

# PIED PIPERS OF BABYLON

by Verik K. Speer, D.C.L.



# You're Under Foreign Law



"Pied Pipers of Babylon," by Verl K. Speer, 342 pp., softcover, \$15.00, from Liberty Library, 300 Independence Ave., SE, Washington, D.C. 20003.

## Review

EXCLUSIVE TO THE SPOTLIGHT

By Charlie O'Donald

Verl K. Speer, who was raised on a Kansas farm, has contributed a remarkable book to the patriotic movement in his "Pied Pipers of Babylon."

The key discovery of Dr. Speer is that Americans have become subject to a foreign system of law—essentially a form of the Roman civil law. This jurisdiction, he says, was imposed on our

country by England. He contrasts this with the "other great system," the common law.

"Common law," as Speer defines it, is based on reason and the immutable laws of God and nature. It is the law of conscience—and as such, it cannot be written, only written about.

### REVOLUTION

One of the first things of interest this reviewer learned from "Pipers" was the cause of the American Revolution. It was not, as most people think, the tax on tea or "taxation without representation." Rather, as is mentioned in two separate places in the Declaration of Independence, it was England's attempt to subject Americans to the civil law.

To quote from the Declaration: King George III had "combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his asset to acts of pretended legislation." And, at another point: "Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislation to extend an unwarrantable jurisdiction over us."

### 'ADMIRAL' COMES ASHORE

Once again today Americans are the victims of an attempt to force this foreign law on them, whether you call it the law of merchants, maritime law, or equity—slightly different variations taken by the civil law.

The importance of this little-publicized issue is highlighted by contrasting common law with maritime or admiralty law. Under common law, you have all your Constitutional rights. But when you are aboard a ship at sea, your captain is legally a dictator. You have no "rights"; you have only privileges conferred by the captain.

Today, says Speer, maritime law has come ashore and threatens to squeeze out all our rights.

How then have Americans been

tricked out of their common-law rights and into the admiralty courts, just as happened more than 200 years ago? Speer explains this in his book. Furthermore, he examines the principles applicable to the resolution of this dilemma, and how they may be invoked and implemented.

Among the topics covered in great detail by Speer are the "malady of paper money" and the powers of the jury to judge the facts and the law, and to nullify the law where necessary—that is, whenever the law is unjust. Also covered at length is the subject of land patents and alodial land title.

"Pipers" is a sizable book, running to more than 300 pages, and you should be forewarned that much of the content is heavy reading, with a lot of "legalese." But if you don't wish to strain your brain with the point-by-point discussion of the convoluted ramifications of the famous "Erie" case and suchlike, you can garner the gist of the book by applying some judicious skimming. Here Speer has helped the reader by highlighting the pearls and nuggets of information.

A word is necessary to explain the title of the book. "Babylon" is a worldwide, corporate trust governed by the money power—the "Beast" of the Bible—the same conspiracy of bankers who are behind the imposition of an alien and unwarrantable jurisdiction on Americans.

And the "Pied Pipers" reference is to the technique used to lure Americans into submission to this alien jurisdiction: a meretricious deceit. You are lured back into slavery by the supposed "benefits" the Establishment would confer on you, such as Social Security and convenient checking accounts.

This work will be of interest to all patriots who want to "come out of Babylon" and secure their freedom as our forefathers did.



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PIED PIPERS

OF

BABYLON

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TO MY WIFE

LUCILLE

WITH LOVE AND AFFECTION

ALWAYS

## PIED PIPERS OF BABYLON

"Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

James Madison

"My people are destroyed for lack of knowledge; because thou hast rejected knowledge, I will also reject thee, ...."

Hosea 4:6

"All the perplexities, confusion and distress in America arise not from defects in their constitution or confederation, not from a want of honor or virtue so much as downright ignorance of the nature of coin, credit, and circulation."

John Adams

"... The merchants were the powers of the earth, and their sorceries deceived all nations."

Revelation 18:23

"How has it happened that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate our understanding?"

Benjamin Franklin, Constitutional Convention, June 28, 1787

"Come out of her (Babylon) Lest you partake of her sins and receive her plagues."

Revelation 18:4

# PIED PIPERS OF BABYLON

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## FORWARD

I recall a bright January day in 1979 when I met the author of this book at the Sundial dining room in Modesto, California. With no specialized law training we met with others as representatives of the common person, the individual who finds himself overwhelmed by a sense of futulity and injustice. It was the day our energies were united through conscience and reason to create something lasting and easily available to the common person. The hope we saw in the ice-breaking crusades of the sixties had become frozen in the seventies. Our attempts to combat the effects and not the cause resulted in the dissipation of our constructive energies. Throughout the stillness of the seventies our actions were directed towards the understanding of the cause. Now in the eighties, over six years after that bright day, our efforts resulted in the creation of a program entitled the "THE COMMON LAW." It provides an understanding for all individuals of the problem through which solutions are available at Law. Accepted internationally by way of enrolled students, the Common Law program saw one of its' students prevail at the U.S. Supreme Court when the legal profession offered and gave no hope. This was accomplished by means of a new look at the historical record going back nearly three-thousand-five-hundred years; maintaining conscience and reason is the "Law of Life," and principles cannot be compromised for expediency. Indeed many have been jailed for not going along with those who are thought to be custodians of the "basis of trust." If anyone walks - they walk here upon this earth. Forget concentrating on the world's despair, let reason and conscience put you in touch with yourself; Discover that which is available and everlasting in you so that you may walk easily upon the earth.

PIED PIPERS OF BABYLON, based on the foundation of the Common Law program, reveals the complex and fascinating story of conspiracy, intrigue, and venality behind the hypothecation of all assets of the United States of America; The usurpation of the government, and the consequent surreptitious restructuring of our entire system of jurisprudence relating to jurisdiction over our private affairs. These revelations are undertaken by the author in which he carefully offers an in depth analysis of the problem, and what may very well be the only solution to the present day plight of natural born persons. This book enlightens the individual by allowing an avenue for understanding and spiritual growth whereby one can rise above injustice and the overwhelming sense of futility.

President of The Common Law Association  
David C. Chovanak

## ACKNOWLEDGMENTS

After more than six years of research, and with the contributions and assistance of hundreds of concerned individuals, the author and his associates have produced an account, while not exhaustive, they hope will provide the general reader an understanding of the NATURE of a very esoteric subject: A subject which is designed to be understood by only a chosen few while directly controlling the life of every person; A subject that must be understood before any individual has a chance of becoming his own governor.

The author particularly acknowledges the following contributors to the unveiling of powers whose sorceries have indeed deceived all nations:

Congressmen McFadden and Patman, whose herculean efforts to investigate the entire Federal Reserve System has made significant contributions toward exposing its true nature and operation. The late Bill Avery who, to my knowledge, was the first to lift a portion of the veil of secrecy surrounding an unwarrantable jurisdiction that has been imposed on the American people - results of His research efforts were published in his newsletter "Common Sense." The late Merrill Jenkins, Monetary Realist, whose research and publications provided his readers with an understanding of the nature of "money" - coin, credit, and circulation. Lee Brobst and associates who continued the research of Bill Avery and have made substantial contributions to the identification and understanding of the true nature of this secret jurisdiction. Phillip Kenneth Sade who, via his book "The Tontine Government," shows his readers the direct relationship between Tontine and our present day dilemma. F. Tupper Saussy and Associates, whose detailed research into the formation of the Union provides the readers of F. Tupper's book "The Miracle on Main Street," and his monthly newsletter "The Main Street Journal," an essential and necessary understanding of the heritage our forefathers gave us. Red Beckman, Bill Benson and the Montana Historians for unveiling fundamental anomalies and fraud in the ratification process of certain key amendments to the U.S. Constitution. Staff of the Universal Life University School of Law, whose five year efforts resulted in a comprehensive self-study program in the Common Law, and all inter-related fields of law - providing essential knowledge for any individual wanting to be a free sovereign and assume the responsibilities of being his own governor.

## NOTES

Bibliography references in the text are used to cross-reference cites and authorities by chapter. Capital letters in brackets refer to a major source document. A bracketed capital letter followed by a number in parentheses refers to sub-cites within that particular source document.

Legal citations generally consist of three symbol groups (numbers or abbreviations). Numbers refer to a specific Volume, Title, Section, Chapter, Clause, Page, and the like; while abbreviations refer to specific Names of people, places, or things, which can be found in a legal dictionary (see for instance, Black's Law dictionary, 4th Ed., Abbreviations, page 1797, et seq., for the following: U.S., U.S.C., Cal., C.C.P., Y.B., Bl. Com.,). For example: 28 U.S.C. 1441(b); 3 Bl. Com. 295; Cal. C.C.P. 413.1; Y.B. 3 Hen. VI 36 are citations to Title 28 of U.S. Code, Section 1441, Subsection b; Part Three of Black's Commentaries, page 295; California Code of Civil Procedures, Section 413, Subsection 1; the Third Book of Henry the Sixth, page 36; respectively.

Case citations follow a similar scheme, except that the title of the case and the year on which it was decided precedes the citation. Thus *Erie Railroad v. Tompkins*, (1938) 304 U.S. 64, refers to the landmark case whereby the federal government of the United States disclaimed the general principles of federal common law; the case was reported in Volume 304 of the United States Reports, at Page 64.

A glossary is provided to assist the reader in the understanding of various terms used in this work, terms which may be unfamiliar and, therefore, difficult; and/or terms which may be ambiguous and require explanation of the specific meaning intended by the author. In other words, its purpose is to assure a path of communication between the author and reader. The definitions come from many sources - the definitions of "common law" and "common law system" are the author's own in order to hold on to the true meaning, the essence of the thought trying to be communicated.

## PIED PIPERS OF BABYLON

### PROLOGUE

America, the land of the free - or is it? The general response to this question goes something like this: "Well, maybe not as much as it used to be, but it still is the best country in the world in which to live." End of conversation for, somehow, to pursue the subject further smacks of being unpatriotic and maybe even subversive. The fact that the lesser of two evils is still evil, and could not be tolerated by a truly free person is never considered.

I call this the "relativity syndrome" characterized by the total absence of absolutes: "I am standing in manure up to my waist, but I have no cause for complaint or corrective action because you are in it up to your chin." "I have been wrongly convicted and sentenced to six months incarceration but I should feel fortunate and never question the system of 'justice' because my cellmate has been wrongly convicted and sentenced to a year of incarceration." etc., etc..

In retrospect, answers of this nature should be expected and predictable because we have been systematically programmed to accept such dogma without question. You see, in order to properly and intelligently address the question, one must have an understanding and knowledge of law. Law no longer taught in our schools and churches.

To understand the political significance of the question, one needs to examine our basic form or system of government. The word law itself suggests restraint and jurisdiction (i.e., lawful authority over the subject matter in controversy, over a thing within that subject matter, and over a person associated with the subject matter) and, therefore, suggests government. Government and law are closely related. Governments owe their existence to the laws they observe, which in turn, determines the form or system of any particular government.

This raises other questions of logic we may ask ourselves: What laws does our government observe? What is the jurisdiction imposed in order to enforce these laws? How is this jurisdiction acquired over an artificial person?  
How is this jurisdiction acquired over a natural born person?

First, the answers require an understanding of the systems of law and their fundamental differences; and second, an understanding of the forms of government that can exist within these systems of law.

There are fundamentally two systems of man-made law on planet Earth. One is called the Common Law, the other the Civil Law (or Roman Civil Law). Common Law is founded on reason and the immutable laws of God and Nature. In its

purest form, it is the law of conscience; being the law of conscience, it cannot be written, only be written about. It is rooted in the reasoning and spiritual powers of man. The Civil Law is statutory or codified law and is only as new as writing and reading. Writing was put to use as a method of civil direction in Mesopotamia, where by 2100 B.C., the judgments of gods, revealed by their seers, began to be recorded. About three centuries later, The Code of Hammurabi, King of Babylon, probably the first statutory codification, made possible the theocratic unity of Mesopotamia and marked the beginning of governmental bureaucratic memoranda for communicating the wishes and commandments from above.

The Common Law and the Civil Law have since been in constant ideological war against each other for the control of societies (governments); so it is extremely important to understand the differences between the two. Civil Law is the law of the ruler. Common Law is the law of the people. Common Law is based solidly on the immutable laws of God and Nature. Civil Law is changeable at the whim of the ruler. The former can only be preserved against the latter by constant vigilance on the part of the people. It is axiomatic that the people cannot possibly maintain this vigilance without knowledge and understanding of the law.

J. Reuben Clark, a former Under-Secretary of State and Ambassador to Mexico, gives us the following analysis of these two competing systems of law:

Briefly, and stated in general terms, the basic concept of these two systems is as opposite as the poles. In the civil law, the source of all law is the personal ruler, whether prince, king or emperor; he is sovereign. In the Common Law, certainly as finally developed in America, the source of all the law is the people. They, as a whole, are sovereign.

During the centuries, these two systems have had an almost deadly rivalry for the control of society, the civil law and its fundamental concepts being the instrument through which ambitious men of genius and selfishness have set up and maintained despotisms; the Common Law, with its basic principles, being the instrument through which men of equal genius, but with love of mankind burning in their souls, have established and preserved liberty and free institutions. The Constitution of the United States embodies the loftiest concepts yet framed of this exalted concept. [A]

The civil law has been passed down through the centuries under many different names, just as there has been many different names attached to governments functioning under its jurisdiction; but the nature of the system is always the same, just as the nature of all governments operating according to its principles, rules and procedures is the same. It is a police power jurisdiction, and by definition, governments operating thereunder are dictatorships. The degree of tolerability (evil) is at the whim and under the total control of the ruler. Under this jurisdiction there are no such things as rights, only privileges granted by the ruler - for a price.

The signers of the Declaration of Independence and of the original Constitution were well aware of the fact there are two fundamental systems of law, and consequently, two fundamental systems of government. Benjamin Franklin, when asked by a gentleman about the constitution, "What kind of government did you give us?" answered, "A republic, if you can keep it." In giving us a republic, they carefully delineated these two systems of government by the terms "National" and "Federal." The clearly stated purpose of the constitutional convention in 1787 was to eradicate a federal government and replace it with a national government: [B]

The people expect relief from their present embarrassed situation, and look up for it to this national convention; and it follows that they expect a national government. [James Wilson, in Convention, June 16, 1787.]

In a letter dated March 25, 1826, Madison wrote to Andrew Stevenson to correct Stevenson's confusion about the National purpose of the Constitution, as opposed to a Federal purpose:

The term (National) was used, not in contradistinction to a limited, but to a federal government. As the latter operated within the extent of its authority thro' requisitions on the confederated States, and rested on the sanction of State Legislatures, the Government to take its place, was to operate within the extent of its powers directly and coercively on individuals, and to receive the higher sanction of the people of the States. And there being no technical or appropriate denomination applicable to the new and unique System, the term national was used with a confidence that it would not be taken in a wrong sense, especially as a right

one could be readily suggested if not sufficiently implied by some of the propositions themselves. Certain it is that not more than two or three members of the Body, and they rather theoretically than practically, were in favor of an unlimited Govt. founded on a consolidation of the States .... [The Records of the Federal Convention of 1787, Farrand, Vol. III, p. 473 - Yale University Press.]

In order to understand the significance of Madison's words, we must examine the definitions of the terms "Federal" and "National." Webster's 1828 Dictionary tells us that the term "federal," comes from the Latin "foedus" meaning a "league." Webster goes on to define "federal," to mean "pertaining to a league or contract," derived from an agreement or covenant between parties, particularly between nations.

Foedal is pronounced "few-dal," and is the same as "feudal." "Feudalism" is a federal system in which servant, serf, is bound by a foedum or compact to his master or lord.

The Declaration of Independence severed the hold of English feudalism over the colonists which, as will be shown in this work, was being administered and enforced upon the people under the jurisdiction of Admiralty/Maritime and pursuant to the principles, rules and usages of the Civil Law. The Articles of Confederation that followed was federal in nature and totally failed to work on a free and independent people - being free, they also rejected the lesser of the two evils (i.e., American federalism/feudalism as compared to British federalism/feudalism). Thus, the purpose of the Constitutional Convention was stated to be:

... for the purpose of revising the Articles of Confederation and perpetual Union between the United States of America, and ... establishing in these states a firm National government. [Proceedings in Congress, February 21, 1787, House Document No. 398, 69th. Congress, pages 44 and 45.]

From its definition, we begin to see the reason for the careful avoidance of "federal." Not only did the people expect a "national" government, but any form of "federal" government is in direct violation of the Declaration of Independence, the First Organic Law of the United States (see Title I, United States Code, pages xxix and xxx), which abolished feudal systems in this country and upended an

entire political order. At the Constitutional Convention, Gouverneur Morris reminded his colleagues that "On the Declaration of Independence, a Government is to be formed."

So, what did they mean by "national?" As Madison said, "... there being no technical or appropriate denomination applicable to the new system, ...." How could they use this term "with a confidence that it would not be taken in a wrong sense?" Clearly, that confidence had to repose in the accepted definition of the term "national." According to Webster, the word "nature" comes from the Latin "nasci" meaning "be born"; and he defines the term "nation" to mean "a body of people inhabiting the same country, united under the same government," coming from the Latin "natus" meaning "born."

Thus, there is a difference between the very roots of the words "federal" and "national", more than just academic. "Federal" has to do with contracts, agreements or compacts between parties; while "National" has to do with the inhabitants of one country, united under one government. As Madison said, "... in this new and unique system, government was to operate directly and coercively on individuals - ONLY WITHIN THE EXTENT OF ITS POWERS."

This was the grand and noble experiment, an entirely new concept in the annals of government. The National Constitution and the National government which it created, was limited in its powers over natural born persons (individuals) to those expressly granted (i.e., beyond the extent of powers granted the natural born inhabitant was to be governed by the Laws of God and Nature, the Law of Conscience).

The federal government, under the Articles of Confederation, was a feudal compact between sovereign states and had unlimited powers over the individual. Upon ratification of the Constitution, federalism/feudalism was gone forever in the United States of America. But wait! In that case, why do we find the following in Black's Law Dictionary, Third Edition (1933)?

The United States has been generally styled, in American political and juridical writings, a "federal government." The term has not been imposed by any specific constitutional authority, but expresses the general sense and opinion upon the nature of the form of government..."Federal" is somewhat appropriate if the government is considered a union of the states; "National" is preferable if the view is adopted that the state governments and the Union are two distinct systems, each established by the people directly, one for local and the other for national

purposes. See United States v. Cruikshank, 92 US 542; Abbott; Mills, Representative Government 301; Freeman, Fed Gov't.

