time and attention necessary to the investigation of each case, --- twelve of their number shall be taken by lot, or otherwise at random, from the whole body; that they shall not be chosen by majorities, (the same majorities that elected the agents who enacted the laws to be put in issue,) nor by any interested or suspected party; that they shall not be appointed by, or be in any way dependent upon, those who enacted the law; that their opinions, whether for or against the law that is in issue, shall not be inquired of beforehand; and that if these twelve men give their consent to the enforcement of the law, their consent shall stand for the consent of the whole.

This is the mode, which the trial by jury provides, for keeping the government within the limits designed by the whole people, who have associated for its establishment. And it is the only mode, provided either by the English or American constitutions, for the accomplishment of that object.

But it will, perhaps, be said that if the minority can defeat the will of the majority, then the minority rule the majority. But this is not true in any unjust sense. The minority enact no laws of their own. They simply refuse their assent to such laws of the majority as they do not approve. The minority assume no authority over the majority; they simply defend themselves. They do not interfere with the right of the majority to seek their own happiness in their own way, so long as they (the majority) do not interfere with the minority. They claim simply not to be oppressed, and not to be compelled to assist in doing anything which they do not approve.

They say to the majority, "We will unite with you, if you [*219] desire it, for the accomplishment of all those purposes, in which we have a common interest with you. You can certainly expect us to do nothing more. If you do not choose to associate with us on those terms, there must be two separate associations. You must associate for the accomplishment of your purposes; we for the accomplishment of ours."

In this case, the minority assume no authority over the majority; they simply refuse to surrender their own liberties into the hands of the majority. They propose a union; but decline submission. The majority are still at liberty to refuse the connection, and to seek their own happiness in their own way, except that they cannot be gratified in their desire to become absolute masters of the minority.

But, it may be asked, how can the minority be trusted to enforce even such legislation as is equal and just? The answer is, that they are as reliable for that purpose as are the majority; they are as much presumed to have associated, and are as likely to have associated, for that object, as are the majority; and they have as much interest in such legislation as have the majority. They have even more interest in it; for, being the weaker party, they must rely on it for their security, --- having no other security on which they can rely. Hence their consent to the establishment of government, and to the taxation required for its support, is presumed, (although it ought not to be presumed,) without any express consent being given. This presumption of their consent to be taxed for the maintenance of laws, would be absurd, if they could not themselves be trusted to act in good faith in enforcing those laws. And hence they cannot be presumed to have consented to be taxed for the maintenance of any laws, except such as they are themselves ready to aid in enforcing. It is therefore unjust to tax them, unless they are eligible to seats in a jury, with power to judge of the justice of the laws. Taxing them for the support of the laws, on the assumption that they are in favor of the laws, and at the same time refusing them the right, as jurors, to judge of the justice of the laws, on the assumption that they are opposed to the laws, are flat contradictions.

But, it will be asked, what motive have the majority, when [*220] they have all power in their own hands, to submit their will to the veto of the minority?

One answer is, that they have the motive of justice. It would be unjust to compel the minority to contribute, by taxation, to the support of any laws which they did not approve.

Another answer is, that if the stronger party wish to use their power only for purposes of justice, they have no occasion to fear the veto of the weaker party; for the latter have as strong motives for the maintenance of just government, as have the former.

Another answer is, that if the stronger party use their power unjustly, they will hold it by an uncertain tenure, especially in a community where knowledge is diffused; for knowledge will enable the weaker party to make itself in time the stronger party. It also enables the weaker party, even while it remains the weaker party, perpetually to annoy, alarm, and injure their oppressors. Unjust power, --- or rather power that is grossly unjust, and that is known to be so by the minority, --- can be sustained only at the expense of standing armies, and all the other machinery of force; for the oppressed party are always ready to risk their lives for purposes of vengeance, and the acquisition of their rights, whenever there is any tolerable chance of success. Peace, safety, and quiet for all, can be enjoyed only under laws that obtain the consent of all. Hence tyrants frequently yield to the demands of justice from those weaker than themselves, as a means of buying peace and safety.

Still another answer is, that those who are in the majority on one law, will be in the minority on another. All, therefore, need the benefit of the veto, at some time or other, to protect themselves from injustice.

That the limits, within which legislation would, by this process, be confined, would be exceedingly narrow, in comparison with those it at present occupies, there can be no doubt. All monopolies, all special privileges, all sumptuary laws, all restraints upon any traffic, bargain, or contract, that was naturally lawful, fn105 all restraints upon men's natural [*221] rights, the whole catalogue of mala prohibita, and all taxation to which the taxed parties had not individually, severally, and freely consented, would be at an end; because all such legislation implies a violation of the rights of a greater or less minority. This minority would disregard, trample upon, or resist, the execution of such legislation, and then throw themselves upon a jury of the whole people for justification and protection. In this way all legislation would be nullified, except the legislation of that general nature which impartially protected the rights, and subserved the interests, of all. The only legislation that could be sustained, would probably be such as tended directly to the maintenance of justice and liberty; such, for example, as should contribute to the enforcement of contracts, the protection of property, and the prevention and punishment of acts intrinsically criminal. In short, government in practice would be brought to the necessity of a strict adherence to natural law, and natural justice, instead of being, as it now is, a great battle, in which avarice and ambition are constantly fighting for and obtaining advantages over the natural rights of mankind. [*222]

APPENDIX. TAXATION .

It was a principle of the Common Law, as it is of the law of nature, and of common sense, that no man can be taxed without his personal consent. The Common Law knew nothing of that system, which now prevails in England, of assuming a man's own consent to be taxed, because some pretended representative, whom he never authorized to act for him, has taken it upon

himself to consent that he may be taxed. That is one of the many frauds on the Common Law, and the English constitution, which have been introduced since Magna Carta. Having finally established itself in England, it has been stupidly and servilely copied and submitted to in the United States.

If the trial by jury were reestablished, the Common Law principle of taxation would be reestablished with it; for it is not to be supposed that juries would enforce a tax upon an individual which he had never agreed to pay. Taxation without consent is as plainly robbery, when enforcers against one man, as when enforced against millions; and it is not to be imagined that juries could be blind to so self-evident a principle. Taking a man's money without his consent, is also as much robbery, when it is done by millions of men, acting in concert, and calling themselves a government, as when it is done by a single individual, acting on his own responsibility, and calling himself a highwayman. Neither the numbers engaged in the act, nor the different characters they assume as a cover for the act, alter the nature of the act itself.

If the government can take a man's money without his consent, there is no limit to the additional tyranny it may practise upon him; for, with his money, it can hire soldiers to stand over him, keep him in subjection, plunder him at discretion, and kill him if he resists. And governments always will do this, as they everywhere and always have done it, except where the Common Law principle has been established. It is therefore a first principle, a very sine qua non of political freedom, that a man can be taxed only by his personal consent. And the establishment of this principle, with trial by jury, insures freedom of course; because: 1. No man would pay his money unless he had first contracted for such a government as he was willing to support; and, 2. Unless the government then kept itself within the terms of its contract, juries would not enforce the payment of the tax. Besides, the agreement to be taxed would probably be entered into but for a year at a time. If, in that year, the government proved itself either inefficient or tyrannical, to any serious degree, the contract would not be renewed. [*223] The dissatisfied parties, if sufficiently numerous for a new organization, would form themselves into a separate association for mutual protection. If not sufficiently numerous for that purpose, those who were conscientious would forego all governmental protection, rather than contribute to the support of a government which they deemed unjust.

All legitimate government is a mutual insurance company, voluntarily agreed upon by the parties to it, for the protection of their rights against wrong-doers. In its voluntary character it is precisely similar to an association for mutual protection against fire or shipwreck. Before a man will join an association for these latter purposes, and pay the premium for being insured, he will, if he be a man of sense, look at the articles of the association; see what the company promises to do; what it is likely to do; and what are the rates of insurance. If he be satisfied on all these points, he will become a member, pay his premium for a year, and then hold the company to its contract. If the conduct of the company prove unsatisfactory, he will let his policy expire at the end of the year for which he has paid; will decline to pay any further

premiums, and either seek insurance elsewhere, or take his own risk without any insurance. And as men act in the insurance of their ships and dwellings, they would act in the insurance of their properties, liberties and lives, in the political association, or government.

The political insurance company, or government, have no more right, in nature or reason, to assume a man's consent to be protected by them, and to be taxed for that protection, when he has given no actual consent, than a fire or marine insurance company have to assume a man's consent to be protected by them, and to pay the premium, when his actual consent has never been given. To take a man's property without his consent is robbery; and to assume his consent, where no actual consent is given, makes the taking none the less robbery. If it did, the highwayman has the same right to assume a man's consent to part with his purse, that any other man, or body of men, can have. And his assumption would afford as much moral justification for his robbery as does a like assumption, on the part of the government, for taking a man's property without his consent. The government's pretence of protecting him, as an equivalent for the taxation, affords no justification. It is for himself to decide whether he desires such protection as the government offers him. If he do not desire it, or do not bargain for it, the government has no more right than any other insurance company to impose it upon him, or make him pay for it. Trial by the country, and no taxation without consent, were the two pillars of English liberty, (when England had any liberty,) and the first principles of the Common Law. They mutually sustain each other; and neither can stand without the other. Without both, no people have any guaranty for their freedom; with both, no people can be otherwise than free. fn106 [*224]

By what force, fraud, and conspiracy, on the part of kings, nobles, and "a few wealthy freeholders," these pillars have been prostrated in England, it is desired to show more fully in the next volume, if it should be necessary.

NOTES

1. [*8] To show that this supposition is not an extravagant one, it may be mentioned that courts have repeatedly questioned jurors to ascertain whether they were prejudiced against the government --- that is, whether they were in favor of, or opposed to, such laws of the government as were to be put in issue in the then pending trial. This was done (in 1851) in the United States District Court for the District of Massachusetts, by Peleg Sprague, the United States district judge, in panelling three several juries for the trials of Scott, Hayden, and Morris, charged with having aided in the rescue of a fugitive slave from the custody of the United States deputy marshal. This judge caused the following question to be propounded to all the jurors separately; and those who answered unfavorably for the purposes of the government, were excluded from the panel.

“Do you hold any opinions upon the subject of the Fugitive Slave Law, so called, which will induce you to refuse to convict a person indicted under it, if the facts set forth in the indictment, and constituting the offense, are proved against him, and the court direct you that the law is constitutional?”

The reason of this question was, that “the Fugitive Slave Law, so called,” was so obnoxious to a large portion of the People, as to render a conviction under it hopeless, if the jurors were taken indiscriminately from among the people.

A similar question was soon afterwards propounded to the persons drawn as jurors in the United States Circuit Court for the District of Massachusetts, by Benjamin R. Curtis, one of the Justice of the Supreme Court of the United States, in empanelling a jury for the trial of the aforesaid Morris on the charge before mentioned; and those who did not answer the question favorably for the government were again excluded from the panel.

It has also been an habitual practice with the Supreme Court of Massachusetts, in empanelling juries for the trial of capital offences, to inquire of the persons drawn as jurors whether they had any conscientious scruples against finding verdicts of guilty [*9] in such cases; that is, whether they had any conscientious scruples against sustaining the law prescribing death as the punishment of the crime to be tried; and to exclude from the panel all who answered in the affirmative.

The only principle upon which these questions are asked, is this --- that no man shall be allowed to serve as juror, unless he be ready to enforce any enactment of the government, however cruel or tyrannical it may be.

What is such a jury good for, as a protection against the tyranny of the government? A jury like that is palpably nothing but a mere tool of oppression in the hands of the government. A trial by such a jury is really a trial by the government itself --- and not a trial by the country --- because it is a trial only by men specially selected by the government for their readiness to enforce its own tyrannical measures.

If that be the true principle of the trial by jury, the trial is utterly worthless as a security to liberty. The Czar might, with perfect safety to his authority, introduce the trial by jury into Russia, if he could but be permitted to select his jurors from those who were ready to maintain his laws, without regard to their injustice.

This example is sufficient to show that the very pith of the trial by jury, as a safeguard to liberty, consists in the jurors being taken indiscriminately from the whole people, and in their

right to hold invalid all laws which they think unjust.

2. [*11]The executive has a qualified veto upon the passage of laws, in most of our governments, and an absolute veto, in all of them, upon the execution of any laws which he deems unconstitutional; because his oath to support the constitution (as he understands it) forbids him to execute any law that he deems unconstitutional.

3. [*15] And if there be so much as a reasonable doubt of the justice of the laws, the benefit of that doubt must be given to the defendant, and not to the government. So that the government must keep its laws clearly within the limits of justice, if it would ask a jury to enforce them.

4. [*17] Hallam says, "The relation established between a lord and his vassal by the feudal tenure, far from containing principles of any servile and implicit obedience, permitted the compact to be dissolved in case of its violation by either party. This extended as much to the sovereign as to inferior lords. * * If a vassal was aggrieved, and if justice was denied him, he sent a defiance, that is, a renunciation of fealty to the king, and was entitled to enforce redress at the point of his sword. It then became a contest of strength as between two independent potentates, and was terminated by treaty, advantageous or otherwise, according to the fortune of war. * * There remained the original principle, that allegiance depended conditionally upon good treatment, and that an appeal might be lawfully made to arms against an oppressive government. Nor was this, we may be sure, left for extreme necessity, or thought to require a long-enduring forbearance. In modern times, a king, compelled by his subjects' swords to abandon any pretension, would be supposed to have ceased to reign; and the express recognition of such a right as that of insurrection has been justly deemed inconsistent with the majesty of law. But ruder ages had ruder sentiments. Force was necessary to repel force; and men accustomed to see the king's authority defied by a private riot, were not much shocked when it was resisted in defence of public freedom. --- 3 Middle Ages 240-2.

5. [*20] 1 Hume, Appendix 2.

6. [*20] Crabbe's History of the English law, 236.

7. [*21] Coke says, "The king of England is armed with divers councils, one whereof is called commune concilium, (the common council,) and that it the court of parliament, and so it is legally called in writs and judicial proceedings commune concilium regni Angliae (the common council of the kingdom of England.) And another is called magnum concilium, (great council;) this is sometimes applied to the upper house of parliament, and sometimes, out of parliament time, to the peers of the realm, lords of parliament, who are called magnum concilium regis, (the great council of the king). * * Thirdly, (as every man knoweth,) the king hath a privy

council for matters of state. * * The fourth council of the king are his judges for law matters. --- 1 Coke's Institutes, 110a.

8. [*21] The Great Charter of Henry III., (1216 and 1225,) confirmed by Edward I., (1297,) makes no provision whatever for, or mention of, a parliament, unless the provision, (Ch. 37,) that "Escuage, (a military contribution,) from henceforth shall be taken like as it was wont to be in the time of King Henry our grandfather," mean that a parliament shall be summoned for that purpose.

9. [*21] The Magna Carta of John, (Ch. 17 and 18,) defines those who were entitled to be summoned to parliament, to wit, "The Archbishops, Bishops, Abbots, Earls, and Great Barons of the Realm, * * and all others who hold of us in chief." Those who held land of the king in chief included none below the rank of knights.

10. [*21] The parliaments of that time were, doubtless, such as Carlyle describes them, when he says, "The parliament was at first a most simple assemblage, quite cognate to the situation; that Red William, or whoever had taken on him the terrible task of being King of England, was wont to invite, oftenest about Christmas time, his subordinate Kinglets, Barons as he called them, to give him the pleasure of their company for a week or two; there, in earnest conference all morning in freer talk over Christmas [*22] cheer all evening, in some big royal hall of Westminster, Winchester, or wherever it might be, with log fires, huge rounds of roast and boiled, not lacking malmsey and other generous liquor, they took counsel concerning the arduous matters of the kingdom."

11. [*22] Hume, Appendix 2.

12. [*22] This point will be more fully established hereafter.

13. [*24] It is plain that the king and all his partisans looked upon the charter as utterly prostrating the king's legislative supremacy before the discretion of juries. When the schedule of liberties demanded by the barons was shown to him, (of which the trial by jury was the most important, because it was the only one that protected all the rest,) "the king, falling into a violent passion, asked, Why the barons did not with these exactations demand his kingdom? * * and with a solemn oath protested, that he would grant such liberties as would make himself a slave." * * But afterwards, "seeing himself deserted, and fearing they would seize his castles, he sent the Earl of Pembroke and other faithful messengers to them, to let them know he would grant them the laws and liberties they desired." * * But after the charter had been granted, "the king's mercenary soldiers, desiring war more than peace, were by their leaders continually whispering in his ears, that he was now no longer king, but the scorn of other

princes; and that it was more eligible to be no king, than such a one as he." * * He applied "to the [*25] Pope, that he might by his apostolic authority make void what the barons had done. * * At Rome he met with what success he could desire, where all the transactions with the barons were fully represented to the Pope, and the Charter of liberties shown to him, in writing; which, when he had carefully perused, he, with a furious look, cried out, What! Do the barons of England endeavor to dethrone a king, who has taken upon him the Holy Cross, and is under the protection of the Apostolic See; and would they force him to transfer the dominions of the Roman Church to others? By St. Peter, this injury must not pass unpunished. Then debating the matter with the cardinals, he, by a definitive sentence, damned and cassated forever the Charter of Liberties, and sent the king a bull containing that sentence at large." --- Echard's History of England, p. 106-7.

These things show that the nature and effect of the charter were well understood by the king and his friends; that they all agreed that he was effectually stripped of power. Yet the legislative power had not been taken from him; but only the power to enforce his laws, unless furies should freely consent to their enforcement.

14. [*26] The laws were, at that time, all written in Latin.

15. [*26] "No man shall be condemned at the king's suit, either before the king in his bench, where pleas are coram rege, (before the king,) (and so are the words nec super eum ibimus, to be understood,) nor before any other commissioner or judge whatsoever, and so are the words nec super eum mittemus, to be understood, but by the judgment of his peers that is, equals, or according to the law of the land." --- 2 Coke's Inst., 46.

16. [*28] Perhaps the assertion in the text should be made with this qualification --- that the words "per legem terrae," (according to the law of the land,) and the words "per legale judicium parium suorum," (according to the legal judgment of his peers,) imply that the king, before proceeding to any executive action, will take notice of "the law of the land," and of the legality of the judgment of the peers, and will execute upon the prisoner noting except what the law of the land authorizes, and no judgments of the peers, except legal ones. With this qualification, the assertion in the text is strictly correct --- that there is noting in the whole chapter that grants to the king, or his judges, any judicial power at all. The chapter only describes and limits his executive power.

17. [*28] Blackstone's Law Tracts, page 294, Oxford Edition.

18. [*29] These Articles of the Charter are given in Blackstone's collection of Charters, and are also printed with the Statutes of the Realm. Also in Wilkins' Laws of the Anglo-Saxons, p. 356.

19. [*29] Lingard says, “The words, ‘We will not destroy him, nor will we go upon him, nor will we send upon him,’ have been very differently expounded by different legal authorities. Their real meaning may be learned from John himself, who the next year promised by his letters, patent. . . . nec super eos per vim vel per arma ibimus, nisi per legem regni nostri, vel per judicium parium suorum in curia nostra, (nor will we go upon them by force or arms, unless by the law of our kingdom, or in the judgment of their peers in our court.) Pat. 16 Johan, apud Drad. 11, app. no. 124. He had hitherto been in the habit of going with an armed force, or sending an armed force on the lands, and against the castles, of all whom he knew or suspected to be his secret enemies, without observing any form of law.” --- 3 Lingard, 47 note.

20. [*30] “Judgment, judicium. * * The sentence of the law, pronounced by the court, upon the matter contained in the record.” --- 3 Blackstone, 395. Jacob’s Law Dictionary. Tomlin’s do.

“Judgment is the decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of the proceedings instituted therein, for the redress of an injury.” --- Bouvier’s Law Dict.

“Judgment, judicium. * * Sentence of a judge against a criminal. * * Determination, decision in general.” --- Bailey’s Dict.

“Judgment. * * In a legal sense, a sentence or decision pronounced by authority of a king, or other power, either by their own mouth, or by that of their judges and officers, whom they appoint to administer justice in their stead.” --- Chamber’s Dict.

“Judgment. * * In law, the sentence or doom pronounced in any case, civil or criminal, by the judge or court by which it is tried.” --- Webster’s Dict.

Sometimes the punishment itself is called judicium, judgment; or, rather, it was at the time of Magna Carta. For example, in a statute passed fifty-one years [*31] after Magna Carta, it was said that a baker, for default in the weight of his bread, “debeat amerciari vel subire judicium pillorie”; that is, ought to be amerced, or suffer the punishment, or judgment, of the pillory. Also that a brewer, for “selling ale contrary to the assize,” “debeat amerciari, vel pati judicium tumbrelli”; that is, ought to be amerced, or suffer the punishment, or judgment, of the tumbrel.” --- 51 Henry 3, St. 6. (1266.)

Also the “Statutes of uncertain date,” (but supposed to be prior to Edward III., or 1326,) provide, in chapters 6, 7, and 10, for “judgment of the pillory.” --- See 1 Ruffhead’s Statutes,

187, 188. 1 Statutes of Realm, 203.

Blackstone, in his chapter “Of Judgment, and its consequences,” says,

“Judgment (unless any matter be offered in arrest thereof) follows upon conviction; being the pronouncing of that punishment which is expressly ordained by law.” --- Blackstone’s Analysis of the Laws of England, Book 4, Ch. 29, Sec. l. Blackstone’s Law Tracts, 126.

Coke says, “Judicium . . the judgment is the guide and direction of the execution.” 3 Inst. 210.

21. [*32] This precedent from Germany is good authority, because the trial by jury was in use, in the northern nations of Europe generally, long before Magna Carta, and probably from time immemorial; and the Saxons and Normans were familiar with it before they settled in England.

22. [*32] Beneficium was the legal name of an estate held by a feudal tenure. See Spelman’s Glossary.

23. [*33] Contenement of a freeman was the means of living in the condition of a freeman.

24. [*33] Waynage was a villein’s plough-tackle and carts.

25. [*33] Tomlin says, “The ancient practice was, when any such fine was imposed, to inquire by a jury quantum inde regi dare valeat per annum, salva sustentatione sua et uxoris liberorum suorum, (how much is he able to give to the king per annum, saving his own maintenance, and that of his wife and children). And since the disuse of such inquest, it is never usual to assess a larger fine than a man is able to pay, without touching the implements of his livelihood; but to inflict corporal punishment, or a limited imprisonment, instead of such a fine as might amount to imprisonment for life. And this is the reason why fines in the king’s courts are frequently denominated ransoms, because the penalty must otherwise fall upon a man’s person, unless it be redeemed or ransomed by a pecuniary fine.” --- Tomlin’s Law Dict., word Fine.

