

LAW AND EQUITY

Memorandum of Law

The judicial power shall extend to all cases, in law and equity, arising under this Constitution. – U.S. Constitution Article III Section 2

The purpose of this memorandum is to clarify the profound difference between law and equity. Equity courts are nisi prius¹ courts that are presided over by judges (political servants) who rule according to regulations, statutes and codes or contracts. Courts that proceed according to regulations, statutes and codes are for bureaucrats, corporations, other fictional entities and not People. Equity courts can hear contract cases between two People if both agree or if the value of the case is less than twenty dollars.

- **STATUTE:** An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state.² This word is used to designate the written law in contradistinction to the unwritten law.³
- **REGULATION:** The act of regulating; a rule or order prescribed for management or government; a regulating principle; a precept.⁴ Rule of order prescribed by superior or competent authority relating to action of those under its control.⁵
- **CODE:** A complete system of positive law, scientifically arranged, and promulgated by legislative authority,⁶ a systematic body of law.⁷

ARTICLE I SECTION 8 CLAUSE 18: Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers [listed in Clauses 1-17], and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

¹ **NISI PRIUS:** is a Latin term (Bouvier's) Where courts bearing this name exist in the United States, they are instituted by statutory provision.; 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.; Blacks 4th - 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.

² Federal Trust Co. v. East Hartford Fire Dist., C.C.A.Conn., 283 F. 95, 98; In re Van Tassel's Will, 119 Misc. 478, 196 N.Y.S. 491, 494; Washington v. Dowling, 92 Fla. 601, 109 So. 588, 591.

³ Foster v. Brown, 199 Ga. 444, 34 S.E.2d 530, 535. See Common Law.

⁴ Curless v. Watson, 180 Ind. 86, 102 N.E. 497, 499.

⁵ State v. Miller, 33 N.M. 116, 263 P. 510, 513.

⁶ Wilentz v. Crown Laundry Service, 172 A. 331, 332, 116 N.J.Eq. 40.

⁷ Wall v. Close, 14 So.2d 9, 26, 203 La. 345.

Law courts are presided over by juries (twelve People) who rule according to Natural Law, no judges, regulations, statutes, or codes allowed in a court of law because they lack due process. Liberty is freedom from equity courts without our permission. In other words, free from government interference of our behavior. Unalienable Rights are the spirit of Natural Law, the Law of our Creator and not of man. All Law is to be understood in light of our Unalienable Rights. Any law repugnant to that spirit is by nature's Creator "Null and Void." The Law of the Land is a/k/a the Declaration of Independence, the Constitution for the United States of America [Article VI] and its Cap-Stone Bill of Rights. These are all Natural Law documents that were constructed upon Natural Law Principles. To deny Natural Law is to deny these documents and to deny these founding documents would be treason.

We the People, via the Constitution, Bill of Rights and the Declaration of Independence, vested our judiciary with two jurisdictions, Law and equity! It is extremely important that we understand the differences between the two. Simply put, the tribunals in an equity court are elected or appointed 'judges' while the tribunals in law courts are the 'People,' a/k/a juries. These Law courts are called 'courts of record' that proceed according to 'natural law' liberated from statutes.

"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." – United States Constitution Article VI.

"Equity and Justice are substantially equivalent terms, if not synonymous."⁸ "Under constitutional provision guaranteeing right to obtain justice, the justice to be administered by courts is not an abstract justice as conceived of by the judge but justice according to law or, as it is phrased in the constitution, conformably to the laws."⁹

Equity law is the system of jurisprudence administered by the purely secular tribunals. In equity courts [contract courts], judges are to act under "American Jurisprudence" which is the philosophy of law, the knowledge of things divine and human, the science of what is right and what is wrong;¹⁰ the constant and perpetual disposition to render every man his due.¹¹ It has no direct concern with questions of moral or political policy,

⁸ In re Lessig's Estate, 6 N.Y.S.2d 720, 721, 168 Misc. 889.

⁹ State ex rel. Department of Agriculture v. McCarthy, 238 Wis. 258, 299 N.W. 58, 64.

¹⁰ Dig. 1, 1, 10, 2; Inst. 1, 1, 1. This definition is adopted by Bracton, word for word. Bract. fol. 3.