How about that! According to Black's, by 1933, the United States had been generally styled a "federal government" with no specific constitutional authority to do so - a government whose nature is feudal, and operates outside of the Constitution! Being feudal in nature, this government also owes its existence to the Civil Law and, necessarily, functions pursuant to its principles, rules and usages.

Sad to say, the 1933 Edition of Black's was absolutely correct and the year 1913 was the year of the coup de grace, subsequently followed by a major coup on June 5, 1933. These were giant steps toward what the perpetrators of this takeover intend to be a "fait accompli" (a thing done that cannot be changed).

Since March 9, 1933, the United States has been in a state of declared national emergency. In fact, there are now in effect four presidentially proclaimed states of national emergency: In addition to the national emergency declared by President Roosevelt in 1933, there are also the states of national emergency proclaimed by President Truman on December 16, 1950, and the two declared by President Nixon on March 23, 1970, and August 15, 1971.

These proclamations give force to 470 provisions of Federal Law. These hundreds of statutes 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. This vast range of powers, taken together, confer enough authority to rule the country without reference to normal constitutional processes.

Under the powers delegated by these statutes, the President may: seize property; organize and control the means of production; seize commodities; assign military forces abroad; institute martial law; seize and control all transportation and communication; regulate the operation of private enterprise; restrict travel; and, in a plethora of particular ways, control the lives of American citizens.

It was recently brought to the author's attention that the flag that is displayed in all our courtrooms today is not the flag of the United States as defined by law. Black's Law Dictionary, 4th Edition states:

**FLAG OF THE UNITED STATES.** By the act entitled "An act to establish the flag of the United States," (Rev. St. Sections 1791, 1792), it was provided "that, from and after the fourth day of July next, the flag of the United States be

thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field; that, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission. "See Act July 30, 1947, c. 389, Sections 1, 2, 61 Stat. 641; 4 U.S.C.A. Sections 1, 2.

The flags being flown in all our courtrooms today have something added to the flag described above, and that addition is a **YELLOW FRINGE ON THREE SIDES**. Lets analyze this fringe to see if it has any significance to the subject matter previously discussed. From The National Encyclopedia, Volume Four:

**FLAG**, an emblem of a nation; usually made of cloth and flown from a staff. **FROM A MILITARY STANDPOINT** flags are of two general classes, those flown from stationary masts over army posts, and those carried by troops in formation. The former are referred to by the general name flags. The latter are called colors when carried by dismounted troops. **COLORS AND STANDARDS** are more nearly square than flags and are made of silk with a knotted **FRINGE OF YELLOW ON THREE SIDES** ....

**USE OF FLAG. THE MOST GENERAL AND APPROPRIATE USE OF THE FLAG IS AS A SYMBOL OF AUTHORITY AND POWER.** It is used in ceremonial observances to denote the sovereignty of a state, and also its equality. Recognition of the flag, generally reciprocal, is a mark of respect for the state which flies it. Improper use of a flag of truce or a national flag is forbidden by the Hague Conference agreements. It is generally contended that a man-of-war may under certain conditions make use of a false flag. By the Declaration of London, the enemy or neutral character of a vessel is governed by the flag she has the right to fly. By the same Declaration, the transfer of an enemy vessel to a neutral flag is valid, if effected before the breaking out of hostilities, and without intent to evade the consequences of enemy character. Such transfer after hostilities is generally void.

And from Black's Law Dictionary:

LAW OF THE FLAG. IN MARITIME LAW. The law of that nation or country whose flag is flown by a particular vessel. A SHIPOWNER WHO SENDS HIS VESSEL INTO A FOREIGN PORT GIVES NOTICE BY HIS FLAG TO ALL WHO ENTER INTO CONTRACTS WITH THE MASTER THAT HE INTENDS THE LAW OF THAT FLAG TO REGULATE SUCH CONTRACTS, AND THAT THEY MUST EITHER SUBMIT TO ITS OPERATION OR NOT CONTRACT WITH HIM. [Rubstrat v. People. 185, Ill, 133, 57 N.E. 41, 49 L. R. A. 181, 76 Am. St. Rep. 30.

Thus, it appears that all our courts are flying military colors as their symbol of authority and power; and the law of that flag regulates all contracts entered into thereunder. We must either submit to its operation or not contract with the ship master, pursuant to maritime law.

It is the major purpose of this work to apprise the reader of how this usurpation was accomplished, and what we as natural born persons can do to recoup what we have lost. The answer is the same as it has always been since time immemorial - effective application of knowledge and understanding of the law.

## CHAPTER I

### INTRODUCTION

#### Part I: A Foreign And Unwarrantable Jurisdiction

Many reasons impelled the American colonists to separate from Great Britain, but the more obvious reasons were stated in the Declaration of Independence itself. Written in the style of a formal complaint or action at law, it contains a Declaration, a Bill of Particulars or Counts, and a prayer to the Supreme Judge of the Universe; The stated purpose of the Declaration was to assume, among the powers of the earth, the separate and equal station to which the Laws of Nature and the Laws of God entitle them. Out of respect for the opinions of mankind, they should declare the "causes" which impel them to the separation. The fundamental cause was mentioned twice:

He (King George) has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving assent to their acts of pretended legislation .... and;

Nor have we been wanting in attentions to our British brethren. We have warned them from time-to-time by their legislature to extend an unwarrantable jurisdiction over us.

The "foreign" and "unwarrantable" jurisdiction was the fundamental cause of the separation, because the colonists knew that as long as this jurisdiction went unchallenged, all other obscenities complained of were perfectly legal. Until this jurisdiction was challenged and overturned, there was no lawful basis for redress of the acts complained of.

What then, was this unwarrantable and foreign jurisdiction? Nowhere in the Declaration is it specifically identified by name. Apparently the authors did not feel this was necessary, because they had previously done so in other declarations. In the Declaration of Rights of 1765, we find:

8th. That the Late act of Parliament, entitled "An act for granting and applying certain stamp duties, and other duties in the British colonies and plantations of America, etc.," by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of

admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists ....

Lastly, that is the indispensable duty of these colonies to the best of sovereigns, to the mother country, and to themselves ... to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of Parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and the other late acts for the restriction of the American Commerce. [Declaration of Rights in Congress, at New York, October, 19, 1765.]

And, in the Declaration of Rights of 1774, they said:

Whereas, since the close of the last war, the British Parliament claiming a power of right to bind the people of America, by statute, in all cases whatsoever, hath in some acts expressly imposed taxes on them, and in others, under various pretenses, but in fact for the purpose of raising revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county...we cheerfully consent to the operation of such acts of the British Parliament, as are bona fide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America, without their consent ....

Resolved, N.C.D.5. That the respective colonies are entitled to the Common Law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that Law. All and each of which the aforesaid deputies, in behalf of themselves and their constituents, do claim demand, and insist on, as their indubitable rights and liberties; which can not be legally taken from them, altered or abridged by

any power whatever, without their own consent,

....

The several acts (of King George) ... which impose duties for the purposes of raising a revenue in America, extend the powers of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, ... and are subversive of American rights. [Declaration of Rights In Congress, at Philadelphia, October 14, 1774.]

Just what is this law and jurisdiction of admiralty that was subversive of American rights? How can it be extended to encompass the trial of causes merely arising within the body of a county, when its ancient limits were confined to the sea, and its ancient boundaries were the "ebb and flow of the tide"? How can acts for imposing duties for purposes of raising a revenue serve as the vehicle for extending the powers of the Admiralty courts beyond these ancient limits? And, more importantly, what is the relevance of these questions to each and every one of us today?

Admiralty law encompasses all controversies arising out of acts done upon or relating to the sea (i.e., all subject matter that is maritime in nature) and questions of prize. Prize is that law dealing with war, and the spoils of war such as capture of ships, goods, materials, property both real and personal, etc..

Maritime law is that system of law which particularly relates to commerce and navigation. Admiralty/Maritime jurisdiction can attach merely because the subject matter falls within the scope of maritime law and as our founding fathers fully understood, you do not have to be on a ship in the middle of the sea to be under admiralty jurisdiction.

The jurisdiction of Admiralty depends, or ought to depend, as to contracts upon the subject matter, i.e., whether maritime or not, and as to torts, upon locality .... [De Lovio v. Boit, 2 Gall. 398]

The colonists understood the law regarding revenue causes, as it was subsequently stated by the U.S. Supreme Court in the Huntress case in 1840:

For more than a century before the formation of the constitution, that is, from the early part of the reign of Charles II, revenue causes had been heard and tried in the colonies by courts of Vice Admiralty. [The Huntress, Case No. 6, 914, 12 Fed. Cas. 984]

This is why revenue acts could be used to extend the jurisdiction of admiralty within the bodies of the counties. The more one's day to day personal transactions involve taxation, the more he is drawn into the jurisdiction of admiralty and out of the jurisdiction of Common Law. It is worthy of note that neither the Declaration of Independence, the Constitution, nor any subsequently enacted statute has modified the originally established jurisdictional boundaries over revenue causes in this country.

The colonists also understood the law relating to right of trial by jury, as subsequently stated by Justice Story in *De Lovio v. Boit*:

... the right of trial by jury ... is excluded in all cases of admiralty and maritime jurisdiction. [*De Lovio v. Boit*, supra]

Admiralty law grew and developed from the harsh realities and expedient measures required to survive at sea. It has very extensive jurisdiction of maritime causes, both civil and criminal. Because of its genesis, it contains a harsh set of rules and procedures where there is no right to trial by jury, no right to privacy, etc.. In other words, there are no rights under this jurisdiction - only privileges granted by the captain of the ship.

For instance, in the jurisdiction of admiralty, there is no such thing as a right not to be compelled to testify against yourself in a criminal case. However, the captain can, if he wishes, grant you the privilege against self-incrimination; There is no such thing as a right to use your property on the public highways, but the captain can grant you the privilege via license and registration, if he chooses; There is no such thing as a right to operate your own business, only a privilege allowed as long as you perform according to the captain's regulations.

Just before the Revolution, when common law was practiced in the colonies, the King's men came over to collect their taxes. They did not use common law, they applied admiralty law on the colonists. They arrested people, held star chamber proceedings, and totally denied access to common law rights by way of this "unwarrantable jurisdiction." Under this jurisdiction, all of the acts complained of are sanctioned: taxation without representation, denial of right to trial by jury, placing colonists on ships and sending them down to the British West Indies where many died of fever in the holds of those ships and very few returned, etc.. Yes, this unwarrantable jurisdiction was the cause of the revolt. All things that followed its imposition were the natural and predictable effects.

What is the Common Law that was denied to the colonists by this unwarrantable jurisdiction? Historically, this law came by way of the Tribes of Israel to the Anglo-Saxons in Northern Germany, thence to England by way of the Anglo-Saxons. It existed and ruled the land of England prior to the reign of William the Conqueror, commencing in the year 1066, when he conquered the Anglo-Saxons and interjected Roman Civil Law into English law. This mixture of common law and civil law is what modern day textbooks erroneously refer to as "the common law" - a ludicrous statement to anyone who understands the fundamental distinctions between these two totally different systems of law. Common law and civil law are, as J. Reuben Clark said, "as opposite as the poles," and are in constant ideological war against each other for the control of society.

When William the Conqueror took England in 1066, he subjugated all the Saxons to his rule. But there was one part of England that he was not able to take, that was London Town. The merchants had a wall built around it; they could bring supplies with ships up to the palace, and unload them - and William's soldiers could not take the city. The outcome was an independent City of London, governed under the merchants law; they called it "Lex Mercatoria." Today it is called "Law Merchant". And to this day, the law of merchants governs the City of London. This is the law, and its jurisdiction, that was imposed on the colonists that caused the revolt.

What we are going to examine in this work is how we have been tricked out of access to our common law rights and into the admiralty courts, just as it occurred over 200 years ago.

We will see that our heritage of freedom is a direct and proximate result of the Common Law, deriving its authority solely from Divine Providence and the Law of Nature.

We will examine the means our founding fathers gave us for the purpose of assuring access to this law in the Constitution itself.

We will see evidence that shows how certain portions of the Constitution, dealing with the jurisdiction of Admiralty/Maritime law, has been used to bar our access to the Common Law.

We will examine which laws are applicable to the resolution of this dilemma, and how they must be invoked and implemented.

## Part II: Building the Case

Our objective is to systematically present fact and law to enable the reader to build a winning case. The first

step in building any case that has a chance of winning is to analyze the problem. A common pattern for doing this is to recognize a problem that needs answering, define the problem by stating it, reach a satisfactory judgment, and then defend our judgment.

In preparing our case, our legal research will be determined entirely by the facts of the case, for without provable facts, the law is meaningless. In marshalling our facts, we need to keep a few guiding principles in mind so we are not led astray. We must discount preconceptions and postpone judgments. We must observe for a purpose, know why we are observing and stick to relevant facts about the case. The case must be based on evidence, premises and inferences.

Man has a great propensity to concentrate on effects and treat them as cause. In so doing, he quite often mitigates undesirable effects which, in turn, leads him to believe he has properly and adequately marshalled his facts about the case and resolved the problem.

The key to causation is in the effects. This, for us is the known world. It has been wisely said: "If you would know the unknown, observe carefully the known."

So let us observe the known and, by a process of inference and extrapolation, apply what we know about the known to the unknown. When an unknown becomes known, we reiterate the process in our search for truth while continually checking and testing our premises.

By this process we will arrive at a CAUSE in keeping with the effect or effects. This should result in two prerequisites of the future in order to meet our objective: Correct orientation of the mind with Reality, and a new dimension of consciousness, knowledge to give us the power and wisdom to be our own governors.

### Part III: Theory of Cognitive Dissonance (TCD)

As computers go, the human brain is without parallel or parity, when compared to even the most sophisticated man-made computer. Nevertheless, it is a computer and like all computers, it can be programmed.

There is a theory known as the Theory of Cognitive Dissonance (TCD) which holds that the mind involuntarily rejects information not in line with previous thoughts and/or actions.

Leon Festinger may have been the first person to document the law of cognitive dissonance, but he was certainly not the first to observe it. Since the most ancient times, mind-controllers have been enticing free people into servi-

tude (piping them on board, so to speak) by taking advantage of man's tendency to generate cognitive dissonance.

In his book, A THEORY OF COGNITIVE DISSONANCE, (Stanford University Press, 1957), Festinger says that new events or new information create an unpleasantness, a dissonance with existing knowledge, opinion, or cognition concerning behavior. When this happens, pressures naturally arise within the person to reduce the dissonance. Not reconciling the new information with the old, but reducing the dissonance.

Festinger further stated that strength of the pressures to reduce the dissonance is a function of the magnitude of the dissonance. Dissonance acts in the same way as a state of drive, need or tension. The greater the dissonance, the greater will be the intensity of the action to reduce the dissonance and the greater the avoidance of situations that would increase the dissonance.

A person can deal with the pressure generated by the dissonance by changing the old behavior to harmonize with information. But if the person is too committed to the old behavior and way of thinking, he simply rejects the new information. A simple "I don't believe it" thought or word is the easy cop out. For if you are unaware, you are unaware of being unaware.

## CHAPTER II

### THE COMMON LAW - YOUR BIRTHRIGHT

#### Part I: The Common Law

##### Introduction:

The Common Law is the law which cannot be written by man; it is mankind's conscience. (See Glossary definitions of "Common Law" and "Common Law Systems.") All of us have experienced instances when we are moved by deep human emotions: good or evil, love or hate, sadness or happiness, tragedy or comedy. Our emotions, however, are not allowed to soar on the wings of imagination. Common sense and reason contain them within the bounds we have set for ourselves. When the limits of reason are exceeded by our fellow human beings, we say they are unreasonable or irrational, with little regard for the reasons for this "irrationality." We "know" the truth from our own perspective, and we occasionally forget that truth is all-sided. If we could understand "Truth" from the varied perspectives of mankind, we would be able to understand the total sum of human reason and achieve the highest level of conscienceness. We would then possess understanding and knowledge of the Common Law of man. The Common Law is the process of human reasoning for the purpose of spiritual growth. It is man's communions with God and Nature, his guiding light. Common Law is "that" which is. It is the substance from which form is constructed. All too often this form is the barrier, or seeming barrier between man and nature. More understanding of that which is can dissolve the barrier. The late great scientist-biologist, Edward Sinnott wrote:

Life is the center where the material and spiritual forces of the universe seem to meet and be reconciled. Spirit is born in life.

#### Development of the Common Law: [A]

##### The Old Testament

The Common Law originated in the Laws of God and Nature. It is rooted in antiquity, a beautiful history of men becoming free. The words were coined from observations made within the Catholic Church of old England. These people had among them a common notion of an unwritten law expressed as conduct. They had rules enforced by a responsibility borne

by each person to know what was right or wrong and to apply that knowledge in their dealings with one another - a "common law." Its principles were nurtured, preserved, eventually set forth in our Declaration of Independence. The essence of the unwritten law, need not be put into print, as it was "written" explicit enough in the common knowledge of the sovereigns - the Freemen of America!

The ancestry of early English settlers can be traced through migration of the ten "lost" tribes of Israel described in the Old Testament. The principles and concepts found in these ancient documents give record of a new spirit in human affairs. Although the greater histories of Egyptian, Syrian, Assyrian and Phoenician kingships make the Hebrew kingship a mere incident, out of this history arose a moral and intellectual consequence [such as, "why do we do these things?"] of primary importance; and a system of law that made these consequences into a custom of the tribes.

Somewhere between the Nile and Euphrates rivers, there lived a group of Nomad tribes who had fled from cultured Egypt; a land where they could neither live as a group nor practice their spiritual beliefs. After a dramatic escape, they reached Kades in the desert. The name of their God was Yahweh, or Jehovah, which is as close as we can get because the name, a repetition of the verb "to be," or "eternal," has four consonants and no vowels, so no one really knows the pronunciation. The people were struggling between going on or returning to Egypt. Their struggles gave rise to events, which in turn led to words about these events, which finally became the books that form the Old Testament.