26. [*33] Because juries were to fix the sentence, it must not be supposed that the king was obliged to carry the sentence into execution; but only that he not go beyond the sentence. He might pardon, or he might acquit on grounds of law, notwithstanding the sentence; but he could not punish beyond the extent of the sentence. Magna Carta does not prescribe that the king shall punish according to the sentence of the peers; but only that he shall not punish “unless according to” that sentence. He may acquit or pardon, notwithstanding their sentence

or judgment but he cannot punish, except according to their judgment.

27. [*36] The trial by battle was one in which the accused challenged his accuser to single combat, and staked the question of his guilt or innocence on the result of the duel. This trial was introduced into England by the Normans, within one hundred and fifty years before Magna Carta. It was not very often resorted to even by the Normans [*37] themselves; probably never by the Anglo-Saxons, unless in their controversies with the Normans. It was strongly discouraged by some of the Norman princes, particularly by Henry II., by whom the trial by jury was especially favored. It is probable that the trial by battle, so far as it prevailed at all in England, was rather tolerated as a matter of chivalry, than authorized as a matter of law. At any rate, it is not likely that it was included in the "legem terrae" of Magna Carta, although such duels have occasionally occurred since that time, and have, by some, been supposed to be lawful. I apprehend that nothing can be properly said to be a part of lex terrae, unless it can be shown either to have been of Saxon origin, or to have been recognized by Magna Carta.

The trial by ordeal was of various kinds. In one ordeal the accused was required to take hot iron in his hand; in another to walk blindfold among red-hot ploughshares; in another to thrust his arm into boiling water; in another to be thrown, with his hands and feet bound, into cold water; in another to swallow the morsel of execration; in the confidence that his guilt or innocence would be miraculously made known. This mode of trial was nearly extinct at the time of Magna Carta, and it is not likely that it was included in "legem terrae," as that term is used in that instrument. This idea is corroborated by the fact that the trial by ordeal was specially prohibited only four years after Magna Carta, "by act of Parliament in 3 Henry III., according to Sir Edward Coke, or rather by an order of the king in council." --- 3 Blackstone 345, note.

I apprehend that this trial was never forced upon accused persons, but was only allowed to them, as an appeal to God, from the judgment of a jury. [Hallam says, "It appears as if the ordeal were permitted to persons already convicted by the verdict of a jury." --- 2 Middle Ages, note.]

The trial by compurgators was one in which, if the accused could bring twelve of his neighbors, who would make oath that they believed him innocent, he was held to be so. It is probable that this trial was really the trial by jury, or was allowed as an appeal from a jury. It is wholly improbable that two different modes of trial, so nearly resembling each other as this and the trial by jury do, should prevail at the same time, and among a rude people, whose judicial proceedings would naturally be of the simplest kind. But if this trial really were any other than the trial by jury, it must have been nearly or quite extinct at the time of Magna Carta; and there is no probability that it was included in "legem terrae."

28. [*39] Coke attempts to show that there is a distinction between amercements and fines --- admitting that amercements must be fixed by one's peers, but claiming that fines may be fixed by the government. (2 Inst. 27, 8 Coke's Reports 38.) But there seems to have been no ground whatever for supposing that any such distinction existed at the time of Magna Carta. If there were any such distinction in the time of Coke, it had doubtless grown up within the four centuries that had elapsed since Magna Carta, and is to be set down as one of the numberless inventions of government for getting rid of the restraints of Magna Carta, and for taking men out of the protection of their peers, and subjecting them to such punishments as the government chooses to inflict.

The first statute of Westminster, passed sixty years after Magna Carta, treats the fine and amercement as synonymous, as follows:

"Forasmuch as the common fine and amercement of the whole county in Eyre of the justices for false judgments, or for other trespass, is unjustly assessed by sheriffs and baretors in the shires, * * it is provided, and the king wills, that from henceforth such sums shall be assessed before the justices in Eyre, afore their departure, by the oath of knights and other honest men," &c. --- 3 Edward I, Ch. 18. (1275.)

And in many other statutes passed after Magna Carta, the terms fines and amercement seem to be used indifferently, in prescribing the punishments for offences. As late as 1461, (246 years after Magna Carta,) the statute 1 Edward IV., Ch. 2, speaks of "fines, ransoms and amerciaments" as being levied upon criminals, as if they were the common punishments of offences.

St. 2 and 3 Philip and Mary, Ch. 8, uses the terms, "fines, forfeitures, and amerciaments" five times. (1555.)

St. 5 Elizabeth, Ch. 13, Sec. 10, uses the terms "fines, forfeitures, and amerciaments."

That amercements were fines, or pecuniary punishments, inflicted for offences, is proved by the following statutes, (all supposed to have been passed within one hundred [*40] and fifteen years after Magna Carta,) which speak of amercements as a species of "judgment," or punishment, and as being inflicted for the same offences as other "judgments."

Thus one statute declares that a baker, for default in the weight of his bread, "ought to be amerced, or suffer the judgment of the pillory;" and that a brewer, for "selling ale contrary to the assize," "ought to be amerced, or suffer the judgment or the tumbrel." --- 51 Henry III., St. 6. (1266.)

Among the “Statutes of Uncertain Date,” but supposed to be prior to Edward III., (1326,) are the following:

Chap. 6 provides that “if a brewer break the assize, (fixing the price of ale,) the first, second, and third time, he shall be amerced, but the fourth time he shall suffer judgment of the pillory without redemption.”

Chap. 7 provides that “a butcher that selleth swine’s flesh measled, or flesh dead of the murrain, or that buyeth flesh of Jews, and selleth the same unto Christians, after he shall be convict thereof, for the first time he shall be grievously amerced; the second time he shall suffer judgment of the pillory; and the third time he shall be imprisoned and make fine; and the fourth time he shall forswear the town.”

Chap. 10, a statute against forestalling, provides that,

“He that is convict thereof, the first time shall be amerced, and shall lose the thing so bought, and that according to the custom of the town; he that is convicted the second he shall have judgment of the pillory; at the third time he shall be imprisoned and make fine; the fourth time he shall abjure the town. And this judgment shall be given upon all manner of forestallers, and likewise upon them that have given them counsel, help, or favor. --- 1 Ruffhead’s Statutes, 187, 188. 1 Statutes of the Realm, 203.

29. [*40] 1 Hume, Appendix, l.

30. [*40] Blackstone says, “Our ancient Saxon laws nominally punished theft with death, if above the value of twelve pence; but the criminal was permitted to redeem his life [*41] by a pecuniary ransom, as among their ancestors, the Germans, by a stated number of cattle. But in the ninth year of Henry the First, (1109,) this power of redemption was taken away, and all persons guilty of larceny above the value of twelve pence were directed to be hanged, which law continues the force to this day.” --- 4 Blackstone, 238.

I give this statement of Blackstone, because the latter clause may seem to militate with the idea, which the former clause corroborates, viz., that at the time of Magna Carta, fines were the usual punishments of offences. But I think there is no probability that a law so unreasonable in itself, (unreasonable even after making all allowance for the difference in the value of money,) and so contrary to immemorial custom, could or did obtain any general or speedy acquiescence among a people who cared little for the authority of kings.

Maddox, writing of the period from William the Conqueror to John, says:

"The amercements in criminal and common pleas, which were wont to be imposed during this first period and afterwards, were of so many several sorts, that it is not easy to place them under distinct heads. Let them, for method's sake, be reduced to the heads following: Amercements for or by reason of murders and manslaughters, for misdemeanors, for disseisins, for recreancy, for breach of assize, for defaults, for nonappearance, for false judgment, and for not making suit, or hue and cry. To them may be added miscellaneous amercements, for trespasses of divers kind." --- 1 Maddox's History of the Exchequer, 542.

31. [*46] Coke, in his exposition of the words legem terrae, gives quite in detail the principles of the common law governing arrests; and takes it for granted that the words "nisi per legem terrae" are applicable to arrests, as well as to the indictment, &c. --- 2 Inst., 51, 52.

32. [*47] I cite the above extract from Mr. Hallam solely for the sake of his authority for rendering the word vel by and; and not by any means for the purpose of indorsing the opinion he suggests, that legem terrae authorized "judgments by default or demurrer," without the intervention of a jury. He seems to imagine that lex terrae, the common law, at the time of Magna Carta, included everything, even to the practice of courts, that is, at this day, called by the name of Common Law; whereas much of what is now called Common Law has grown up, by usurpation, since the time of Magna Carta, in palpable violation of the authority of that charter. He says, "Certainly there are many legal procedures, besides trial by jury, through which a parts goods or person may be taken." Of course there are now many such ways, in which a party's goods or person are taken, besides by the judgment of a jury; but the question is, whether such takings are not in violation of Magna Carta.

He seems to think that, in cases of "judgment by default or demurrer," there is no need of a jury, and thence to infer that legem terrae may not have required a jury in those cases. But this opinion is founded on the erroneous idea that juries are required only for determining contested facts, and not for judging of the law. In case of default, the plaintiff must present a prima facie case before he is entitled to a judgment; and Magna Carta, (supposing it to require a jury trial in civil cases, as Mr. Hallam assumes that it does,) as much requires that this prima facie case, both law and fact, be made out to the satisfaction of a jury, as it does that a contested case shall be.

As for a demurrer, the jury must try a demurrer (having the advice and assistance of the court, of course) as much as any other matter of law arising in a case.

Mr. Hallam evidently thinks there is no use for a jury, except where there is "trial" --- meaning thereby a contest on matters of fact. His language is, that "there are many legal procedures, besides trial by jury, through which a party's goods or person may be taken." Now Magna Carta says nothing of trial by jury; but only of the judgment, or sentence, of a jury. It is only by inference we come to the conclusion that there must be a trial by jury. Since the jury alone can give the judgment, or sentence, we infer that they must try the case; because otherwise they would be incompetent, and would have no moral right, to give judgment. They must, therefore, examine the grounds, (both of law and fact,) or rather try the grounds, of every action whatsoever, whether it be decided on "default, demurrer," or otherwise, and render their judgment, or sentence, thereon, before any judgment can be a legal one, on which "to take a party's goods or person." In short, the principle of Magna Carta is, that no judgment can be valid against a party's goods or person, (not even a judgment for costs,) except a judgment rendered by a jury. Of course, a jury must try every question, both of law and fact, that is involved in the rendering of that judgment. They are to have the assistance and advice of the judges, so far as they desire them; but the judgment itself must be theirs, and not the judgment of the court.

As to "process of attachment for contempt," it is of course lawful for a judge, in his character of a peace officer, to issue a warrant for the arrest of a man guilty of a contempt, as he would for the arrest of any other offender, and hold him to bail, (or, in default of bail, commit him to prison,) to answer for his offence before a jury. Or [*48] he may order him into custody without a warrant when the offence is committed in the judge's presence. But there is no reason why a judge should have the power of punishing for contempt, any more than for any other offence. And it is one of the most dangerous powers a judge can have, because it gives him absolute authority in a court of justice, and enables him to tyrannize as he pleases over parties, counsel, witnesses, and jurors. If a judge have power to punish for contempt, and to determine for himself what is a contempt, the whole administration of justice (or injustice, if he choose to make it so) is in his hands. And all the rights of jurors, witnesses, counsel, and parties, are held subject to his pleasure, and can be exercised only agreeably to his will. He can of course control the entire proceedings in, and consequently the decision of, every cause, by restraining and punishing every one, whether party, counsel, witness, or juror, who presumes to offer anything contrary to his pleasure.

This arbitrary power, which has been usurped and exercised by judges to punish for contempt, has undoubtedly had much to do in subduing counsel into those servile, obsequious, and cowardly habits, which so universally prevail among them, and which have not only cost so many clients their rights, but have also cost the people so many of their liberties.

If any summary punishment for contempt be ever necessary, (as it probably is not,) beyond exclusion for the time being from the court-room, (which should be done, not as a punishment, but for self-protection, and the preservation of order,) the judgment for it should be given by the jury, (where the trial is before a jury,) and not by the court, for the jury, and not the court,

are really the judges. For the same reason, exclusion from the court-room should be ordered only by the jury, in cases when the trial is before a jury, because they, being the real judges and triers of the cause, are entitled, if anybody, to the control of the court-room. In appeal courts, where no juries sit, it may be necessary --- not as a punishment, but for self-protection, and the maintenance of order --- that the court should exercise the power of excluding a person, for the time being, from the court-room; but there is no reason why they should proceed to sentence him as a criminal, without his being tried by a jury.

If the people wish to have their rights respected and protected in courts of justice, it is mostly of the last importance that they jealously guard the liberty of parties, counsel, witnesses, and jurors, against all arbitrary power on the part of the court.

Certainly Mr. Hallam may very well say that "one may doubt whether these (the several cases he has mentioned) were in contemplation of the framers of Magna Carta" --- that is, as exceptions to the rule that all judgments that are to be enforced "against a party's goods or person," be rendered by a jury.

Again, Mr. Hallam says, if the word be rendered by and, "the meaning will be, that no person shall be disseized, &c., except upon a lawful cause of action." This is true; but it does not that any follow that any cause of action, founded on statute only, is therefore a "lawful cause of action," within the meaning of legem terrae, or the Common Law. Within the meaning of the legem terrae of Magna Carta, nothing but a common law cause of action is a "lawful" one.

33. [*52] Hale says:

"The trial by jury of twelve men was the usual trial among the Normans, in most suits; especially in assizes, et juris utrum." --- 1 Hale's History of the Common Law, 219.

This was in Normandy, before the conquest of England by the Normans. See Ditto, p. 218.

Crabbe says:

"It cannot be denied that the practice of submitting causes to the decision of twelve men was universal among all the northern tribes (of Europe) from the very remotest antiquity." ---- Crabbe's History of the English Law, p. 32.

34. [*55] "The people, who in every general council or assembly could oppose and dethrone

their sovereigns, were in little dread of their encroachments on their liberties; and kings, who found sufficient employment in keeping possession of their crowns, would not likely attack the more important privileges of their subjects."

35. [*56] This office was afterwards committed to sheriffs. But even while the court was held by the lord, "the Lord was not judge, but the Pares (peers) only." --- Gilbert on the Court of Exchequer, 61-2.

36. [*59] The opinion expressed in the text, that the Witan had no legislative authority, is corroborated by the following authorities:

"From the fact that the new laws passed by the king and the Witan were laid before the shire-mote, (county court,) we should be almost justified in the inference that a second sanction was necessary before they could have the effect of law in that particular county." --- Dunham's Middle Ages, Sec. 2, B. 2, Ch. 1. 57 Lardner's Cab. Cyc., 53.

The "second sanction" required to give the legislation of the king and Witan the effect of law, was undoubtedly, I think, as a general thing, the sanction of a jury. I know of no evidence whatever that laws were ever submitted to popular vote in the county courts, as this author seems to suppose possible. Another mode, sometimes re- [*60] sorted to for obtaining the sanction of the people to the laws of the Witan, was, it seems, to persuade the people themselves to swear to observe them. Mackintosh says:

"The preambles of the laws (of the Witan) speak of the infinite number of liegemen who attended, as only applauding the measures of the assembly. But this applause was neither so unimportant to the success of the measures, nor so precisely distinguished from a share in legislation, as those who read history with a modern eye might imagine. It appears that under Athelstan expedients were resorted to, to obtain a consent to the law from great bodies of the people in their districts, which their numbers rendered impossible in a national assembly. That monarch appears to have sent commissioners to hold shire-gemotes or county meetings, where they proclaimed the laws made by the king and his counsellors, which, being acknowlged and sworn to at these folk-motes (meetings of the people) became, by their assent, completely binding on the whole nation." --- Mackintosh's Hist. of England, Ch. 2. 45 Lardner's Cab. Cyc., 75.

37. [*60] Page 31.

38. [*60] Hallam says, "It was, however, to the county court that an English freeman chiefly looked for the maintenance of his civil rights." --- 2 Middle Ages, 392.

Also, “This (the county count) was the great constitutional judicature in all questions of civil right.” --- Ditto, 395.

Also, “The liberties of these Anglo-Saxon thanes were chiefly secured, next to their swords and their free spirits, by the inestimable right of deciding civil and criminal suits in their own county courts.” --- Ditto, 399.

39. [*61] “Alfred may, in one sense, be called the founder of these laws, (the Saxon,) for until his time they were an unwritten code, but he expressly says, ‘that I, Alfred, collected the good laws of our forefathers into one code, and also wrote them down’ --- which is a decisive fact in the history of our laws well worth noting.” --- Introduction to Gilbert’s History of the Common Pleas, p. 2, note.

Kelham says, “Let us consult our own lawyers and historians, and they will tell us * * that Alfred, Edgar, and Edward the Confessor, were the great compilers and restorers of the English laws.” --- Kelham’s Preliminary Discourse of the Laws of William the Conqueror, p. 12. Appendix to Kelham’s Dictionary of the Norman Language.

“He (Alfred) also, like another Theodosius, collected the various customs that he found dispersed in the kingdom, and reduced and digested them into one uniform system, or code of laws, in his som-bec, or liber judicialis (judicial book). This he compiled for the use of the court baron, hundred and county court, the court-leet and sheriff’s tourn, tribunals which he established for the trial of all causes, civil and criminal, in the very districts wherein the complaints arose.” --- 4 Blackstone, 411.

Alfred himself says, “Hence I, King Alfred, gathered these together, and commanded many of those to be written down which our forefathers observed --- those which I liked --- and those which I did not like, by the advice of my Witan, threw aside. For I durst not venture to set down in writing over many of my own, since I knew not what among them would please those that should come after us. But those which I met with either of the days of me, my kinsman, or of Offa, King of Mercia, or of Aethelbert, who was the first of the English who received baptism --- those which appeared to me the justest --- I have here collected, and abandoned the others. Then I, Alfred, King of the West Saxons, showed these to all my Witan, and they then said that they were all willing to observe them.” --- Law of Alfred, translated by R. Price, prefixed to Macintosh’s Hist. of England, vol. 1. 45 Lardner’s Cab. Cyc.

“King Edward * * projected and begun what his grandson, King Edward the Confessor, afterwards completed, vis., one uniform digest or body of laws to be observed throughout the

whole kingdom, being probably no more than a revival of King Alfred's code, with some improvments suggested by necessity and experience, particularly the incorporating some of the British, or, rather, Mercian customs, and also such of the Danish (customs) as were reasonable and approved, into the West Saxon Lage, which was still the ground-work of the whole. And this appears to be the best supported and most plausible conjecture, (for certainty is not to be expected,) of the rise and original of that admirable system of maxims and unwritten customs which is now known by the [*62] name of the common law, as extending its authority universally over all the realm, and which is doubless of Saxon parentage. --- 4 Blackstone, 412.

"By the Lex Terrae and Lex Regni it is understood the laws of Edward the Confessor, the confirmed and enlarged as they were by William the Conqueror; and this Constitution or Code of Laws is what even to this day are called 'The Common Law of the Land.'" --- Introduction to GIlbert's History of the Common Pleas, p. 22, note.

40. [*62] Not the conqueror of the English people (as the friends of liberty maintain) but ibly of Harold the usurper. --- See Hale's History of the Common Law, ch. 5.

41. [*62] For all these codes see Wilkins' laws of the Anglo-Saxons.

"Being regulations adapted to existing institutions, the Anglo-Saxon statutes are concise and technical, alluding to the law which was then living and in vigor, rather than defining it. The same clauses and chapters are often repeated word for word, in the statutes of subsequent kings, showing that enactments which bear the appearance of novelty are merely declaratory. Consequently the appearance of a law, seemingly for the first time, is by no means to be considered as a proof that the matter which it contains is new; nor can we trace the progress of the Anglo-Saxon institutions with any degree of certainty, by following the dates of the statutes in which we find them first noticed. All arguments founded on the apparent chronology of the subjects included in the laws, are liable to great fallacies. Furthermore, a considerable portion of the Anglo-Saxon law was never recorded in writing. There can be no doubt but that rules of inheritance were well established and defined; yet we have not a single law, and hardly a single document from which the course of the descent of land can be inferred. * * Positive proof cannot be obtained of the commencement of any institution, because of the first written law relating to it may possibly be merely confirmatory or declaratory; neither can the nonxistence of any institution be inferred from the absence of direct evidence. Written laws were modified and controlled by customs of which no trace can be discovered, until after the lapse of centuries, although those usages must have been in constant vigor during the long interval of silence." --- 1 Palsgrave's Rise and Progress of the English Commonwealth, 58-9.

42. [*63] Rapin says, "The customs now practised in England are, for the most part, the same as

the Anglo-Saxons brought with them from Germany." --- Rapin's Dissertation on the Government of the Anglo-Saxons, vol. 2, Oct. Ed., p. 138. See Kelham's Discourse before named.

43. [*64] Hallam says, "The county of Sussex contains sixty-five ('hundreds'); that of Dorset forty-three; while Yorkshire has only twenty-six, and Lancashire but six." --- 2 Middle Ages, 391.

44. [*65] Excepting also matters pertaining to the collection of the revenue, which were determined in the king's court of exchequer. But even in this court it was the law "that none be amerced but by his peers." --- Mirrors of Justice, 49.

45. [*65] For the English laws, although not written, may, as it should seem, and that without any absurdity, be termed laws, (since this itself is law --- that which pleases the prince has the force of law,) I mean those laws which it is evident were promulgated by the advice of the nobles and the authority of the prince, concerning doubts to be settled in their assembly. For if from the mere want of writing only, they should not be considered laws, then, unquestionably, writing would seem to confer more authority upon laws themselves, than either the equity of the persons constituting, or the reason of those framing them." ---Glanville's Preface, p. 38. (Glanville was chief justice of Henry II., 1180) 2 Turner's History of the Anglo-Saxons, 280.

46. [*65] Mackintosh's History of England, ch. 3. Lardner's Cabinet Cyclopaedia, 266.

47. [*66] If the laws of the king were received as authoritative by the juries, what occasion was there for his appointing special commissioners for the trial of offences, without the intervention of a jury, as he frequently did, in manifest and acknowledged violation of Magna Carta, and "the law of the land?" These appointments were undoubtedly made for no other reason than that the juries were not sufficiently subservient, but judged according to their own notions of right, instead of the will of the king --- whether the latter were expressed in his statutes, or by his judges.

48. [*67] Of course, Mr. Reeve means to be understood that, in the hundred court, and court-leet, the jurors were the judges, as he declares them to have been in the county court; otherwise the "bailiff" or "steward" must have been judge.

49. [*72] The jurors were sometimes called "assessors," because they assessed, or determined the amount of fines and amercements to be imposed.

50. [*73]"The barons of the Hundred" were the freeholders. Hallam says: "The word baro,

originally meaning only a man, was of very large significance, and is not unfrequently applied to common freeholders, as in the phrase court-baron." --- 3 Middle Ages, 14-15.

