

ARTICLE III COURTS

Memorandum of Law

The purpose of this memorandum is to clarify the Jurisdictions of the Federal District Courts that are to proceed under Law or Equity. Whereas equity courts proceed under codes and statutes and presided over by a judge, whose decision can be appealed to an appellate court that is presided over by a panel of judges. Law courts proceed according to the Common Law without codes and statutes and are presided over by a jury of twelve People. The decision in a court of Law is final and cannot be appealed. Finally, there is no constitutional authority or legislative authority for the creation of an Article I tax court which would be prohibited by Article I Section 9 Clause 4: “*No capitation, or other direct, tax [tax on salary or property] shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.*”

USC Title 26 states no jurisdiction and claims to be a court of record while operating under statutes which is an oxymoron. 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.¹ Common Law is distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority.²

COVENANT³

It is by the following words in our founding document upon which all true Law rests whereby We the People called upon God and made a covenant, that no man can break:

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

¹ 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.

² Klever v. Seawall, C.C.A.Ohio, 65 F. 395, 12 C.C.A. 661.

³ **Blacks 4th**: An absolute covenant is one which is not qualified or limited by any condition and binds the heirs of the land.

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. - Declaration of Independence.

God's covenant founded upon the law of the land is eternal⁴ and cannot be broken on behalf of another. This law is called common law because it is common onto all men or natural law because it is innate, written in the hearts of men⁵. Thereby the authority vested in We the People instituted by decree in our Constitution created a republican form of government to secure the blessings of liberty to ourselves and our posterity.

We the People through this Constitution empowered elected and appointed servants to guard the same. The Constitution cannot be altered or abolished by the legislative servants who took an oath to protect it. *“Any judge who does not comply with his oath to the Constitution for the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason.”*⁶

CREATION OF ARTICLE III COURTS

It is Article III Section 1 where authority is given to create courts. We the People vested power in only “One Supreme Court” and empowered Congress to ordain and establish inferior courts whereas judges hold office only so long as they are in good behavior.

Article III Section 1: *The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to*

⁴ **Psalms 105:8-11** *He hath remembered his covenant forever, the word [which] he commanded to a thousand generations. He hath remembered his covenant forever, the word [which] he commanded to a thousand generations. Which [covenant] he made with Abraham, and his oath unto Isaac; And confirmed the same unto Jacob for a law, [and] to Israel [for] an everlasting covenant: Saying, Unto thee will I give the land of Canaan, the lot of your inheritance:*

⁵ **Jeremiah 31:33-34** *But this [shall be] the covenant that I will make with the house of Israel; After those days, saith the LORD, I will put my law in their inward parts, and write it in their hearts; and will be their God, and they shall be my people. And they shall teach no more every man his neighbour, and every man his brother, saying, Know the LORD: for they shall all know me, from the least of them unto the greatest of them, saith the LORD: for I will forgive their iniquity, and I will remember their sin no more.*

⁶ Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).

time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior...

Good behavior is defined in Article VI which is obedience to the ‘Law of the Land’ which includes Natural Law. Any judge not in good behavior would be in bad behavior and forfeit’s their office. Therefore, it is Congresses’ duty to impeach judges in bad behavior if they do not stand down. And if Congress cannot find the backbone to do their duty then we the People will remove them via extraordinary indictments.

*Article VI Clause 2: 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.*

Congress has been given power to create only Article III Courts of Record and equity ruled by American Jurisprudence. Equity courts proceed under USC Titles. Law courts a/k/a ‘courts of record’ are to proceed under Natural Law.

Article I Section 8; Clause 9: The Congress shall have power to constitute tribunals inferior to the Supreme Court; as referred to in Article III Section 1⁷

28 USC §132: Creation and composition of district courts (a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district. (b) Each district court shall consist of the district judge or judges for the district in regular active service. Justices or judges designated or assigned shall be competent to sit as judges of the court. (c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

Every federal district is to have a ‘court of record’ a/k/a natural law court which is presided over by the People (12 jurists), ‘no political judges permitted.’ When a judge sits as judge, it is an equity court under statutes or contract; Amendment VI makes clear that judges cannot hear, decide, or sentence criminal cases.

⁷ **Article III Section 1:** The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,…”

AUTHORITY TO APPOINT JUDGES & COURT OFFICERS

Article II Section 2; Clause 2: The President shall have power... to nominate ... by and with the advice and consent of the Senate, shall appoint ... judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law....

ARTICLE III COURTS

Our Constitution provides for courts of equity and courts of law, the former is a court not of record that is presided over by a Judge whose decision can be appealed; the latter is a court of record presided over by a tribunal a/k/a jury whose decision is final and cannot be appealed.

Article III Section 2: The judicial power shall extend to all cases, in law and equity...

COURTS OF EQUITY are courts not of record that do not have the power to fine or incarcerate, they cannot hear criminal cases. They proceed in equity⁸ which is a body of jurisprudence⁹ being a practical science that builds upon principles and self-evident truths synonymous with that of common law and the law of the land that all judges must

⁸ **EQUITY:** Black's 4th: “Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law.” Laird v. Union Traction Co., 208 Pa. 574, 57 A. 987; “It is a body of rules existing by the side of the original civil law, founded on distinct principles, and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles.” Maine, Anc. Law, 27; In a restricted sense, the word denotes equal and impartial justice as between two persons whose rights or claims are 'in conflict; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law. This is not a technical meaning of the term, except in so far as courts which administer equity seek to discover it by the agencies above mentioned, or apply it beyond the strict lines of positive law. See Miller v. Kenniston, 86 Me. 550, 30 A. 114.; “In its most restricted sense, it is a system of jurisprudence, or branch of remedial justice, administered by certain tribunals, distinct from the common-law courts and empowered to decree ‘equity’ in the sense last above given. Here it becomes a complex of well-settled and well-understood rules, principles, and precedents.” Isabelle Properties v. Edelman, 297 N.Y.S. 572, 574, 164 Misc. 192.