The Old Testament may be distinguished in three phases: 1) under Judges, the dominant interest was common loyalty and the welfare of the nation, 2) under the Prophets, individual life and personal conscience were foremost, 3) after the second exile and there was a sense of fellowship with all men, the expectation of a deliverer was to be sent by God. However, this does not include the ten lost "tribes" of the first exile.

Phase 1, 1800-1200 B.C.: The basic laws expressing spiritual and moral life together were given to Moses by Yahweh and thence to the people; the Ten Commandments, one complete law with ten points; if one was broken, they were all broken in principle. The first three dealt with the vertical relationship to God; the last seven with the horizontal relationship to one's fellow Man.

Phase 2, 1200-1000 B.C.: After Moses's time, the tribes entered the fertile land of Canaan; it was a savage time, as the Old Testament clearly shows. Each tribe was assigned a specific area within the Land of Canan in which to dwell (Numbers 33: 54,55 and Chapters 34, 35, 36), their only bond being their relationship with their God and the common laws

with respect to this relationship. Because they were united by their spiritual beliefs in Yahweh and His laws there was a concern over "covenants," a word which implied fellowship between members of the tribe and specifically between the people and their God; they lived with faith, loyalty and goodness. To serve God meant to be kind to the oppressed, the widows and the orphans. At the same time, they began to take an interest in other people as having a conscience. Ultimately, "well-being" was not seen as material prosperity, but as goodness and justice.

Justice means that organized law had to exist; and it did exist as the explicit conscience of the people. In the law, the people encountered the Eternal.

This is your wisdom and your understanding in the sight of the nations which shall hear all these statutes, and say, "Surely this great nation is a wise and understanding people." For what nation is there so great who has God so nigh as the Lord our God is to us ... And what nation is there that has statutes and ordinances so righteous as all this law .... [Deut. 4:6-8]

The commandments of the law are,

not in heaven, that you should say, Who will go up for us to heaven, and bring it to us? But the word is very near you; it is in your mouth and in your heart. [Deut. 30:12-14]

The law supported the concept of responsibility not only to loved ones, but to neighbors. With such a concept in their midst, the people were unobstructed in ruling their own lives as they chose. Freedom, not yet existing elsewhere at that time, was possible.

Phase 3, 1000-587 B.C.: A high place was reached when the people became a kingdom. According to the ordinary laws of comparative religion, a State religion should have developed in which the Godhead was the personification of the State. But when Israel became a monarchy, Eternal Law became the God of king and nation; Life and religion were one. The passing on of God's law to England began with the Israelite migrations out of Assyria around 671 B.C.. In 740 B.C. the warring Assyrians invaded the Northern kingdom of Israel, with Samaria as its capital, and the tribes were subsequently swept off into captivity and utterly lost to history by 710 B.C. (II Kings 15:19-38 and Chapters 16,17,18) It will be of interest to find that they are not lost, thanks to Russian research in the nine-teenth century. They were held in captivity until the fall of

Assyria, around 605 B.C., then allowed to escape over the Caucasus mountains to the Steppes of Russia just north of the Black Sea. During the following centuries, it appears that at least three waves of these Israelite people migrated into Europe. The first of these was the Cimmerians or Celts, the second was the Scythians, and the third was later to become known as the Anglo-Saxons.

### The Great Migrations

Tradition as well as historical sources indicate that the people who later became known as Anglo-Saxons were one of three major migrations which came from the vicinity of the Black Sea to Europe. Other migrations of lesser proportions occurred, but for our purposes these three deserve primary consideration. They are the Cimmerians (often referred to by their language identification as Celts), the Scythians, and the Anglo-Saxons.

**The Cimmerians or Celts:** This group is identical with the Cimbri who attacked Rome and the "Cymry" from whom the Welsh claim descent. They are also the same people who settled Brittany and from whom the so-called "Brettons" of early English history emanated. These are also the ancestors of the Gaelic Scots and the Gaelic Irish. Many of the Cimmerians settled in Scandinavia when the climate was mild and far more attractive to new settlers than in our time.

**The Scythians:** Herodotus, the earliest Greek historian, described an ancient group of nomadic people whom he called "Scythians." They occupied the area from which the Cimmerians had departed. Both people were of the same basic culture and built mounds for their dead. It is by means of these mounds that we are able to trace the migrations of these people from the Crimea into Europe. The Cimmerians, Scythians and Anglo-Saxons were all mound builders, and we shall have more to say about this later. One branch of the Scythians was known as the Sakae. It is believed these are identical with the Saxons in Northern Germany with whom the Engles intermingled to form the Anglo-Saxons.

**The Anglo-Saxons:** The Saxons were already in northern Europe when they were conquered in the first century B.C. by a new migration of people called the Yngling or Engles, and the two people thereafter became known as the Anglo-Saxons (Engle-Saxons). It is therefore to the Engles or Yngling migration that we now turn our attention. Since this is the ancestral line of all Anglo-Saxon Americans, this migration is of particular interest.

The Yngling people originally occupied a large territory north of the Black Sea, then made their way through western Russia, across Gothic Germany, and finally settled in the

northwest corner of Europe which is now Jutland of continental Denmark.

The tremendous influence of the Yngling migration into northern Europe is borne out by the fact that their institutes and their fierce love of freedom and independence were impressed upon nearly every people with whom they came in contact. The "people's law" (common to all the people, hence the "common law") was universally accepted in Northern Europe. The early German tribes called themselves the "Deutsch," which means "The people."

Although the West German tribes as well as the Scandinavians retained many of their original institutes, these eventually became dominated by the concepts of the Roman Civil Law which acknowledged all power as emanating from the king or emperor. Fortunately, however, before this happened the institutes of freedom under the "people's common law" had been transplanted to England where it continued its development quite independent of Roman civil law in the continent.

Shortly after the Romans left the British Isles in the fourth century A.D., certain Celtic tribes invited the English, Saxons and Jutes (who had previously raided the east coast of England as pirates) to bring their hands over to England to help defeat other Celts. These Nordic tribes responded with exuberance but later refused to return home. They established permanent settlements in England and gradually imposed their power over whole regions formerly occupied by the Celts. In due time, the Danes decided their Anglo-Saxon cousins had such a good thing that they came over and conquered much of England. Thus, through these various invasions from Europe, the institutes of the Anglo-Saxons took root in the British Isles just in time to escape the full impact of the oppressive Roman civil law which was moving northward from Rome and Constantinople.

One of the most puzzling aspects of the institutes of the Anglo-Saxons (as well as the more ancient Cimmerian and Scythian cultures) is the fact that they are almost identical with many of the unique institutes of the Israelites in the Bible. How could this be? The answer has been found in the burial mounds of these people which are scattered from the Crimea to Sweden.

It will be recalled that in 922 B.C. the ten northern tribes of Israel broke off from the House of Judah to form a nation of their own. The Assyrians carried away these ten tribes and held them captive for over a century. However, when Assyria was conquered by Babylon at the battle of Carchemish in 605 B.C., the Israelites were able to escape and fled over the Caucasus mountains into the region of the Crimea and the prairie likeness of present day Russia. The Book of Tobit makes reference to Tobit, 721 B.C., a wealthy

Israelite of the northern tribe who advocates leaving Nineveh, the capitol of Assyria, and going to Medes which was close to this area. The burial mounds found in this area contain pottery, jewelry, trinkets and other artifacts which are "exactly similar" to those found in the mounds of Scandinavia. (Du Chaillu, The Viking Age, Vol. 1, p. 216, 299). And the burial grounds in the Crimea and surrounding area re-identified with the Israelites.

During the reign of the Tsars, Russian Archaeologists made extensive investigations into the mounds in the vicinity of the Crimea and the Kuban River. It is interesting that on the Crimean Peninsula there is a "Valley of Jehosaphat," and a place called "Israel's Fortress," which is surrounded by hundreds of these tombs.

The Russian Archaeological Society made extensive excavations into these mounds and unearthed a great many epitaphs, some of them going back to pre-Christian times. The inscriptions are in Hebrew and many of these were taken to the Museum of Leningrad. Here are examples:

I am Jehude, the son of Moses, the son of Juhudah the mighty, a man of the tribe of Naphtali, of the family of Shimli, who was carried captive in the captivity of Hoshea, king of Israel, with the tribe of Simeon, together with other tribes of Israel.

To one of the faithful in Israel, Abraham-ben-Mar-Sinchah of Kertch, in the year of our exile 682, which the envoys of the prince of Rosh Mesech came from Kou to our master Chazar, Prince David, from Halah, Habor and Gozan, to which places Tiglath Pileasar had exiled the sons of Reuben and Gad and the half Tribe of Manasseh, and permitted them to settle there, and from which they have been scattered throughout the entire East, even as far as China.

This is the grave of Buke, the son of Izchak (Isaac), the priest. May his rest be in Eden at the time of the deliverance of Israel. In the year 702 of the years of our Exile. Rabbi Moses Levi Died in the year 726 of our exile.

Zadok the Levite, son of Moses, died 4,000 after creation, 785 of our exile. (This refers to the Karaite era of the creation, which makes that event 3911 B.C.. So this last date would be 88-89 A.D.)

A summary of additional evidence identifying the mound builders of the Black Sea area with the Israelites of the

Bible is presented in the "Utah Geneological and Historical Magazine," Vol. 25, pp. 6-10. Among other things it says:

Professor A.D. Chwolson examined, in the Museum of St. Petersburg (Leningrad) from 1823 to 1869, more than 700 tombstones and many tablets and other articles of historical value. He translated the contents of many of these which are readable and wrote sixteen or seventeen volumes with some illustrated pages, which are now in the Library of Moscow, appearing under various titles, such as Pamiatnike drevnei pismennosti (Memorials of Ancient Records), St. Petersburg, 1892, Vol. 84; Drevnia Pamiatniki (Ancient Monuments).

Only a few excerpts have been taken from these records of ancient Monuments and translated into the English language by Rev. Stern.

These archaeological records are the most direct proofs of the origin of the people who settled in Southern Russia around the Black and Caspian seas; and many other archaeological proofs found in Scandinavia and along the Dnieper river clear up to the Baltic Sea, contain the records of a people, covering more than 1,600 years of their sojourn in this country, and eventual separation into new groups and tribes.

More or less authentic documents and convincing Russian authorities on history and exegesis have suggested that the ancient Russians came from the cities of the Medes and from Assyria; and that they and the Scandinavians were originally one people for nearly a thousand years, known then as the Sakei, or Sacae, Saakha-suni, Gaeth, Messagete, Vargians, or Northmen, also called "Rous" or Russ. For centuries there was a continuous common faith and belief among them and an exchange of ideas, as well as merchandise. Scandinavian Sagas and Russian bylines bear this out. (Russian Antiquities, Bk. 1, Copenhagen 1850). Many Dano-Norwegian Sagas have Russian origin. For example, the Saga of Orvard Odd. Archaeological discoveries and runic inscriptions on the memorial stones found in Sweden confirm this common history of the people. Another proof of the closeness of Scandinavian-Russian relationships is to be found in the great number of purely Russian proper names, the same as those which are generally to be read on the Russian monuments of the 3rd to 9th centuries of our era, deciphered among the

runic inscriptions and in various documents originating in the eastern provinces of Sweden:

According to Israelitish custom the tribes that occupied the great plains of what is now known as Russia, left many suggestive geographical names behind them. For instance, the four rivers that empty into the Black Sea were thus named, Don, Dan-jeper (now Dnieper). Danube (in Russian Donajets). On the Donajets, they built the city of Ishmail; straight north of the Caspian sea they built the great city of Samaria, named after the capital city of their nativity. They built the city of Kiev, which is called the mother of Russian cities and had many ancient monuments which bear record of its Israelitish origin. The Isle of Kertch was named after one of the princes or leaders.

The burial mounds of these people extend the length of Europe. In Sweden and along the Baltic they abound. In Tanum Parich, Bohuslon, alone there are more than 2,000 mounds, the largest being over 300 feet in circumference; in Uppsala nearly 600; at Ultona 700. The greatest number found in any one spot is east of the ancient Birka Bjorka where there are over 1,000 of them. It is possible to trace the migration of these ancient peoples from the Black Sea up the valley of the river Dnieper in Russia to the Baltic and thence to northern Germany and Scandinavia. Since they belong to the same people it is no wonder that those as far away as Sweden contain ceramics and jewelry very much like those which are found in the mounds along the Black Sea.

#### A Society of Free Men

It seems particularly significant that the institutes of the Anglo-Saxons were of Israelite origin since this makes it possible to compare them with the institutes of Moses in the Bible.

The Israelites prided themselves in being free under God's law. The statutes given to Moses provided that every fifty years there should be a jubilee celebration to "Proclaim liberty throughout all the land unto ALL the inhabitants thereof." (Leviticus 25:10) No man was even allowed to subject himself to bonded indebtedness or servitude in excess of six years. In the seventh year he had to be set free: "If thou buy a Hebrew servant, six years he shall serve: and in the seventh year he shall go out free for nothing." (Exodus 21:2) It was a great offense against heaven to ignore this concept of individual

freedom among the Israelites. A thousand years after Moses, the Prophet Jeremiah declared: "Therefore, thus saith the Lord: Ye have not hearkened unto me, in proclaiming liberty, every one to his brother, and every many to his neighbor: behold, I proclaim a liberty for you, saith the Lord ..." (Jeremiah 34:17)

A similar emphasis on the rights and liberties of the individual is found to be a fundamental belief of the Anglo-Saxons. (Our principal source of authority for the Anglo-Saxon culture will be the well-known historian, Dr. Colin Rhye Lovell of the University of Southern California who wrote ENGLISH CONSTITUTIONAL AND LEGAL HISTORY in 1962). A large segment of the Anglo-Saxon population became known as "Franks" or "Freemen" and Dr. Lovell points out that this emphasis on the freedom of the individual characterized the Anglo-Saxon culture when it was transplanted to England.

The social structure, while not rigid, had definite gradations. The bulk of the tribe, however, consisted of FREEMEN. All adult free males had the obligation of bearing arms and, therefore, the right to participate as EQUALS in the tribal assembly and to hold a share of the tribal land. [Lovell, p. 4]

British historian John Richard Green emphasizes the same point when he says, "the basis of their society was the freemen." (Green, A Short History of England, p.2)

In ancient Israel, all important decisions and appointments had to have the approval of the whole people. Moses tells us that he was required by the Lord to ask the people if they were willing to accept the laws that God would reveal to them. The idea was not merely to get a majority vote, but to have the universal "common consent" on the entire body. Here is what we read in Exodus 19: 7-8:

And Moses came and called for the elders of the people, and laid before their faces all these words which the Lord commanded him. And ALL THE PEOPLE answered together and said, All that the Lord hath spoken we will do.

The attitude of the Israelites toward the divine origin of their law is seen in hundreds of passages. The following are selected as representative:

Moses said:

These words the Lord spake unto all your assembly in the mount out of the midst of the

fire, of the cloud, and of the thick darkness, with a great voice ... and he wrote them in two tables of stone, and delivered them unto me. [Deuteronomy 5:22]

Now these are the commandments, the statutes, and the judgments, which the Lord your God commanded (me) to teach you .... [Deuteronomy 6:1]

Psalm 119 declares:

Thou art near, O Lord, and all thy commandments are truth .... My tongue shall speak of thy word: for all thy commandments are righteousness. [verses 151 and 172]

This typifies the attitude of the Israelites concerning the divine origin of their law and it referred to all of the commandments of God whether they were moral precepts or civil statutes.

The Anglo-Saxons held a similar view of their law. Dr. Lovell writes:

To most Anglo-Saxons the law was either divinely inspired or the work of their ancestors, (Being) of such antiquity that it was unthinkable that it should be changed. Alfred the Great ... was one of the few rulers of the period who issued new laws, but he too regarded the body of traditional Anglo-Saxon law as sacred and God-Given. [English Constitutional and Legal History, p. 36]

A unique system of government existed among the Israelites. When Moses (who had no governmental training except the pattern he had observed among the Egyptians) was unable to cope with the governing of three million Israelites, the high priest, Jethro, instructed him to follow God's pattern of government. Jethro said to Moses:

The thing that thou doest is not good. Thou wilt surely wear away, both thou, and this people that is with thee: for this thing is too heavy for thee; thou art not able to perform it thyself alone. Hearken now unto my voice, I will give thee counsel, and God shall be with thee ... Thou shalt provide out of all the people able men, such as fear God, men of truth hating covetousness; and place such over them, to be rulers of THOUSANDS, and rulers of HUND-

REDS, rulers of FIFTIES, and rulers of TENS.  
[Exodus 18:17-21]

Moses later refers to the accomplishment of this assignment. He told the Israelites:

And I spake unto you at that time, saying I am not able to bear you myself alone .... Take you wise men, and understanding, and known among your tribes, and I will make them rulers over you.... So I took the chief of your tribes, wise men, and known, and made them heads over you, captains over THOUSANDS, and captains over HUNDREDS, and captains over FIFTIES, and captains over TENS, and officers among your tribes. [Deuteronomy 1:9-15]

One of the most interesting aspects of Anglo-Saxon society was a similar division into an ascending hierarchy of self-governing units:

**The Tithing:** It was so called because ten freeholders with their families composed one. It is said that they were all knit together in one society, and bound to the king for the peaceable behavior of each other. In each of these societies there was one chief or principal person, who, from his office, was called "Teothing man," and "TITHING MAN." [Black's Law Dictionary, under "Tithing"] The territory occupied by a tithing was referred to as a vill (later village).

**The Tun (or town):** Often referred to as an assembly of several vills and thereby comprising some fifty or so families.

**The Hundred:** This subdivision of the Saxon society consisted of "Ten tithings, or groups of ten families of freeholders or frankpledges. The hundred was governed by a high constable (called a hundredman), and had its own court; but its most remarkable feature was the corporate responsibility of the whole for the crimes or defaults of the individual members. The introduction of this plan of organization into England ... was probably known to the ancient German people, as we find the same thing established in the Frankish kingdom under

Clothaire, and in Denmark." [Black's Law Dictionary, under "Hundreds"]

The Shire: This was a division of the realm originally comprising approximately ten "hundreds" (a thousand) families which had their own court, their own judicial officer, and their own executive officer or chief. The judicial officer was called the shire-reff or sheriff and the executive officer was called the "earldorment" or "earl." [See English Constitutional and Legal History, pp. 28-29]

We have already seen how the Israelites were divided into groups of families with a judge or "captain" over each body of ten, fifty, a hundred, or a thousand families. Local self-government or the solving of problems within each group was therefore the pride and lifestyle of these people.

