

# FUNDAMENTAL PRINCIPLES OF LAW

**The following is excerpts from “Excellence of the Common Law” by Brent Winters:**

Three fundamental principles of law and government arise from Scripture that are foundational to the common law tradition.

- 1) First, the only legitimate exercise of law and government is ministerial: every public magistrate and officer holds his office, authority, and power at the pleasure of God to whom the public official is responsible and to whom he will ultimately answer for the conduct of his office.
- 2) Second, God alone is LORD of the individual conscience: each person, from the private individual serving as juror to the public magistrate and officer, is responsible before God to rightly inform his conscience and exercise independent judgment in determining his convictions and actions; his duty of independent discernment in judgment is non-delegable.
- 3) Third, when the individual ultimately answers to God for his actions, God will not permit him to take refuge in his obedience to or conformity with the judgment of any other mortal or combination thereof, regardless of their threats, demonstrations of power, or claims to infallibility. The individual's only real legitimate refuge and safe harbor is in true obedience to God in response to a conscience rightly informed which is only possible as the product of faith in God in response to the Scriptures.

The common law tradition is in harmony with the foregoing three principles from Scripture, which forms its foundation. Any doctrine said to be a part of the common law tradition that is inconsonant with these three is not part of the common law tradition. The civil law tradition remains irreconcilable with the foregoing three principles.

Popular politics will erode the liberty of life and property of individual Americans if it is not preceded by and founded upon a pervasive, experiential, and true knowledge of her courts and government in their common law function. Good government is right government, but right government will prevail only as individuals found it on common law ideals as these arise from the articulations of the courts in response to real controversies. Though at times legislation may serve as a catalyst, reliable evidence of the law and good government emerges from individual cases and issues sharpened in the courts, not through the broad and undiscerning brush of legislation.

**Our Constitution is not legislation**, as civil law jurists understand the term: the product of superior reasoning of an elitist class. **Rather, it is an expression of common law principles** of government: the product of centuries of judicial struggle—thus its staying power, strength, and reliability. Though legislation has its common law and constitutional use as the political feature of common law government, **America can get along well with a minimum of legislation**. Because her ideals of law and government, however, arise from common law principles uncovered, refined, and articulated by the courts in tailored application, her ideals will fail without reliable and easily accessible courts. Unfortunately, Americans give disproportionate time and attention to promoting legislation, but precious little time and attention to understanding and invoking our **common law first principles**. Experience shows that government centered on common law courts and juries encourages close

participation and discourages lawlessness; government centered on legislatures excludes close participation. **Legislation, by its nature must deny the minority opinion on any given issue.** The tone of legislation is broad and commanding; the tone of the courts is narrow and discerning. Legislation decrees; courts of record make findings and render opinions. The ultimate statutory commands of a faceless state without the independent Jury and courts are absolute, undiscerning, impersonal, and disheartening; Jury verdicts and reasonable court opinions tend to limit government, can be respectable and acceptable, leaving room for disagreement and lawful avenues for advancement of the individual conscience.

**The judicial power of the United States and of the several states lies only within the processes of the common law.** True authority and lasting national strength will not result from popular politics through the politization of every American in disregard of the foundations of the common law tradition. Popular **politics without the eternality and majesty of the law will ultimately disappoint and discourage, but the triumph of true law will satisfy and encourage.** The strength, uniqueness, and aspiration of our common-law government is not the will of popular politics, but rather the insistence upon right due process. In the common law tradition, the legislator champions popular politics as a check on executive power; **the court champions the quest for true law as a check on executive power and legislative majorities.**

To place hope in the strong arm of executive power or popular politics through the stroke of the legislative pen is to trust the government of a man or men in popular assembly. But to give attention to understanding and intelligent participation in the processes of the common law tradition when summoned as jurors, witnesses, or litigants **is to insist upon a government of law.** Consideration of executive power and legislative majorities in exclusion to the proven processes of the common law to effect discernment between good and evil, right and wrong will result in tyranny. **Rightly informed and intelligent experience with common law due process will provide the boldness necessary to assert common law limits for government that will enable liberty in deed.**

The **common law is process oriented, not result oriented:** following the right processes by asking the right questions can yield a right result, viz., justice; following the wrong processes by asking the wrong questions cannot yield the right result. Because the processes of the common law tradition are in agreement with Holy Writ, those equipped with consciences rightly informed with understanding of our common law tradition will occupy and hold the territory of law and government and will effect liberty.