Blackstone says: "The court-baron * * is a court of common law, and it is the court of the barons, by which name the freeholders were sometimes anciently called; for that it is held before the freeholders who owe suit and service to the manor." --- 3 Blackstone, 33.

51. [*75] The ancient jury courts kept no records, because those who composed the courts could neither make nor read records. Their decisions were preserved by the memories of the jurors and other persons present.

52. [*77] Stuart says:

"The courts, or civil arrangements, which were modelled in Germany, preserved the independence of the people; and having followed the Saxons into England, and continuing their importance, they supported the envied liberty we boast of. * *

"As a chieftain led out his retainers to the field, and governed them during war; so in peace he summoned them together, and exerted a civil jurisdiction. He was at once their captain and their judge. They constituted his court; and having inquired with him into the guilt of those of their order whom justice had accused, they assisted him to enforce his decrees.

"This court (the court-baron) was imported into England; but the innovation which conquest introduced into the fashion of the times altered somewhat its appearance. * *

"The head or lord of the manor called forth his attendants to his hall. * * He inquired into the breaches of custom, and of justice, which were committed within the precincts of his territory; and with his followers, who sat with him as judges, he determined in all matters of debt, and of trespass to a certain amount. He possessed a similar jurisdiction with the chieftain in Germany, and his tenants enjoyed an equal authority with the German retainers.

"But a mode of administration which intrusted so much power to the great could not long be exercised without blame or injustice. The German, guided by the candor of his mind, and entering into all his engagements with the greatest ardor, perceived not, at first, that the chieftain to whom he submitted his disputes might be swayed, in the judgments he pronounced, by partiality, prejudice, or interest; and that the influence he maintained with his followers was too strong to be restrained by justice. Experience instructed him of his error; he acknowledged the necessity of appealing from his lord; and the court of the Hundred was

erected.

“This establishment was formed both in Germany and England, by the inhabitants of a certain division, who extended their jurisdiction over the territory they occupied. [“It was the freemen in Germany, and the possessors of land in England, who were suitors (jurors) in the hundred court. These ranks of men were the same. The alteration which had happened in relation to property had invested the German freemen with land or territory.”] They bound themselves under a penalty to assemble it stated times; and having elected the wisest tp preside over them, they judged, not only all civil and criminal matters, but of those also which regarded religion and the priesthood. The judicial power thus invested in the people was extensive; they were able to preserve their rights, and attended this court in arms.

“As the communication, however, and intercourse, of the individuals of a German community began to be wider, and more general, as their dealings enlarged, and as disputes arose among the members of different hundreds, the insufficiency of these [*78] courts for the preservation of order was gradually perceived. The shyre mote, therefore, or county court, was instituted; and it formed the chief source of justice both in Germany and England.

“The powers, accordingly, which had been enjoyed by the court of the hundred, were considerably impaired. It decided no longer conceeamg capital offences; it decided not concerning matters of liberty, and the property of estates, or of slaves; its judgments, in every case, became subject to review; and it lost entirely the decision of causes, when it delayed too long to consider them.

“Every subject of claim or contention was brought, in the first instance, or by appeal, to the county court; and the earl, or eorldorman, who presided there, was active to put the laws in execution. He repressed the disorders which fell out within the circuit of his authority; and the least remission in his duty, or the least fraud he committed, was complained of and punished. He was elected from among the great, and was above would the temptation of a bribe; but, to encourage his activity, he was presented with a share of the territory he governed, or was entitled to a proportion of the fines and profits of justice. Every man, in his district, was bound to inform him concerning criminals, and to assist him to bring them to trial; and, asinrude and violent times the poor and helpless were ready to be oppressed by the strong, he was instructed particularly to defend them.

“His court was ambulatory, and assembled only twice a year, unless the distribution of justice reed that its meetings should be oftener. Every freeholder in the county was obliged to attend it; and should he refuse this service, his possessions were seized, and he was forced to find surety for his appearance. The neighboring earls held not their courts on the same day; and, what seems very singular, no judge was allowed, after meals, to exercise his office.

“The druids also, or priests, in Germany, as we had formerly occasion to remark, and the clergy in England, exercised a jurisdiction in the hundred and county courts. They instructed the people in religious duties, and in matters regarding the priesthood; and the princes, earls, or eorldormen, related to them the laws and customs of the community. These judges were mutually a check to each other; but it was expected that they should agree in their judgments, and should willingly unite their efforts for the public interest. [[*78] It would be wholly erroneous, I think, to infer from this statement of Stuart, that either the “priests, princes, earls, or eorldormen” exercised any authority over the jury in the trial of causes, in the way of dictating the law to them. Henry’s account of this matter doubtless gives a much more accurate representation of the truth. He says that anciently

“The meeting (the county court) was opened with a discourse by the bishop, explaining, out of the Scriptures and ecclesiastical canons, their several duties as good Christians and members of the [*79] church. After this, the alderman, or one of his assessors made a discourse on the laws of the land, and the duties of good subjects and good citizens. When these preliminaries were over, they proceeded to try and determine, first the causes of the church, next the pleas of the crown, and last of all the controversies of private parties.” --- 3 Henry’s History of Great Britain, 348.

This view is corroborated by Tyrrell’s Introduction to the History of England, p. 8 and by Spence’s Origin of the Laws and Political Institutions of Modern Europe, p. 447, and the note on the same page. Also by a law of Canute to this effect, In every county let there be, twice a year an assembly, whereat the bishop the earl shall be present, the one to instruct the people in divine, the other in human, laws. --- Wilkins, p. 136.]

“But the once or earl performed not, at all times, in person, the obligations of his office. The enjoyment of ease and of pleasure, to which in Germany he had delivered himself over, when disengaged from war, and the mean idea he conceived of the drudgery of civil affairs, made him often delegate to an inferior person the distribution of justice in his district. The same sentiments were experienced by the Saxon nobility; and the service which they owed by their tenures, and the high employments they sustained, called them often from the management of their counties. The progress, too, of commerce, [*79] giving an intricacy to cases, and swelling the civil code, added to the difficulty of their office, and made them averse to its duties. Sheriffs, therefore, or deputies, were frequently appointed to transact their business; and though these were at first under some subordination to the earls, they grew at length to be entirely independent of them. The connection of jurisdiction and territory ceasing to prevail, and the civil being separated from the ecclesiastical power, they became the sole and proper officers for the direction of justice in the counties.

“The hundred, however, and county courts, were not equal of themselves for the purposes of

jurisdiction and order. It was necessary that a court should be erected, of supreme authority, where the disputes of the great should be decided, where the disagreeing sentiments of judges should be reconciled, and where protection should be given to the people against their fraud and injustice.

“The princes accordingly, or chief nobility, in the German communities, assembled together to judge of such matters. The Saxon nobles continued this prerogative; and the king, or, in his absence, the chief justiciary, watched over their deliberations. But it was not on every trivial occasion that this court interested itself. In smaller concerns, justice was refused during three sessions of the hundred, and claimed without effect, at four courts of the county, before there could lie an appeal to it.

“So gradually were these arrangements established, and so naturally did the varying circumstances in the situation of the Germans and Anglo-Saxons direct those successive improvements which the preservation of order, and the advantage of society, called them to adopt. The admission of the people Into the courts of justice preserved, among the former, that equality of ranks for which they were remarkable; and it helped to overturn, among the latter, those envious distinctions which the feudal system tended to introduce, and prevented that venality in judges, and those arbitrary proceedings, which the growing attachment to interest, and the influence of the crown, might otherwise have occasioned.” --- Stuart on the Constitution of England, p. 222 to 245.

“In the Anglo-Saxon period, accordingly, twelve only were elected; and these, together voice of reason, or conscience, all causes were submitted to them.” Ditto, p. 260.

Before the orders of men were very nicely distinguished, the jurors were elected from the same rank. When, however, a regular subordination of orders was established, and when a knowledge of property had inspired the necessitous with envy, and the rich with contempt, every man was tried by his equals. The same spirit of liberty which gave rise to this regulation attended its progress. Nor could monarchs assume a more arbitrary method of proceeding. ‘I will not’ (said the Earl of Cornwall to his [*80] sovereign) ‘render up my castles, nor depart the kingdom, but by judgment of my peers.’ Of this institution, so wisely calculated for the preservation of liberty, all our historians have pronounced the eulogium.” --- Ditto, p.262-3.

Blackstone says:

“The policy of our ancient constitution, as regulated and established by the great Alfred, was to bring justice home to every man’s door, by constituting as many courts of judicature as these are manors and towns in the kingdom; wherein injuries were redressed in an easy and

expeditious manner, by the suffrage of neighbors and friends. These little courts, however, communicated with others of a larger jurisdiction, and those with others of a still greater power; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as, by reason of their weight and difficulty, demanded a more solemn discussion. The course of justice flowing in large streams from the king, as the fountain, to his superior courts of record; and being then subdivided into smaller channels, till the whole and every part of the kingdom were plenty watered and refreshed. An institution that seems highly agreeable to the dictates of natural reason, as well as of more enlightened policy. * * *

"These inferior courts, at least the name and form of them, still continue in our legal constitution; but as the superior courts of record have, in practice, obtained a concurrent original jurisdiction, and as there is, besides, a power of removing plaints or actions thither from all the inferior jurisdictions; upon these accounts (among others) it has happened that these petty tribunals have fallen into decay, and almost into oblivion; whether for the better or the worse may be matter of some speculation, when we consider, on the one hand, the increase of expense and delay, and, on the other, the more able and impartial decisions that follow from this change of jurisdiction.

"The order I shall observe in discoursing on these several courts, constituted for the redress of civil injuries, (for with those of a jurisdiction merely criminal I shall not at present concern myself,) [There was no distinction between the civil and criminal courts, as to the rights or powers of juries.] will be by beginning with the lowest, and those whose jurisdiction, though public and generally dispersed through the kingdom, is yet (with regard to each particular court) confined to very narrow limits; and so ascending gradually to those of the most extensive and transcendent power." --- 3 Blackstone, 30 to 32.

"The court-baron is a court incident to every manor in the kingdom, to be holden by the steward within the said manor. This court-baron is of two natures; the one is a customary court, of which we formerly spoke, appertaining entirely to the copy-holders, in which their estates are transferred by surrender and admittance, and other matters transacted relative to their tenures only. The other, of which we now speak, is a court of common law, and it is a court of the barons, by which name the freeholders were sometimes anciently called; for that it is held by the freeholders who owe suit and service to the manor, the steward being rather the registrar than the judge. These courts, though in their nature distinct, are frequently confounded together. The court we are now considering, viz., the freeholders court, was composed of the lord's tenants, who were the pares [*81] (equals) of each other, and were bound by their feudal tenure to assist their lord in the dispensation of domestic justice. This was formerly held every three weeks; and its most important business is to determine, by writ of right, all controversies relating to the right of lands within the manor. It may also hold plea of any personal actions, of debt, trespass in the case, or the like, where the debt or damages do not amount to forty shillings; which is the same sum, or three marks, that bounded the

jurisdiction of the ancient Gothic courts in their lowest instance, or fierding courts, so called because four were instituted within every superior district or hundred." --- 3 Blackstone, 33, 31.

"A hundred cart is only a larger court-baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors are here also the judges, and the steward the registrar, as in the case of a court-baron. It is likewise no court of record, resembling the former at all points, except that in point of territory it is of greater jurisdiction. This is said by Sir Edward Coke to have been derived out of the county court for the ease of the people, that they might have justice done to them at their own doors, without any charge or loss of time; but its institution was probably coeval with that of hundreds themselves, which were formerly observed to have been introduced, though not invented, by Alfred being derived from the polity of the ancient Germans. The centeni, we may remember, were the principal inhabitants of a district composed of different villages, originally in number a hundred, but afterward only called by that name, and who probably gave the same denomination to the district out of which they were chosen. Caesar speaks positively of the judicial power exercised in their hundred courts and court-baron. 'Princeps regiorum atque pagorum' (which we may fairly construe the lords of hundreds and manors) 'inter suos jus dicunt, controversias que minuunt' (The chiefs of the country and the villages declare the law among them, and abate controversies.) And Tacitus, who had examined their constitution still more attentively, informs us not only of the authority of the lords, but that of the centeni, the hundreders, or jury, who were taken out of the freeholders, and had themselves a share in the determination. 'Eliguntur in conciliis et princeps, qui jura per pagos vicosque reddunt, centeni [*82] singulis, ex plebe comites concilium simul et auctoritas adsunt.' (The princes are chosen in the assemblies, who administer the laws throughout the towns and villages, and with each one are acted an hundred companions, taken from the people, for purposes both of counsel and authority.) This hundred court was denominated haereda in the Gothic constitution. But this court, as causes are equally liable to removal from hence as from the common court-baron, and by the same writs, and may also be reviewed by writ of false judgment, is therefore fallen into equal disuse with regard to the trial of actions." --- 3 Blackstone, 34, 35.

"The county court is a court incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debt, or damages, under the value of forty shillings; over some of which causes these inferior courts have, by the express words of the statute of Gloucester, (6 Edward I., ch. 8,) a jurisdiction totally exclusive of the king's superior courts. * * The county court may also hold plea of many real actions, and of all personal actions to any amount, by virtue of a special writ, called a justicies, which is a writ empowering the sheriff, for the sake of despatch, to do the same justice in his county court as might otherwise be had at Westminster. The freeholders of the country court are the real judges in this court, and the sheriff is the ministerial officer. * * * In modern times, as proceedings are removable from hence into the king's superior courts, by writ of pone or recordari, in the same manner as from hundred courts and courts-baron, and as the same writ of false judgment may be had in nature of a writ of error, this has occasioned the same disuse of bringing actions therein." --- 3 Blackstone, 36,

37.

“Upon the whole, we cannot but admire the wise economy and admirable provision of our ancestors in settling the distribution of justice in a method so well calculated for cheapness, expedition, and ease. By the constitution which they established, all trivial debts, and injuries of small consequence, were to be recovered or redressed in 1every man’s own county, hundred, or perhaps parish. --- 3 Blackstone, 59.

53. [*84] 1 Blackstone, 63-67.

54. [*87] This quaint and curious book (Smith’s Commonwealth of England) describes the minutiae of trials, giving in detail the mode of impaneliing the jury, and then the conduct of the lawyers, witnesses, and court. I give the following extracts, tending to show, that the judges impose no law upon the juries, in either civil or criminal cases, but only require them to determine the causes according to their consciences.

In civil causes he says:

“When it is thought that it is enough pleaded before them, and the witnesses have said what they can, one of the judges, with a brief and pithy recapitulation, reciteth to the twelve in sum the arguments of the sergeants of either side, that which the witnesses have declared, and the chief points of the evidence showed in writing, and once again putteth them in mind of the issue, and sometime giveth it them in writing, delivering to them the evidence which is showed on either part, if any be, (evidence here is called writings of contracts, authentical after the manner of England, that is to say, written, sealed, and delivered,) and biddeth them go together.” --- p. 74.

This is the whole account given of the charge to the jury.

In criminal cases, after the witnesses have been heard, and the prisoner has said what he pleases in his defence, the book proceeds:

“When the judge hath heard them say enough, he asketh if they can say any more: If they say no, then he turneth his-to the inquest ‘Good men, (saith he,) ye of the inquest, ye have heard what these men say against the prisoner. You have also heard what the Prisoner can say for himself. Have an eye to your oath, and to your duty, and do that which shall God put in your minds to the discharge of your consciences, and mark well what is said.’” --- p. 92.

This is the whole account given of the charge in a criminal case.

The following statement goes to confirm the same idea, that jurors in England have formerly understood it to be their right and duty to judge only according to their consciences, and not to submit to any dictation from the court, either as to law or fact

"If having pregnant evidence, nevertheless, the twelve do acquit the malefactor, which they will do sometime, especially if they perceive either one of the justices or of the judges, or some other man, to pursue too much and too maliciously the death of the prisoner, * * the prisoner escapeth; but the twelve (are) not only rebuked by the judges, but also threatened of punishment; and many times commanded to appear in the Star-Chamber, or before the Privy Council for the matter. But this threatening chanceth oftener than the execution thereof; and the twelve answer with most gentle words, they did it according to their consciences, and pray the judges to be good unto them, they did as they thought right, and as they accorded all, and so it passeth away for the most part." --- p. l00.

The account given of the trial of peer of the realm corroborates the same point:

"If any duke, marquis, or any other of the degrees of a baron, or above, lord of the Parliament, be appeached of treason, or any other capital crime, he is judged by his Peers and equals; that is, the yeomanry doth not go upon him, but an inquest of the lords of Parliament, and they give their voice not one for all, but each severally as they do in Parliament, being (beginning) at the youngest lord. And for judge one lord sitteth, who is constable of England for that day. The judgment once given, he breaketh his staff, and abdicateth his office. In the rest there is no difference from that above written," (that is, in the case of a freeman. --- p. 98.

55. [*89] The present form of the jurors' oath is that they shall 'give a true verdict according to the evidence." At what time this form was introduced is uncertain; but for several centuries after the Conquest, the jurors, both in civil and criminal case, were sworn merely to speak the truth (Glanville, lib. 2, cap. 17; Bracton, lib. 3, cap. 22; lib.4, p. 287, 291; Britton, p. 135.) Hence their decision was the accurately termed veredictum, or verdict, that is 'a thing truly said'; where the phrase 'true verdict' in the modern oath is not an accurate expression. --- Political Dictionary, word Jury.

56. [*91] Of course, there can be no legal trial by jury, in either civil or criminal cases, where the are sworn to try the cases "according to law."

57. [*92] Coke, as late as 1588, admits that amercements must be fixed by the peers (8 Coke's Rep. 38, 2 Inst. 27); but he attempts, wholly without success, as it seems to me, to show a difference between fines and amercements. The statutes are very numerous, running through the three or four hundred years immediately succeeding Magna Carta, in which fines, ransoms, and amercements are spoken of as if they were the common punishments of offences, and as if they all meant the same thing. If however, any technical difference could be made out between them, there is clearly none in principle; and the word amercement, as used in Magna Carta, must be taken in its most comprehensive sense.

58. [*98] "Common right" was the common law. 1 Coke's Inst. 142 a. 2 do. 55, 6.

59. [*99] The oath of the justices is in these words:

"Ye shall swear, that well and lawfully ye shall serve our lord the king and his people, in the office of justice, and that lawfully ye shall counsel the king in his business, and that ye shall not counsel nor assent to anything which may turn him in damage or disherison in any manner, way, or color. And that ye shall not know the damage or disherison of him, whereof ye shall not cause him to be warned by yourself, or by other; and that ye shall do equal law and execution of right to all his subjects, rich and poor, without having regard to any person. And that ye take not by yourself, or by other, privily nor apertly, gift nor reward of gold nor silver, nor of any other thing that may turn to your profit, unless it be meat or drink, and that of small value, of any man that shall have any plea or process hanging before you, as long as the same process shall be so hanging, nor after for the same cause. And that ye take no fee, as long as ye shall be justice, nor robe of any man great or small, but of the king himself. And that ye give none advice or counsel to no man great or small, in no case where the king is party. And in case that any, of what estate or condition they be, come before you in your sessions with force and arms, or otherwise against the peace, or against the form of the statute thereof made, to disturb execution of the common law," (mark the term, "common law,") "or to menace the people that they may not [*100] pursue the law, that ye shall cause their bodies to be arrested and put in prison; and in case they be such that ye cannot arrest them, that ye certify the king of their names, and of their misprision, hastily, so that he may thereof ordain a convenable remedy. And that ye by yourself, nor by other, privily nor apertly, maintain any plea or quarrel hanging in the king's court, or elsewhere in the country. And that ye deny no man common right by the king's letters, nor none other man's, nor for none other cause; and in case any letters come to you contrary to the law," (that is, "the common law" before mentioned,) that ye do nothing by such letters, but certify the king thereof, and proceed to execute the law, (the "common law" before mentioned,) "notwithstanding the same letters. And that ye shall do and procure the profit of the king and of his crown, with all things where ye may reasonably do the same. And in case ye be from henceforth found in default in any of the points aforesaid, ye shall be at the king's will of body, lands, and goods, thereof to be done as shall please him, as God you help and all saints. --- 18 Edward III., st. 4 (1344.)

60. [*100] That the terms “Law” and “Right,” as used in this statute, mean the common law, is shown by the preamble, which declares the motive of the statute to be that “the Law of the Land, (the common law,) which we (the king) by our oath are bound to maintain,” may be the better kept, &c.

61. [*103] The following is a copy of the original:

Forma Juramenti Regis Angliae in Coronacione sua:

(Alchiepiscopus Cantuariae, ad quo de jure et consuetudine Ecclesiae Cantuariae, antiqua et approbata, pertinet Reges Agliae inungere et coronare, die coronacionis Regis, anteque Rex coronetur, faciet Regi lnterrogationes subscriptas.)

Si leges et consuetudines ab antiquis justis et Deo devotis Regibus plebi Aglicano concessas, cum sacramenti confirmacione eidem plebi concedere et servare (volueris:) Et praesertim leges et consuetudines et libertates a glorioso Rege Edwardo clero populoque concessas?

(Et respondeat Rex,) Concedo et servare volo, et sacramento confirmare.

Servabis Ecclesiae Dei, Cleroque, et Populo, pacem ex integro et concordiam in Deo secundum vires tuas?

(Et respondeat Rex,) Servabo.

Facies fieri in omnibus Judiciis tuis equam et rectam justiciam, et discrecionem, in misericordia et veritate, secundum vires tuas?

(Et respondeat Rex,) Faciam.

Concedis justas, leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, quas lgus elegit, secundum vires tuas?

(Et respondeat Rex,) Concedo et promitto.”

62. [*106] It would appear, from the text, that the Charter of Liberties and the Charter of the Forest were sometimes called “laws of the land.”

63. [*108] As the ancient coronation oath, given in the text, has come down from the Bon times, the following remarks of Palgrave will be pertinent, in connection with the oath, as illustrating the fact that, in those times, no speaI authority attached to the laws of the king:

“The Imperial Witenagemot was not a legislative assembly, in the strict sense of the term, for the whole Anglo-Saxon empire. Promulgating his edicts amidst his peers and prelates, the king uses the language of command; but the theoretical prerogative was modified by usage, and the practice of the constitution required that the law should be accepted by the legislatures (courts) of the several kingdoms. * * The ‘Basileus’ speaks in the tone of prerogative: Edgar does not merely recommend, he commands that the law shall be adopted by all the people, whether English, Danes, or Britons, in every part of his empire. let this statute be observed, he continues, by Earl Oslac, and all the host who dwell under his government, and let it be transmitted by writ to the ealdormen of the other subordinate states. And yet, in defiance of this positive injunction, the laws of Edgar were not accepted in Mercia until the reign of Canute the Dane. It might be said that the course so adopted may have been an exception to the general rule, but in the scanty and imperfect annals of Anglo-Saxon legislation, we shall be able to find so many examples of similar proceedings, that this mode of enactment must be considered as dictated by the constitution of the empire. Edward was the supreme lord of the Northumbrians, but more than a century elapsed before they obeyed his decrees. The laws of the glorious Athelstane had no effect in Kent, (county,) the dependent appanage of his crown, until sanctioned by the Witan of the shire (county court). And the power of Canute himself, the ‘King of all England,’ does not seem to have compelled the Northumbrians to receive his code, until the reign of the Confessor, when such acceptance became a part of the compact upon the accession of a new earl.