As Moses had been told:

and it shall be, that every GREAT matter they shall bring unto thee, but every SMALL matter they shall judge: so shall it be easier for thyself, and they shall bear the burden with thee. [Exodus 18:22]

In Deuteronomy 1:13 we learn that the groups themselves suggested to Moses the identity of the men they wanted to serve them as their captains or judges. Thereafter, "the hard causes they brought unto Moses, but every small matter they judged themselves." (Exodus 18:20) The system had one judge for every ten people. Moses would handle the hardest cases unresolved at lower levels.

Moses was promised that if he would inaugurate this system of local self-government the people would be able to "go to their place in peace" (Exodus 18:23), meaning that they would be satisfied because their problem had been handled. The reason usually put forth to justify the concentration of authority and the handling of all problems by the central government is the promise that it will be more "efficient" and therefore, more "economical." Experience demonstrates, however, that each problem should be handled on the level where it originates so that only the most profound and difficult problems filter up to the central authority. Otherwise, there is an inevitable clogging of government machinery to the point of total frustration both to the officials of the government and the long-suffering people. What turned out to be true and practical in the days of Moses is equally true today. The

more complex a people's way of life becomes the simpler must be the controlling machinery.

### A Common Law Jury of 12

Why a Common Law Jury of 12? This question is of such paramount importance that it should be gone into in some detail. As to the number twelve (12), this is probably best explained by DUNCOMB'S TRIALS PER PAIS (1665) Eighth ed., London (1776) page 92. An account of the number 12:

And first as to their (the jury's) number 12: and this number is no less esteemed by our law than by Holy Writ. If the twelve apostles on their twelve thrones must try us in our eternal state, good reason hath the law to appoint the number of twelve to try our temporal. The Tribes of Israel were twelve, the patriarchs were twelve, and Solomon's officers were twelve (I Kings IV 7). Therefore not only matters of fact were tried by twelve, but of ancient times twelve judges were to try matters in law, in the Exchequer Chamber there were twelve counsellors of state for matters of state; and he that wadgeth his law must have eleven others with him who believe he says true. And the law is so precise in this number of twelve, that if the trial be more or less, it is a mistrial.

It is apparent from a study of the ancient Common Law System, and the principles embodied therein, that it is amazingly similar and in some cases identical with the unique features of the Law of the Covenant concerning Moses on Mount Sinai. One or two of these provisions could be attributed to coincidence, but since the over-all pattern is virtually the same, it is nearly impossible to escape the conclusion that the Common Law System is rooted in the substance of statutes of ancient Israel.

### The Essence And Science Of The Common Law: [B]

Common Law is the law of conscience - nothing more. All other attributes properly associated with "the common law" are, in reality, referring to a system devised by man for the sole purpose of allowing and encouraging this law of conscience to flourish. The common law jury of twelve, knowingly and intelligently exercising its rights and duties, is the cornerstone of this system of common law.

The science of Common law is the science of God's Laws - Natural law and justice. Its essence is the golden rule:

It is the science of peace; and the only science of peace; since it is the science alone which can tell us on what conditions mankind can live in peace, or ought to live in peace, with each other.

These conditions are simply these: first, that each man shall do towards every other all that justice requires him to do; and, for example, that he shall pay his debts, that he shall return borrowed or stolen property to its owner, and that he shall make a reparation for any injury he may have done to the person or property of another.

The second condition is, that each man shall abstain from doing to another anything which justice forbids him to do; as, for example, that he shall abstain from committing theft, robbery, arson, murder, or any other crime against the person or property of another.

The ancient maxim makes the sum of a man's legal duty to his fellow men to be simply this: "to live honestly, to hurt no one, to give to everyone his due."

This entire maxim is really expressed in the single words, to live honestly; since to live honestly is to hurt no one, and give to everyone his due. [The Science of Justice and Natural Law Contrasted with Legislation, by Lysander Spooner.]

## Part II: The Common Law Jury - Its Rights, Duties and Purposes

Selected Excerpts From Lysander Spooner's "Essay On Trial By Jury": [C]

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 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 country - that is, by the people - as distinguished from a trial by 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 theroretically 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. 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 sub-

stantially 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 required 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 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.

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 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 empaneling three separate 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 offence are proved against him, and the court direct you that the law is constitutional?

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 Justices of the Supreme Court of the United States, in empaneling 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.

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.

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," but a trial by the government; because the jury then try the accused, not by any standard of their own - not by their own judgments of their rightful lib-

erties - 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 capable of being practised 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. [An Essay On The Trial By Jury by Lysander Spooner.]

A word to the wise, however: These rights, duties and purposes only apply to a Jury functioning within the Jurisdiction of the Common Law. Juries functioning within the Jurisdictions of Equity or Admiralty/Maritime are merely advisory - and have none of the rights, duties and purposes described above.

Common Law Jury Nullification - A Right and Duty at Common Law: [D]

The history of DUE PROCESS is essentially the history of the common law jury. Lysander Spooner did humanity a great service in laying down the historical foundations of Trial by Jury. As Spooner saw it, the jury, as a democratic institution, was being substituted by the summary jurisdiction of the Chancellor, the King's Conscience.

Alan W. Schefflin, an Associate Professor of Law at Georgetown University, has continued the fine work initiated

by Spooner in JURY NULLIFICATION - THE RIGHT TO SAY NO.  
Following are excerpts from this work:

Only one of the countless historical trials held at the Old Bailey in London is commemorated by a memorial. In the present building on a plaque near Court No. 5 are inscribed these words:

Near this site William Penn and William Mead were tried in 1670 for pleading to an unlawful assembly in Gracechurch Street.

This tablet commemorates the courage and endurance of the Jury. Thomas Vere, Edward Bushell and ten others who refused to give a verdict against them, although they were locked up without food for two nights and were fined for their final verdict of Not Guilty.

The case of these jurymen was reviewed on a Writ of Habeas Corpus and Chief Justice Vaughan delivered the opinion of the court which established the Right of Juries to give their verdict according to their conviction.

All of the jurors in that celebrated case were fined and jailed until they paid their fines in full. Four of them spent months in prison and all were locked up without meat, drink, fire and tobacco for three days in an attempt to force them to change their verdict. Their courage, fortitude and dedication to the spirit of liberty has been institutionalized in our legal system under the doctrine of jury nullification.

According to this doctrine, the jurors have the inherent right to set aside the instructions of the judge and to reach a verdict of acquittal based upon their own consciences, and the defendant has the right to have the jury so instructed. The jury nullification concept did not develop as a pure question but instead was intermixed with other issues. Thus, some of the ensuing discussion deals with the right of the jury to decide questions of law as well as of fact. This issue raises the question of whether the jury can rule on the constitutionality of statutes for the sake of them. However, the jury nullification concept advanced here is the right of the jury to be told by the judge that they may refuse to apply the law, as it is given to them by the judge, to the defendant if in good conscience they believe that the defendant should be acquitted.

There was a time when "conscience" played a legally recognized and significant role in jury deliberations. Lord Hale, discussing the function of the jury in 1665, stressed the fact that "... it is the conscience of the jury, that

must pronounce the prisoner guilty or not guilty." In 1680, Sir John Hawles defended the right of jurors to judge both law and fact in a criminal case:

To say that they are not at all to meddle with, or have respect to, law in giving their verdicts, is not only a false position, and contradicted by every day's experience; but also a very dangerous and pernicious one; tending to defeat the principal end of the institution of juries, and so subtly to undermine that which was too strong to be battered down.

The increased use by the English government of prosecutions for seditious libel in the 18th century as a means of silencing political foes gave rise to a great debate as to the extent to the role of juries in those cases. [D](1). Under the law of libel as it then existed, truth was not a defense. In addition, judges left to the jury only the issue of whether there was a publication by the defendant. With this view of the power of the jury, prosecutions for seditious libel provided an excellent device for repression of dissent. With an agreeable, or at least neutral, judge, with truth not a defense, and with a jury rubber-stamping the fact of publication, which was usually not contested by the defendant anyway, convictions were routine. Were it not for some courageous jurors who were willing to put their lives on the line and decide political cases upon their own consciences, the law of seditious libel might have prevented the birth of our constitutional Republic by silencing all voices raised in protest. Certainly freedom of speech and press would only have meant the inalienable right to publicly agree with the government.

Consider the courage of the jury that tried William Penn. [D](2). Penn and Mead were indicted in 1670 for preaching before an unlawful assembly. After hearing the evidence, the jury retired to consider its verdict. Within an hour and a half, eight jurors returned to convict but four refused to return to court until ordered to do so. The jury was threatened by the court and sent back for further deliberations. When they returned they found Penn guilty of speaking at Gracechurch Street but refused to say whether he had been addressing an unlawful assembly. Sent back again, they returned with a verdict of not guilty for Mead and guilty of preaching to an assembly for Penn. The Recorder then addressed them:

Gentlemen, you shall not be dismissed til we have a verdict that the court will accept; and you shall be locked up, without meat, drink,

fire, and tobacco; you shall not think thus to abuse the court; we will have a verdict by the help of God, or you shall starve for it.

Penn: My jury, who are my judges, ought not to be thus menaced; their verdict should be free, and not compelled; the bench ought to wait upon them, but not forestall them. I do desire that justice may be done me, and that the arbitrary resolves of the bench may not be made the measure of my jury's verdict.

Recorder: Stop that prating fellow's mouth, or put him out of the court.

Once again the jury was sent out and once again they returned with the same verdict. After threats by the court failed to move them, Penn spoke up:

Penn: It is intolerable that the jury should be thus menaced: is this according to the fundamental laws? Are not they my proper judges by the Great Charter of England? What hope is there of ever having justice done, when juries are threatened, and their verdicts rejected? I am concerned to speak, and grieved to see such arbitrary proceedings. Did not the lieutenant of the Tower render one of them worse than a felon? And do you not plainly seem to condemn such for factious fellows, who answer not your ends? Unhappy are those juries who are threatened to be fined, and starved, and ruined, if they give not in verdicts contrary to their consciences.

Recorder: My Lord, you must take a course with that same fellow.

Mayor: Stop his mouth; gaoler, bring fetters, and stake him to the ground.

Penn: Do your pleasure, I matter not your fetters.

Recorder: Till now I never understood the reason of the policy and prudence of the Spaniards, in suffering the inquisition among them; and certainly it will never be well with us, till something like unto the Spanish Inquisition be in England.

When the jury was ordered to retire one more time, Bushell, the foreman, objected by saying: "We have given in our verdict, and we all agreed to it; and if we give in another, it will be a force upon us to save our lives."

Nevertheless, they ultimately acquitted both defendants even though the Court polled them individually.

Recorder: I am sorry, gentlemen, you have followed your own judgments and opinions, rather than the good and wholesome advice which was given you; God keep my life out of your hands; but for this the court fines you 40 markes a man; and imprisonment till paid.

Upon this Penn came forward, and said:

I demand my liberty, being freed by the jury.

Mayor: No, you are in for your fines.

Penn: Fines, for what?

Mayor: For contempt of Court.

Upon a habeas corpus petition for release from prison. Bushell and his fellow jurors were vindicated by a decision concurred in by all of the judges of England, except one, abolishing the practice of punishing juries for their verdicts. [D](3). Chief Justice Vaughan of the Court of Common Pleas made it clear that:

They (the jury) resolve both law and fact complicatedly, and not the fact by itself; so as though they answer not singly to the question of what is the law, yet they determine the law in all matters, where it is joined and tried in the principle case, but where the verdict is special.

Vaughan felt that if the jury returned a verdict contrary to their consciences they would be in violation of their oaths:

A man cannot see by another's eye, nor hear by another's ear; no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning; and though the verdict be right the jury give, yet they, not being assured it is so from their own understanding, are forsworn, at least from conscience.

The Penn and Mead jury stand as a hallmark of a common law jury exercising its rights and performing its duties; a popular check on governmental tyranny and judicial servility.

Continuing this development, over a century later in 1783, was the case of William Davis Shipley, Dean of St. Asaph's. Shipley was charged with seditious libel. His attorney, Thomas Erskine, in a brilliant summation to the jury, argued that the rulings of the court (that the jury could not consider justification but could only decide whether there was in fact a publication, as to which there was no dispute) should not be obeyed:

They therefore call upon you to pronounce that guilt, which they forbid you to examine into. Thus without inquiry into the only circumstance which can constitute guilt, and without meaning to find the defendant guilty, you may be seduced into a judgment which your consciences may revolt at, and your speech to the world deny - I shall not agree that you are therefore bound to find the defendant guilty unless you think so likewise. [Dean of St. Asaph's Case, 21 HOWELL'S 847 (1783).]

Erskine's position became the law of the land nine years later when Fox's Libel Act gave the jury the authority to decide questions of both law and fact.

As new attempts to control jury verdicts developed, greater acts of conscience were demanded. Three trials of William Hone were held on three consecutive days in December, 1817, for publication of three works alleged to be blasphemous and libelous. [D](4). Three times, three different juries refused to convict despite the Court's instructions. One juror during the first trial openly challenged the judge's ruling that a certain item of evidence was irrelevant. A juror in the third trial stated that he was prepared to die, if need be, "rather than pronounce a man 'guilty' who was manifestly persecuted, not for blasphemy or sedition, but for exposing abuses which were eating into the very heart of the nation."

In the British colonies, the role of the jury in criminal trials underwent similar development. A New York jury in 1735, at the urging of Andrew Hamilton, generally considered to be the foremost lawyer in the Colonies, gave John Peter Zenger his freedom by saying "no" to governmental repression of dissent. Zenger was the only printer in New York who would print material not authorized by the British mayor. He published the New York Weekly Journal, a newspaper designed to expose some of the corruption among government officials. All of the articles in the papers were unsigned; the only name on the paper was that of its printer, Zenger. Although a grand jury convened by the government refused to indict Zenger, he was arrested and charged by information

with seditious libel. Although Zenger did not write any of the articles and it was not clear that he even agreed with their content, had the jury followed the instructions of the court they would have had to find him guilty.

Against this obstacle, Hamilton insisted that the jurors: ... have the right beyond all dispute to determine both the law and the facts, and where they do not doubt of the law, they ought to do so. [J. ALEXANDER, A BRIEF NARRATION OF THE CASE AND TRIAL OF JOHN PETER ZENGER (1963).]

He urged the jury "to see with your own eyes, to hear with their own ears, and to make use of their consciences and understanding in judging of the lives, liberties or estate of their fellow subjects." The closing words of his summation to the jury are as vital today as they were when they were uttered over 200 years ago:

[T]he question before the Court and you gentlemen of the jury, is not of small or private concern, it is not the cause of a poor printer, nor of New York alone, which you are now trying: No! It may in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause, it is the cause of liberty; and I make no doubt but your upright conduct this day will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery will bless and honor you as men who have baffled the attempt of tyranny; and, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors that to which nature and the laws of our country have given us a right - the liberty - both of exposing and opposing arbitrary power (in these parts of the world) at least, by speaking and writing truth.

In the United States, colonial juries regularly refused to enforce the navigation acts designed by the British Parliament to channel all Colonial trade through the mother country. Ships impounded by the British for violating the acts were released by colonial juries, often in open disregard of law and fact. In response to this process of jury nullification, the British established COURTS OF VICE-ADMIRALTY to handle maritime cases, including those

arising from violations of the navigations acts. The leading characteristic of these courts was the absence of the jury; this resulted in great bitterness among the colonists and was one of the major grievances which ultimately culminated in the American Revolution. [D](5)

In the period immediately before the Revolution, jury nullification in the broad sense had become an integral part of the American judicial system. The principle that juries could evaluate and decide questions of both fact and law was accepted by leading jurists of the period. [D](6).

John Adams, writing in his Diary for February 12, 1771, noted that the jury power to nullify the judge's instructions derives from the general verdict itself, but if a judge's instructions run counter to fundamental constitutional principles:

Is a juror obliged to give his verdict generally, according to his direction or even to the fact specially, and submit the law to the court? Every man, of any feeling of conscience, will answer, no. It is not only his right, but his duty, in that case to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court. [2 LIFE AND WORKS OF JOHN ADAMS 253.55 (C.F. Adams ed. 1856).]

Adams based this reasoning in part on the democratic principle that "the common people ... should have as complete a control, as decisive a negative, in every judgment of a court of judicature" as they have in other decisions of government. At the time of the adoption of the Constitution, this view of jury nullification prevailed. [D](7). Without jury nullification, as the Founding Fathers well knew, government by "judge" (or through the judge by the rulers in power) became a distinct possibility and had in fact been a reality. In the Zenger case, two lawyers were held in contempt and ordered disbarred by the judge when they argued that he should not sit because he held his office during the King's "will and pleasure." The Court of Star Chamber was not too distant in memory for the colonists to have forgotten the many perversions perpetrated there in the name of justice and law. [D](8). It was likely, therefore, that the once unchecked, unresponsive power of the judge would have been limited by the Founding Fathers through some method of public control. One method chosen was the jury function most closely guarded by the colonists: the power of a common law jury to say NO to oppressive authority.

After the adoption of the Constitution, the concept of the jury as one of the people's most essential vanguards against political oppression continued as an underlying principle in the American judicial system. In a civil trial held in 1794 under the original jurisdiction of the United States Supreme Court, Chief Justice John Jay, after instructing the jury on the law and advising them that, as a general rule, they should take the law from the court, went on to say:

[i]t must be observed that by the same law, which recognised the reasonable distribution of jurisdiction, you have, nevertheless, a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. [Georgia v. Brailsford, 3 U.S., 3 Dall. 1 (1794)]

Even the politically repressive Sedition Law of 1798 provided that in persecutions for seditious libels "the jury who shall try the cause shall have a right to determine the law and the fact, under the direction of the court, as in other cases." [D](9).

At the trial of John Fries for treason in 1800, Justice Chase instructed the jury that in criminal cases juries were to judge both the law and the facts. [D](10). Justice Chase appended this charge to the jury to his answer in his own impeachment trial where he was accused of, among other things, usurping the function of the jury by denying them the right to decide the law. [D](11).