⁹ **JURISPRUDENCE:** The science of the law. “By science here, is understood that connexion of truths which is founded on principles either evident in themselves, or capable of demonstration; a collection of truths of the same kind, arranged in methodical order. In a more confined sense, jurisprudence is the practical science of giving a wise interpretation to the laws, and making a just application of them to all cases as they arise. In this sense, it is the habit of judging the same questions in the same manner, and by this course of judgments forming precedents.” 1 Ayl. Pand. 3 Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 1, 12, 99; Merl. Rep. h. t.; 19 Amer. Jurist, 3.

obey. Equity supersedes the civil law in virtue meting out impartial justice¹⁰ between two persons whose rights or claims are in conflict; the tribunal is a Judge bound by oath and an appellate structure made up of three or more judges. If the claim is over twenty dollars, either party has a right to choose a court of law, which is a court of record, which is trial by jury.

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

COURTS OF LAW are courts of record that proceed according to common law. All criminal cases require an injured party and the State cannot be the injured party. The tribunal is a “free and independent jury” of twelve People whose decision is final and from which there is no appeal. It is We the People that bring an indictment and the People decide the facts, law, remedy and/or penalty.

ADMINISTRATIVE COURTS are statutory [equity] courts that proceed according to statutes and do not yield to common law and whose end results are the will of the state. These courts do not have the power to fine or incarcerate and are called nisi prius¹¹ courts. People are not obligated to participate in these courts unless they agree first. The law requires jurisdiction to appear on the record.¹² Some examples of these kinds of courts are housing courts, department of labor courts, compensation courts, village courts, town courts, etc....

¹⁰ **JUSTICE:** Bouvier's Law: In the most extensive sense of the word, it differs little from virtue, for it includes within itself the whole circle of virtues. Yet the common distinction between them is that that which considered positively and in itself, is called virtue, when considered relatively and with respect to others, has the name of justice. But justice being in itself a part of virtue, is confined to things simply good or evil, and consists in a man's taking such a proportion of them as he ought.; * Luke 6:19 And the whole multitude sought to touch him: for there went virtue out of him, and healed them all.

¹¹ **NISI PRIUS:** (Bouvier's Law) Where courts bearing this name exist in the United States, they are instituted by statutory provision.; 'Nisi prius' is a Latin term (Black's 5th) 'Prius' means 'first.' 'Nisi' means 'unless.' A 'nisi prius' procedure is a procedure to which a party FIRST agrees UNLESS he objects. A rule of procedure in courts is that if a party fails to object to something, then it means he agrees to it. A nisi procedure is a procedure to which a person has failed to object A 'nisi prius court' is a court which will proceed unless a party objects. The agreement to proceed is obtained from the parties first.

¹² **JURISDICTION:** “Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted.” Lantanav. Hopper, 102 F2d 188; Chicago v. New York, 37 F Supp 150.; “The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings.” Hagans v. Lavine, 415 U.S. 528.

JURISDICTION OF ARTICLE III COURTS

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.*

- (1) “Admiralty and maritime jurisdiction” cases where international laws apply under American Jurisprudence.
- (2) “Equity jurisdiction” proceeds under codes and statutes whose jurisdictions is defined under USC Titles.
- (3) “Law jurisdiction” proceeds under Natural Law

COURTS THAT RESIST THE CONSTITUTION: Judges have a duty by oath to support the Constitution and guarantee a Republican form of government.¹³ Any judge acting upon seditious legislative-acts joins the conspiracy of subversion: *“if then the courts are to regard the constitution and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply. Those then who resist the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.”*... *“It is in these words: ‘I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.’ Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him and cannot be inspected by him. If such be the real state of things, this is*

¹³ **Article IV Section 4:** The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.”¹⁴

CONCLUSION: Congress has been given power to legislate equity courts as defined under Article I Section 8. Said equity courts proceed under USC Titles and governed by American Jurisprudence.

Congress has been given power to provide for courts of record, a/k/a Natural Law Courts, or Common Law Courts, where ‘Natural Law and not statutes rule the court’. Any court proceeding under statutes is ‘NOT’ a court of record.

Both Law and equity courts are called “United States District Court” and all judges are bound to the law of the land and hold office only when they are obedient to the Law of the Land. There exists no authority for Congress to create or the Judiciary to create a jurisdiction called ‘tax court.’

USC Title 26 states no jurisdiction and claims to be a court of record while operating under statutes which is an oxymoron. A “court of record” proceeds according to the course of common law, not codes and statutes and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, whereas 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.

Congress has not been given power to legislate codes, statutes or regulations for Article III Courts of Record which proceed according to the Common Law. Judges have ‘NO AUTHORITY’ to railroad People into jurisdictions foreign and unknown to the People. Any judge who participates in carrying the People away to jurisdictions’ unknown is guilty of fraud and high treason.

¹⁴ MARBURY v. MADISON, 5 U.S. 137 (1803) 5 U.S. 137 (Cranch) 1803