Legislation constituted but a small portion of the ordinary business transacted by the Imperial Witenagemot. The wisdom of the assembly was shown in avoiding unnecessary change. Consisting Principally of traditionary usages and ancestorial customs, the law was upheld by opinion. The people considered their jurisprudence as a part of their inheritance. Their privileges and their duties were closely conjoined; most frequently, the statutes themselves were only affirmances of ancient customs, or declaratory enactments. In the Anglo-Saxon commonwealth, therefore, the legislative functions of the Witenagemot were of far less importance than the other branches of its authority. * * The members of the Witenagemot were the ‘Pares Curiae’ (Peers of Court) of the kingdom. How far, on there occasions, their opinion or their equity controlled the power of the crown, cannot be ascertained. But the form of inserting their names in the ‘Testing Clause’ was retained under the Anglo-Norman reigns; and the sovereign, who submitted his Charter to the judgment of the Proceres, professed to be guided by the [*109] opinion which they gave. As the ‘Pares’ of the empire, the Witenagemot decided the disputes between the great vassals of the crown. * * The jurisdiction exercised in

the Parliament of Edward I., when the barony of a Lord-Marcher became the subject of litigation, is entirely analogous to the proceedings thus adopted by the great council of Edward, the son of Alfred, the Anglo-Saxon king.

In this assembly, the king, the prelates, the dukes, the ealdormen, and the optimates passed judgment upon all great offenders. * *

The sovereign could not compel the obedience of the different nations composing the Anglo-Saxon empire. Hence, it became more necessary for him to conciliate their opinions, if he solicited any service from a vassal prince or a vassal state beyond the ordinary terms of the compact; still more so, when he needed the support of a free burgh or city. And we may view the assembly (the Witenagemot) as partaking of the character of a political congress, in which the liegemen of the crown, or the communities protected by the 'Basileus,' (sovereign,) were asked or persuaded to relieve the exigences of the state, or to consider those measures which might be required for the common weal. The sovereign was compelled to parley with his dependents.

It may be doubted whether any one member of the empire had power to legislate for any other member. The Regulus of Cumbria was unaffected by the vote of the Earl of the East Angliae, if he chose to stand out against it. These dignitaries constituted a congress, in which the sovereign could treat more conveniently and effectually with his vassals than by separate negotiations. * * But the determinations of the Witan bound those only who were present, or who concurred in the proposition; and a vassal denying his act to the grant, might assert that the engagement which he had contracted with his superior did not involve any pecuniary subsidy, but only rendered him liable to perform service in the field." --- 1 Palgrave's Rise and Progress of the English Commonwealth, 637 to 642.

64. [*111] Marches, the limits, or boundaries, between England and Wales.

65. [*112] That the kings would have had no scruples to enact laws for the special purpose of plundering the people, by means of the judgments of juries' if they could have got juries to acknowledge the authority of their laws, is evident from the audacity with which they plundered them, without any judgments of juries to authorize them,

It is not neck to occupy space here to give details as to these robberies; but, only some evidence of the general fact.

Hallam says, that "For the first three reigns (of the Norman kings) * * the intolerable exactions of tribute, the rapine of purveyance, the iniquity of royal courts, are, continually in the mouths

of the historians. “God sees the wretched people,” says the Saxon Chronicler, “most unjustly oppressed; first they are despoiled of their possesions, and then butchered. This was a grievous year (1124). Whoever had any property, lost it by heavy taxes and unjust decrees. --- 2 Middle Ages, 435-6.

“In the succeeding reign of John, all the rapacious exactions usual to these Norman kings were not only redoubled, but mingled with outrages of tyranny still more intolerable. * *

“In 1207 John took a seventh of the movables of lay and spiritual persons, all murmuring, but none daring to speak against it.” --- Ditto, 446.

In Hume’s account of the extortions of those times, the following paragraph occurs:

“But the most barefaced acts of tyranny and oppression were practised against the [*113] Jews, who were entirely out of the protection of the law, and were abandoned to the immeasurable rapacity of the king and his ministers. Besides many other indignities, to which they were continually exposed, it appears that they were once all thrown into prison, and the sum of 66,000 marks exacted for their liberty. At another time, Isaac, the Jew, paid alone 5100 marks; Brun, 3000 marks; Jurnet, 2000; Bennet, 500. At another, Licorica, widow of David, the Jew of Oxford, was required to pay 6000 marks.” --- Hume’s Hist. Eng., Appendix 2.

Further accounts of the extortions and oppressions of the kings may be found in Hume’s History, Appendix 2, and in Hallam’s Middle Ages, vol. 2, p.435 to 446.

By Magna Carta John bound himself to make restitution for some of the spoliations he had committed upon individuals “without the legal judgment of their peers.” --- See Magna Carta of John, b. 6, 61, 65 and 66.

One of the great charges, on account of when the nation rose against John, was, that he plundered individuals of their property, “without legal judgment of their peers.” Now it was evidently very weak and short-sighted in John to expose himself to such charges, if his laws were really obligatory upon the peers; because, in that case, he could have enacted any laws that were necessary for his purpose, and then, by civil suits, have brought the cases before juries for their judgment,” and thus have accomplished all his robberies in a perfectly legal manner.

There would evidently have been no sense in these complaints, that he deprived men of their property “without legal judgment of their peers,” if his laws had been binding upon the peers;

because he could then have made the same spolations as well with the judgment of the peers as without it. Taking the judgment of the peers in the matter, would have been only a ridiculous and useless formality, if they were to exercise no discretion or conscience of their own, independently of the laws of the king.

It may here be mentioned, in passing, that the same would be true in criminal matters, if the king's laws were obligatory upon juries.

As an illustration of what tyranny the kings would sometimes practise, Hume says:

"It appears from the Great Charter itself, that not only John, a tyrannical prince, and Richard, a violent one, but their father Henry, under whose reign the prevalence of gross abuses is the least to be suspected, were accustomed, from their sole authority, without process of law, to imprison, banish, and attaint the freemen of their kingdom. — Hume, Appendix 2.

The provision, also, in the 64th chapter of Magna Carta, that all unjust and illegal fines, and all amercements, imposed unjustly, and contrary to the Law of the Land, shall be entirely forgiven," &c.; and the provision, in chapter 61, that the king "will cause full justice to be administered" in regard to "all those things, of which any person has, without legal judgment of his peers, been dispose or deprived, either by King Henry, our father, or our brother, King Richard," indicate the tyrannical practices that prevailed.

We are told also that John himself "had dispossessed several great men without any judgment of their peers, condemned others to cruel deaths, * * insomuch that his tyrannical will stood instead of a law." --- Echard's History of England, 106.

Now all these things were very unecessary and foolish, if his laws were binding [*114] upon juries; because, in that case, he could have procured the conviction of these men in a legal manner, and thus have saved the necessity of such usurpation. In short, if the laws of the king had been binding upon juries, there is no robbery, vengeance, or oppression, which he could not have accomplished through the judgments of juries. This consideration is sufficient of itself, to prove that the laws of the king were of no authority over a jury, in either civil or criminal cases, unless the juries regarded the laws as just in themselves.

66. [*119] By the Magna Carta of Henry III, this is changed to once a year.

67. [*119] From the provision of Magna Carta, cited in the text, it must be inferred that there can be no legal trial by jury, in civil cases, if only the king's justices preside; that, to make the

trial legal, there must be other persons, chosen by the people, to sit with them; the object being to prevent the jury's being deceived by the justices. I think we must also infer that the king's justices could sit only in the three actions specially mentioned. We cannot go beyond the letter of Magna Carta, in making innovations upon the common law, which required all presiding officers in jury trials to be elected by the people.

68. [*120] The earls, sheriffs, and head-boroughs were annually elected in the full folcmote, (people's meeting)." — Introduction to Gilbert's History of the Common Pleas, p. 2, note.

"It was the especial province of the earldomen or earl to attend the shyre-meeting, (the county court,) twice a year, and there officiate as the county judge in expounding the secular laws, as appears by the fifth of Edgar's laws." --- Same, p. 2, note.

"Every ward had its proper alderman, who was chosen, and not imposed by the prince." Same, p. 4, text.

"As the aldermen, or earls, were always chosen" (by the people) "from among the greatest thanes, who in those times were generally more addicted to arms than to letters, they were but ill-qualified for the administration of justice, and performing the civil duties of their office." --- 3 Henry's History of Great Britain, 343.

"But none of these thanes were annually elected in the full folcmote, (people's meeting,) as the earls, sheriffs, and head-boroughs were; nor did King Alfred (as this author suggests) deprive the people of the election of those last mentioned magistrates and nobles, much less did he appoint them himself." --- Introd. to Gilbert's Hist. Com. Pleas, p. 2, note.

"The sheriff was usually not appointed by the lord, but elected by the freeholders of the district." – Political Dictionary, word Sheriff.

"Among the most remarkable of the Saxon laws we may reckon * * the election of their magistrates by the people, originally even that of their kings, till dear-bought experience evinced the convenience and necessity of establishing an hereditary succession to the crown. But that (the election) of all subordinate magistrates, their military officers or heretochs, their sheriffs, their conservators of the peace, their coroners, their portreeves (since changed into mayors and bailiffs,) and even their tithing-men and borsholders at the last, continued, some, the Norman quest, others for two centuries after and some remain to this day." – 4 Blackstone, 413

"The election of sheriffs was left to the people, according to ancient usage." –– St. West. 1, c. 27. –– Crabbe's History of English Law, 181.

69. [*123] Judges do not even live up to that part of their own maxim, which requires jurors to try the matter of fact. By dictating to them the laws of evidence, --- that is, by dictating what evidence they may hear, and what they may not hear, and also by dictating to them rules for weighing such evidence as they permit them to hear, --- they of necessity dictate the conclusion to which they shall arrive. And thus the court really tries the question of fact, as well as the question of law, in every cause. It is clearly impossible, in the nature of things, for a jury to try a question of fact, without trying every question of law on which the fact depends.

70. [*127] Most disagreements of juries are on matters of fact, which are admitted to be within their province. We have little or no evidence of their disagreements on matters of natural justice. The disagreements of courts on matters of law, afford little or no evidence that juries would also disagree on matters of law — that is, of justice; because the disagreements of courts are generally on matters of legislation and not on those principles of abstract justice, by which juries would be governed, and in regard to which the minds of men are nearly unanimous.

71. [*130] This is the principle of all voluntary associations whatsoever. No voluntary association was ever formed, and in the nature of things there never can be one formed, for the accomplishment of any objects except those in which all the parties to the association are agreed. Government, therefore, must be kept within these limits, or it is no longer a voluntary association of all who contribute to its support, but a mere tyranny established by a part over the rest.

An, or nearly all, voluntary associations give to a majority, or to some other portion of the members less than the whole, the right to use some limited discretion as to the [*131] means to be used to accomplish the ends in view; but the ends themselves to be accomplished are always precisely defined, and are such as every member nearly agrees to, else he would not voluntarily join the association.

Justice is the object of government, and those who support the government, must be agreed as to the justice to be executed by it, or they cannot not rightfully unite in maintaining the government itself.

72. [*137] Jones on Bailments, 133.

73. [*137] Kent, describing the difficulty of construing the written law, says:

"Such is the imperfection of language, and the want of technical skill in the makers of the law, that statutes often give occasion to the most perplexing and distressing doubts and discussions, arising from the ambiguity that attends them. It requires great experience, as well as the command of a perspicuous diction, to frame a law in such clear and precise terms, as to secure it from ambiguous expressions, and from all doubts and criticisms upon its meaning " — Kent, 460.

The following extract from a speech of Lord Brougham, in the House of Lords, confesses the same difficulty:

There was another subject, well worthy of the consideration of government during the recess, — the expediency, or rather the absolute necessity, of some arrangement for the preparation of bills, not merely private, but public bills, in order that legislation might be consistent and systematic, and that the courts might not have so large a portion of their time occupied in endeavoring to construe acts of Parliament, in many cases unconstruable, and in most cases difficult to be construed."— Law Reporter, 1848, p. 525.

74. [*138] This condemnation of written laws must, of course, be understood as applying only to cases where principles and rights are involved, and not as condemning any governmental arrangements, or instrumentalities, that are consistent with natural right, and which must be agreed upon for the purpose of carrying natural law into effect. These things may be varied, as expediency may dictate, so only that they be allowed to infringe no principle of justice. And they must, of course, be written, because they do not exist as fixed principles, or laws in nature.

75. [*142] On the English Constitution.

76. [*143] Although all the freemen are legally eligible as jurors, any one may nevertheless be challenged and set aside, at the trial, for any special personal disqualification; such as mental or physical inability to perform the duties; having been convicted, or being under charge, of crime; interest, bias, &c. But it is clear that the common law allows none of these points to be determined by the court, but only by "triers."

77. [*143] What was the precise meaning of the Saxon word, which I have here called elderly, I do not know. In the Latin translations it is rendered by seniores, which may perhaps mean simply those who have attained their majority.

78. [*147] In 1483 it was enacted, by a statute entitled "Of what credit and estate those jurors

must be which shall be impaneled in the Sheriff's Turn."

"That no bailiff nor other officer from henceforth return or impanel any such person in any shire of England, to be taken or put in or upon any inquiry in any of the said Turns, but such as be of good name and fame, and having lands and tenements of freehold within the same shires, to the yearly value of twenty shillings at the least, or else lands and tenements holden by custom of manor, commonly called copy-hold, within the said shires, to the yearly value of twenty-six shillings eight pence over all charges at the least." — 1 Richard III., ch. 4. (1483)

In 1486 it was enacted, " That the justices of the peace of every shire of this realm for the time being may take, by their discretion, an inquest, whereof every man shall have lands and tenements to the yearly value of forty shillings at the least, to inquire of the concealments of others," &c., &c., — 3 Henry VII, ch. 1. (1486.)

A statute passed in 1494, in regard to jurors in the city of London, enacts:

"That no person nor persons hereafter be impaneled, summoned, or sworn in any jury or inquest in courts within the same city, (of London,) except he be of lands, tenements, or goods and chattels, to the value of forty marks; [*A mark was thirteen shilling and four pence.] and that no person or persons hereafter be impaneled, summoned, nor sworn in any jury or inquest in any court within the said city, for lands or tenements, or action personal, wherein the debt or damage amounteth to the sum of forty marks, or above, except he be in lands tenements, goods, or chattels, to the value of one hundred marks." — 11 Henry VII. ch. 21. (1494.)

The statute 4 Henry VIII, ch. 3, sec. 4, (1512) requires jurors in London to have "goods to the value of one hundred marks."

In 1494 it was enacted that "It shall be lawful to every sheriff of the counties of Southampton, Surrey., and Sussex, to impanel and summons twenty-four lawful men of such, inhabiting within the precinct of his or their turns, as owe suit, to the same turn, whereof every one hath lands or freehold to the yearly value of ten shillings, or copyhold lands to the yearly value of thirteen shillings four pence, above all charges within any of the said counties, or men of less livelihood, if there be not so many there, not withstanding the statute of 1 Richard III., ch. 4. To endure to the next parliament." 11 Henry VII., ch. 24. (1494.) This statute was continued in force by 19 Henry VII., ch. 16 (1503.)

In 1531 it was enacted, "That every person or person being the king's natural subject born, which either by the name of citizen, or of a freeman, or any other name, doth enjoy and use the liberties and privileges of any city, borough, or town corporate, where he dwelleth and maketh

his abode, being worth in moveable goods and substance to the clear value of forty pounds, be henceforth admitted in trials of murders and felonies in every sessions and gaol delivery, to be kept and holden in and for the liberty of such cities, boroughs, and towns corporate, albeit they have no freehold; any act, statute, use, custom, or ordinance to the contrary hereof notwithstanding." 23 Henry VIII., ch. 13. (1531.)

In 1585 it was enacted, "That in all cases where any jurors to be returned for trial of any issue or issues joined in any of the Queen's majesty's courts of King's Bench, Common Pleas, and the Exchequer, or before judices of assize, by the laws of this realm now in force, ought to have estate of freehold in lands, tenements, or hereditaments, of the clear yearly value of forty shillings, that in every such case the jurors that shall be returned from and after the end of this present session of parliament, shall every of them have estate of freehold in lands, tenements, or hereditaments, to the clear yearly value of four pounds at the least." 27 Elizabeth, ch. 6. (1585.)

In 1664-5 it was enacted "That all jurors (other than strangers upon trials per medietatem linquae) who are to be returned for the trials of issues joined in any of (his) [*148] majesty's courts of king's bench, common pleas, or the exchequer, or before justices of assize, nisi prius, oyer and terminer, gaol delivery, or general or quarter sessions of the peace from and after the twentieth day of April, which shall be in the year of our Lord one thousand six hundred and sixty-five, in any county of this realm of England, shall every of them then have, in their own name, or in trust for them, within the same county, twenty pounds, by the year, at least, above reprises, in their own or their wives right, of freehold lands, or of ancient demesne, or of rents in fee, fee-tail, or for life. And that in every county within the dominion of Wales every such juror shall then have, within the some, eight pounds by the year, at the least, above reprises, in manner aforesaid. All which persons having such estate as aforesaid are hereby enabled and made liable to be returned and serve as jurors for the trial of issues before the justices aforesaid, any law or statute to the contrary in any wise notwithstanding," 16 and 17 Charles II., ch. 5. (1664-5,)

By a statute passed in 1692, jurors in England are to have landed estates of the value of ten pounds a year, and jurors in Wales to have similar estates of the realm of six pounds a year. 4 and 5 William and Mary, ch. 24, sec. 14, (1692,)

By the same statute, (sec. 18,) persons may be returned to serve upon the tales in any county of England, who shall have within the same county, five pounds by the year, above reprises, in the manner aforesaid.

By St. 3 George II., ch. 25, sec. 10, 20, no one is to be a juror in London, who shall not be "an householder within the said city, and have lands, tenements, or personal estate, to the value of

one hundred pounds."

By another statute, applicable only to the county of Middlesex, it is enacted, "That all leaseholders, upon leases where the improved rents or value shall amount to fifty pounds or upwards per annum, over and above all ground rents or other reservations payable by virtue of the said leases, shall be liable and obliged to serve upon juries when they shall be legally summoned for that purpose.," 4 George II., ch. 7, sec, 3. (1731.)

79. [*150] Suppose these statutes, instead of disfranchising all whose freeholds were of less than the standard value fixed by the statutes, had disfranchised all whose freeholds were of greater value than the same standard would anybody ever have doubted that such legislation was inconsistent with the English constitution; or that it amounted to an entire abolition of the trial by jury? Certainly not. Yet it was as clearly inconsistent with the common law, or the English constitution, to disfranchise those whose freeholds fell below any arbitrary standard fixed by the government, as it would have been to disfranchise all whose freeholds rose above that standard.

80. [*152] Lingard says: "These compurgators or jurors * * were sometimes * * drawn by lot." 1 Lingard's History of England, p. 300.

81. [*153] Chapter 4, p. 120, note.

82. The proofs of this principle of the common law have already been given on page 120, note.

There is much confusion and contradiction among authors as to the manner in which sheriffs and other officers were appointed; some maintaining that they were appointed by the king, others that they were elected by the people. I imagine that both these opinions are correct, and that several of the king's officers bore the same official names as those chosen by the people; and that this is the cause of the confusion that has arisen on the subject.

It seems to be a perfectly well established fact that, at common law, several magistrates, bearing the names of aldermen, sheriff, stewards, coroners and bailiffs, were chosen by the people; and yet it appears, from Magna Carta itself, that some of the king's officers (of whom he must have had many) were also called "sheriffs, constables, coroners, and bailiffs."

But Magna Carta, in various instances, speaks of sheriffs and bailiffs as "our sheriff's and bailiffs;" thus apparently intending to recognize the distinction between officers of the king, bearing those names, and other officers, bearing the same official names, but chosen by the

people. Thus it says that "no sheriff or bailiff of ours, or any other (officer), shall take horses or carts of any freeman for carriage, unless with the consent of the freeman himself." --- John's Charter, ch. 36.

In a kingdom subdivided into so many counties, hundreds, tithings, manors, cities [*158] and boroughs, each having a judicial or police organization of its own, it is evident that many of the officers must have been chosen by the people, else the government could not have mainlined its popular character. On the other hand, it is evident that the king, the executive power of the nation, must have had large numbers of officers of his own in every part of the kingdom. And it is perfectly natural that these different sets of officers should, in many instances, bear the same official names; and, consequently that the king, when speaking of his own officers, as distinguished, from those chosen by the people, should call them "our sheriffs, bailiffs," &c;, as he does in Magna Carta.

I apprehend that inattention to these considerations has been the cause of all the confusion of ideas that has arisen on this subject, a confusion very evident in the following paragraph from Dunham, which may be given as an illustration of that which is exhibited by others on the same points.

"Subordinate to the ealdormen were the gerefas, the sheriffs, or reeves, of whom there were several in every shire, or county. There was one in every borough, as a judge. There was one at every gate, who witnessed purchases outside the walls; and there was one, higher than either --- the high sheriff, --- who was probably the reeve of the shire. This last appears to have been appointed by the king. Their functions were to execute the decrees of the king, or ealdormen, to arrest prisoners, to require bail for their appearance at the sessions, to collect fines or penalties levied by the court of the shire, to preserve the public peace, and to preside in a subordinate tribunal of their own." Durham's Middle Ages, sec. 2, B. 2, ch. 1. 57 Lardner's Cab. Cyc., p 41.

The confusion of duties attributed to these officers indicates clearly enough that different officers, bearing the same official names, must have had different duties, and have derived their authority from different sources, --- to wit, the king, and the people.

83. [*158] Darrein presentement was an inquest to discover who presented the last person to a church; mort de ancestor, whether the last possessor was seized of land in demesne of his own fee; and novel disseisin, whether the claimant had been unjustly disseized of his freehold.

84. [*160] He has no power to do it, either with, or without, the king's command. The prohibition is absolute, containing no such qualification as is here interpolated, viz., "without

the king's command." If it could be done with the king's command, the king would be invested with arbitrary power in the matter.