As the 19th century dawned, juries continued to display the independence that had established their libertarian role under colonial rule. In 1808, for example, resistance to the hated Embargo Law led to the acquittal of a defendant in Massachusetts clearly guilty under the terms of the act after a dramatic trial in which Samuel Dexter persisted in arguing the unconstitutionality of the law to the jury despite the court's order not to do so. [D](12). After Judge Davis had decided that the law was constitutional. ... Mr. Dexter persisted in arguing the question of constitutionality to the jury, notwithstanding the remonstrances of the Bench. At length, Judge Davis, under some excitement, and after repeated admonitions, said to Mr. Dexter, that if he again attempted to raise that question to the jury, he should feel it his duty to commit him for contempt of Court. A solemn pause ensued, and all eyes were turned towards Mr. Dexter. With great calmness of voice and manner, he requested a postponement of the cause until the following morning. The Judge assented. ... On the following morning, there was a full attendance of persons; anxious to

witness the result of this extraordinary collision between the advocate and the Judge. ... Mr. Dexter rose, and facing the bench, commenced his remarks by stating that he had slept poorly and had passed a night of great anxiety. He had reflected very solemnly upon the occurrence of yesterday. ... No man cherished a higher respect for the legitimate authority of these tribunals before which he was called to practice his profession; but he entertained no less respect for his moral obligations to his client. ... He had arrived at the clear conviction that it was his duty to argue the constitutional question to the jury. ..., and that he should proceed to do so, regardless of any consequences. [D](13).

In 1850 Congress passed the Fugitive Slave Law making it a crime to provide assistance to runaway slaves. Resistance to the law on moral grounds was open and widespread among the most "respectable" elements of society. [D](14). Judge Theophilus Harrington of Vermont said that the only evidence of slave ownership he would accept was a bill of sale from God Almighty. Benjamin Wade an Ohio judge in 1850, publicly declared he would never enforce the fugitive law. (Id. at 47). Prosecutions under the law were largely unsuccessful because of the refusal of juries to convict. [D](15).

There is agreement among many commentators that the right of the jury to decide questions of law and fact prevailed in this country until the middle 1800's. [D](16). By the end of the century, however, the power of the jury had been thoroughly decimated by a jealous judiciary eager to exercise tighter controls over lay participants in the administration of justice. As one commentator has noted, "The jury at the outset of the century had been regarded as a mainstay of liberty and an integral part of democratic government. But by the end of the century the jury had come to be seen as an outmoded and not-too-reliable institution for resolving disputed questions of fact." [D](17). Indirect emasculation of the jury's right to nullify through procedural devices such as the directed verdict, special interrogatories, detailed jury instructions and a restricted reading of the law-fact dichotomy, occurred during this period thereby effectuating a redistribution of legal power. The specific demise of the nullification right, however, can be traced to four highly influential cases which virtually changed the law across the country: (United States v. Battiste in 1835; Commonwealth v. Porter, in 1845; United States v. Morris, 1851; And Sparf and Hansen v. United States in 1895. [D](18).

Sparf and Hansen is the most significant of these four cases, which involved two sailors accused of murder on the high seas. Under applicable federal laws, the jury was given the power to find the defendants guilty of any lesser

included offense than the one charged in the indictment. However, the judge instructed the jury that there was no evidence in the case to support a lesser charge and if they found a felonious killing, they must find it to be murder. The jury interrupted its deliberations to get further instructions from the judge:

Juror: If we bring in a verdict of guilty, that is capital punishment?

Court: Yes.

Juror: Then there is no other verdict we can bring in except guilty or not guilty?

Court: In a proper case, a verdict for manslaughter may be rendered ...; and even in this case you have the physical power to do so; but as one of the tribunals of the country, a jury is expected to be governed by law, and the law it should receive from the court.

Juror: There has been a misunderstanding amongst us. Now it is clearly interpreted to us and no doubt we can now agree on certain facts. [156 U.S. at 62 N.1.]

It appears that the jury was seeking to avoid the harsh penalty from a guilty-of-murder decision by returning a verdict of manslaughter. The Supreme Court has recently pointed out how jury nullification can have a profound influence on the law. The Court noted that, historically, juries refused to convict where the death penalty was deemed to be too harsh. In order to meet the problem of jury nullification, legislatures did not try, as before, to refine the definition of capital homicides. Instead they adopted the method of forthrightly granting juries discretion which they had been exercising in fact. [D](19). But this they were forbidden to do by the judge. The Supreme Court, in sustaining the trial judge's ruling, based its conclusion on a much broader framework than nullification:

Public and private safety alike would be in peril, if the principle be established that juries in criminal cases may, of right, disregard the law as expounded to them by the court and become a law unto themselves. Under such a system, the principle function of the judge would be to preside and keep order while

jurymen, untrained in the law, would determine questions affecting life, liberty or property according to such legal principles as in their judgment were applicable to the particular case being tried. If because, generally speaking, it is the function of the jury to determine the guilt or innocence of the accused according to the evidence, of the truth or weight of which they are to judge, the court should be held bound to instruct them upon a point in respect to which there was no evidence whatever, or to forbear stating what the law is upon a given state of facts, the result would be that the enforcement of the law against criminals and the protection of citizens against unjust and groundless prosecutions, would depend entirely upon juries uncontrolled by any settled, fixed, legal principles. And if it be true that jurors in a criminal case are under no obligation to take the law from the court, and may determine for themselves what the law is, it necessarily results that counsel for the accused may, of right, in the presence of both court and jury contend that what the court declares to be the law applicable to the case in hand is not the law, and, in support of his contention, read to the jury the reports of adjudged cases and the view of elementary writers. [156 U.S. at 101-02.]

What the court, and the commentators, failed to tell us is that Sparf (and Battiste, and Morris) were prosecuted in Admiralty courts (within the exclusive Jurisdiction of admiralty/maritime). The juries were not common law Juries, but merely served as an advisory panel to the chancellor; a perfectly proper procedure in admiralty. Therefore, the juries' role in the particular case was properly within the discretionary powers of the "Judge," as the court(s) ruled. The problem is that these "admiralty precedents" were subsequently allowed to be, and were, used as precedents at common law.

## CHAPTER III

### AUTHORIZED JURISDICTIONS IN AMERICAN JURISPRUDENCE

#### Part I: The Concept Of Jurisdiction

##### Introduction:

There is a wide range of definitions of the word "jurisdiction" as applied in our courts. We here are not only interested in the term as a simple determinant of whether a court has the power to hear and decide a particular cause, but also in how it is required to proceed when it has the right to hear and decide. For California jurisdiction this is well summarized in Whitkins Jurisprudence:

Jurisdiction is often defined as "the power to hear and determine" the cause.

In the sense ... in which the term ordinarily is used jurisdiction may be concisely stated to be the right to adjudicate concerning the subject matter in a given case.

It is in truth the power to do both or either - to hear without determining or to determine without hearing.

Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.

The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment. ...

The foregoing definition, though traditional and not incorrect, is of little value in the solution of problems involving a court's power. It is now recognized that the term "jurisdiction" does not have a single, fixed meaning, but has different meanings in different situations. The practical approach to the subject, therefore, is by classification rather than definition; i.e., the scope and meaning of the term will best be discovered by an examination of the situations in which problems of jurisdiction are involved. As the court observed in the *Abelleira* case, ...

The term, used continuously in a variety of situations, has so many different meanings that no single statement can

be entirely satisfactory as a definition. At best it is possible to give the principal illustrations of the situations in which it may be applied, and then to consider whether the present case falls within one of the classifications. [17 C.2d 287.]

The Abelleira opinion sums up the matter as follows: "The concept of jurisdiction embraces a large number of ideas of similar character, some fundamental to the nature of any judicial system, some derived from the requirement of due process, some determined by the constitutional or statutory structure of a particular court, and some based upon mere procedural rules originally devised for convenience and efficiency, and by precedent made mandatory and jurisdictional ... And, as a practical matter, accuracy in definition is neither common nor necessary. Though confusion and uncertainty in statement are frequent, there is a surprising uniformity in the application of the doctrine by the courts, so that sound principles may be deduced from the established law by marshalling the cases and their holdings in this field." [1 Whitkin 527]

#### Nature Of Jurisdiction Of Subject Matter:

Jurisdiction of the subject matter is sometimes referred to as jurisdiction "in the fundamental or strict sense," or the "power to hear or determine the case."

For subject matter jurisdiction there must be jurisdiction of the state, and jurisdiction of the court over the amount in controversy or the type of case.

But even when these elements are present, there may be certain basic defects in the proceeding which deprive the court of power to determine it. In California, particularly in recent years, there has been a considerable expansion of this class of fundamental "jurisdictional defenses." Some are a result of the broadened concept of constitutional due process of law, and some are a result of attributing greater importance to statutory procedural requirements or limitations on the power of the courts. This development has been aided by the fact that many of the cases involved direct attack on the proceedings by writs of prohibition or certiorari, rather than collateral attack. [1 Whitkin 534]

The term is also used to describe the range of power to apply remedies in various fields of substantive law, such as the following:

(a) "Equity Jurisdiction." In California, the distribution of jurisdiction among the superior and inferior courts makes jurisdiction in equity relate to the competency of the court (subject matter jurisdiction), and, even where

the court is competent, an equitable remedy granted on an insufficient showing may be considered "in excess of jurisdiction. .."

(b) "Probate Jurisdiction." Though the phrase is sometimes used to refer to the substantive law governing probate of wills and administration of estates, it also may relate to the competency of the probate court to hear probate matters, or to the limitations on the power of the probate court to act in proceedings over which it has subject matter jurisdiction. [1 Whitkin 527]

#### Concurrent Jurisdiction With State Courts:

In some instances a federal statute creating a right of action expressly gives concurrent jurisdiction to federal and state courts to enforce the right. Illustrations are relatively few, but include the following types of cases:

- (1) Naturalization proceedings. (8 U.S.C., Sec. 701; see 3 Summary, Constitutional Law, Sec. 50.)
- (2) Actions under Federal Employers' Liability Act. (45 U.S.C., Sec. 56; see 2 Summary, Workmen's Compensation, Sec. 26.)
- (3) Action on bonds executed under federal law. (28 U.S.C., Sec. 1352.)
- (4) ADMIRALTY EXCEPTION. The exclusive grant of admiralty jurisdiction to the federal court contains an exception formerly phrased as follows: "saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it." (28 U.S.C., Title 1333.) ....

It was subsequently revised so as to save "all other remedies to which they are otherwise entitled," THUS ELIMINATING ANY POSSIBLE OBJECTION TO AN "EQUITABLE," AS DISTINGUISHED FROM A "COMMON LAW" REMEDY. [Cal Jur III, Jurisdiction Sec. 56.]

... State tribunals ... have concurrent jurisdiction with the Federal District Courts over maritime cases.

Whether a civil case is "of Admiralty or Maritime jurisdiction" depends upon the nature of the transaction giving rise to it if the claim is in contract, and upon the locality if the claim is in tort.

... A right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law. Thus the state must follow the substantive maritime law, although it can enforce such law through any common-law remedy. Accordingly, the State has jurisdiction to entertain proceedings in personam against one who has

violated a maritime contract or committed a maritime tort, since common-law courts have traditionally entertained such proceedings.

A State court has jurisdiction where the suit is in personam against an individual, auxiliary attachment against a particular thing or against the property of the defendant in general. [Cal Practice, Volume 2, Part 1, Section 8:183]

Generally, the State courts have concurrent jurisdiction with the Federal courts in federal civil matters, unless the United States Constitution or an act of Congress provides otherwise. Federal and State courts are expressly given concurrent jurisdiction in some matters by federal statute, including ... LIABILITY ACT ACTIONS [Cal Practice, Volume 2, Part 1, Section 8:184]

The General Principle is that Jurisdiction Cannot be Conferred by Consent.

The very nature of subject matter jurisdiction, as a required element distinct from that of jurisdiction of the parties, indicates that it cannot be conferred by consent, waiver or estoppel. ...

Neither a party, nor both parties, can vest a court with a jurisdiction to which it is a stranger. [Cal Jur III, Jurisdiction, Sec 10]

Jurisdiction Created By Interpretation Or Acquiescence:

Although the three primary classifications of jurisdiction which interest us here (Admiralty, Equity and Law) are susceptible to precise definition and subject to precise rules of procedure, it appears that neglecting to define them or to require that the courts observe them precisely can create new or uncontrollable situations. It is well known, that if a court follows incorrect rules of procedure, it may constitute reversible error and this safeguard may be lost by failing to raise and argue the question in the court below.

There are several California cases in which, by acquiescence or a liberal construction of legal acts, jurisdiction was, for all practical purposes, actually created, i.e., conferred on a court which did not otherwise have it.

Hartnett v. Hull, illustrates one situation. Plaintiff filed a complaint in the justice court (then limited to \$300), on a bill with various items, one of which was \$107.66 due on a note, and this brought the total to over \$300. After judgment for plaintiff, defendant raised the jurisdictional objection by appeal to the superior court, which refused to dismiss the action. Held, the refusal was

proper because the complaint was uncertain as to whether the \$107.66 was claimed as principal (part of amount in controversy) or interest (excluded from computation). Where:

all parties to the action apparently adopt and acquiesce in an interpretation that sustains the jurisdiction of the court as to the subject matter of the action, the losing party in such court should not be allowed upon appeal for the first time to insist upon a different interpretation of the pleading - one that will oust the court of its jurisdiction. [(1912) 19 C.A. 91,94; 124 p. 885]

A similar attitude appears in *Holbrook v. Phelan*. Plaintiff sought equitable relief beyond the jurisdiction of the municipal court, was awarded only a money judgment, and appealed. Held, the denial of equitable relief was correct, but the money judgment should stand. The trial court entirely lacked jurisdiction over the action, which was equitable in nature:

but no appeal being taken by defendants, we cannot reverse the judgment against defendants. [(1931) 121 C.A. Supp.781, 6 P. 2d 356].

Thus, lack of jurisdiction of the subject matter, usually deemed so fundamental a defect as to open the judgment to collateral attack was here considered merely an error.

Part II: Article III, United States Constitution And The Judiciary Act Of 1789

Three Jurisdictions:

The various jurisdictions of the United States, Constitutional, Courts are specified in Article III, Section 2, of the United States Constitution:

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; ....

Congress further defined these jurisdictions, in terms of prescribed modes and proceedings, in the Judiciary Act of 1789. Section 9 of this Act dealt with equity, admiralty and maritime jurisdictions of our courts. Congress said that:

The forms and modes of proceeding in causes of equity and of admiralty and maritime jurisdiction shall be "according to the course of Civil Law."

Section 34 dealt exclusively with the Common Law jurisdiction of the federal courts wherein Congress said:

That the laws of the several states, except where the Constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at Common Law in the courts of the United States in cases where they apply.

By Congressional action in 1792, the form and modes of proceeding in such cases were directed to be:

According to the principles, rules and usages which belong to courts of equity and to courts of Admiralty, respectively, as contradistinguished from courts of common law.

Thus, in 1792, Congress recognized three separate and distinct jurisdictions of courts created pursuant to the authority granted in Article III, Section 2, of the Constitution. There are only three jurisdictions, no more!

Those (courts) established under the specific power given in section 2 of article 3 are called constitutional courts. They share in the exercise of the judicial power defined in that section, can be invested with no other- jurisdiction, ... [Ex Parte Bakelite Corporation, 279 U.S. 438 (1929)]

In defining the meaning of the phrase "common law" as used in the seventh amendment to the Constitution, Justice Story said that the phrase "common law" found in this clause is used in contradistinction to "equity and admiralty and maritime jurisprudence." [Parsons v Bedford, 28 U.S. 452, 3 Pet. 452, 7 L. Ed. 732]. These fundamental distinctions are:

It is well known that in civil causes in courts of equity and admiralty, juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court. When, therefore, we find the amendment requires that the right of trial by jury shall be preserved in suits at common law, the natural conclusion is that this distinction was present in the minds of the framers of the amendment. By common law they meant what the Constitution denominated in the third article law; not merely suits which the common law recognized among its old and settled proceedings but suits in which legal rights were to be ascertained and determined in contradistinction to those where equitable remedies were administered, or where, as IN THE ADMIRALTY, A MIXTURE OF PUBLIC LAW AND MARITIME LAW AND EQUITY WERE OFTEN FOUND IN THE SAME SUIT. [Klever v. Seawall, Ohio, 65 F. 393, 395; 12 C.C.A. 661]

The Supreme Court analyzed these two sections of the Judiciary Act, Sections 9 and 34, in the *Huntress* case in 1840. This case was a libel in personam against the owners of the steamship *Huntress*, in which the Court said:

In these, and an analogous cases, the only question that can be considered as an open one is, whether they come within that clause of the constitution which says, the judicial power of the United States shall extend to "all causes of admiralty and maritime jurisdiction." If they do, then the original cognizance of them is by the Ninth section of the Judiciary Act, given to the district court. ...

The argument, that this clause is controlled by the seventh amendment, which secures the right of trial by jury in all suits at Common Law, where the value in controversy exceeds twenty dollars, has no application to the constitutional grant; because these are not suits at common law; [The *Huntress*, Case No. 6,914, 12 Fed. Cas. 984]

And in the *De Lovio* case, Justice Story said:

And the ground is made stronger by the consideration, that the right of trial by jury is preserved by the constitution in all suits at

common law, where the value in controversy exceeds twenty dollars; and by the statute (Judiciary Act), this right is excluded in all cases of admiralty and maritime jurisdiction. [De Lovio v. Boit, 2 Gall. 398]

Thus, it is clear that there is no access to a common law Jury trial in courts of equity or admiralty/maritime.

In 1832, the Supreme Court of the State of Pennsylvania very ably addressed the meaning and intent of the 7th Amendment as follows:

... by attempting to introduce the admiralty jurisdiction of the civil law, ... a foundation is laid for interminable conflicts of jurisdiction between the courts of the state and the union.

It is vain to contend that the seventh amendment will be any efficient guarantee for the right, in Suits at Common Law, if an admiralty jurisdiction exists in the United States commensurate with what is claimed by the claimant in this case. Its assertion is, in my opinion, a renewal of the contest between legislative power and royal prerogative, the common and the civil law, striving for mastery; the one to secure, the other to take away the trial by jury, ... judicial power must first annul the seventh amendment, or judicial subtlety transform a suit at common law into a case of admiralty and maritime jurisdiction, before I take cognizance of such a case as this without a jury. [Bains v. The Schooner James and Catherine, Pennsylvania, October Term 1832]

#### Comparison Of Principles, Rules And Usages:

All three jurisdictions have cognizance over civil matters, as contradistinguished from criminal matters, depending on the subject matter and nature of the cause in controversy. Equity, however, has no cognizance over criminal matters:

"Equity jurisdiction." in its ordinary acceptation, as distinguished on the one side from the general power to decide matters at all, and on the other from the jurisdiction "at law" or "common-law jurisdiction," is the power to hear certain kinds and classes of civil causes

according to the principles of the method and procedure adopted by the court of chancery, ...