**The goal of the common law** is to insure due process with a view toward justice; **the goal of the civil law** is to insure obedience to the state's will. Civil law begins by affirming legislation to be the true expression of justice; common law begins by assuming truth's expression of justice is yet to be revealed and seeks to discover truth's just application by following the requirements of due process. Civil law courts venerate the legislative code; common law courts allow the adversity afforded by due process to test legislation's application. **While legislatures remain distant subjects of political winds, courts are to be local subjects of law.**

## THE KINGS BENCH

The King's Bench is the authority of a court of record proceeding according to the common law under the authority of the People, a/k/a tribunal. The 5<sup>th</sup> Amendment "demands" a traditional Common Law Grand jury<sup>1</sup>; and every court is "bound" to obey the common law<sup>2</sup>. A court of record proceeds according to common law who's tribunal are "We the People" functioning independently of the magistrate<sup>3</sup>.

NO criminal trial can proceed without the will of the People through the Common Law Grand Jury. When a Judge deceives one of the People to make a plea without first an indictment the said act would be criminal and does not give a judge authority to claim jurisdiction and only courts' of record can fine and incarcerate<sup>4</sup>.

*"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ... nor be deprived of life, liberty, or property, without due process of law;..."* 5<sup>th</sup> Amendment:

NO criminal trial can proceed without the will of the People through a Common Law Trial Jury, wherein judge do not have the authority to make a judgment.

*"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; ... and to have the Assistance of Counsel<sup>5</sup> [not attorney] for his defense."* 6<sup>th</sup> Amendment

No judge has the authority to second guess or overturn a decision by the People (Jury) and trial is to according to common law.

*"...the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."* 7<sup>th</sup> Amendment

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<sup>1</sup> "The Court of Appeals' rule would neither preserve nor enhance the traditional functioning of the grand jury that the "common law" of the Fifth Amendment demands." UNITED STATES v. WILLIAMS; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352;

<sup>2</sup> Article VI "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

<sup>3</sup> "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.

<sup>4</sup> "Courts of Record and Courts not of Record the former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded". 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52

<sup>5</sup> COUNSEL. Blacks 4th In practice. An advocate, counsellor, or pleader. 3 Bl. Comm. 20 ; 1 Kent, Corum. 307. One who assists his client with advice, and pleads for him in open court.

Judges are magistrates and not the tribunal they possess no power to make a ruling (judgment):

*"Acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony; proceeds according to the course of common law; has power to fine or imprison for contempt; possesses a seal; it's judicial tribunal has attributes and exercising functions independently of the person of the magistrate designated generally to hold it." Ex parte Watkins, 3 Pet., at 202-203. [cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973)].*

The judicial executive branch have turned the New York State Supreme Court into a nisi prius court not of record thereby becoming a hybrid, combining a statutory and chancery court, both without the approval of the king, whereas justice can never be served.

***"This maxim is applied by Lord Coke to courts, and, terms of law; being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is coram rege, and the style of the court of chancery is coram domino rege in cancellaria; the addition showing the difference."** 4 Inst. 80. 2 Bl.Comm. 106; Litt. §1.*

Statutory courts (*officers of the court*) cannot second guess the judgment of a court of record and are subject to collateral attack by the court of record (*sovereigns of the court*).

*"The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court are subject to collateral attack. In other words, in a superior court one may sue an inferior court directly, rather than resort to appeal to an appellate court. Decision of a court of record may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court (whether it be an appellate or supreme court) can second guess the judgment of a court of record. The judgment of a court of record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it." Ex parte Watkins, 3 Pet., at 202-203. [cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973)].*

## **GOD IS THE KING OF THE COURT**

Common Law and Natural Law are synonymous therefore under Common Law We the People are judged/ruled by the Governor of the Universe. Therefore God is the King of the court and the Grand or Trial Jury total the King's Bench, a/k/a the tribunal; and as long as the Kings Bench reflects the will of the Lord through His principles and authorities We the People will be blessed sovereign above all earthly states.

**CORAM IPSO REGE.** *"Before the king himself the old name of the court of king's bench, which was originally held before the king in person."* 3 Bl.Comm. 41. *"The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative"*. Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

**KING'S BENCH.** [Blacks Law] "*The supreme court of common law in England, being so called because the king used formerly to sit there in person, the style of the court being coram ipso rege.*" See 3 Bl.Comm. 41-43.

**CORAM NOBIS.** [Blacks Law] Before us ourselves, (the king, i. e., in the king's or queen's bench.) Applied to writs of error directed to another branch of the same court, e. g., from the full bench to the court at *nisi prius*. 1 Archb. Pr. K. B. 234. See Writ of Error.