85. [*161] The absurdity of this doctrine of Coke is made more apparent by the fact that, at that time, the "justices" and other persons appointed by the king to hold courts were not only dependent upon the king for their offices, and removable at his pleasure, but that the usual custom was, not to appoint them with any view to permanency, but only to give them special commissions for trying a single cause, or for holding a single term of a court, or for making a single circuit; which, being done, their commissions expired. The king, therefore, could, and undoubtedly did, appoint any individual he pleased, to try any cause he pleased, with a special view to the verdicts he desired to obtain in the particular cases.

This custom of commissioning particular persons to hold jury trials, in criminal cases, (and probably also in civil ones,) was of course a usurpation upon the common law, but had been practised more or less from the time of William the Conqueror. Palgrave says:

"The frequent absence of William from his insular dominions occasioned another mode of administration, which ultimately produced still greater changes in the law. It was the practice of appointing justiciars to represent the king's person, to hold his court, to decide his pleas, to dispense justice on his behalf, to command the military levies, and to act as conservators of the peace in the king's name. . . . [In this extract, Palgrave seems to assume that the king himself had a right to sit as judge, in jury trials, in the county courts, in both civil and criminal cases. I apprehend he had no such power at the common law, but only to sit in the trial of appeals, and in the trial of peers, and of civil suits in which peers were parties, and possibly in the courts of ancient demesne.] The justices who were [*162] assigned in the name of the sovereign, and whose powers were revocable at his pleasure, derived their authority merely from their grant. . . .Some of those judges were usually deputed for the purpose of relieving the king from the burden of his judicial functions. . . .The number as well as the variety of names of the justices appearing in the early chirographs of 'Concords,' leave reason for doubting whether, anterior to the reign of Henry III., (1216 to 1272,) a court, whose members were changing at almost every session, can be said to have been permanently constituted. It seems more probable that the individuals who composed the tribunal were selected as suited the pleasure of the sovereign, and the convenience of the clerks and barons; and the history of our legal administration will be much simplified, if we consider all those courts which were afterwards denominated the Exchequer, the King's Bench, the Common Pleas, and the Chancery, as being originally committees, selected by the king when occasion required, out of a large body, for the despatch of peculiar branches of business, and which committees, by degrees, assumed an independent and permanent existence. . . .Justices itinerant, who, despatched throughout the land, decided the ' Pleas of the Crown,' may be obscurely traced in the reign of the Conqueror; not, perhaps, appointed with much regularity, but despatched upon peculiar occasions and emergencies." --- 1 Palgrave's Rise and Progress, &c., p. 289 to 293.

The following statute, passed in 1354, (139 years after Magna Carta,) shows that even after this usurpation of appointing "justices " of his own, to try criminal cases, had probably become somewhat established in practice, in defiance of Magna Carta, the king was in the habit of granting special commissions to still other persons, (especially to sheriffs, --- his sheriffs, no doubt,) to try particular cases:

"Because that the people of the realm have suffered many evils and mischiefs, for that sheriffs of divers counties, by virtue of commissions and general writs granted to them at their own suit, for their singular profit to gain of the people, have made and taken divers inquests to cause to indict the people at their will, and have taken fine and ransom of them to their own use, and have delivered them; whereas such persons indicted were not brought before the king's justices to have their deliverance, it is accorded and established, for to eschew all such evils and mischiefs, that such commissions and writs before this time made shall be utterly repealed, and that from henceforth no such commissions shall be granted." --- St. 28 Edward III., ch. 9, (1354.)

How silly to suppose that the illegality of these commissions to try criminal eases, could have been avoided by simply granting them to persons under the title of "justices," instead of granting them to "sheriffs." The statute was evidently a cheat, or at least designed as such, inasmuch as it virtually asserts the right of the king to appoint his tools, under the name of "justices," to try criminal cases, while it disavows his right to appoint them under the name of "sheriffs."

Millar says: "When the king's bench came to have its usual residence at Westminster, the sovereign was induced to grant special commissions, for trying particular crimes, in such parts of the country as were found most convenient; and this practice was gradually modeled into a regular appointment of certain commissioners, empowered, at stated seasons, to perform circuits over the kingdom, and to hold courts in particular towns, for the trial of all sorts of crimes. These judges of the circuit, however, never obtained an ordinary jurisdiction, but continued, on every occasion, to derive their authority from two special commissions: that of oyer and terminer, by which they were appointed to hear and determine all treasons, felonies and misdemeanors, within certain districts; and that of gaol delivery, by which they were directed to try every prisoner confined in the gaols of the several towns falling under their inspection." --- Millar's Hist. View of Eng. Gov., vol. 2, ch. 7, p. 282.

The following extract from Gilbert shows to what lengths of usurpation the kings [*163] would sometimes go, in their attempts to get the judicial power out of the hands of the people, and entrust it to instruments of their own choosing:

"From the time of the Saxons," (that is, from the commencement of the reign of William the

Conqueror,) "till the reign of Edward the first, (1272 to 1307,) the several county courts and sheriffs courts did decline in their interest and authority. The methods by which they were broken were two-fold. First, by granting commissions to the sheriffs by writ of JUSTICIES, whereby the sheriff had a particular jurisdiction granted him to be judge of a particular cause, independent of the suitors of the county court," (that is, without a jury;) "and these commissions were after the Norman form, by which (according to which) all power of judicature was immediately derived from the king." --- Gilbert on the Court of Chancery, p. l.

The several authorities now given show that it was the custom of the Norman kings, not only to appoint persons to sit as judges in jury trials, in criminal cases, but that they also commissioned individuals to sit in singular and particular eases, as occasion required; and that they therefore readily could, and naturally would, and therefore undoubtedly did, commission individuals with a special view to their adaptation or capacity to procure such judgments as the kings desired.

The extract from Gilbert suggests also the usurpation of the Norman kings, in their assumption that they, (and not the people, as by the common law,) were the fountains of justice. It was only by virtue of this illegal assumption that they could claim to appoint their tools to hold courts.

All these things show how perfectly lawless and arbitrary the kings were, both before and after Magna Carta, and how necessary to liberty was the principle of Magna Carta and the common law, that no person appointed by the king should hold jury trials in criminal cases.

86. [*164] The opinions and decisions of judges and courts are undeserving of the least reliance, (beyond the intrinsic merit of the arguments offered to sustain them,) and are unworthy even to be quoted as evidence of the law, when those opinions or decisions are favorable to the power of the government, or unfavorable to the liberties of the people. The only reasons that their opinions, when in favor of liberty, are entitled to any confidence, are, first, that all presumptions of law are in favor of liberty; and, second, that the admissions of all men, the innocent and the criminal alike, when made against their own interests, are entitled to be received as true, because it is contrary to human nature for a man to confess anything but truth against himself.

More solemn farces, or more gross impostures, were never practised upon mankind, than are all, or very nearly all, those oracular responses by which courts assume to determine that certain statutes, in restraint of individual liberty, are within the constitutional power of the government, and are therefore valid and binding upon the people.

The reason why these courts are so intensely servile and corrupt, is, that they are not only

parts of, but the veriest creatures of, the very governments whose oppressions they are thus seeking to uphold. They receive their offices and salaries from, and are impeachable and removable by, the very governments upon whose acts they affect to sit in judgment. Of course, no one with his eyes open ever places himself in a position so incompatible with the liberty of declaring his honest opinion, unless he do it with the intention of becoming a mere instrument in the hands of the government for the execution of all its oppressions.

As proof of this, look at the judicial history of England for the last five hundred years, and of America from its settlement. In all that time (so far as I know, or presume) no bench of judges, (probably not even any single judge,) dependent upon the legislature that passed the statute, has ever declared a single penal statute invalid, on account of its being in conflict either with the common law, which the judges in England have been sworn to preserve, or with the written constitutions, (recognizing men's natural rights,) which the American judges were under oath to maintain. Every oppression, every atrocity even, that has ever been enacted in either country, by the legislative power, in the shape of a criminal law, (or, indeed, in almost any other shape,) has been as sure of a sanction from the judiciary that was dependent upon, and impeachable by, the legislature that enacted the law, as if there were a physical necessity that the legislative enactment and the judicial sanction should go together. Practically speaking, the sum of their decisions, all and singular, has been, that there are no limits to the power of the government, and that the people have no rights except what the government pleases to allow to them.

It is extreme folly for a people to allow such dependent, servile, and perjured creatures to sit either in civil or criminal trials; but to allow them to sit in criminal trials, and judge of the people's liberties, is not merely fatuity, --- it is suicide.

87. [*165] Coke, speaking of the word bailiffs, as used in the statute of 1 Westminster, ch. 35, (1275,) says:

"Here bailiffs are taken for the judges of the court, as manifestly appeareth hereby." --- 2 Inst., 229.

Coke also says, "It is a maxim in law, aliquis non debet esse judex in propria causa, (no one ought to be judge in his own cause;) and therefore a fine levied before the baylifes of Salop was reversed, because one of the baylifes was party to the fine, quia non potest esse judex et pars," (because one cannot be judge and party.) 1 Inst., 141 a.

In the statute of Gloucester, ch. 11 and 12, (1278,) "the mayor and bailiffs of London (undoubtedly chosen by the people, or at any rate not appointed by the king) are manifestly

spoken of as judges, or magistrates, holding jury trials, as follows:

Ch. II. "It is provided, also, that if any man lease his tenement in the city of London, for a term of years, and he to whom the freehold belongeth causeth himself to be impleaded by collusion, and maketh default after default, or cometh into court and giveth it up, for to make the termor (lessee) lose his term, (lease,) and the demandant hath his suit, so that the termor may recover by writ of covenant; the mayor and bailiffs may inquire by a good inquest, (jury,) in the presence of the termor and the demandant, whether the demandant moved his plea upon good right that he had, or by collusion, or fraud, to make the termor lose his term; and if it be found by the inquest (jury) that the demandant moved his plea upon good right that he had, the judgment shall be given forthwith; and if it be found by the inquest (jury) that he impleaded him (self) by fraud, to put the termor from his term, then shall the termor enjoy his term, and the execution of judgment for the demandant shall be suspended until the term be expired." --- 4 Edward I., ch. 11, (1278.)

Coke, in his commentary on this chapter, calls this court of "the mayor and bailiffs" of London, "the court of the hustings, the greatest and highest court in London;" and adds, "other cities have the like court, and so called, as York, Lincoln, Winchester, &e;. Here the city of London is named; but it appeareth by that which hath been said out of Fleta, that this act extends to such cities and boroughs privileged, --- that is, such as have such privilege to hold plea as London hath." --- 2 Inst., 322.

The 12th chapter of the same statute is in the following words, which plainly recognize the fact that "the mayor and bailiffs of London" are judicial officers holding courts in London.

"It is provided, also, that if a man, impleaded for a tenement in the same city, (London,) doth vouch a foreigner to warranty, that he shall come into the chancery, and have a writ to summon his warrantor at a certain day before the justices of the bench, and another writ to the mayor and bailiff of London, that they shall surcease (suspend proceedings) in the matter that is before them by writ, until the plea of the warrantee be determined before the justices of the bench; and when the plea at the bench shall be determined, then shall he that is vouched be commanded to go into the city," (that is, before "the mayor and bailiffs' " court,) "to answer unto the chief plea; and a writ shall be awarded at the suit of the demandant by the justices unto the mayor and bailiffs, that they shall proceed in the plea," &c;. --- 6 Edward I., ch. 12, (1278.)

Coke, in his commentary on this chapter, also speaks repeatedly of "the mayor and bailiffs" as judges holding courts, and also speaks of this chapter as applicable not only to "the citie of London, specially named for the cause aforesaid, but extended by equity to all other privileged places," (that is, privileged to have a court of "mayor and bail – [*166] iffs,") "where foreign

voucher is made, as to Chester, Durham, Salop," &c. --- 2 Inst., 325-7.

BAILIE. --- In Scotch law, a municipal magistrate, corresponding with the English alderman. [Alderman was a title anciently given to various judicial officers, as the Alderman of all England, Alderman of the King, Alderman of the County, Alderman of the City or Borough, alderman of the Hundred or Wapentake. These were all judicial officers. See Law Dictionaries.] --- Burrill's Law Dictionary.

BAILLIFFE --- Baillif. Fr. A bailiff: a ministerial officer with duties similar to those of a sheriff. . . .The judge of a court. A municipal magistrate, &c. --- Burrill's Law Dict.

BAILIFF . . . The word bailiff is of Norman origin, and was applied in England, at an early period, (after the example, it is said, of the French,) to the chief magistrates of counties, or shires, such as the alderman, the reeve, or sheriff, and also of inferior jurisdictions, such as hundreds and wapentakes. --- Spelman, voc. Balivus; 1 Bl. Com.,344. See Bailli, Ballivus. The Latin ballivus occurs, indeed, in the laws of Edward the Confessor, but Spelman thinks it was introduced by a later hand. Balliva (bailiwick) was the word formed from ballivus, to denote the extent of territory comprised within a bailiff's jurisdiction; and bailiwick is still retained in writs and other proceedings, as the name of a sheriff's county. --- 1 Bl. Com., 344. See Balliva. The office of bailiff was at first strictly, though not exclusively, a judicial one. In France, the word had the sense of what Spelman calls justitia tutelaris. Ballivus occurs frequently in the Regiam Majestatem, in the sense of a judge. --- Spelman. In its sense of a deputy, it was formerly applied, in England, to those officers who, by virtue of a deputation, either from the sheriff or the lords of private jurisdictions, exercised within the hundred, or whatever might be the limits of their bailiwick, certain judicial and ministerial functions. With the disuse of private and local jurisdictions, the meaning of the term became commonly restricted to such persons as were deputed by the sheriff to assist him in the merely ministerial portion of his duty; such as the summoning of juries, and the execution of writs. --- Brande. . . . The word bailiff is also applied in England to the chief magistrates of certain towns and jurisdictions, to the keepers of castles, forests and other places, and to the stewards or agents of lords of manors. --- Burrill's Law Dict.

"BAILIFF, (from the Lat. ballivus; Fr. baillif, i. e., Praefectus provinciae,) signifies an officer appointed for the administration of justice within a certain district. The office, as well as the name, appears to have been derived from the French," &c. --- Brewster's Encyclopedia.

Millar says, "The French monarchs, about this period, were not content with the power of receiving appeals from the several courts of their barons. An expedient was devised of sending royal bailiffs into different parts of the kingdom, with a commission to take cognizance of all those causes in which the sovereign was interested, and in reality for the purpose of abridging

and limiting the subordinate jurisdiction [*167] of the neighboring feudal superiors. By an edict of Phillip Augustus, in the year 1190, those bailiffs were appointed in all the principal towns of the kingdom." --- Millar's Hist. View of the Eng. Gov., vol. ii., ch. 8, p. 126.

"BAILIFF --- office. --- Magistrates who formerly administered justice in the parliaments or courts of France, answering to the English sheriffs, as mentioned by Bracton." --- Bouvier's Law Dict.

"There be several officers called bailiffs, whose offices and employments seem quite different from each other . . . The chief magistrate, in divers ancient corporations, are called bailiffs, as in Ipswich, Yarmouth, Colchester, &c;. There are, likewise, officers of the forest, who are termed bailiffs." --- 1 Bacon's Abridgment, 498 9.

" BAILIFF signifies a keeper or superintendent, and is directly derived from the French word bailli, which appears to come from the word balivus, and that from bagalus, a Latin word signifying generally a governor, tutor, or superintendent . . . The French word bailli is thus explained by Richelet, (Dictionaire, &c.:) Bailli. --- He who in a province has the superintendence of justice, who is the ordinary judge of the nobles, who is their head for the ban and arriere ban, ["Ban and arriere ban, a proclamation, whereby all that hold lands of the crown, (except some privileged officers and citizens,) are summoned to meet at a certain place in order to serve the king in his wars, either personally, or by proxy." --- Boyer.] and who maintains the right and property of others against those who attack them. . . . All the various officers who are called by this name, though differing as to the nature of their employments, seem to have some kind of superintendence intrusted to them by their superior." --- Political Dictionary.

"BAILIFF, balivus. From the French word bayliff, that is, praefectus provinciae, and as the name, so the office itself was answerable to that of France, where there were eight parliaments, which were high courts from whence there lay no appeal, and within the precincts of the several parts of that kingdom which belonged to each parliament, there were several provinces to which justice was administered by certain officers called bailiffs; and in England we have several counties in which justice hath been, and still is, in small suits, administered to the inhabitants by the officer whom we now call sheriff, or viscount; (one of which names descends from the Saxons, the other from the Normans.) And, though the sheriff is not called bailiff, yet it was probable that was one of his names also, because the county is often called balliva; as in the return of a writ, where the person is not arrested, the sheriff saith, infra-nominatus, A. B. non est inventus in balliva mea, &c.; (the within named A. B. is not found in my bailiwick, &c;.) And in the statute of Magna Carta, ch. 28, and 14 Ed. 8, ch. 9, the word bailiff seems to comprise as well sheriffs, as bailiffs of hundreds.

"Bailies, in Scotland, are magistrates of burghs, possessed of certain jurisdictions, having the same power within their territory as sheriffs in the county. . . .

"As England is divided into counties, so every county is divided into hundreds; within which, in ancient times, the people had justice administered to them by the several officers of every hundred, which were the bailiffs. And it appears by Bracton, (lib. 3, tract. 2, ch. 34,) that bailiffs of hundreds might anciently hold plea of appeal and approvers; but since that time the hundred courts, except certain franchises, are swallowed in the county courts; and now the bailiff's name and office is grown into contempt, they being [*168] generally officers to serve writs, &c., within their liberties; though, in other respects, the name is still in good esteem, for the chief magistrates in divers towns are called bailiffs; and sometimes the persons to whom the king's castles are committed are termed bailiffs, as the bailiff of Dover Castle, &c;.,

"Of the ordinary bailiffs there are several sorts, viz., bailiffs of liberties; sheriffs' bailiffs; bailiffs of lords of manors; bailiffs of husbandry, &c;.

"Bailiffs of liberties or franchises are to be sworn to take distresses, truly impanel jurors, make returns by indenture between them and sheriffs, &c. . . .

"Bailiffs of courts baron summon those courts, and execute the process thereof.. . . .

"Besides these, there are also bailiffs of the forest . . . " --- Jacob's Law Dict. Tomlin's do.

"BAILIWICK, balliva, --- is not only taken for the county, but signifies generally that liberty which is exempted from the sheriff of the county, over which the lord of the liberty appointeth a bailiff, with such powers within his precinct as an under-sheriff exerciseth under the sheriff of the county; such as the bailiff of Westminster." --- Jacob's Law Dict. Tomlin's do.

"A bailiff of a Leet, Court-baron, Manor, Balivus Letae, Baronis, Manerii. --- He is one that is appointed by the lord, or his steward, within every manor, to do such offices as appertain thereunto, as to summon the court, warn the tenants and resiants; also, to summon the Leet and Homage, levy fines, and make distresses, &c;., of which you may read at large in Kitchen's Court-leet and Court-baron." --- A Law Dictionary, anonymous, (in Suffolk Law Library.)

"BAILLIFF --- In England an officer appointed by the sheriff. Bailiff's are either special, and appointed, for their adroitness, to arrest persons; or bailiffs of hundreds, who collect fines, summon juries, attend the assizes, and execute writs and processes. The sheriff in England is the king's bailiff. . . .

"The office of bailiff formerly was high and honorable in England, and officers under that title on the continent are still invested with important functions." --- Webster.

"BAILLI, (Scotland.) --- An alderman; a magistrate who is second in rank in a royal burgh." --- Worcester.

"Baili, or Bailiff. --- (Sorte d'officier de justice.) A bailiff; a sort of magistrate." --- Boyer's French Dict.

"By some opinions, a bailiff, in Magna Carta, ch. 28, signifies any judge." --- Cunningham's Law Dict.

"BAILIFF. --- In the court of the Greek emperors there was a grand bajulos, first tutor of the emperor's children. The superintendent of foreign merchants seems also to have been called bajulos; and, as he was appointed by the Venetians, this title (balio) was transferred to the Venetian ambassador. From Greece, the official bajulos (ballivus, bailli, in France; bailiff, in England,) was introduced into the south of Europe, and denoted a superintendent; hence the eight ballivi of the knights of St. John, which constitute its supreme council. In France, the royal bailiffs were commanders of the militia, administrators or stewards of the domains, and judges of their districts. In the course of time, only the first duty remained to the bailiff; hence he was bailli d'epee, and laws were administered in his name by a lawyer, as his deputy, lieutenant de robe. The seigniories, with which high courts were connected, employed bailiffs, who thus consti- [*169] tuted, almost everywhere, the lowest order of judges. From the courts of the nobility, the appellation passed to the royal courts; from thence to the parliaments. In the greater bailiwicks of cities of importance, Henry II. established a collegial constitution under the name of presidial courts. . . .The name of bailiff was introduced into England with William I. The counties were also called bailiwicks, (bailivae,) while the subdivisions were called hundreds, but, as the courts of the hundreds have long since ceased, the English bailiffs are only a kind of subordinate officers of justice, like the French huissiers. These correspond very nearly to the officers called constables in the United States. Every sheriff has someof them under him, for whom he is answerable. In some cities the highest municipal officer yet bears this name, as the high bailiff of Westminster. In London, the Lord Mayor is at the same time bailiff; (which title he bore before the present became usual,) and administers, in this quality, the criminal jurisdiction of the city, in the court of old Bailey, where there are, annually, eight sittings of the court, for the city of London and the county of Middlesex. Usually, the recorder of London supplies his place as judge. In some instances the term bailiff, in England, is applied to the chief magistrates of towns, or to the commanders of particular castles, as that of Dover. The term baillie, in Scotland, is applied to a judicial police-officer, having powers very similar to those of justices of peace in the United States." --- Encyclopaedia Americana.

88. [*169] Perhaps it may be said (and such, it has already been seen, is the opinion of Coke and others) that the chapter of Magna Carta, that "no bailiff from henceforth shall put any man to his open law, (put him on trial,) nor to an oath (that is, an oath of self- exculpation) upon his (the bailiff's) own accusation or testimony, without credible witnesses brought in to prove the charge," is itself a "provision in regard to the king's justices sitting in criminal trials," and therefore implies that they are to sit in such trials.

But, although the word bailiff includes all judicial, as well as other, officers, and would therefore in this case apply to the king's justices, if they were to sit in criminal trials; yet this particular chapter of Magna Carta evidently does not contemplate "bailiffs" while acting in their judicial capacity, (for they were not allowed to sit in criminal trials at all,) but only in the character of witnesses, and that the meaning of the chapter is, that the simple testimony (simplici loquela) of "no bailiff," (of whatever kind,) unsupported by other and "credible witnesses," shall be sufficient to put any man on trial, or to his oath of self-exculpation." [At the common law, parties, in both civil and criminal cases, were allowed to swear in their own behalf; and it will be so again, if the true trial by jury should be reestablished.]