Cause, n. (Lat. causa.) ... A reason for an action or condition. A ground of a legal action. ...

Civil. Of or relating to the state or its citizenry. Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings. ...

In the great majority of states which have adopted rules or codes of civil procedure as patterned on the Federal Rules of Civil Procedure, there is only one form of action known as a "civil action." The former distinctions between actions at law and suits in equity, and the separate forms of those actions and suits, have been abolished. Rule of Civil Proc. 2; New York CPLR Section 103(a). [Black's Law Dictionary, 5th Edition]

Therefore, in criminal cases there are only two jurisdictions. Every criminal case must be prosecuted either in the jurisdiction of common law or that of the law of admiralty (Figure III-1).

The Judiciary Act directed that separate principles, rules and usages be applied in courts of equity and admiralty according to the course of the Civil Law. These principles, rules and usages, were contradistinguished from those of the common law. Briefly, here are some key and distinctive differences between the principles, rules and usages of common law and civil law:

COMMON LAW	CIVIL LAW
<ul style="list-style-type: none"> <li>* Right to trial by Common Law Jury</li> <li>* 12 Judges who control the trial and: Judge Justice of the law</li> <li>Determine admissibility of The Evidence</li> <li>Apply Law to the Facts</li> <li>Render verdict according to their individual consciences.</li> </ul>	<ul style="list-style-type: none"> <li>* No right to trial by jury</li> <li>* 1 "Judge" (chancellor) controls trial and: Jury (if there is one) is advisory to the chancellor. Chancellor Determines Admissibility of the Evidence.</li> <li>Jury is sworn to take the law as the chancellor gives it</li> <li>Jury renders verdict according to law dictated and evidence allowed by chancellor.</li> </ul>

JUDICIARY ACT OF 1798, AS MODIFIED IN 1792-

THE THREE JURISDICTIONS

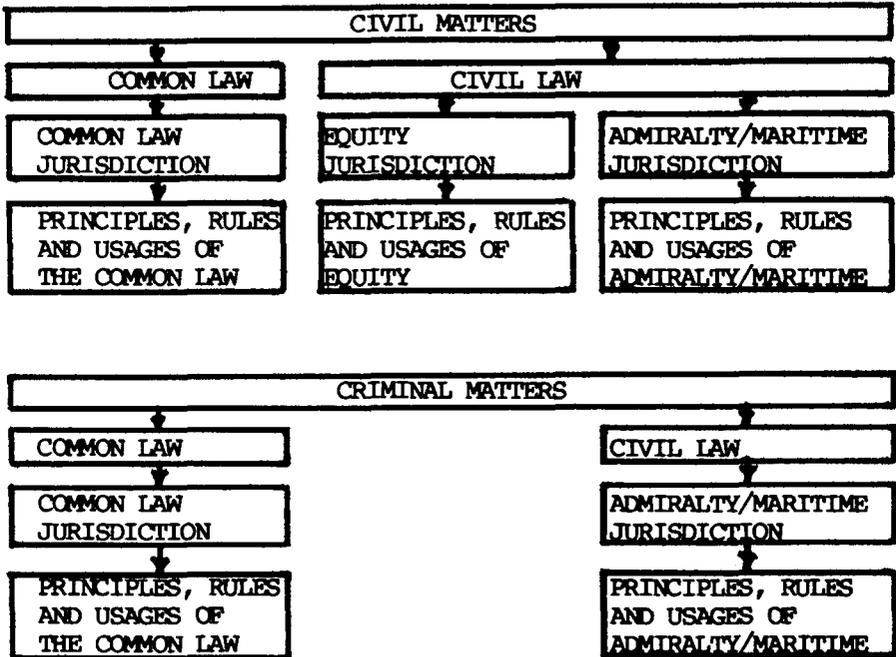


FIGURE: III-1

Procedural Mergers:

Merger of Law and Equity [A]

The movement for the procedural merger of law and equity had its chronological beginning in the United States with the activities of the New York Commissioners on Practice and Pleading. Their report of 1848 proposed that the distinction between law and equity be abolished, and this proposal was embodied in the Code of Procedure adopted by the legislature of New York in that year and widely copied in many other states within a relatively brief period. A little later, as a result of the investigations of two Royal Commissions, substantial legislative changes were made in the English practice which brought about some degree of fusion but of a less complete character. The English

legislation, unlike that of New York and the states which copied the New York code, did not purport to combine law and equity, but did not permit equitable defenses and some degree of equitable relief in actions at law and extended the jurisdiction of the Court of Chancery to decide questions of law. Later English legislation (1858) gave the courts of law a limited jurisdiction to grant equitable relief in some cases. Legislation of somewhat similar character has been enacted in many of the non-code states. In 1875, England made effective a completely unified procedure. In 1915, Congress for the first time permitted equitable defenses in actions at law in the federal courts and allowed the transfer of causes from law to equity or from equity to law. In the provision as to transfer of causes, Congress followed the lead of a number of non-code states.

In studying the procedural merger of law and equity, four main types of legislation came into consideration.

1. Equitable defenses and counterclaims at law. The English legislation of 1854, the Federal legislation of 1915, and the statutes of most non-code states permit the defendant in an action at law to set up what are commonly denominated "equitable defenses." The main purpose of the earlier legislation of this character seems to have been to deal with cases where the defendant in an action at law could secure in equity a perpetual and unconditional injunction against the prosecution of the action. For example, where the plaintiff sued in covenant on a sealed instrument obtained by fraud in the inducement, in a jurisdiction where such fraud was not a legal defense. Later these statutes were extended in many jurisdictions to allow equitable counterclaims or sometimes equitable relief at law in some cases.

By the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125 Sections 83-86, it was provided that where in an action at law the defendant would be entitled on equitable grounds to relief against the judgment. He might plead the facts which entitle him to such relief as a defense in the action at law. But if the court is of the opinion that any such equitable plea cannot be dealt with by a court of law as to do justice between the parties, it may order the plea to be struck out on such terms as to costs and otherwise as to it may seem reasonable.

By the United States Judicial Code, Section 274b, as inserted in 1915, it was provided that in all actions at law equitable defenses may be interposed by answer, plea, or replication, without the necessity of filing a bill on the equity side of the court. This provision which was formerly 28 U.S.C. Section 398 has been repealed, since the distinc-

tion between actions at law and suits in equity has been done away with in the federal courts.

Under the code system of unified procedure it would appear that no special statutory authorization of equitable defenses of counterclaims was necessary but doubts which arose under the pioneer New York Code of Procedure led to its amendment to include the following provisions.

The defendant may set forth by answer, as many defences and counterclaims as he may have, whether they be such as have been heretofore denominated legal or equitable or both.

Similar sections are contained in most of the codes of civil procedure in the states which have adopted code practice.

2. Expansion of the power of equity. Under the classical English practice, the powers of the Court of Chancery were limited by three self-imposed restrictions: (1) The Court was reluctant to decide questions of legal right or title in suits to enjoin torts; (2) it was sometimes reluctant to decide questions of law and was in the habit of stating cases for the opinion of one of the courts of common law on such questions; (3) it would not give damages in lieu of specific performance or damages in cases where equitable relief turned out to be impracticable or was refused for some other reason not affecting the merits. The first two of these limitations were removed by statute in 1852, the third by statute in 1858.

By the Chancery Amendment Act, 1852, 15 & 16 Vict. c. 86, Sections 61, 62, it was provided that the Court of Chancery should not direct a case to be stated for the opinion of any court of common law. It should have full power to determine any questions of fact which in its judgment should be necessary to be decided previously to the decision of the equitable question at issue between the parties. And the Court of Chancery might itself determine the legal title or right of the parties without requiring them to proceed at law.

By Lord Cairns' Act. 21 & 22 Vict. c. 27 (1858), it was provided that where the Court of Chancery has jurisdiction to enjoin a breach of contract or any wrongful act or to grant specific performance of a contract, it may, if it should think fit, award damages either in addition to or in substitution for such injunction or specific performance and that such damages may be assessed in such manner as the court should direct.

The difficulties met by this English legislation have not been so serious in the United States and there is little legislation of similar character in this country.

3. Transfer of causes from law to equity or from equity to law. Under the old practice a plaintiff who failed in a suit in equity because he was found to have an adequate remedy at law or for some other reason not affecting the merits such as impracticability of the remedy in equity had to begin a new action at law. Similarly, a plaintiff who sought relief at law which could be given only in equity had to bring a new suit in equity. According to the better view he was not precluded from so doing by any election of remedies. This resulted in substantial and unnecessary expense in every such case and in some cases the Statute of Limitations had run on the plaintiff's cause of action before he found out that he had sued in the wrong court. Where law and equity are administered in the same court but by different procedures, as in a considerable number of the United States, these difficulties could readily be met by providing that an action or suit brought on the wrong side of the court might be transferred to the other side of the court with appropriate amendment of the pleadings. Such statutes have been enacted in a number of the non-code states.

By the United States Judicial Code, Section 274a, as inserted in 1915, it was provided that:

in case any of said courts shall find that a suit at law should have been brought in equity or a suit in equity should have been brought at law, the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice, ... the cause shall proceed and be determined upon such amended pleadings. (This section is now repealed.)

In those states which still have separate courts at law and equity, this procedure of transfer seems unavailable, although there would seem to be no reason why some statutory provision for removal from one court to the other of actions or suits brought in the wrong court might not be provided for.

4. Unification of legal and equitable procedure. None of the methods heretofore discussed eliminates all the difficulties resulting from corporate law and equity procedure. In consequence, the most used form of legislative change to meet these difficulties has been some kind of unification of legal and equitable procedure.

Two somewhat different techniques have been used to bring about the procedural unification of law and equity which may be described for the sake of brevity as the New York method and the English method.

(1) The New York method involves the formal abolition of the distinction between actions at law and suits in equity. The New York Code of Procedure of 1818 provided in Section 62 that:

The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and, there shall be in this state, hereafter, but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action.

The New York Code and most of the other codes distinguish between a civil action and special proceeding. Special proceedings include such judicial proceedings as habeas corpus, quo warranto, mandamus, prohibition, enforcement of mechanics' liens, applications to punish for criminal contempt in a civil action, and a considerable number of other proceedings of a rather miscellaneous character.

(2) The characteristics of the English method of unified procedure have been well stated by Millar:

The English statute proceeded differently. It explicitly faced the fact that, owing to the manner of the law's growth, the distinction between legal and equitable rules, though purely artificial had so embedded itself in the fabric of the law as to be insusceptible of any outright abolition, and that what really was being aimed at in speaking of fusion was the concurrent administration of the two kinds of rules in the same suit when the circumstances so required. Resultingly, it enacted that "in every civil cause or matter ... law and equity shall be administered" according to a series of detailed provisions which followed, covering the various contingencies calling for that concurrent administration. To this was added a session regulating certain special situations involved in the change, which concluded with the significant declaration that "generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail." Thus equity, as before, was to have the last word, but now that word was to be spoken in time to

foreclose the adverse word of the common law. This difference between the two statutes in the manner of approach accounts in some measure, at least, for the smoother working of the English system in the present regard.

The Illinois Civil Practice Act of 1933 follows the English model to a considerable extent. Section 31 of that Act provides in part as follows:

... there shall be no distinctions respecting the manner of pleading between such actions at law and suits in equity, other than those specific in this Act and the rules adopted pursuant thereto; but this section shall not be deemed to affect in any way the substantial averments of fact necessary to state any cause of action either at law or in equity.

A rule of court adopted pursuant to the statute requires that every complaint shall contain in the caption the words "at law" or "in chancery," and it may be doubted how far there is under this rule even the degree of procedural unification accomplished by the English statute.

When Congress authorized the Supreme Court of the United States to prescribe rules of procedure of the district courts in 1938, the Act provided:

The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure of both; provided however, that in such union of rules the right to trial by jury as at common law and declared by the Seventh Amendment to the Constitution shall be preserved to the parties inviolate.

The first two rules adopted by the Supreme Court in pursuance of the authority thus conferred upon it are as follows:

#### Rule 1. Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity, .... They shall be construed to secure the just, speedy, and inexpensive determination of every action.

## Rule 2. One Form of Action

There shall be one form of action to be known as "civil action."

However, as matters stand in the federal and state courts, preserving the right to trial by jury in cases at law raises serious problems for a unified procedure, as brought out by Professor Chaffee of Harvard University:

There is only one genuine reason today for distinguishing an action at law from a suit in equity - the constitutional right to a jury trial in civil cases.

In the federal courts the right to trial by jury is stipulated by the Sixth-Amendment "in all criminal prosecutions." And by the Seventh Amendment "in suits at common law, where the value in controversy shall exceed twenty dollars." This is confirmed by the Federal Rules of Civil Procedures (FRCP), Rule 38 (a):

The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by statute of the United States shall be preserved to the parties inviolate.

The right exists in actions at law but not in suits in equity. For purposes of ascertaining whether a litigant is entitled to a jury trial, a reading of even the most recent cases reveal that no effective merger of substantive law and equity has been achieved and the distinction between "Actions at Law" and "Suits in Equity" remains, as supported by the following:

In *Beacon Theatres, Inc. v. Westover* the Supreme Court stated:

Since the right to a jury trial is a constitutional one, however, while no similar requirement protects trials by the court, that discretion is very narrowly limited and must, wherever possible, be exercised to preserve jury trial. As this court said in *Scott v. Neely*, 140 U.S. 106, 109-110, 11 S. Ct. 712, 714, 35 L. Ed. 358; 'In the Federal courts this (jury) right cannot be dispensed with, except by the assent of the parties entitled to it; nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for

equitable relief in aid of the legal action, or during its pendency.' This long-standing principle of equity dictates that only under the most imperative circumstances, circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims. [(1959) 359 U.S. 500; 79 S. Ct. 948]

Another equitable opinion by the Supreme Court in Dairy Queen v. Wood, 1962, 369 U.S. 469, 82 S. Ct. 894, stated:

In Scott v. Neely, decided in 1891, this Court held that a court of equity could not even take jurisdiction of a suit "in which a claim properly cognizable only at law is united in the same pleadings with a claim for equitable relief." ... When the procedure was modernized by the adoption of the Federal Rules of Civil Procedure in 1938, 28 U.S.C.A., it was deemed advisable to abandon that part of the holding of Scott v. Neely which rested upon the separation of law and equity and to permit the joinder of legal and equitable claims in a single action. Thus Rule 18(a) provides that a plaintiff "may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party." And Rule 18(b) provides; "Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties."

The Federal Rules did not, however, purport to change the basic holding of Scott v. Neely that the right to trial by jury of legal claims must be preserved. Quite the contrary ... (See Rule 38(a)).

This procedure finally came before us in Beacon Theatres v. Westover ... That holding, of course, applies whether the trial judge chooses to characterize the legal issues presented as "incidental" to equitable issues or not ..., the sole question which we must decide in the action now pending before the District Court is whether it contains legal issues... But the constitutional right to trial by jury cannot be made to

depend upon the choice of words used in the pleading ... the legal claims involved in the action must be determined prior to any final court determination of respondent's equitable claims. [369 U.S. 469; 825. Ct. 894]

In *Shubin v. United States District Court* the United States Court of Appeals Ninth Circuit opined:

Validity and infringement are ultimate facts on which depends the question of liability. In actions at law they are to be decided by the jury. (*United States v. Esnault-Pelterie*, 299 U.S. 201 at 205, 7 S. Ct. 159, at 161, 81 L. Ed. 123). We recognize that no longer can a jury trial be denied a litigant because the legal issues presented are "incidental" to equitable issues. As long as any legal cause is involved the jury rights it creates control. This is the teaching of *Beacon Theatres* as we construe it. [(1963) 313 F. 2d. 250]

In *Carter J., in Gillespie v. Hynes*, a Nebraska Court stated:

When the trial court determined that the interveners were not entitled to equitable relief, the court was without power to determine the legal action without the intervention of a jury ... The general rule stated in 19 *Am Jur., Equity*, Sect. 132, p. 132, is as follows: "The rule which permits the court of chancery to retain jurisdiction of litigation and finally dispose thereof is limited in its application to cases in which equitable relief has been administered pursuant to the prayer of the bill or in which the jurisdiction of the court has been rightfully invoked. If the facts which are relied on to sustain equity jurisdiction fail of establishment, the court may not retain the case for the purpose of administering incidental relief. It is said that an equitable right must be both averred and proved as a prerequisite to the determination of adjudication of purely legal right. The prevailing view is that where jurisdiction has not been established, the court may not award damages or award any other decree except for costs. If the rule were otherwise, it has been argued, a litigant, by pretended claim to equitable relief, might deprive his

opponent of advantages incident to an action at law - for example, the constitutional right of trial by jury."

Cases from jurisdictions supporting this principle are legion...We hold to the rule announced in Reynolds v. Warner, supra, and the authorities cited in support of it. [168 Neb. 49, 50-54, 95 N.W. 2d 457, 458-60 (1959)]

In Indianhead Truck Line, Inc. v. Hvidsten Transport, Inc., a Minnesota Court decided:

In actions for the recovery of money only, or of specific real or personal property, or for a divorce on the ground of adultery, the issues of fact shall be tried by a jury, unless a jury trial be waived ...[268 Minn. 176, 128 N.W. 2d 334 (1964)]

Be that as it may, it is clear that the procedural merger of law and equity eliminated the procedural distinctions of substantive differences between these two jurisdictions. The natural propensity of man to place form over substance, and then forget the substance, resulted in the foregoing cases. This merger effectively modified the Judiciary Act as depicted in Figure III-2.