¹¹ Inst. 1, 1, pr.; 2 Inst. 56. See Borden v. State, 11 Ark. 528, 44 Am.Dec. 217; Collier v. Lindley, 203 Cal. 641, 266 P. 526, 530; The John E. Mulford, D.C. N.Y., 18 F. 455.

for they fall under the province of ethics and legislation.¹² They are to meet out Justice, which in the most extensive sense of the word, differs little from virtue;¹³ for it includes within itself the whole circle of virtues. 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.”¹⁴

Law of nature [*Jus Naturale*] is Natural law [*Lex Naturale*]. It is absolute law, the true and proper law of nature¹⁵ a/k/a “common law as distinguished from law created by the enactment of legislatures. Common Law is the use of legal principles to discover by the light of nature or abstract reasoning comprised of the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of ancient antiquity.”¹⁶

“*The Supreme Court shall have appellate jurisdiction, both as to law and fact...*”¹⁷ in all ‘*cases in equity*,’ thereby becoming the final arbitrator and maker of case law, governed by American Jurisprudence¹⁸ under the rules of Common Law. The Supreme Court has NO APPELLATE authority over cases ‘*in Law*’ a/k/a Jury trials, with the one exception of protecting an individual if an unalienable right of the same is violated. Federal District Court Judges, when hearing a ‘*case in equity*’ are governed by American Jurisprudence and case law under the rules of Common Law. In cases “*in Law*,” Judges or Magistrates take on an administrative role, with no summary judgement powers. Whereas, the Jury, a/k/a Tribunal of 12 People, is the final arbitrator deciding the facts, law and remedy with the power of nullification and mercy. This is called a ‘court of record’ from which there is no appeal, as we read:

“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

¹² Sweet.

¹³ Luke 6:19 “And the whole multitude sought to touch him [Jesus]: for there went virtue out of him, and healed them all.”

¹⁴ Bouvier..

¹⁵ 1 Steph.Comm. 21 et seq.

¹⁶ 1 Kent, Comm. 492. Western Union Tel. Co. v. Call Pub. Co., 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; Barry v. Port Jervis, 72 N.Y.S. 104, 64 App. Div. 268; U. S. v. Miller, D.C.Wash., 236 F. 798, 800.

¹⁷ Article III Section 2, Clause 2.

¹⁸ **JURISPRUDENCE:** The science of the law. By science here, is understood that collection 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.

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."¹⁹

"Under our system of government upon the individuality and intelligence of the citizen, the state does not claim to control him/her, except as his/her conduct to others, leaving him/her the sole judge as to all that affects himself/herself."²⁰ "All laws, rules and practices which are repugnant to the Constitution are null and void."²¹ "Every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent."²² "Law is that which is laid down, ordained, or established."²³

We the people ordained and established the Constitution for the United States of America.²⁴ We the People vested Congress to make law via Article I Section 8.²⁵ We the People did not vest Congress with law making powers to control our behavior. We the People are above the Constitution and all legislated law, whereas government authorities are under the Constitution. We the People are subject only to the Laws of Nature and of Nature's God.²⁶ "All codes, rules, and regulations are for government authorities only, not human/Creators in accordance with God's laws. All codes, rules, and regulations are unconstitutional and lacking due process...."²⁷ The phrase "at Law" is used to point out that a thing is to be done according to the course of the common law. It is distinguished from a proceeding in equity.²⁸ "All laws, rules and practices which are repugnant to the Constitution are null and void."²⁹

"Sovereignty³⁰ 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." ...

¹⁹ Ex parte Watkins, 3 Pet., at 202-203 cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973).

²⁰ Mugler v. Kansas 123 U.S. 623, 659-60.

²¹ Marbury v. Madison, 5th US (2 Cranch) 137, 180.

²² Cruden v. Neale, 2 N.C. 338 (1796) 2 S.E.

²³ Koenig v. Flynn, 258 N.Y. 292, 179 N. E. 705.

²⁴ **PREAMBLE:** We the people of the United States, in order to form a more perfect union, establish justice, 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.

²⁵ Article I Section 1: All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives; Article I Section 8 Clause 18: Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

²⁶ Declaration of Independence.

²⁷ Rodrigues v. Ray Donovan (U.S. Department of Labor) 769 F. 2d 1344, 1348 (1985).

²⁸ Blacks 4th At Law.

²⁹ Marbury v. Madison, 5th US (2 Cranch) 137, 180.

³⁰ "Sovereignty means that the decree of sovereign makes law, and foreign courts cannot condemn influences persuading sovereign to make the decree." Moscow Fire Ins. Co. of Moscow, Russia v. Bank of New York & Trust Co., 294 N.Y.S. 648, 662, 161 Misc. 903.

“For, the very idea that man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.”³¹

The authority of the legislature is limited and defined under Article I of the Constitution. The authority of the executive is limited and defined under Article II of the Constitution. And, the authority of the judiciary is limited and defined under Article III of the Constitution.