It will be noticed that the words of this chapter are not, "no bailiff of ours," --- that is, of the king, --- as in some other chapters of Magna Carta; but simply "no bailiff,"&c. The prohibition, therefore, applied to all "bailiffs," -- to those chosen by the peo- [*170] ple, as well as those appointed by the king. And the prohibition is obviously founded upon the idea (a very sound one in that age certainly, and probably also in this) that public officers (whether appointed by king or people) have generally, or at least frequently, too many interests and animosities against accused persons, to make it, safe to convict any man on their testimony alone.

The idea of Coke and others, that the object of this chapter was simply to forbid magistrates to put a man on trial, when there were no witnesses against him, but only the simple accusation or testimony of the magistrates themselves, before whom he was to be tried, is preposterous; for that would be equivalent to supposing that magistrates acted in the triple character of judge, jury and witnesses, in the same trial; and that, therefore, in such case, they needed to be prohibited from condemning a man on their own accusation or testimony alone. But such a provision would have been unnecessary and senseless, for two reasons; first, because the bailiffs or magistrates had no power to "hold pleas of the crown," still less to try or condemn a man; that power resting wholly with the juries; second, because if bailiffs or magistrates could try and condemn a man, without a jury, the prohibition upon their doing so upon their own accusation or testimony alone, would give no additional protection to the accused, so long as these same bailiffs or magistrates were allowed to decide what weight should be given, both to their own testimony and that of other witnesses, for, if they wished to convict, they would of course decide that any testimony, however frivolous or irrelevant, in addition to their own, was sufficient. Certainly a magistrate could always procure witnesses enough to testify to something or other, which he himself could decide to be corroborative of his own testimony.

And thus the prohibition would be defeated in fact, though observed in form.

89. [*171] In this chapter I have called the justices "presiding officers," solely for the want of a better term. They are not "presiding officers," in the sense of having any authority over the jury; but are only assistants to, and teachers and servants of, the jury. The foreman of the jury is properly the "Presiding Officer," so far as there is such an officer at all. The sheriff has no authority except over other persons than the jury.

90. [*172] 2 Sullivan Lectures, 234-5. 3 Blackstone, 274-5, 376. Sullivan says that both plaintiff's and defendants were liable to amercement. Blackstone speaks of plaintiffs being liable, without saying whether defendants were so or not. What the rule really was I do not know. There would seem to be some reason in allowing defendants to defend themselves, at their own charges, without exposing themselves to amercement in case of failure.

91. [*173] When any other witnesses than freeholders were required in a civil suit, I am not aware of the manner in which their attendance was procured; but it was doubtless done at the expense either of the state or of the witnesses themselves. And it was doubt less the same in criminal cases.

92. [*173] "All claims were established in the first stage by the oath of the plaintiff, except when otherwise specially directed by the law. The oath, by which any claim was supported, was called the fore-oath, or ' Praejuramentum,' and it was the foundation of his suit. One of the cases which did not require this initiatory confirmation, was when cattle could be tracked into another man's land, and then the foot-mark stood for the fore-oath." --- 2 Palgrave's Rise and Progress, &c., 114.

93. [*174] Among the necessary expenses of suits, should be reckoned reasonable compensation to counsel, for they are nearly or quite as important to the administration of justice, [*175] as are judges, jurors, or witnesses; and the universal practice of employing them, both on the part of governments and of private persons, shows that their importance is generally understood. As a mere matter of economy, too, it would be wise for the government to pay them, rather than they should not be employed; because they collect and arrange the testimony and the law beforehand, so as to be able to present the whole case to the court and jury intelligibly, and in a short space of time. Whereas, if they were not employed, the court and jury would be under the necessity either of spending much more time than now in the investigation of causes, or of despatching them in haste, and with little regard to justice. They would be very likely to do the latter, thus defeating the whole object of the people in establishing courts.

To prevent the abuse of this right, it should perhaps be left discretionary with the jury in each

case to determine whether the counsel should receive any pay --- and, if any, how much --- from the government.

94. [*184] This presumption, founded upon age alone, is as absurd in civil matters as in criminal. What can be more entirely ludicrous than the idea that all men (not manifestly imbecile) become mentally competent to make all contracts whatsoever on the day they become twenty-one years of age? --- and that, previous to that day, no man becomes competent to make any contract whatever, except for the present supply of the most obvious wants of nature? In reason, a man's legal competency to make binding contracts, in any and every case whatever, depends wholly upon his mental capacity to make reasonable contracts in each particular case. It of course requires more capacity to make a reasonable contract in some cases than in others. It requires, for example, more capacity to make a reasonable contract in the purchase of a large estate, than in the purchase of a pair of shoes. But the mental capacity to make a reasonable contract, in any particular case, is, in reason, the only legal criterion of the legal competency to make a binding contract in that case. The age, whether more or less than twenty-one years, is of no legal consequence whatever, except that it is entitled to some consideration as evidence of capacity.

It may be mentioned, in this connection, that the rules that prevail, that every man is entitled to freedom from parental authority at twenty-one years of age, and no one before that age, are of the same class of absurdities with those that have been mentioned. The only ground on which a parent is ever entitled to exercise authority over his child, is that the child is incapable of taking reasonable care of himself. The child would be entitled to his freedom from his birth, if he were at that time capable of taking reasonable care of himself. Some become capable of taking care of themselves at an earlier age than others. And whenever any one becomes capable of taking reasonable care of himself, and not until then, he is entitled to his freedom, be his age more or less.

These principles would prevail under the true trial by jury, the jury being the judges of the capacity of every individual whose capacity should be called in question.

95. [*187] In contrast to the doctrines of the text, it may be proper to present more distinctly the doctrines that are maintained by judges, and that prevail in courts of justice.

Of course, no judge, either of the present day, or perhaps within the last five hundred years, has admitted the right of a jury to judge of the justice of a law, or to hold any law invalid for its injustice. Every judge asserts the power of the government to punish for acts that are intrinsically innocent, and which therefore involve or evince no criminal intent. To accommodate the administration of law to this principle, all judges, so far as I am aware, hold it to be unnecessary that an indictment should charge, or that a jury should find, that an act was

done with a criminal intent, except in those cases where the act is malum in se, --- criminal in itself. In all other cases, so far as I am aware, they hold it sufficient that the indictment charge, and consequently that the jury find, simply that the act was done "contrary to the form of the statute in such case made and provided;" in other words, contrary to the orders of the government.

All these doctrines prevail universally among judges, and are, I think, uniformly practised upon in courts of justice; and they plainly involve the most absolute despotism on the part of the government.

But there is still another doctrine that extensively, and perhaps most generally, prevails in practice, although judges are not agreed in regard to its soundness. It is this: that it is not even necessary that the jury should see or know, for themselves, what the law is that is charged to have been violated; nor to see or know, for themselves, that the act charged was in violation of any law whatever; --- but that it is sufficient that they be simply told by the judge that any act whatever, charged in an indictment, is in violation of law, and that they are then bound blindly to receive the declaration as true, and convict a man accordingly, if they find that he has done the act charged.

This doctrine is adopted by many among the most eminent judges, and the reasons for it are thus given by Lord Mansfield:

"They (the jury) do not know, and are not presumed to know, the law. They are not sworn to decide the law;" [This declaration of Mansfield, that juries in England "are not sworn to decide the law" in criminal cases, is a plain falsehood. They are sworn to try the whole case at issue between the king and the prisoner, and that includes the law as well as the fact. See juror's oath, page 85.] they are not required to do it. . . .The jury ought not to assume the jurisdiction of law. They do not know, and are not presumed to know, anything of the matter. They do not understand the language in which it is conceived, or the meaning of the terms. They have no rule to go by but their passions and wishes." --- 8 Term Rep., 428, note.

What is this but saying that the people, who are supposed to be represented in juries, and who institute and support the government, (of course for the protection of their own rights and liberties, as they understand them, for plainly no other motive can be attributed to them,) are really the slaves of a despotic power, whose arbitrary commands even they are not supposed competent to understand, but for the transgression of which they are nevertheless to be punished as criminals

This is plainly the sum of the doctrine, because the jury are the peers (equals) of the accused,

and are therefore supposed to know the law as well as he does, and as well as it is known by the people at large. If they (the jury) are not presumed to know the [*188] law, neither the accused nor the people at large can be presumed to know it. Hence, it follows that one principle of the true trial by jury is, that no accused person shall be held responsible for any other or greater knowledge of the law than is common to his political equals, who will generally be men of nearly similar condition in life. But the doctrine of Mansfield is, that the body of the people, from whom jurors are taken, are responsible to a law, which it is agreed they cannot understand. What is this but despotism? --- and not merely despotism, but insult and oppression of the intensest kind?

This doctrine of Mansfield is the doctrine of all who deny the right of juries to judge of the law, although all may not choose to express it in so blunt and unambiguous terms. But the doctrine evidently admits of no other interpretation or defence.

96. [*193] Mackintosh's Hist. of Eng., ch. 3. 45 Lardner's Cab. Cyc., 354.

97. [*193] "Forty shilling freeholders" were those "people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of forty shillings by the year at the least above all charges." By statute 8 Henry 6, ch. 7, (1429,) these freeholders only were allowed to vote for members of Parliament from the counties.

98. [*197] He probably speaks in its favor only to blind the eyes of the people to the frauds he has attempted upon its true meaning.

99. [*198] It will be noticed that Coke calls these confirmations of the charter "acts of parliament," instead of acts of the king alone. This needs explanation.

It was one of Coke's ridiculous pretences, that laws anciently enacted by the king, at the request, or with the consent, or by the advice, of his parliament, was "an act of parliament," instead of the act of the king. And in the extracts cited, he carries this idea so far as to pretend that the various confirmations of the Great Charter were "acts of parliament," instead of the acts of the kings. He might as well have pretended that the original grant of the Charter was an "act of parliament; "because it was not only granted at the request, and with the consent, and by the advice, but on the compulsion even, of those who commonly constituted his parliaments. Yet this did [*199] not make the grant of the charter "an act of parliament." It was simply an act of the king.

The object of Coke, in this pretence, was to furnish some color for the palpable false- hood that the legislative authority, which parliament was trying to assume in his own day, and which it

finally succeeded in obtaining, had a precedent in the ancient constitution of the kingdom.

There would be as much reason in saying that, because the ancient kings were in the habit of passing laws in special answer to the petitions of their subjects, therefore those petitioners were a part of the legislative power of the kingdom.

One great objection to this argument of Coke, for the legislative authority of the ancient parliaments, is that a very large --- probably much the larger --- number of legislative acts were done without the advice, consent, request, or even presence, of a parliament. Not only were many formal statutes passed without any mention of the consent or advice of parliament, but a simple order of the king in council, or a simple proclamation, writ, or letter under seal, issued by his command, had the same force as what Coke calls "an act of parliament." And this practice continued, to a considerable extent at least, down to Coke's own time.

The kings were always in the habit of consulting their parliaments, more or less, in regard to matters of legislation, --- not because their consent was constitutionally necessary, but in order to make influence in favor of their laws, and thus induce the people to observe them, and the juries to enforce them.

The general duties of the ancient parliaments were not legislative, but judicial, as will be shown more fully hereafter. The people were not represented in the parliaments at the time of Magna Carta, but only the archbishops, bishops, earls, barons, and knights; so that little or nothing would have been gained for liberty by Coke's idea that parliament had a legislative power. He would only have substituted an aristocracy for a king. Even after the Commons were represented in parliament, they for some centuries appeared only as petitioners, except in the matter of taxation, when their consent was asked. And almost the only source of their influence on legislation was this: that they would sometimes refuse their consent to the taxation, unless the king would pass such laws as they petitioned for; or, as would seem to have been much more frequently the case, unless he would abolish such laws and practices as they remonstrated against.

The influence, or power of parliament, and especially of the Commons, in the general legislation of the country, was a thing of slow growth, having its origin in a device of the king to get money contrary to law, (as will be seen in the next volume,) and not at all a part of the constitution of the kingdom, nor having its foundation in the consent of the people. The power, as at present exercised, was not fully established until 1688, (near five hundred years after Magna Carta,) when the House of Commons (falsely so called) had acquired such influence as the representative, not of the people, but of the wealth, of the nation, that they compelled, the king to discard the oath fixed by the constitution of the kingdom; (which oath has been already given in a former chapter, [*See page 101] and was, in substance, to preserve and execute the

Common Law, the Law of the Land, [*200] --- or, in the words of the oath, "the just laws and customs which the common people had chosen;") and to swear that he would "govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same." [* St. 1 William and Mary, ch. 6, (1688)]

The passage and enforcement of this statute, and the assumption of this oath by the king, were plain violations of the English constitution, inasmuch as they abolished, so far as such an oath could abolish, the legislative power of the king, and also "those just laws and customs which the common people (through their juries) had chosen," and substituted the will of parliament in their stead.

Coke was a great advocate for the legislative power of parliament, as a means of restraining the power of the king. As he denied all power to juries to decide upon the obligation of laws, and as he held that the legislative power was "so transcendent and absolute as (that) it cannot be confined, either for causes or persons, within any bounds," [* 4 Inst., 36] he was perhaps honest in holding that it was safer to trust this terrific power in the hands of parliament, than in the hands of the king. His error consisted in holding that either the king or parliament had any such power, or that they had any power at all to pass laws that should be binding upon a jury.

These declarations of Coke, that the charter was confirmed by thirty-two "acts of parliament," have a mischievous bearing in another respect. They tend to weaken the authority of the charter, by conveying the impression that the charter itself might be abolished by "act of parliament." Coke himself admits that it could not be revoked or rescinded by the king; for he says, "All pretence of prerogative against Magna Carta is taken away." (2 Inst., 36.)

He knew perfectly well, and the whole English nation knew, that the king could not lawfully infringe Magna Carta. Magna Carta, therefore, made it impossible that absolute power could ever be practically established in England, in the hands of the king. Hence, as Coke was an advocate for absolute power, --- that is, for a legislative power "so transcendent and absolute as (that) it cannot, be confined, either for causes or persons, within any bounds," --- there was no alternative for him but to vest this absolute power in parliament. Had he not vested it in parliament, he would have been obliged to abjure it altogether, and to confess that the people, through their juries, had the right to judge of the obligation of all legislation whatsoever; in other words, that they had the right to confine the government within the limits of "those just laws and customs which the common people (acting as jurors) had chosen." True to his instincts, as a judge, and as a tyrant, he assumed that this absolute power was vested in the hands of parliament.

But the truth was that, as by the English constitution parliament had no authority at all for

general legislation, it could no more confirm, than it could abolish, Magna Carta.

These thirty-two confirmations of Magna Carta, which Coke speaks of as "acts of parliament," were merely acts of the king. The parliaments, indeed, by refusing to grant him money, except, on that condition, and otherwise, had contributed to oblige him to make the confirmations; just as they had helped to oblige him by arms to grant the charter in the first place. But the confirmations themselves were nevertheless constitutionally, as well as formally, the acts of the king alone.

100. [*204] Under the head "John."

101. [*205] 4 Blackstone, 349-50

102. [*205] 3 Blackstone, 379

103. [*205] Hume, ch. 2.

104. [*205] Page 203, 5th edition, 1721.

105. [*220] Such as restraints upon banking, upon the rates of interest, upon traffic with foreigners, &e., &c.

106. [*223] Trial by the country, and no taxation without consent, mutually sustain each other, and can be sustained only by each other, for these reasons: 1. Juries would refuse to enforce a tax against a man who had never agreed to pay it. They would also protect men in forcibly resisting the collection of taxes to which they had never consented. Otherwise the jurors would authorize the government to tax themselves without their consent, a thing which no jury would be likely to do. In these two ways, then, trial by the country would sustain the principle of no taxation without consent. 2. On the other hand, the principle of no taxation without consent would sustain the trial by the country, because men in general would not consent to be taxed for the support of a [*224] government under which trial by the country was not secured. Thus these two principles mutually sustain each other.

But, if either of these principles were broken down, the other would fall with it, and for these reasons: 1. If trial by the country were broken down, the principle of no taxation without consent would fall with it, because the government would then be able to tax the people without their consent, inasmuch as the legal tribunals would be mere tools of the government,

and would enforce such taxation, and punish men for resisting such taxation, as the government ordered. 2. On the other hand, if the principle of no taxation without consent were broken down, trial by the country would fall with it, because the government, if it could tax people without their consent, would, of course, take enough of their money to enable it to employ all the force necessary for sustaining its own tribunals, (in the place of juries,) and carrying their decrees into execution.

Orders of the Grand Juries of the 50 American Republics[86]

The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American republics

We the People inhabiting the North American continent, free men and women convened under God, having been granted by the Creator dominion over all the earth, to restore the blessings of liberty for ourselves and the posterity, do hereby invoke our sacred right to alter or abolish destructive government as memorialized in The unanimous Declaration of the thirteen united States of America, c. 1776 by declaring herewith this solemn declaration to the people of the earth and all governments and nations derived there from.

Whereas we do not now, nor have we ever been possessed of a desire to relinquish any of our unalienable rights for the dubious benefits of limited liability or any other compelled revocable "privileges" of a subject-class citizenship of the United States, nor to relinquish every aspect of our lives to corporations posing as legitimate governments

Whereas we do not now, nor have we ever entered into a binding contract, agreement or trust relationship with any person, living or fictitious, with the fully informed and willful intent to deprive ourselves or to be deprived by others of any unalienable rights granted to us by the self-existing Creator and guaranteed by the constitutions of the free republics of North America and the United States of America republic, c. 1787

Whereas we have become aware that each of the free American republics and the constitutional republic of the United States of America, c. 1787, have been preempted by military power and emasculated by coercive and deceitful methods of economic and political subjugation imposed by corporations posing as legitimate governments

Therefore we the sovereign People of the free American republics do hereby and herewith

organize under God for all the world to hear and see upon each state's signatories hereto numbering at least twenty-six souls, as the respective fifty (50) well-regulated Guardians of the Free Republics

restore and re-inhabit through this declaration the legitimate constitutional governments of these free republics in peace and harmony

conclude the era of illicit corporate governance by renouncing in the presence of the Creator, forever and without contrived ambiguity, all permissions, delegations of authority and grants of attorney, real or imagined, to corporations posing as legitimate governments, in particular the United States Federal Corporation and all subdivisions thereof

86 Sample found on the web. Not authenticated. Reformatted for readability.

assemble upon each state's signatories hereto numbering at least twenty-six souls, De jure Grand Juries in the People's common law of the land, herein authorized in remedy of the Self-evident Expositions of Truth hereunder to forthwith order and conduct forensic accounting of the various trusts and so-called "legacy accounts" attributed to the People;facilitate a return to the People of the wealth which has been taken by fraudulent artifice on the part of the banking institutions of this or any country, in particular the ill-gotten gains of foreclosure and fraudulent foreign taxation; peacefully eliminate all existing government structures, entities and agencies that have been derived from the de facto corporations posing as legitimate governments; issue orders to the military, police and corporate powers of the land and sea to enforce our divine rights to such lawful government as was already ensured by our constitutions; and restore de facto actors to lawful de jure capacity duly confined by the constitutions of the these republics and replace the noncompliant; thus restoring to each and every American their in-law, dry land, divine rights of birth and the fruits of their individual and ancestral labor as quickly, efficiently and discretely as possible, without causing undue alarm or stress and without malice for anyone

forgive in the name of the Creator all who repent their political and economic misdeeds.

It is hereby so decreed by the sovereign People of these free American republics assembled herein. Teste meipso by our hands, republic by republic, hereinafter following.

Warrant

of the De jure Grand Juries

of the People of the united States of America

assembled under God as

Guardians of the Free Republics

and sole lawful authority on the land

We the sovereign People inhabiting the free American republics, the well-regulated Guardians of the Free Republics under God, having salvaged the rule of lawful de jure governance and reinhabited these De jure Grand Juries by The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the Free American Republics, c. 2010, do hereby invoke our sacred dominion over all the earth and issue this Warrant and orders attached hereto to the following men and women presently acting in the incorporated capacities respectively noted thereby, and all successors thereto and nominees thereof, and to all other people, governments and nations to whom this Warrant and orders necessarily apply:

Robert Renfroe Riley, a man occupying the office of Governor, incorporated State of Alabama
SeanR. Parnell, a man occupying the office of Governor, incorporated State of Alaska
Janice Kay Brewer, a woman occupying the office of Governor, incorporated State of Arizona
Mickey Dale Beebe, a man occupying the office of Governor, incorporated State of Arkansas
Arnold Alois Schwarzenegger, a man occupying the office of Governor, incorporated State of California
August William Ritter, Jr., a man occupying the office of Governor, incorporated State of Colorado
Mary Jodi Rell, a woman occupying the office of Governor, incorporated State of Connecticut
Jack A. Markell, a man occupying the office of Governor, incorporated State of Delaware
Charles Joseph Crist, Jr., a man occupying the office of Governor, incorporated State of Florida
George Ervin Perdue III, a man occupying the office of Governor, incorporated State of Georgia
Linda (Cutter) Lingle, a woman occupying the office of Governor, incorporated State of Hawaii
Clement Leroy Otter, a man occupying the office of Governor, incorporated State of Idaho
Patrick Joseph Quinn III, a man occupying the office of Governor, incorporated State of Illinois
Mitchell Elias Daniels, Jr., a man occupying the office of Governor, incorporated State of Indiana
Chester John Culver, a man occupying the office of Governor, incorporated State of Iowa
Mark V. Parkinson, a man occupying the office of Governor, incorporated State of Kansas
Steven Beshear, a man occupying the office of Governor, incorporated Commonwealth of Kentucky
Piyush Jindal, a man occupying the office of Governor, incorporated State of Louisiana
John Elias Baldacci, a man occupying the office of Governor, incorporated State of Maine
Martin Joseph O'Malley, a man occupying the office of Governor, incorporated State of Maryland
Deval Laurdine Patrick, a man occupying the office of Governor, incorporated Commonwealth of Massachusetts
Jennifer Mulhern Granholm, a woman occupying the office of Governor, incorporated State of Michigan
Timothy James Pawlenty, a man occupying the office of Governor, incorporated State of Minnesota

Haley Reeves Barbour, a man occupying the office of Governor, incorporated State of Mississippi
Jeremiah Wilson Nixon, a man occupying the office of Governor, incorporated State of Missouri
Brian David Schweitzer, a man occupying the office of Governor, incorporated State of Montana
David Eugene Heineman, a man occupying the office of Governor, incorporated State of Nebraska
James Arthur Gibbons, a man occupying the office of Governor, incorporated State of Nevada
John H. Lynch, a man occupying the office of Governor, incorporated State of New Hampshire
Jon Stevens Corzine, a man occupying the office of Governor, incorporated State of New Jersey

William Blaine Richardson III, a man occupying the office of Governor, incorporated State of New Mexico
David Alexander Paterson, a man occupying the office of Governor, incorporated State of New York
Beverly Eaves Perdue, a woman occupying the office of Governor, incorporated State of North Carolina
John Henry Hoeven III, a man occupying the office of Governor, incorporated State of North Dakota
Ted Strickland, a man occupying the office of Governor, incorporated State of Ohio
Charles Bradford Henry, a man occupying the office of Governor, incorporated State of Oklahoma
Theodore R. Kulongoski, a man occupying the office of Governor, incorporated State of Oregon
Edward Gene Rendell, a man occupying the office of Governor, incorporated Commonwealth of Pennsylvania
Donald L. Carcieri, a man occupying the office of Governor, incorporated State of Rhode Island
Marshall Clement Sanford, Jr., a man occupying the office of Governor, incorporated State of South Carolina
Marion Michael Rounds, a man occupying the office of Governor, incorporated State of South Dakota
Philip Norman Bredesen, Jr., a man occupying the office of Governor, incorporated State of Tennessee
James Richard Perry, a man occupying the office of Governor, incorporated State of Texas
Gary Richard Herbert, a man occupying the office of Governor, incorporated State of Utah
James H. Douglas, a man occupying the office of Governor, incorporated State of Vermont
Robert Francis McDonnell, a man occupying the office of Governor, incorporated Commonwealth of Virginia
Christine O'Grady Gregoire, a woman occupying the office of Governor, incorporated State of Washington
Joseph Manchin III, a man occupying the office of Governor, incorporated State of West Virginia
James Edward Doyle, a man occupying the office of Governor, incorporated State of Wisconsin
David Duane Freudenthal, a man occupying the office of Governor, incorporated State of Wyoming

Notice. This Warrant comprises notice to each and all of the above-listed men and women and all agents and nominees thereof and successors thereto, and to all the people, governments and nations of the world, of the reinhabitation of the legitimate de jure un-incorporated republican government institutions pursuant to the constitutions of the free American republics and the United States of America republic, c. 1787, and the conclusion, termination, voiding and de-funding of the de facto office of "Governor" of each of the aforesaid fifty (50) political subdivisions of the United States Federal Corporation.