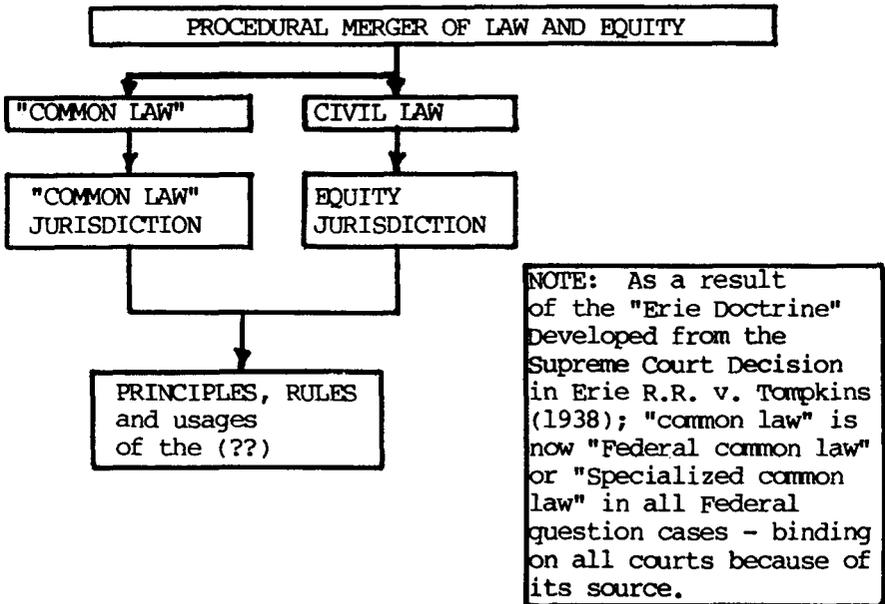


FIGURE III-2

## Merger of Law, Equity and Admiralty/Maritime

On February 28, 1966, the Supreme Court rescinded the former Rules of Practice in Admiralty and Maritime Cases, promulgated by the Supreme Court on December 6, 1920, and merged these rules into the general Rules of Civil Procedure for the United States District Courts with the exception of certain "distinctively maritime remedies" that were preserved in the "Supplemental Rules for Certain Admiralty and Maritime Claims." These Supplemental Rules apply to the procedure in admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure with respect to the following remedies:

- (1) Maritime attachment and garnishment;
- (2) Actions in rem;
- (3) Possessory, petitory, and partion actions;
- (4) Actions for exoneration from or limitation of liability.

The general Rules of Civil Procedure for the United States District Courts are also applicable to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.

This merger effectively modified the Judiciary Act as depicted in Figure III-3.

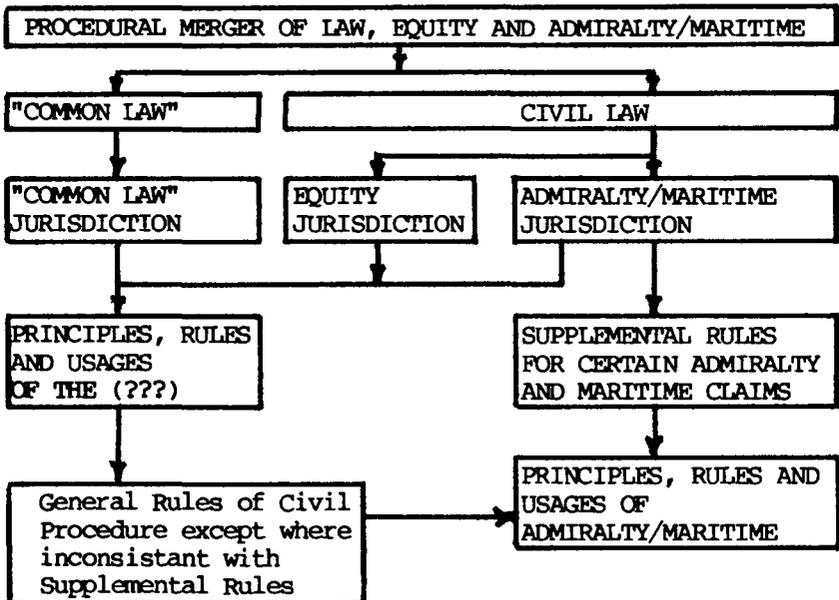


FIGURE: III-3

As we shall see, these procedural mergers were a de facto implementation of prior congressional acts that changed the nature of the subject matter and right being enforced in nearly all controversies brought before the courts; i.e., the commonality of procedures matched the commonality of substantive rights which were created from a common source by congressional action.

### Part III: The Civil Law Jurisdictions

#### Equity: [B]

The basic function of any court is to protect the rights of the litigants appearing before it. Equity Courts render decisions based upon the opinions of chancellors, the King's conscience. Common Law courts render judgment based upon the opinion of twelve good-and lawful men, judgment by the people themselves acting through representatives chosen by the litigants. Equity courts are biased by the self-interest of the chancellor and prejudiced by the interest of the ruler; Jurors are also individually biased and prejudiced but their consensus of opinion tends to be towards healthy public opinion and subject to the veto of any one member who dissents.

Equity in its most general sense means justice. In its most technical sense it means a system of law or a body of connected legal principles which have superseded or supplemented the Common Law on the ground of alleged intrinsic superiority. Aristotle defines equity as a better sort of justice which corrects legal justice where the latter errs through being expressed in a universal form and not taking account of particular cases.

When the law speaks universally and something happens which is not according to the common course of events, it is right that the law should be modified in its application to that particular case as the lawgiver himself might do. Accordingly the equitable man is he who does not push the law to its extremes but having legal justice on his side is disposed to make allowances. Equity as thus described would correspond to the judicial discretion which modifies the administration of the law rather than to the antagonistic system which claims to supersede the Law.

The part played by equity in the development of law is admirably illustrated in the well-known work of Sir Henry Main on Ancient law. Positive law, at least in progressive societies, is constantly tending to fall behind public opinion and the expedients adopted for bringing it into harmony therewith are three: legal fictions, equity, and

statutory legislation. Equity here is defined to mean "any 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 these principles." It is thus different from legal fiction, by which a new rule is introduced surreptitiously and under the pretense that no change has been made in the Law, and from statutory legislation in which the obligatory force of the rule is not supposed to depend upon its intrinsic fitness. The source of Roman equity was the fertile theory of natural law, of the law common to all nations. Even in the Institutes of Justinian there is a carefully drawn distinction in the laws of a country. Those peculiar to itself and those natural reason appoints for all mankind. The agency introducing these principles was the edicts of the praetor, an annual proclamation setting forth the manner in which the magistrate intended to administer the law during his year of office. Each successive praetor adopted the edict of his predecessor and added new equitable rules of his own, until the further growth of the irregular code was stopped by the Praetor Salvius Julianus in the reign of Hadrian.

The place of the praetor was occupied in English jurisprudence by the Lord High Chancellor. The real beginning of English equity is to be found in the custom of handing over to that officer, for adjudication, the complaints addressed to the king praying for remedies beyond the reach of the Common Law. Over and above the authority delegated to the ordinary councils or courts, a reserve of judicial power was believed to reside in the King, invoked by the suitors who could not obtain relief from any inferior tribunal.

These petitions were referred to the chancellor, already the head of the judicial system, although he was not at first the only officer through whom the prerogative of grace was administered. In the reign of Edward III, the equitable jurisdiction of the court seems to have been established. Its constitutional origin was analagous to that of the Star Chamber and the Court of Requests. The latter, in fact, was a minor court of equity attached to the Lord Privy Seal as the Court of Chancery was to the chancellor.

The successful assumption of extraordinary or equitable jurisdiction by the chancellor caused similar pretensions to be made by other officers and courts. Not only the Court of Exchequer, whose functions were in a peculiar manner connected with royal authority, but the Counties Palatine of Chester, Lancaster, and Durham, the Court of Great Sessions in Wales, the universities, the city of London, the Cinque Ports, and other places silently assumed extraordinary jurisdiction similar to that exercised in the Court of

Chancery. Even private persons, lords and ladies, affected to establish in their honours courts of equity.

English equity has one marked historical peculiarity that it established itself in a set of independent tribunals which remained in standing contrast to the ordinary courts for many hundreds of years. In Roman law, the judge gave the preference to the equitable rule; In English law the equitable rule was enforced by a distinct set of judges. One cause of this separation was the rigid adherence to precedent on the part of the Common law Courts. Another was the conflict between common law principles and the principles of the Roman Law on which English equity to a large extent was founded.

When a case of prerogative was referred to the chancellor in the reign of Edward III, he was required to grant such remedy as should be consonant with honesty. And honesty, conscience, and equity were said to be the fundamental principles of the court. The early chancellors were ecclesiastics and under their influence not only moral principles (where these were not regarded by the Common Law) but also the equitable principles of the Roman Law were introduced into English jurisprudence. Between this point and the time when equity became settled as a portion of the legal system, having fixed principles of its own, various views of its nature have prevailed. For a long time it was thought that precedents could have no place in equity, inasmuch as it professed in each case to do that which was just, and we find this view maintained by Common Lawyers even after it had been abandoned by the professors of equity. Mr. Spence, in his book, *Equitable Jurisdiction of the Courts of Chancery*, quotes a case in the reign of Charles II:

Chief Justice Vaughan said, "I wonder to hear of citing of precedents in matter of equity, for if there be equity in a case, that equity is a universal truth, and there can be no precedent in it, so that in any precedent which can be produced, if it be the same with this case, the reason and equity is the same in itself, and if the precedent be not the same case with this, it is not to be cited."

But the Lord Keeper Bridgman answered: "Certainly precedents are very necessary and useful to us, for in them we may find the reasons of the equity to guide us, and besides the authority of those who made them is much to be regarded. We shall suppose they did it upon great consideration and weighing of the matter and it would be very strange and very ill if we

should disturb and set aside what has been the course for a long series of times and ages."

Selden's description is well known: "Equity is a roughish thing. Tis all one as if they should make the standard for measure the chancellor's foot" Lord Nottingham in 1676 reconciled the ancient theory and the established practice by saying that the conscience which guided the court was not the natural conscience of the man but the civil and political conscience of the judge! The same tendency of equity to settle into a system of law is seen in the recognition of its limits, in the fact that it did not attempt in all cases to give a remedy when the rule of the Common Law was contrary to justice. Cases of hardship, which the early chancellors would certainly have relieved, were passed over by later judges simply because no precedent could be found for their interference. The point at which the introduction of new principles of equity finally stopped is fixed by Sir Henry Maine in the chancellorship of Lord Eldon, who held that the doctrines of the court ought to be as well-settled and made as uniform almost as those of the Common Law. From that time equity, like Common Law, has professed to take its principles wholly from recorded decisions and statute law. The view, traceable no doubt to the Aristotelian definition that equity mitigates the hardships of the law where the law errs through being framed in universals, is to be found in some of the earlier writings. Thus in Doctor and Student it is said:

Law makers take heed to such things as may often come, and not to every particular case, for they could not though they would; therefore, in some cases it is necessary to leave the words of the law and follow that reason and justice requires, and to that intent equity is ordained, that is to say, to temper the rigor of the law.

And Lord Ellesmere said: "The cause why there is a chancery is for that men's actions are so diverse and infinite that it is impossible to make any general law which shall aptly meet with every particular act and not fail in some circumstances."

During the early centuries following the Norman conquest, it was common for subjects of the English Crown to present to the King petitions requesting particular favors or relief that could not be obtained in the ordinary courts of law. The extraordinary or special relief granted by the chancellor, to whom the King referred such matters, was of such a nature as was dictated by bureaucratic principles of

justice and equity. This body of principles was called equity. Justice could not be obtained in the courts for very obvious reasons. A claimant had to wait until he had been damaged before he could obtain relief at law. Consider: "B" is driving his cattle across "A's" land without his consent. At common law, "A" could not demand relief until "B's" cattle had somehow damaged his property, and then, and only then could "A" file an action at law against "B" for damage done to his property. "A" was helpless at common law unless he took the law into his own hands and put a fence around his property. If he did put a fence up to stop "B", then he had a remedy at law if "B" broke his fence, "A" could file suit for money damages at common law.

Suppose that "A" could not put up a fence and could find no other way of stopping "B" from trespassing his land, what recourse did he then have? His only recourse would be to seek relief in a court of Equity by way of injunction. The equity court could enjoin "B" pendente lite (pending outcome of Litigation) from trespassing upon "A's" property. In the early days of our court systems when law and equity were still tried separately, the courtroom was still the same courtroom but actions at "law" were tried on the "law side" of the court, while suits in equity were tried on the "equity side" of the same court. Equity and law were tried under different rules.

Ordinarily, law actions have for their object the assessment of damages but a court of equity goes farther and attempts to prevent the wrong itself. Among the more common equity actions are injunction suits, specific performance, partition suit, rescission and reformation of contracts, and all matters relating to trusts and trustees. With a common-law action, the form of the action is significant as a rule. It is important to determine for example, whether the action is brought in the "law side" or the "equity side" of the court. The word "legal" is a fictitious name for "law", therefore, the use of the word "legal" properly means "law", hence, the "law side" of the court.

Many states say in effect that the distinction between actions in law and suits in equity has been abolished but that the substantive rules governing legal actions and equitable actions are preserved. Actions of legal nature include, among others, recovery of a money judgment, recovery of specific property, breach of contract where money is involved, and damages for personal injuries. Actions of an equitable nature include, among others, accounting (this includes business accounting for state taxes, fees, etc.), specific performance of a contract, trust enforcement, and injunctions.

## Admiralty/Maritime:

The admiralty courts were originally established in England and other maritime countries of Europe for the protection of commerce and the administration of the venerable law of the sea, which reaches back to sources long anterior even to those of the civil law itself; which Lord Mansfield says is not the law of any particular country, but the general law of nations, and which is founded on the broadest principles of equity and justice, deriving, however, much of its completeness and symmetry, as well as its modes of proceeding, from the Civil law, and embracing altogether a system of regulations embodied and matured by the combined efforts of the most enlightened nations of the world. [New England Marine Ins. Co. v. Dunham, 78 U.S. 1, 23; 11 Wall. 1, 23; 20 L. Ed. 90.]

Admiralty law encompasses the law of prize and Maritime law (Figure III-4). Admiralty/prize is that law dealing with war, and the spoils of war, which is not relevant to the purposes of this work. Admiralty/Maritime jurisdiction has cognizance over maritime contracts, maritime torts and maritime crimes; and, as we will see, one does not have to be on a ship in the middle of the sea to be under this jurisdiction (just as in the case of our forefathers).

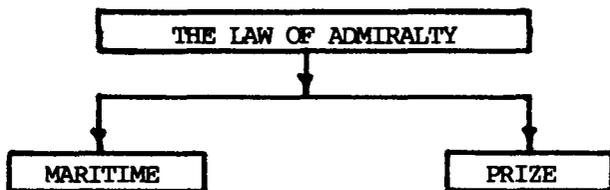


FIGURE: III-4

In English Law, the Court of the Admiral was erected by Edward III. It was held by the High Lord Admiral or before his deputy the Judge of the Admiralty, by which latter officer it has for a long time been exclusively held. It sits as two courts with separate commissions known as the Instance Court and the Prize Court, the former of which is commonly intended by the term admiralty. At its origin the

jurisdiction of this court was very extensive, embracing all maritime matters. By the statutes 13 Rich. II. C. 5, and 15 Rich. II. C. 3, especially as explained by the common-law courts, their jurisdiction was much restricted. A violent and long-continued contest between the admiralty and common-law courts resulted in the establishment of the restrictions which continued until the statutes 3 and 4 Vict. C. 65 and 9 and 10 Vict. C. 99 materially enlarged its powers. The civil jurisdiction of the court extends to torts committed on the high seas including personal batteries, restitution of possession from a claimant withholding unlawfully, cases of piratical and illegal taking at sea and contracts of a maritime nature including suits between part owners, for mariners' and officers' wages, pilotage, bottomry and respondentia bonds, and salvage claims. The criminal jurisdiction of the court extended to all crimes and offenses committed on the high seas or within the ebb and flow of the tide and not within the body of a county.

In American Law, the admiralty court is a tribunal having a very extensive jurisdiction of maritime causes, civil and criminal. It exercises jurisdiction over all maritime contracts, torts, or offenses (2 Parsons, Marit. Law. 508). The court of original admiralty jurisdiction in the United States is the United States District Court. From this court causes may be removed, in certain cases, to the Circuit and ultimately to the Supreme Court. After a somewhat protracted contest, the jurisdiction of admiralty has been extended beyond that of the English admiralty court and is said to be coequal with that of the English court as defined by the statutes of Rich. II, under the construction given them by the contemporaneous or immediately subsequent courts of admiralty.

Its civil jurisdiction extends to cases of salvage, bonds of bottomry, respondentia or hypothecation of ship and cargo, seaman's wages, seizures under the laws of impost, navigation or trade (commerce), cases of prize and ransom, contracts of affreightment between different states or foreign ports, etc..

Its criminal jurisdiction extends to all crimes and offenses committed on the high seas or beyond the jurisdiction of any country.

In the case of *De Lovio v. Boit*, Justice Story addressed the full scope and meaning of the "admiralty and maritime" jurisdiction clause of Article III, Section 2:

What is the true interpretation of the clause - "all cases of admiralty and maritime jurisdiction?" If we examine the etymology, or received use of the words "admiralty" and "mari-

time jurisdiction," we shall find, that they include jurisdiction of all things done upon or relating to the sea, or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea. In all the great maritime nations of Europe, the terms "admiralty jurisdiction" are uniformly applied to the Courts exercising jurisdiction over maritime contracts and concerns. We shall find the terms just as familiarly known among the jurists of Scotland, France, Holland, and Spain, as of England, and applied to their own Courts, possessing substantially the same jurisdiction, as the English admiralty in the reign of Edward the Third.

The clause however of the constitution not only confers admiralty jurisdiction, but the word "maritime" is superadded, seemingly ex industria, to remove every latent doubt. "Cases of Maritime jurisdiction" must include all maritime contracts, torts and injuries, which are in the understanding of the common law, as well as the admiralty, ...

The admiralty from its highest antiquity, has exercised a very extensive jurisdiction, and punished offenses by fine and imprisonment. The celebrated inquisition at Queensborough, in the reign of Edward III, would alone be decisive. And even at common law it had been adjudged, that the admiralty might fine for contempt ...

... appeal, and not a writ of error, lies from its decrees; ...

Yet it is conceded on all sides, that of maritime hypothecations the admiralty has jurisdiction ...

The jurisdiction of the admiralty depends, or ought to depend, as to contracts upon the subject matter, i.e., whether maritime or not; and as to torts, upon locality, ...