NATURAL LAW

The only Laws that apply to We the People are the Laws of Nature and of Nature's God of which we are entitled. We the People have declared in our founding document that, “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.”³² “Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”³³ US Titles 18 and 26, when applied upon We the People, are “null and void.”³⁴ Congress can make no law or rule to control the behavior of We the People.

NATURE’S LAW is personified in the following:

- “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.” Jer 31:33
- “For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which show the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another.” Rom 2:14-15
- “For this is the covenant that I will make with the house of Israel after those days, saith the Lord; I will put my laws into their mind, and write them in their hearts: and I will be to them a God, and they shall be to me a people.” Heb 8:10

Everybody knows when a wrong has been done to another and by examining our conscience as to what remedy might be necessary to satisfy it. Positive law, a/k/a legislative law, can never take into account the complexities and differences between

³¹ Yick Wo v. Hopkins, 118 US 356, 370.

³² Declaration of Independence.

³³ Miranda v. Arizona, 384 U.S. 436, 491.

³⁴ “All laws, rules and practices which are repugnant to the Constitution are null and void.” Marbury v. Madison, 5th US (2 Cranch) 137, 174, 176,(1803).

each case in Courts of Justice. Only the human heart, contemplating nature's law, a/k/a common law so called because it is law common onto all, can discern justice. As the twelve bear witness³⁵ to the truth, so a petit jury of twelve bears witness to the truth and its proper remedy. If a jury is conflicted beyond accord, the accused must be set free. For there is no such thing as a hung jury, for the declaring of a jury hung by one partial state compensated judge who has not had the counseling of eleven other witnesses is a travesty of justice and places the accused in double jeopardy. This allows the state to continue trial after trial until it gets its desired result. Therefore, a jury must convene and not be given back its liberty until it renders a just decision, which it is its duty to perform.

The definition of Law is that which is laid down, ordained, or established. It is "a rule or method according to which phenomena or actions co-exist or follow each other and must be obeyed or be subject to sanctions or legal consequences."³⁶ In our Republic, Common Law, Equity³⁷ and the Constitution are the Law of the Land by which We the People chose to be judged when we "assumed among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle us."

In the United States, before any court can have authority to hear a case, the court must have both in personam and subject matter jurisdiction. Any court not a court of record³⁸ has no authority to proceed without the consent of the persons involved. No judge or legislators can alter that which the People ordained, to alter is high treason.

American courts are vested by the People, "the author and source of law,"³⁹ through constitutions⁴⁰ ordained by the People. Therefore, a court must first have "constitutional authority" over an individual before it can proceed. In criminal cases, a court must have an indictment by an untainted grand jury, in other words, the permission by the People to proceed. Any judge who instructs the petit jury that the said judge decides the law taints the jury and is a pseudo-court under fiction of law.⁴¹

Furthermore, "all" state laws and constitutions are ultimately governed by the "Supremacy Clause" of the Constitution for the United States of America as ordained by

³⁵ **Acts 4:33** And with great power gave the apostles witness of the resurrection of the Lord Jesus: and great grace was upon them all.

³⁶ Koenig v. Flynn, 258 N.Y. 292, 179 N. E. 705.

³⁷ under American Jurisprudence, the principles of common law.

³⁸ **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 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.

³⁹ "Sovereignty itself is, of course, not subject to law, for it is the author and source of law;" -- Yick Wo v. Hopkins, 118 US 356, 370.

⁴⁰ That which is laid down, ordained, or established. Koenig v. Flynn, 258 N.Y. 292, 179 N. E. 705.

⁴¹ FICTION OF LAW. Something known to be false is assumed to be true. Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d 607, 621.

the People in Article VI, clause 2, that defines the “Law of the Land” which renders “anything in the Constitution or Laws of any State to the Contrary notwithstanding” null and void.

“No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence”⁴² and “that which the law requires to be done or forborne to a determinate person or the public at large, correlative to a vested and coextensive right in such person or the public, and the breach of which constitutes negligence.”⁴³

Congress was not vested with legislate power to pass civil law statutes or criminal law statutes or any other statute that control the behavior of People. There are two Common Law Maxims that govern all criminal cases. (1) In order for there to be a crime, there must be an injured party. (2) The state cannot be the injured party. As for the injured party, there is a Common Law Maxim that states: For every injury, there must be a remedy. Therefore, in criminal cases, restitution is more just for all parties then incarceration.