**TRIBUNAL.** The seat of a judge; the place where he administers justice; but by this term is more usually understood the whole body of judges [jury] who compose a jurisdiction sometimes it is taken for the jurisdiction which they exercise.

**ONLY THE KING (PEOPLE) ARE SOVEREIGN** – the state is a clipped sovereignty

**NEW YORK CODE - N.Y. CVR. LAW § 2 : NY Code - Section 2:** "*Supreme sovereignty in the people - No authority can, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.*"

"*A consequence of this prerogative is the legal ubiquity of the king. His majesty in the eye of the law is always present in all his courts, though he cannot personally distribute justice. His judges are the mirror by which the king's image is reflected". (Fortesc.c.8. 2Inst.186) [1 Blackstone's Commentaries, 270, Chapter 7, Section 379]*

"*Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts And the law is the definition and limitation of power...*" [Yick Wo v. Hopkins, 118 US 356, 370 Quotiens dubia interpretatio libertatis est, secundum libertatem respondendum erit]

"*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].

"*In United States, sovereignty resides in people. The Congress cannot invoke the sovereign power of the People to override their will as thus declared.*" [Perry v. US, 294 U.S.330]

"*It is the public policy of this state that public agencies exist to aid in the conduct of the people's business.... The people of this state do not yield their sovereignty to the agencies which serve them. ...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...*" CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL (1793) pp471-472.

## **EXTRAORDINARY WRITS**

are the King's (Sovereign's) Remedy

**EXTRAORDINARY REMEDIES.** The writs of mandamus (*We Command*), quo warranto (*Kings inquiry of usurpers*), habeas corpus (*release from unlawful imprisonment*), and some others are sometimes called "extraordinary remedies," in contradistinction to the ordinary remedy by action. Receivership is also said to be an "extraordinary remedy." **Prudential Securities Co. v. Three Forks, H. & M. V. R. Co., 49 Mont. 567, 144 P. 158, 159.**

**An extraordinary writ, issued by a superior court** to an inferior court to prevent the latter from exceeding its jurisdiction, either by prohibiting it from assuming jurisdiction in a matter over which it has no control, or from going beyond its legitimate powers in a matter of which it has jurisdiction. *State v. Medler, 19 N.M. 252, 142 P. 376, 377.*

**An extraordinary judicial writ issuing out of a court** of superior jurisdiction, directed to an inferior court or tribunal exercising judicial powers, for the purpose of **preventing the inferior tribunal from usurping a jurisdiction with which it is not lawfully vested**, (*State v. Stanfield, 11 Okl.Cr. 147, 143 P. 519, 522*); from assuming or exercising jurisdiction over matters beyond its cognizance, (*Jackson v. Calhoun, 156 Ga. 756, 120 S.E. 114, 115*); or from exceeding its jurisdiction in matters of which it has cognizance. (*Jackson v. Calhoun, 156 Ga. 756, 120 S.E. 114, 115*).

**QUO WARRANTO.** In old English practice. A writ, in the nature of a **writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right**. It lay also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. 3 Bl.Comm. 262.; An extraordinary proceeding, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted. *Johnson v. Manhattan Ry. Co., N.Y., 53 S.Ct. 721, 289 U.S. 479, 77 L.Ed. 1331.*; It is intended to prevent exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising such powers. *State ex rel. Johnson v. Conservative Savings & Loan Ass'n, 143 Neb. 805, 11 N.W.2d 89, 92, 93.*

**Conclusion** - King God rules through honorable People who judge by biblical principles and will answer directly to King God if they deviate from said principles. The Kings bench is the seat of the tribunal (a/k/a judges) for the supreme court of common law (court of record) made up of one or more sovereigns, with the power to fine or imprison for contempt and functions independently of the person of the magistrate. Therefore the kings bench can only be the Jury (grand or the petite) or the sovereign of the court. Whenever the Kings Bench is impaneled "by the people" a Court of Record is open whether it is in its investigative role (Grand Jury) or in its pre-trial mode (Petite Jury) its authority, power, judgments, and jurisdiction is final and cannot be challenged or overturned. All courts not of record (without the kings bench) are inferior courts whose jurisdiction is limited and special and whose proceedings are not according to the course of the common law. Criminal courts proceed according to statutory law. Jurisdiction and procedure is defined by statute. Likewise, civil courts and admiralty courts proceed according to statutory law. Any court proceeding according to statutory law is not a court of record (which only proceeds according to common law); it is an inferior court.

Extraordinary writs emanate from the Kings Bench being extraordinary "REMEDIES".