Warrant. The De jure Grand Juries, do hereby unanimously and simultaneously arrest, redeem and recall the bonds, insurance, surety and de facto escrow of the de facto office of Governor, State of _____, real or imagined, in each of the fifty (50) incorporated political subdivision States of the United States Federal Corporation, thereby rendering all such bonds, insurance, surety and de facto escrow instantly null, void and non-negotiable, and the public wanting for indemnification. For purposes herein, the term "State" also includes the term "Commonwealth" when referring to the fifty (50) political subdivisions of the United States Federal Corporation and similar de facto institutions.

Order. The de facto office of Governor of the "State of _____" of each of the fifty (50) incorporated States of the United States Federal Corporation, and all vestiges thereof, is hereby resorbed into the respective de jure office of Governor of _____ (e.g. New York) of each of the respective fifty (50) free republics of the United States of America, c. 1787, upon the man or woman occupying each such office receiving notice of this Warrant. Upon such notice, each such man or woman shall be free to resign within three days of receipt of this Warrant without recourse for such resignation, to be replaced by the man or woman next in line to occupy such office.

Order. At the time of such resorption, or as soon as is practical thereafter, all such men and women accepting the office of governor of a de jure state republic shall take and subscribe the following respective oath in the presence of the Almighty Creator in front of a duly appointed officer of these De jure Grand Juries, and shall file such oath(s) with these De jure Grand Juries before, and as a condition of, occupying the said respective office, such filing to be completed no later than fourteen (14) days after receipt of this Warrant. Failure of these De jure Grand Juries to timely receive the said oath shall comprise resignation of the respective party from the respective office. The mandatory oath for the office of governor

shall be:

> "I, A. B., do solemnly swear (or affirm) that I will support, preserve, defend and protect the Constitution of the _____ (name of state, e.g. "New York" not the "State of New York") republic and the Constitution for the United States of America republic, circa 1787, and that I will perform and fulfill all of the duties of the office of governor of this republic faithfully and impartially to the best of my ability and understanding, as a sacred actionable blood-oath contract with the People of the _____ (e.g. "New York" *Cease and desist all tax related actions against the sovereign People* of the "State of New York") republic, so help me God."

Order. All acts of omission and commission undertaken in good faith in furtherance of this Warrant and all orders to the governors hereunder or subsequent, are indemnified against recourse by the Provisional Bond De jure of Public Indemnification of the Guardians of the Free Republics included in this Declaration in its entirety, the said bond providing safe passage for all such acts of good faith.

Order. Until further notice, all funds necessary to timely implement this Warrant and

orders to the governors annexed hereto or subsequent warrants or orders shall be debited against the various assets identified in the respective de facto States' Comprehensive Annual Financial Report. Failure to comply with these orders to the governors will result in immediate removal from office by order of the De jure Grand Juries.

First order to the governors

of the De jure Grand Juries

of the People of the united States of America

assembled under God

Cease and desist all foreclosure and collection actions against the sovereign People

The People of your respective states, your family, neighbors and friends who trust in your vigilance, the mothers, fathers, sons, daughters, children and grandparents who harbor expectations that you will first and foremost protect and preserve the posterity, being entitled to relief from a century of economic warfare waged by global money predators

You are hereby ordered by these De jure Grand Juries to direct the men and women in whether by private session or otherwise, occupying the highest judicial offices and applicable trial judges to forthwith provide full faith and credit to Landmark National Bank v. Kesler, Kansas, Lexis 834 (2009) and citations therein, regarding implementation of strict rules of evidence and verification in all judicial cases involving foreclosure and collection of debt, thus requiring attorneys of record to certify to the court existence of the debt in fact under penalty of perjury; barring the testimony of attorneys of record from all hearings in the matter at hand; requiring the exhibition of wet-ink signed original instruments and contracts as a condition for filing an action; requiring the appearance in open court of an officer able to testify under penalty of perjury to first hand knowledge that such documents are, in fact, lost; requiring exhibition of all ledgers and accounts related to the transaction at issue in particular off-balance sheet journals; requiring exhibition of the initial journal entry which identifies the source of the lender's funds in question; requiring the appearance in open court of a lending officer to certify under penalty of perjury the completeness of all records pertaining to the transaction at hand and first hand knowledge as to the source of the funds in question; requiring verification of signature on all such documents in question; and

requiring timely production of all such evidence and prosecution.

You are further ordered to direct such men and women to approve within twenty-four (24) hours all petitions for restraining orders, injunctions or estoppels of any and all administrative or judicial actions which want for any or all of the aforementioned exhibitions and/or verifications.

Second order to the governors

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Cease and desist all tax related actions against the sovereign People

The state taxing agencies being unlawful collection arms for the Federal Reserve System and its principal private money predators and war profiteers, being repugnant to the Constitution for the United States of America, c. 1787 and an abomination to mankind, being corrupt beyond repair; assault upon and incarceration of the sovereign People by the government of their creation for failure to accede to thefts of their wealth under the guise of "legal" process being a sin and repugnant to the Constitution for the United States of America, c. 1787

You are hereby ordered by these De jure Grand Juries to direct the man or woman occupying the office of Director, Commissioner or similar officer of the department of taxation of your respective incorporated State to cease and desist forthwith all investigations, actions, prosecutions, garnishments, liens, levies and distress against the sovereign People, all members thereof and all accounts, trusts, artifices and legal fictions derived therefrom, real or imagined, as the result of tax, income tax, property tax, sales tax and/or other tax-related charges and/or claims such as failure to file, failure to pay, obstruction and/or conspiracy, and any peripheral actions which do not involve a flesh and blood injured party.

You are hereby further ordered to direct the said men and women to prepare and deliver to these De jure Grand Juries no later than thirty (30) days after receipt of this order a complete list of all men and women within your state who are currently subject to, or have been subjected during the ten (10) calendar years previous to the signing of this order, to lien, levy, garnishment, invasion, investigation, distress, harassment, detention, judicial process or similar acts of terrorism, whether past or ongoing, as the result of tax, income tax, property tax, sales tax and/or other tax-related charges and/or claims such as, but not limited to, failure to file, failure to pay, obstruction and/or conspiracy.

Third order to the governors

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Cease and desist all judicial and quasi judicial actions against the sovereign People for crimes which lack an injured party

The People being sovereign with respect to the United State of America republic, c. 1787, at no time having willingly and knowingly granted standing to a corporate entity masquerading as a legitimate government to pose as an injured party with respect to the People's private affairs, or to impose an artificial personage on the People as a vehicle for presuming the People's submission to a commercial law venue, or to employ the judicial institutions and detention facilities of the fee American republics for corporate profit, all such activities comprising crimes against mankind

You are hereby ordered by these De jure Grand Juries to direct the men and women occupying all judicial offices within your respective state's judicial system to forthwith cease and desist all actions and prosecutions against the sovereign People which want for an injured

party and/or witnesses willing to testify to first hand knowledge of the alleged crimes under full liability, or where the injured party is deemed to be a government entity, in particular all such prosecutions which covertly impose a legal personality and/or the Admiralty, commercial or administrative law venues upon the sovereign People for the purpose of facilitating such action(s). Until further notice, all actions for non-violent "crimes" involving members of the sovereign People who duly and specifically identify themselves as such shall be referred to these De jure Grand Juries through procedures to be devised

You are hereby further ordered to direct the said men and women to prepare and deliver to these De jure Grand Juries within thirty (30) days of receipt of this order a complete list of all men and women who are currently subject to or suffering incarceration, distress, parole or restriction as the result of such prosecution as described hereunder for want of an injured party.

Fourth order to the governors

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Provide safe passage through the state republic(s) free from government molestation

The People being sovereign with respect to the United State of America republic, c. 1787, owing no allegiance or obligation to divulge their private affairs to the government of their Creation, possessing the absolute right to peacefully travel, congregate, assemble and worship without government scrutiny or interference and most certainly without sustaining bodily injury, detention, assault, kidnapping and/or distress for failure to exhibit State-issued documents which confess to subject-class State citizenship

You are hereby ordered by these De jure Grand Juries to direct the man or woman occupying the office of Secretary of State of your respective state republic to prepare an appropriate

verifiable wallet-sized document by which Guardians of the Free Republics will be afforded diplomatic immunity and safe passage through your (our) respective state republic, and by extension, through the United States of America, free from government detention, arrest, hindrance, interference, scrutiny and/or molestation, such identification to be ready for production no later than thirty (30) days after receipt of this order and without language diminishing the sovereign People to wards of the state or subject-class citizenship; with production thereafter to require no greater than seven (7) days after request.

You are further ordered to direct the man or woman occupying the office of Commissioner of Motor Vehicles or similar office in your respective State to prepare an appropriate placard by which motorized conveyances in which a Guardian of the Free Republics has an ownership or possessory interest will be afforded the same full faith and credit as above-noted, such placard to be ready for production no later than thirty (30) days after receipt of this order and without language implying government ownership or security interest in such conveyances, with production thereafter to require no greater than seven (7) days after request.

You are further ordered to direct all men and women who occupy the highest law enforcement offices within your respective State to (i) modify all criminal and other information databases, in particular the National Crime Information Center database, to reflect the diplomatic “do-not-detain” status of Guardians of the Free Republics who exhibit the aforesaid identification document or equivalent identification or otherwise so identify themselves; (ii) cease random road blocks and other unlawful detentions; (iii) cease forthwith all acts of violence against those members of the sovereign People who identify themselves as such and fail to exhibit confessions of State subject-citizenry or who are the subject of notices of tax lien, bank foreclosures, County tax liens, and other fraudulent commercial artifices issued under color of law.

Fifth order to the governors

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Restore the trappings of lawful de jure governance

The People being entitled to notice of the return to lawful de jure governance of the free American republics and the United States of America republic, c. 1787 as existed prior to December 20, 1860 in a manner that does not disturb the peace and orderly transition, and to demonstrate compliance with these orders to the governors, symbols of de jure governance shall be restored beginning as follows

You are hereby ordered by these De jure Grand Juries to direct the necessary judicial and law enforcement officers of your respective state to replace all flags which identify incorporated, military, admiralty, maritime and/or commercial law forms with proper colors that identify the de jure law form of the respective free American republic and the United States of America, c. 1787 in all state institutions, in particular in all state, county and local courtrooms, courthouses, judicial institutions, state buildings and law enforcement facilities no later than ninety (90) days after receipt of this order thereby proclaiming, in an orderly fashion and without inciting vengeance for decades of crimes past, the preempting of corporate-military authority in favor of the divine lawful authority of the sovereign People over their de jure affairs of state.

You are further ordered to direct the aforesaid officials to modify, change or replace all signs, flags, emblems, placards, official stationary, business cards, highway signs and websites to remove all references to the office of "Governor of the State of _____" in favor of the respective de jure notation "Governor of _____" (e.g. "New York") no later than thirty (30) days after receipt of this order.

You are further ordered to direct the aforesaid officials to modify, change or replace all signs, placards, official stationary, business cards, highway signs and websites to replace all references to the "State of _____" with the respective de jure entity notation "_____" (e.g. "New York") no later than three hundred and sixty five days (365) days after receipt of this Warrant;

You are further ordered to direct the aforesaid office holders to replace the great seal of the state and the governor's seal for the purpose of (i) replacing all references to the office of "Governor of the State of _____" with the respective de jure notation "Governor of _____" (e.g. "New York"); (ii) replace all references to the "State of _____" with the respective de jure notation "_____"(e.g. "New York"); and (iii) reflect the coat of arms of the state as existed on December 19, 1860, or the earliest existing coat of arms if your respective state was not in existence on December 19,1860, all such modifications to be

completed no later than forty-five days (45) days after receipt of this order.

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Failure to comply with these orders to the governors completely and in good faith or plead necessity for additional time or clarification. See General Order Seven.

Retaliation or obstruction by corporate officers operating under de facto color of law against any of the signatories hereto or agents thereof acting in furtherance of this declaration is deemed a capital crime.

It is so ordered this _____ day of the _____ month, in the year of our Lord two thousand and ten by the affixing hereto of each state's signatories numbering at least twenty-six souls, duly comprising the De jure Prand Juries of the free American republics pursuant to The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American republics, c. 2010. Teste meipso by our hands, republic by republic hereinafter following.

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General Orders

of the De jure Grand Juries

of the People of the united States of America

assembled under God as

Guardians of the Free Republics

and sole lawful authority on the land

to

our most beloved fathers, mothers, sons and daughters who have selflessly volunteered to serve as the armed forces of the United States of America, and whom, by your oath to support and defend our constitution, are entrusted with the sacred duty to protect your families, neighbors, friends, the nation and the posterity, from enemies foreign and domestic currently waging economic warfare against the People and the nation under God, and to all whose diligent action is needed and bound by oath hereto

in particular to

Michael Mullen, a man occupying the office of Chairman, Joint Chiefs of Staff, and all successors thereto

James E. Cartwright, a man occupying the office of Vice Chairman, Joint Chiefs of Staff, and all successors thereto

George W. Casey, Jr., a man occupying the office of Chief of Staff, Joint Chiefs of Staff, and all successors thereto

Gary Roughead, a man occupying the office of Chief of Naval Operations, and all successors thereto

Norton A. Schwartz, a man occupying the office of Chief of Staff, United States Air Force, and all successors thereto

James T. Conway, a man occupying the office of Commandant of the Marine Corps, and all successors thereto

Robert Gates, a man doing business as United States Secretary of Defense, and all successors thereto

Jane/John Doe, men and women occupying the offices of the United States armed forces and/or Department of Defense

and to

all others to whom these orders must necessarily apply ...

Whereas the People of the free American republics have been under military occupation since 1861 and various persistent unlawful States of National Emergency having been declared and perpetuated without interruption since 1933 such that “freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency” (para. 1, Introduction, Report 93-549 of the Special Committee on the Termination of the National Emergency, United States Senate, November 19, 1973)

Whereas such States of National Emergency and hundreds of derivative emergency statues have been duly confessed by the United States Federal Corporation to “delegate to the President extraordinary powers, ordinarily exercised by the Congress, which affect the lives of American citizens in a host of all-encompassing manners...to rule the country without reference to normal Constitutional processes” (para. 2, Foreword, Report 93-549 of the Special Committee on the Termination of the National Emergency, United States Senate, November 19, 1973)

Whereas the People have been declared enemies of the state through fraudulent means in the private corporate regulation known as the Trading with the Enemy Act, c. 1917, as amended c. 1933, by covertly diminishing their divine sovereign status to the pagan rank of legal fiction U.S. persons thereafter presumed to be belligerents with respect to the United States Federal Corporation

Whereas all such events, manipulations, deceptions and libels are wholly repugnant on their face to the constitutions of the free American republics and the Constitution for the United States of America, c. 1787

Whereas the members of the armed forces of the United States of America are bound by oath to obey proper civilian authority and are guided in that duty by the United States Army and Navy Manual of Military Government and Civil Affairs with respect to recovering domestic

territory from enemy occupation, restoring civilian government, retaining proper civilian laws, removing high-ranking political officials from office, supervising, controlling and closing civilian courts, protecting money, guarding banking facilities, and releasing political prisoners

and

Whereas We the People have proclaimed and reclaimed our rightful place as the one and only lawful authority under God and pursuant to the constitutions of the fifty (50) free American republics and United States of America republic, c. 1787 and have given due notice to the people of the earth and all governments and nations derived there from

Whereas We the People have reinhabited the legitimate de jure constitutional governments of the said free republics in peace and harmony

Whereas We the People by The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American republics, c. 2010, have assembled under oath the well-regulated Guardians of the Free Republics in all fifty (50) free American republics

Whereas We the People have reinhabited under oath the rightful de jure grand juries on the land in all fifty (50) free American republics herein proclaimed as these De jure Grand Juries or the De jure Grand Juries as the case may require

Whereas We the People by the Warrant and orders to the governors of the De jure Grand Juries hereunder, have given due notice to the men and women occupying the office of Governor of each of the fifty States of the United States Federal Corporation and having recalled them, one and all, to de jure service as governors of their respective free American republics

Therefore, We the People the one and only lawful sovereign authority on the land, do hereby peacefully and honorably, without malice for anyone, issue these General Orders to the men and women of the armed forces of the United States of America, all successors thereto and nominees thereof pursuant to their duty by oath to the Constitution for the United States of America, c. 1787, and to all other people, governments and nations to whom these General Orders must necessarily apply:

General Order One

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Cease and desist all tax related actions against the sovereign People

The Internal Revenue Service being an unlawful collection arm for the Federal Reserve System and its principal private money predators and war profiteers, being repugnant to the Constitution for the United States of America, c. 1787 and a self-evident abomination to mankind, being corrupt beyond repair; assault upon and incarceration of the sovereign People by the government of their creation for failure to accede to thefts of their wealth under the guise of "legal" process being a sin and perversion of the Constitution for the United States of America, c. 1787

You are hereby ordered by these De jure Grand Juries to direct the men and women occupying the de facto judicial offices within the United States Federal Corporation, Eric Holder, a man

occupying the office of Attorney General of the United States, Douglas Shulman, a man occupying the office of Commissioner, Internal Revenue Service, and all to whom this order must necessarily apply, to cease and desist forthwith all investigations, actions, prosecutions, liens, levies, garnishments, collections and distress against the sovereign People, all members thereof and all accounts, trusts, artifices and legal fictions derived therefrom, real or imagined, as the result of tax, income tax, property tax, sales tax and/or other tax-related charges and/or claims such as failure to file, failure to pay, obstruction and/or conspiracy, and any peripheral actions which do not involve a flesh and blood injured party.

You are hereby further ordered to direct the said men and women to prepare and deliver to these De jure Grand Juries within thirty (30) days of receipt of this General Order a complete

list of all men and women who are currently subject to, or have been subjected during the ten (10) calendar years previous to the signing of this General Orders, to lien, levy, investigation, distress, harassment, detention, judicial process or similar acts of terrorism, whether past or ongoing, as the result of tax, income tax, property tax, sales tax and/or other tax-related charges and/or claims such as, but not limited to, failure to file, failure to pay, obstruction and/or conspiracy.

General Order Two

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Cease and desist all foreclosure and collection actions against the sovereign People

The sin of a government holding security interests and secret liens against the People it is supposed to serve, obstructing the People from enjoying the fruits of their own labor, charging the People usury, and forcibly stealing the People's God given credit and land by fraudulent means and intentional defects of law, being self-evident crimes against mankind

You are hereby ordered by these De jure Grand Juries to direct the men and women occupying the necessary and relative de facto legislative, executive and judicial offices within the United States Federal Corporation, and Timothy F. Geithner, a man occupying the office of Governor, International Monetary Fund, Michael J. Williams, a man acting as Chief Executive Officer, Fanny Mae, Charles E. Haldeman, Jr, a man acting as Chief Executive Officer, Freddie Mac, Karen Gordon Mills, a woman acting as administrator, U.S. Small Business Administration, Shaun L.S. Donovan, a man acting as Secretary, U.S. Department of Housing and Urban Development, Eric Holder, a man occupying the office of Attorney General of the United States, and all to whom this order must necessarily apply, to cease and desist forthwith all foreclosure and collection actions against the sovereign People and members thereof and/or contrived legal personalities hypothecated therefrom using all necessary means and processes, and further to timely notify all such members of the People as to the cessation of such actions.

You are hereby further ordered to direct the said men and women to prepare and deliver to these De jure Grand Juries within thirty (30) days of receipt of this General Order a complete list of all men and women who are currently subject to, or have been subjected within the ten (10) calendar years previous to the signing of this General Order to such foreclosure and/or collection actions as would be subject to the protections afforded by the previous paragraph

but for the timing of such foreclosure and collection actions.

General Order Three

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Cease and desist all judicial and quasi judicial actions against the sovereign People for crimes which want for an injured party

The People being sovereign with respect to the United State of America republic, c. 1787, at no time having granted standing to a corporate entity masquerading as a legitimate government to pose as an injured party or the People's attorney with respect to the People's private affairs, or to impose an artificial personage on the People as a vehicle for presuming the People's submission to a commercial law venue, or to employ the judicial institutions of the free American republics for corporate profit, all such activities being repugnant to the Constitution for the United States of America, c. 1787 and crimes against mankind

You are hereby ordered by these De jure Grand Juries to direct the men and women occupying the de facto judicial offices within the United States Federal Corporation, and Eric Holder, a

man occupying the office of Attorney General of the United States, to forthwith cease and desist all actions and prosecutions against the sovereign People which want for an injured party and/or witnesses willing to testify to first hand knowledge of the alleged crimes under full liability and penalty of perjury, or where the injured party is deemed to be a government entity, in particular all such prosecutions which impose a legal personality and/or Admiralty, administrative and/or commercial law venues upon the sovereign People for the purpose of facilitating such actions; all future criminal prosecutions being hereafter restricted to matters of espionage, sabotage, insurrection, treason, destruction of United States property, interference with the mails, or fraud against the United States as limited under the Constitution for the United States, c. 1787.