“As to the construction, with reference to Common Law, an important cannon of construction is that constitutions must be construed to reference to the Common Law... The Common Law so permitted destruction of the abatement of nuisances by summary proceedings; and, [it] was never supposed that a constitutional provision was intended to interfere with this established principle [even] though there is no common law of the United States in a sense of a national customary law as distinguished from the common law of England adopted in the several states. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood... The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land; and, any statute to be valid must be In Agreement [with the Constitution]. It is impossible for both the Constitution and a law violating it [the Constitution] to be valid; one must prevail. This is succinctly stated as follows: The General rule is that an unconstitutional statute, though having the form and name of law, is in reality no law; but, is wholly void and ineffective for any purpose since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. Since an

⁴² Ableman v. Booth, 21 Howard 506 (1859).

⁴³ Railroad Co. v. Ballentine, C.C.A.111., 84 F. 935, 28 C.C.A. 572; Toadvine v. Cincinnati, N. O. & T. P. Ry. Co., D.C.Ky., 20 F.Supp. 226, 227.

unconstitutional law is void, the general principles follow that it imposes no duties; confers no rights; creates no office; bestows no power or authority on anyone; affords no protection; and, justifies no acts performed under it... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby. No one is bound to obey an unconstitutional law; and, no courts are bound to enforce it.” 16 American Jurisprudence 2nd, Sec. 114.

THE AUTHOR OF LAW

God is the author of Common Law, which He wrote in the hearts of men, thereby giving We the People both the knowledge of right and wrong and the unalienable right of We the People to judge each other through tribunals called Juries. We the People ordained Common Law in Amendment VII and Congress clearly followed suit and established it through 28 USC §132.

We the Sovereign People ordained and established the Constitution,⁴⁴ which is the law of the land,⁴⁵ to be obeyed by all elected, appointed and hired servants. We the People vested Congress with certain law making powers in Article I Section 8 among which we gave “NO LEGISLATED POWERS” to write ordinances, regulations, codes or statutes that would control the behavior of We the People or apply any set punishment upon We the People. That authority belongs to the People.⁴⁶

“The very meaning of 'sovereignty' is that the decree of the sovereign makes law.”⁴⁷ “A consequence of this prerogative is the legal ubiquity of the king [Nature’s God]. His majesty in the eye of the law is always present in all his courts, though he cannot personally distribute justice.”⁴⁸ “His judges [juries] are the mirror by which the king's image is reflected.”⁴⁹

Unalienable rights come from Nature's God and are not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as certain personal rights; e. g., liberty. Inalienable; incapable of being aliened, that is, sold and transferred.⁵⁰ Rights are defined generally as "powers of

⁴⁴ We the people of the United States, in order to form a more perfect union, establish justice, 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.

⁴⁵ **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.

⁴⁶ “Sovereignty itself is, of course, not subject to law, for it is the author and source of law;” - Yick Wo v. Hopkins, 118 US 356, 370.

⁴⁷ American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

⁴⁸ Fortesc.c.8. 2Inst.186.

⁴⁹ 1 Blackstone's Commentaries, 270, Chapter 7, Section 379.

⁵⁰ Black's 4th

free action, not subject to legal constraint of another, being unconstrained, having power to follow the dictates of one's own will, not subject to the dominion of another and not compelled to involuntary servitude.⁵¹ Any statute that violates rights is null and void.

CONCLUSION: Equity courts are for bureaucrats, corporations and other fictional entities. It's a court "NOT OF RECORD" where one judge decides the facts, law, and penalties according to regulations, statutes, codes or contract under American Jurisprudence whose decisions can be appealed to a higher court.

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;

Whereas, Law courts are Courts of Record for the People. It's a court where the tribunal is a jury of twelve People who decide the facts, law, and penalties according to the laws of nature's God whose decisions cannot be appealed. Courts of Record are administrated by a magistrate who records and enforces the will of the tribunal, the People!

AT LAW: [Bouvier's] *This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity.*; ALL CASES AT LAW. [Black's 4th] *Within constitutional guaranty of jury trial, refers to common law ac-tions as distinguished from causes in equity and certain other proceedings.* - Breimhorst v. Beck-man, 227 Minn. 409, 35 N.W.2d 719, 734.

“Decency, security, and liberty alike demand that government officials be subjected to the same rules of conduct that are commands to the citizen. In a Government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Crime is contagious. If government becomes a lawbreaker, it breeds contempt for the law...it invites every man to become a law unto himself...and against that pernicious doctrine, this court should resolutely set its face.”⁵²

⁵¹ Black's 4th

⁵² Olmstead v U.S., 277 US 348, 485; 48 S. Ct. 564, 575; 72 LEd 944.