You are hereby further ordered to direct the said men and women to prepare and deliver to these De jure Grand Juries within thirty (30) days of receipt of this General Order a complete list of all men and women who are currently subject to or suffering incarceration, distress, parole or restriction as the result of such prosecution as described hereunder for want of an injured party.

General Order Four

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Provide safe passage through the United States free from government interference and molestation

The People being sovereign with respect to the United State of America republic, c. 1787, owning no allegiance to divulge their private affairs to agents of the government of their Creation, possessing the absolute right to travel, congregate, assemble and worship without government scrutiny or interference and most certainly without sustaining bodily injury, detention, assault, kidnapping and distress for failure to exhibit State-issued documents which confess to subject-class State citizenship

You are hereby ordered by these De jure Grand Juries to direct Hillary Rodham Clinton, a woman occupying the office of Secretary of State, to prepare an appropriate verifiable wallet-sized document by which Guardians of the Free Republics will be afforded diplomatic immunity and safe passage through the United States free from government detention, arrest, hindrance, interference and molestation, and a passport type document by which Guardians of the Free Republics will be afforded diplomatic immunity and safe passage throughout the world, such identification to be ready for production no later than thirty (30) days after receipt of this General Order and without language diminishing the sovereign People to wards of the state or subject-class citizens.

You are further ordered to direct the aforesaid Hillary Rodham Clinton and the men and women occupying all necessary judicial and law enforcement offices to (i) modify all criminal and other

information databases, in particular the National Crime Information Center database, to reflect the diplomatic "do-not-detain" status of Guardians of the Free Republics who exhibit the aforesaid identification document or equivalent identification or otherwise so identify themselves; (ii) cease random road blocks and other unlawful detentions; (iii) cease forthwith all acts of violence against those members of the sovereign People who fail to exhibit confessions of State subject-citizenry, and (iv) cease all surveillance, activities and actions against men and women who identify or have previously identified themselves as members of the sovereign People under the specious deception that they are U.S. persons acting as enemies of the state pursuant to The Trading with the Enemy Act, c. 1917 as amended.

General Order Five

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Provide notice of lawful de jure governance

The People being entitled to notice of the return to lawful de jure governance of the free American republics and the United States of America republic, c. 1787 as existed prior to December 20, 1860, and to demonstrate compliance with these General Orders, the symbols of de jure governance shall be restored.

You are hereby ordered by these De jure Grand Juries to direct the necessary judicial and law enforcement officers of the United States to replace all non-regulation flags which identify

incorporated, military, admiralty, maritime and/or commercial law forms with proper colors of the de jure law form of the United States of America, c. 1787, in all United States institutions, in particular courtrooms, courthouses, judicial institutions, federal buildings, and law enforcement facilities, no later than ninety (90) days after receipt of this General Order.

You are further ordered to direct Hillary Rodham Clinton, a woman occupying the office of Secretary of State, to (i) replace the Great Seal of the United States with the de jure seal as existed on December 19, 1860, no later than thirty days (30) days after receipt of this General Order, and (ii) replace the Great Seal of the President of the United States and presidential coat of arms wherever visible with the seal and coat of arms as existed on December 19, 1860, no later than ninety days (90) days after receipt of this General Order, until such time as a new seal can be designed which is devoid of pagan and occult symbolism.

General Order Six

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Ensure and protect the People's credit

The sovereign People hereby repudiating the confiscation of their privately held gold in 1933 pursuant to corporate regulation Executive Order 6102, repudiating the replacement of their system of money with the present system of non-consensual credit in 1933 pursuant to corporate regulation House Joint Resolution 192, repudiating the restriction of access to their own credit by banking institutions licensed to plunder their credit under color of law, manipulation of credit and usury having become the primary weapons of warfare and political subjugation, the De jure Grand Juries do hereby ensure access to credit during the transition from non-consensual credit allocation to unfettered self-determination

Warrant. You are hereby ordered by these De jure Grand Juries to immediately place de facto agencies Fanny Mae, Freddie Mac, the U.S. Small Business Administration, and the U.S. Department of Housing and Urban Development under the protective custody of the armed forces of the United States of America until further notice to ensure the People's credit and access thereto. All necessary steps are authorized and shall be taken to ensure that such access is not diminished, hampered or further restricted in response to these General Orders, nor

shall any new restrictions be implemented by anyone or any method,real or imagined.

General Order Seven

of the De jure Grand Juries
of the People of the united States of America
assembled under God

Administer the governors de jure oaths of office
Remove imposters

On behalf of the Peoples' reinhabitation of the de jure institutions of governance

You are hereby ordered by these De jure Grand Juries to administer the taking and subscribing of the following governors oath of office by each man and woman seeking to reinhabit the de jure office of governor with respect to each of the fifty (50) free American republics pursuant to the Warrant of the De jure Grand Juries included herein in its entirety, and to file the duly sworn and witnessed written oath of office for each such man and woman with these De jure Grand Juries no later than fourteen (14) days after receipt of the aforesaid Warrant by each such man and woman respectively.

For such specific duty, the administrators of such oaths are hereby deputized as officers of these De jure Grand Juries. The said oath shall specifically state:

> "I, A. B., do solemnly swear (or affirm) that I will support, preserve, defend and protect the Constitution of the _____ (name of state, e.g. "New York" not the "State of New York") republic and the Constitution for the United States of America republic, circa 1787, and that I will perform and fulfill all of the duties of the office of governor of this republic, both faithfully and impartially to the best of my ability and understanding, as a sacred actionable blood-oath contract with the sovereign People of the _____
>
> (e.g. "New York" not the "State of New York") republic, so help me God."

Upon objection to the above, each such man and/or woman shall be free to resign within three days of receipt of such Warrant without recourse for such resignation, to be replaced by the man or woman next in line to occupy such office.

Warrant. You are hereby ordered to arrest, detain and bring before these De jure Grand Juries any such man or woman who refuses such oath or timely opportunity to resign, to defend against the high crime of treason. This Order shall not impair the People's right of letter of marque.

It is so ordered by the De jure Grand Juries this _____ day of the _____ month, in the year of our Lord two thousand and ten by the affixing hereto of each state's signatories numbering at least twenty-six souls, duly comprising the De jure Prand Juries of the free American republics pursuant to The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American republics, c. 2010. Teste meipso by our hands, republic by republic hereinafter following.

Provisional Bond De jure of Public Indemnification for the men and women occupying the office of governor of the De jure Grand Juries

of the People of the united States of America assembled under God

standing united as

Guardians of the Free Republics

In Furtherance of the Warrant, orders to the governors, and General Orders included herein in their entirety, to protect the public from harmful acts of commission and omission; to bind public servants one and all to their respective offices, oaths of offices, and the duties and responsibilities thereof within their respective American state republics and the United States of America republic, c. 1787 as the case may be

We the People, Guardians of the Free Republics, do hereby issue this Provisional Bond De jure of Public Indemnification whereby each state's signatories hereto numbering at least twenty-six souls, jointly and severally, by their God-given faith and credit, do hereby indemnify against recourse all parties who act in good faith in furtherance of the aforesaid orders, and do further indemnify the public against all acts of commission and omission undertaken in good faith and furtherance of the aforesaid orders, which inadvertently cause injury to the public.

This bond shall not protect any man or women occupying any public office from full individual liability for acts of malice or other willful, intentional or capricious acts of commission or omission which cause injury to others. For all such acts, the responsible party(ies) remains fully liable commercially and corporeally and shall be judged accordingly.

The word of the People is the People's bond whereby one troy ounce of .999 percent pure silver specie is affixed to this bond. A photocopy of this bond and the duly signed and sealed Sacred Certification of Authentication incorporated herein are sufficient evidence of indemnification.

We the People of the _____ republic, having by oath assembled under God as the De jure Grand Jury(ies) and accepted the duties of guardian in the well-regulated Guardians of the Free Republics to support and defend the constitution of our republic without prejudice to any, do hereby so order and decree by affixing our hands hereto and our seals to such oath:

Name [print in Normal Case: John Jason Smith] County [e.g. Kings] Signature Date [1-12-2010]

_____

_____

This is a sample. There are fifty

_____

_____

such pages in the actual document

which numbers 79 pages.

Appendix

Self-evident Expositions of Truth

The People's divine right to self-governance having been declared by and accepted upon The unanimous Declaration of the thirteen united States of America, c. 1776, the People duly assembled under the Creator, the well-regulated Guardians of the Free Republics, do hereby invoke our divine right to alter or abolish destructive government pursuant to the following self-evident truths:

It is self-evident that the People do not now, nor have we ever intended to become wards of, nor have every aspect of our lives controlled by, the governments of our creation whether by executive order or other deceptions under color of law, nor to endow lifeless corporations with sovereignty over the living sovereign People or in any way imply equality with mankind.

Expositions of monetary policy

We do not now, nor have we ever consented to the confiscation under threat of bodily harm of our private possessions, in particular gold and silver, as was required under color of law by Executive Order 6102 in 1933, nor have we ever consented to the compelled exchange of our valuable possession for obligations of debt such as Federal Reserve Notes.

We do not now, nor have we ever consented to economic enslavement to the Federal Reserve System of central banks characterized by Congressman Louis McFadden, Chairman of the House Banking and Currency Committee in 1934 as "private monopolies which prey upon the people of these United States," "[an] evil institution" which has "impoverished and ruined the people of the United States," and "one of the most corrupt institutions the world has ever known."

We do not now, nor have we ever intended to condone high risk economic debauchery and the insidious immorality which it breeds whereby central banks, in particular the Federal

Reserve System, c. 1913, conjure money at will against the People's credit for the meager cost of printing the currency rather than its face value; loan it to the People at full face value in exchange for bonds from the People's treasury; take final possession of the currency for personal profit when the bonds mature; re-loan the currency to the People nine additional times through member banks; use their ill-gotten profits to fund the world's corporate governments, money predators and war profiteers such as the Bolsheviks trade the currency in gambling emporiums disguised as markets where the People's labor is valued by speculation rather than the face value of our money; cultivate the sin of gambling as a philosophy of moral and economic decay; seize additional profits through the creation of inflationary spirals fueled by additional currency issuances where no such devaluation of the People's money and labor had ever previously existed; and promote cyclical worldwide economic holocaust to ensure the global dominance of a cabal of private banking cartels.

We do not now, nor have we ever desired to accept insidious regulatory obligations to the World Bank, International Monetary Fund, Bildeberg Group, Crown of England, Bank of England, Bank of France, Vatican Bank and Bank of International Settlements by swearing a confession to being an artfully named legal fiction "U.S. person" on a bank signature card as a condition of transacting our private affairs, nor do we desire to have the act of banking transformed into an arrest of our money or other secret lien right by the State.

Pursuant to the above, we do not now, nor have we ever consented to banking institutions which prey on the People and block the People from their God-given credit.

Expositions of State-licensed immorality

We do not now, nor have we ever intended to accept diminished capacity as United States persons / residents / citizens or other artfully named "legal fiction" subjects of the governments of our creation or corporate substitutes thereof by the mere act of having signed our names without full disclosure to documents purportedly of no particular significance which in actuality pledged our lives and labor as chattel to the world's banking institutions and the United States Federal Corporation as confessed in de facto corporate regulation Section 3002 of Title 28 of United States Code.

Pursuant to the above, we do not now, nor have we ever knowingly agreed to thinly-disguised adhesion contracts such as applications for drivers, business and occupational licenses, car and voter registrations, financial statements,

appearance bonds, birth registrations, Social Security cards, bank signature cards, court

documents or any such document which presumes our consent to odious undisclosed obligations under color of law and unwittingly conveys to the State control over every fabric of our lives in ways unimaginable to the founders of the free American republics.

Pursuant to the above, we do not now, nor have we ever consented to exchange our divine right of marriage for the privilege of petitioning the State for permission to receive a marriage license, whereby the divinely-sanctioned covenant of marriage is unwittingly replaced by a State-sanctioned civil union privilege disguised as marriage in which government dictates the terms of such unions, even so far as extending the privilege to people of the same sex, or people and animals if political whimsy should so dictate.

Pursuant to the above, we do not now, nor have we ever desired to file a deed that identifies us as "tenants" on the land in our lawful possession, or otherwise subordinate our possessory rights to a property, tax, zoning, regulatory or other corporate claim, real or imagined, by the state of our creation or incorporated derivatives thereof.

Pursuant to the above, we do not consent to waive our absolute right of privacy for the privilege of signing Form 1040 or similar disguised contracts which imperiously presume the People to have willingly and knowingly volunteered for public examination, investigation, indictment, arraignment, imprisonment and destitution.

Pursuant to the above, we do not now, nor have we ever consented to the "licensing" of free churches by government under the dubious guise of "religious organizations" and "religious corporations," that our houses of worship and sanctuaries from tyranny might be enticed to accept the privilege of tax exemption in place of their divine immunity from political capriciousness and regulation, thereby conveying to the state by fraudulent means control over the People's right to worship in violation of the Constitution for the United States of America, c. 1791 ban on laws respecting such houses.

Pursuant to the above, we do not now, nor have we ever consented to the "licensing" by government of the unalienable right to travel on the public byways, nor to converting the right to travel into the privilege of driving whereby the People are deemed to have voluntarily consented to detention, search, seizure, kidnapping, incarceration, assault and even execution for failure to exhibit a State-issued piece of paper or other confession of subject-class State citizenship.

In recognition of the foregoing expositions, we do not now, nor have we ever granted government the right to require us to obtain a license to enjoy any of our unalienable divine rights to life, liberty, occupation and the pursuit of

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happiness granted, nor to the compelled substitution of a statutory privilege for an unalienable right by duplicitous means for the purpose of providing "legal" status to activities which are unLawful or immoral. Expositions of capital crimes

We do not now, nor have we ever consented to the arrest, detention, internment, deportation, conscription or kidnapping of any of the sovereign People or a distinct class of the

People such as the arrest and internment of the entire population of one hundred and twenty thousand Japanese Americans under Executive Order 9066, c. 1942, without grand jury indictment and due process of law, and in direct violation of Constitutional prohibitions, by imposing on the People the delusion of "legal persons," whether such trespass be by Executive Order, warrant, draft board or other clever deception under color of law,

We do not now, nor have we ever consented to government agents compelling the People to cast witness against themselves in direct violation of the Constitution for the United States of America, c. 1787, nor to the insidious suborning of thousands of such crimes in the courts and law institutions of this country every day.

We do not now, nor have we ever consented to "...two national governments, one to be maintained under the Constitution, with all its restrictions, the other to be maintained by Congress outside and independently of that instrument"nor to "an era of legislative absolutism" whereby the free republics are destroyed by "an evil day for American liberty if the theory of a government outside the supreme law of the land finds lodgment in our constitutional jurisprudence" as eloquently declared by Justice John Marshall Harlan in his dissenting opinion in Downes v. Bidwell 182 U.S. 244 (1901).

We do not now, nor have we ever consented to the "registering" or taking inventory of our children by the State, nor to the repackaging of birth registration applications as securities issued by the Department of the Treasury which are underwritten by the future labor of our children, nor to the exchange of such securities for currency issued by the Federal Reserve banking system, nor to the deposit of such securities as book-entry accounts at The Depository Trust Company,nor to the issuance of Certificates of Birth as the security certificates which represent such securities. The evil of surreptitiously hypothecating the Peoples' labor for the issuance of currency which is to be repaid to a central bank is self-evident.

We do not now, nor have we ever consented to non-consensual labor, slave labor, peonage or involuntary laboratory in service to men or the state, or assumptions that the state has a claim, secret or otherwise, against the People's labor, nor to perverse manipulations by the legal franchise that convert the People's labor into obligations to the state.

We do not now, and have never intended to preempt by force the United States of America republic that existed prior to the Civil War with the incorporated United States democracy, c 1865, nor to the unlawful transfer of dictatorial powers to "rule the country without reference to normal Constitutional processes" under a perpetual "State of National Emergency" persisting since 1933 as confessed in de facto corporate Senate Report 93-549, c. 1973, nor to the more than twelve thousand Executive Orders which have been unlawfully misapplied to the People through the unauthorized application of their names to book entry accounts known as "United States persons" established without the People's knowledge in the banking, judicial and treasury institutions of this country for the purpose of circumventing the People's unalienable rights in ways small and large, such as the aforesaid arrest of the entire population of Japanese American sunder Executive Order 9066, c. 1942.

We do not now, nor have we ever consented to the transfer of slaves from private to government peonage under the guise of the 14th Amendment privilege of subject-class "citizenship," nor to the wholesale substitution of such status throughout society in place of

the superior status of being a member of the sovereign People as existed under law from 1787 Page 28 of 79through 1861.

We do not now, nor have we ever consented to exchange any of our immutable divine rights for revocable government privileges disguised as “civil rights” or other artifices of the “legal” system franchise, “civil law” being derived from the Roman jus gentium, meaning the law of the conqueror as imposed on the free American republics by the compelled armistice signed at the Appomattox Courthouse, c. 1865.

We do not now, nor have we ever consented to the conquest, subjugation and impoverishing of native peoples who inhabited the American continents long antecedent to the arrival of our forefathers, nor to the use of compelled treaties,privileges, licenses and dubious claims to the right of taxation to diminish such people to legal fiction “United States persons” who are subject to such State-issued privileges in place of their divine right to life, privacy, liberty and dignity.

We do not now, nor have we ever consented to the use of corporate regulations masquerading as the private bar association “legal” franchise and endless concocted “statutes” to cultivate the largest prison population and highest rate of incarceration in the world, nor the substitution of the incorporated State as injured party and compensated-beneficiary in place of living men and women, nor to the use of such statutes to subjugate and impoverish an entire race of Americans, nor to profiteering at the expense of the People by the Corrections Corporation of America and other State licensed privateers.

We do not now, nor have we ever consented to the unlawful discarding on procedural grounds of the authentic 13thArticle of Amendment to the Constitution for the United States of America, c. 1787 ratified in 1819 and published in seventy-eight government publications and law journals of that era across the country, whereby holders of foreign titles of nobility such as “Esquire” were stripped of their United States citizenship and capacity to hold public office. Expositions of blasphemy unto the Lord

Pursuant to the above, we do not now, and have never intended to abdicate our dominion over all the earth as granted by the Creator to a system of “legal” statutes and fictions of law created, administered and perpetuated by a privileged class of foreign officials known as “Esquire” so that we might be compelled to “pray” as pagans to United States Federal Corporation de facto territorial courts as is required in such courts across the country. The sin of praying to a court as is common practice among attorneys-at-law is self-evident.

We do not now, nor will be ever be compelled to condemn ourselves to eternal damnation by “praying” to corporations or other false idols.

We do not now, nor have we ever consented to layers of corporate “limited liability” or other usurpations of personal responsibility that have effectively robbed the People of their cultural memory and capacity for self-sustenance and transformed them into wards of the state whose survival depends on voting privileges instead of glorification of the Lord. Expositions of forgiveness

For all of these self-evident offenses against the Almighty Creator and his children declared herein, we the People,respecting the unalienable rights of all men and women, are

required by our status and do hereby forgive all men and women who have planned, executed and profited from these self-evident sins and crimes against mankind, upon such men and women repenting all of the foregoing, and do hereby share and declare The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American republics. The people have spoken, and it is so.

Sacred Certification of Authenticity of the Guardian Elders

For

The unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American republics and all parts thereof herein and hereunder

We the Guardian Elders of the free American republics, authors of The Unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American Republics, c. 2010 under God, organizers of the well-regulated Guardians of the Free Republics, architects of the re-inhabitation of the de jure institutions of government on the land known as the free American republics and the United States of America republic, c. 1787, as amended 1791, constitutors of the De jure Grand Juries charged with supercedeas and productive oversight and supervision thereof and with respect to any and all subsequent de jure grand juries which may be formed by the Guardians of the Free Republics from time to time, do hereby sacredly affirm and certify by our hands and seals affixed below the authenticity of The Unanimous Declaration of the sovereign People of the united States of America to restore and reinhabit the free American Republics to which this certification is attached with all contents intact, pages numbering as many as indicated below, in particular a certain Warrant (to the governors of the free American republics), First through Fifth order(s) to the governors, General Orders (to the men and women of the United States armed forces), General Orders One through Seven, a Provisional Bond De jure of Public Indemnification, Self-evident Expositions of Truth, this Sacred Certification of Authenticity and each state's signatories hereto numbering at least twenty-six souls as the well-regulated Guardians of the Free Republics and respective republics' De jure Grand Juries, and all copies of the complete and whole foregoing noted as authenticated abstracts when our hands and seals appear where so indicated below, all such hands appearing in original red ink to signify all of the aforesaid as a sacred blood covenant with and in the presence of the Almighty Creator, this _____ day of the _____ month, in the year of our Lord, two thousand and ten.

Duly certified original by

_____ _____ _____ _____

James Timothy Turner Thomas Bradford Schaults Regan Dwayne Reedy Samuel Thomas Kennedy

Contact at:

Duly certified authentic abstract (single hand and seal sufficient for authentication)

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Seals:

Further material on the finality of settlement

Join the GSF and explore

Part II – Memorandum of Law

Part III – The Global Mint

Part IV – Re-introducing finality of settlement

Events are moving quickly worldwide. The American Republics are awakening[87] *- grand juries are being convened across the republics of America. The corporate fraud is being challenged in court in the Rod Class & Dave Buess*[88] *case. The SWANsat Magna Carta*[89] *for the information age has been served upon world leaders.*

Our Swiss infrastructure is ready, the Global Mint[90] *is open for business and we are releasing this document on our website ahead of schedule.*

It is time to take the steps to avert WWIII.

Worldwide military, and Heads of State please take notice – we know of how you are pitted against each other, of the weapons in use, of the plans for false flag attacks, of the stolen and secreted gold, and of the use of legal plunder and blackmail to make men fight. We at the GSF – unarmed – are not afraid. We are coming to rescue you from becoming gladiators at the pleasure of your Roman masters.

87 http://www.rayservers.com/blog/redeclaration-of-the-american-republic
88 http://www.rayservers.com/blog/rodney-class-vs-us
89 http://www.global-settlement.org/archive/SWANsat-Magna-carta.pdf
90 The Global Mint is a service of the GSF System where the production of bars is contracted to qualified vendors who are currently LBMA certified major refiners and mints and produce bars of repute with widely accepted hallmarks.