Neither the judicial act nor the constitution, which it follows, limit the admiralty jurisdiction of the District Court in any respect to place. It is bounded only by the nature of the cause over which it is to decide.

On the whole, I am, without the slightest hesitation, ready to pronounce, that the delegation of cognizance of "all CIVIL CASES of admiralty and maritime jurisdiction" to the Courts of the United States comprehends all maritime contracts, torts, and injuries. The

latter branch is necessarily bounded by locality; the former extends over all contracts. (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business or commerce of the sea.

The next inquiry is, what are properly deemed "maritime contracts." Happily in this particular there is little room for controversy. ALL civilians and jurists agree, that in this appellation are included, among other things, ... marine hypothecations, ... and, what is more material to our present purpose, policies of insurance ...

My judgment accordingly is, that policies of insurance are within (though not exclusively within) the admiralty and maritime jurisdiction of the United States. [De Lovio v. Boit, 2 Gall. 398 (1815)]

#### A Mechanism For Secretely Mixing Jurisdictions:

... in the admiralty, a mixture of public law and maritime law and equity were often found in the same suit. [Kolver v. Seawall, Ohio 65 F. 393, 395; 12 C.C.A. 661]

If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. [Federal Rules of Civil Procedure, 28 U.S.C. Rule 9 (h)]

How it is possible that an unidentified and unspecified "mixture" of law can "often" be "found in the same suit," with principles, practices and procedures, of Civil and Criminal matters apparently intermixed?

#### Torts

As we have seen, cases of maritime jurisdiction include all maritime torts. Bouvier's Law Dictionary defines a tort to be:

A private or civil wrong or injury. A wrong independent of contract. 1 Hilliard Torts, 1.

The commission or omission of an act by one without right whereby another receives some injury, directly or indirectly, in person, property, or reputation.

The word "tort" has been borrowed from the French and literally means a wrong. The French word "tort" was in turn derived from the Latin "torquerer," meaning to twist or bend. In its legal meaning, however, "tort" is not used to include everything which the law treats as a wrong. For example, a crime or breach of contract is a legal wrong, but they are both to be distinguished from a tort.

No satisfactory definition of a tort has ever yet been framed. Another definition frequently given is:

A tort is a wrong arising independently of contract for which the appropriate remedy is a common law action.

However, this distinction is too broad because it includes obligations in quasi contract. It is too narrow because it does not include maritime torts. The definition is an inadequate attempt, in a negative way, to distinguish a tort from a crime on the one side and from a breach of contract on the other.

#### Torts Distinguished From Crimes

A crime is an offense against the state and is punished by the state pursuant to the principles, rules, and usages, of the Roman Civil Law as modified by the United States Constitutions. A tort is an offense against the individual and under the common law is redressed by making the party who commits the tort compensate the party whose rights have been infringed.

A crime generally involves a tort. That is, an act which injures society in general is usually also a wrong to a private individual as well. On the other hand, many torts are not crimes because they are not considered to be of such serious character as to be designated a crime. Torts can only be elevated to the status of a crime in the Roman Civil Law.

#### Torts Distinguished From Breaches Of Contract

One of the essentials of a contract is an agreement and the breach of a contract is the failure to carry out the agreement. Liability in tort is not based upon any agreement between the parties; it is imposed by law without the assent of either party. A common characteristic of all torts is that the rights protected by the law of torts are those which are enjoyed against all the world. The most important rights protected by the law of torts are those of personal security, of property, of reputations and of social and business relations.

However, a tort may grow out of, make part of or be coincident with a contract; And attachment, arrest and imprisonment are allowed on claims arising under contracts (1 Hilliard, Torts 3). For example, the wrong of fraud almost necessarily implies an accompanying contract. In these cases the law often allows the party injured an election of remedies; That is, he may proceed against the other party either as a debtor or contractor, or as a wrongdoer. (10 Hilliard, Torts; 10 C.B. 83; 24 Conn. 392)

In the Civil Law, a tort may consist in the violation of a statute (2 Id. Raym. 953) or the abuse of a privilege given by a statute (10 Ill. 425), which may be elevated to the status of a crime.

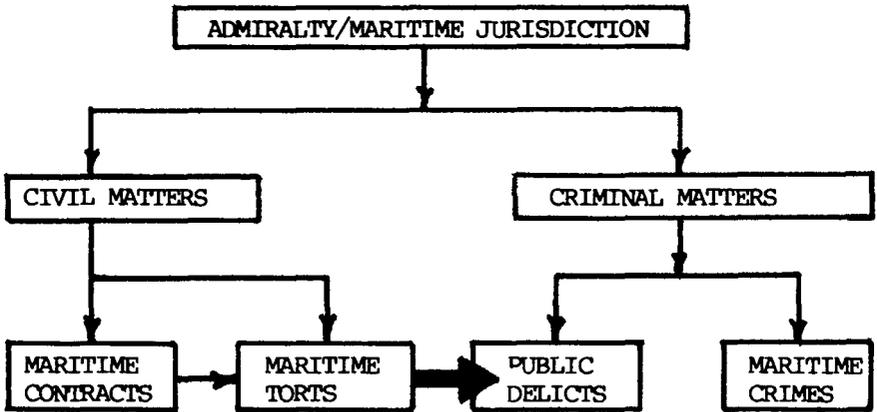
### A Delict

Torts can fall within the jurisdiction of either Common law or Admiralty/Maritime law. The proper jurisdiction is determined by whether or not the right to be protected is maritime in nature. If it is maritime, the claim is within the jurisdiction of admiralty/maritime, whether so identified or not. Within this jurisdiction, a tort can be elevated to the status of a crime, called a "delict."

Delict. In the Civil Law (Roman Civil Law) ... in its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another either voluntarily or accidentally, without evil intention. But more commonly by delicts are understood those small offenses which are punished by a small fine or a short imprisonment. [Bouvier's Law Dictionary]

Delict, Criminal offense; tort; a wrong. In Roman law this word, taken in its most general sense, is wider in both directions than our English term "tort." On the one hand, it includes those wrongful acts which, while directly affecting some individual or his property, yet extend in their injurious consequences to the peace or security of the community at large, and hence rise to the grade of crimes or misdemeanors. These acts were termed in the Roman law "public delicts;" while those for which the penalty exacted was compensation to the person primarily injured were denominated "private delicts." [Black's Law Dictionary]

Thus, we see that only in the Roman Civil Law can a tort be elevated to the grade of a crime or misdemeanor. This means that pursuant to the United States Constitution and the Judiciary Act, the only possible authorized jurisdictions over such a "crime or misdemeanor" is Admiralty/Maritime since Equity has no jurisdiction over criminal matters whatsoever, meaning they must arise from a maritime tort. (Figure III-5)



Torts can only be elevated to the status of crimes in the Civil Law (Roman). Equity Jurisdiction having no cognizance of criminal matters - the only jurisdiction within which this can be accomplished, under the Constitution and Judiciary Act of 1789, is Admiralty/Maritime (regardless of what it is called).

Figure: III-5

These delicts (public or private) may grow out of, make part of, or be coincident with, a contract and may consist in the violation of a statute or the abuse of a privilege given by a statute. Therefore, under the jurisdiction of Admiralty/ Maritime, a civil matter can be designated as a criminal matter inviting the mixture of Civil and Criminal procedure in the same cause. Further obfuscation is a natural result of the procedural merger of Law, Equity and Admiralty/ Maritime.

Contracts Of Adhesion: [C]

The term "Contract of Adhesion" was first used in the United States in 1919. [C](1). It was coined by Raymond Saleilles as "Contract d'adhesion" to describe contracts:

... in which one predominate unilateral will dictates its law to an undetermined multitude rather than to an individual ... as in all employment contracts of big industry, transportation contracts of big railroad companies and all those contracts which, as the Romans said, resemble a law much more than a meeting of the minds. [Saleilles, De la Declaration de Volonte 229 (1901)]

It was popularized in the United States by scholars who were educated on the continent of Europe and who later taught in this county. [C](2).

Contracts of Adhesion have at least three indicia, which may appear in combination:

1. Bargaining over terms may not be between equals. One party may have such a strong economic power that it can dictate its terms to the weaker party.

2. There may be no opportunity to bargain over terms at all. This Contract of Adhesion may be a, take it or leave it, proposition in which the only alternatives are adherence or rejection.

3. One party may be totally familiar with the terms or have the advantage of time and expert advice in preparing it, while the other may have no real opportunity to study it. This could even be compounded by the use of fine print and convoluted clauses.

Analyzing the above, it can be concluded that:

1. The state and the individual are not equals. Although the individual is sovereign, the state has the power position as it exercises executive, legislative and judicial powers: And LORDS them over the individual. The state dictates all terms to its feudal serfs through statutory legislation and administrative regulations.

2. There is no opportunity to bargain over the terms of any contractual legislation. The individual is left with a vote between two evils: The lessor of which is still evil. Citizen input during legislative sessions is usually ignored. The majority of the committee members hold the individual who attempts to influence legislation, by and through committee action in general contempt and scorn. Sometimes the individual is even ridiculed and scolded by the committee chairman for the attempt.

3. The majority of people are not even aware that any contractual liability exists from statutes. The state is a corporate entity engaged in business and the individuals of a state are the customers. The state has been perfecting its business rules for years while the individual simply bends like a reed shaking in the wind.

Where is the consent whereby a statute becomes a contractual agreement? It is implied, created by a fiction of law.

### Contracts Implied In Law

A contract "implied in law" is but a duty imposed by law and treated as a contract for the purposes of a remedy only. [C](3). Examples of duties imposed by law, are marriage license, building permit, drivers license, etc.. Any statute requiring specific performance.

Contracts "implied in law" implies a promise to pay, whether or not any promise was made or intended. [C](4).

When the individual fails to perform a duty imposed by statute there is a breach of quasi-contract and the State is entitled to a remedy at law. Since there is an implied contract intent need not be proven. A promise implied in law is one in which neither the words nor the conduct of the party involved are promissory in form or justify an inference of a promise. The term is used to indicate that a party is under a legally enforceable duty, as he would have been if he had, in fact, made a promise. [C](5).

### Constructive or Quasi-Contracts

Contract "implied in law" is however, a term used to cover a class of obligations, where the law, though the defendant did not intend to assume an obligation, imposes an obligation upon him, notwithstanding the absence of intention on his part, and, in many cases in spite of his actual dissent. Such contracts...may be termed quasi-contracts and are not true contracts. They are generally ... statutory, official, or customary duties... [Bouvier's Law Dictionary, 1914 Vol I. p. 661. Clark on Contracts, Quasi-Contracts, 531.]

Quasi Contracts are only found in the civil law and are defined as:

An obligation similar in character to that of a contract, but which arises not from an agree-

ment of parties but from some relation between them, or from a voluntary act from one of them. [Bouvier's Law Dictionary, 1914 Vol. III, p. 2781.]

Could there be a relationship between the state and the individual? Notice that it only requires the voluntary act of one of the parties. The voluntary act of one may well be the act of the state passing statutory legislation.

Quasi-contracts were a well defined class under the civil law. By the civil code of Louisiana they are defined to be "the lawful and purely voluntary acts of man," from which there results any obligation whatever to a third person and sometimes a reciprocal obligation between parties. In quasi-contracts the obligation arises not from consent, as in the case of contracts, but from the law or natural equity. [Bouvier's Law Dictionary, 1914 Vol I, p. 2781.]

The "lawful and purely voluntary acts" of an individual consummates a quasi-contract and failure to perform the resulting obligation constitutes a breach. This obligation arises from the "law or natural equity," not from the common law.

According to Professor Ames (lect on Leg. Hist. 160) the term was not found in the common law, but it has been taken by writers of the common law from the Roman law. [Bouvier's Law Dictionary, 1914 Vol I, p. 2781.]

It need only be added here that quasi-contracts were in the Roman law of almost infinite variety, but were divided into five classes: 1. *Gegrotirorum gestio*, the management of the affairs of another, without authority .... [Bouvier's Law Dictionary, 1914 Vol I, p. 2781.]

Constructive / quasi-contracts are created by statute on the premise that they are needed as a matter of reason and justice and are allowed to be enforced *ex contractu*. [C](6). *Ex contractu* is a form of action under the civil law, whereas common law remedies arise from actions of case, replevin, trespass, or trover. *Ex contractu* actions are enforced by actions in *personam*. [C](7).

Constructive / quasi-contracts are based solely upon a legal fiction or fiction of law. Since there is no

agreement and a remedy is desired, they are treated as a contract and include obligations founded upon statutory duties. [C](8).

A debt resulting from a normal agreement or contract has always been the result of a promise to pay, invoking a remedy in the form of Assumpsit. However, an assumpsit cannot be applied to actions of debts where there is no agreement unless the court does so by means of a fiction. In order to support assumpsit, it is necessary to allege a promise and without agreement there is no promise. Historically, the courts have adopted the fiction of a promise and it was declared that a promise was implied in law. [C](9).

What this amounts to is:

For the convenience of the remedy, they "have been made to figure as though they sprung from contract, and have appropriated the form of agreement." [Anson, Contracts, (8th Ed.) 362.]

Any obligation created by law, implied by law or quasi contract is:

... not only unscientific, and therefore theoretically wrong, but is also destructive of clear thinking, and therefore vicious in practice. It needs no argument to establish the proposition that it is not scientific to treat as one and the same thing an obligation that exists in every case because of the assent of the defendant, and an obligation that not only does not depend in any case upon his assent, but in many cases exists notwithstanding his assent. [Keener, Quasi Cont, 3.]

IN ORDER FOR A QUASI-CONTRACT TO ATTACH, A BENEFIT MUST BE CONFERRED on the defendant by the plaintiff. The defendant must have displayed an appreciation of that benefit, and accept and retain that benefit so that it is inequitable for him to retain the benefit without payment for the value of the benefit. [C](10).

A person confers a benefit upon another, as respects liability in quasi-contracts for restitution, if he gives to another possession of, or some other interest in: money, land, chattels, or choses in action, performs services beneficial to, or at the request of the other, or in any way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another, but also where he saves the other from expense or loss. [C](11).

## Postscript

Corporate activities and juristic persons all receive a benefit from the state and have the obligation to pay the penalty for breaches of contract. The natural individual functioning as a matter of right receives no benefit from the state and, therefore, is not subject to a penalty for not specifically performing. [C](12).

The natural person is not created by the state and cannot commit any crime where there is no loss or damage to the life, liberty or property of another person. This means the natural person can only be charged with common law crimes unless he has consented or volunteered into a contract, corporate charter or some other licensing scheme.

### Part IV: Law Merchant [D]

#### Introduction:

Law Merchant is a name often used in law to denote the customs which have grown up among merchants in reference to mercantile documents and business, such as bills of exchange, bills of lading, etc..

It is a system consisting largely of the usages of trade and applied by the courts to the contracts and dealings of persons engaged in mercantile business of any kind. Blackstone classifies it as one of the "customs" of England and so a part of the common law, but it is not properly a custom. It is neither restricted to a single community nor is it a part of the municipal law of a single country but regulates commercial contracts in all civilized countries. The body of mercantile usages which compose this branch of law, having no dependence on locality, does not need to be established by witnesses, but judges are bound to take official notice of it. The principal branches of the law-merchant are the law of shipping, the law of marine insurance, the law of sales and the law of bills and notes. The feudal law, which grew up in a time when property consisted chiefly of land upon whose alienation were laid great restrictions, was found inadequate for the needs of mercantile classes coming into prominence. The courts, when commercial contracts were brought before them, adopted from merchants the rules regulating their business dealings and made them rules of law. Many of these rules were in great contradiction to the common law. Magna Charta contained a special provision guaranteeing to merchants, among other things, the right "to buy and sell according to their ancient customs," and many later statutes were erected for their special protection. As the custom of merchants began to encroach

upon the common law, there was a determined effort on the part of lawyers to resist it. It was attempted to make the custom of merchants a particular custom peculiar to a peculiar community and not a part of the law of the land. It was finally decided in the reign of James I to be a part of the law of the realm. An attempt was then made to restrict the application of the Law-Merchant to persons who were actually merchants. The courts, after considerable variance, held that "it applied to the same contracts between parties not merchants."

#### History of Negotiable Instruments:

Negotiable instruments were known in the Middle Ages but by the fifth century their use in Europe had ceased. The Roman law did not deal with the subject. The reason for the failure of early European law to develop negotiable credit instruments was the entrenched idea that a chose-in-action was not assignable, having no physical form it was deemed incapable of delivery. The debtor/creditor relationship was considered too personal to permit one creditor to substitute another in his place.

In time a static rule of law ultimately yields to the pressure of events. Sales of goods were facilitated by the assignment of choses in action and in the eighth and ninth centuries some attempts to circumvent the rule of nonassignability of commercial instruments succeeded.

The immediate ancestor of the bill of exchange was one form of the medieval contract of cambium; a contract to transport money of one country and to exchange it for the money of another country. Italian merchants are given the credit for the origination of this instrument. As commerce developed, the need for exchanging money increased and this business fell into the hands of specialists who knew the money values of the various countries. They became exchangers of money. The customers of the exchangers were the merchants who owed money abroad or who had claims against foreign merchants. Exchangers formed connections such that each became the correspondent of other exchangers. The great Fairs of the Middle Ages were convenient places for the settlement of debts and here the exchangers met and settled accounts; the fairs thus became the original clearing houses. The modern bill of exchange is the descendant of these contracts by means of which the merchants of the 13th centuries paid and collected foreign debts through the agency of the exchanger.

Disputes with reference to such instruments were settled in the Fair Courts by juries composed of merchants. Hence, the law of commercial instruments, as well as some other

branches of the law which grew out of business transactions, is spoken of as the "Law Merchant."

The practice of endorsement had been introduced by the close of the 17th century and the bill of exchange was substantially in its present form. The development of banking followed the development of the bill of exchange. The Bank of Barcelona was established in 1401, that of Genoa in 1407, of Venice in 1587, of Hamburg in 1619, of Stockholm in 1688, and the Bank of England in 1694.

Because of various obstacles in the substantive and procedural law, as enforced in the common law courts of England prior to 1600, the law of commercial paper developed outside the duly constituted law courts. The Fair Courts of England were the custodians of the Law Merchant from their beginning in the 12th century until their decadence near the close of the reign of Elizabeth. Overlapping this period and beginning in 1353 with the enactment of the Statute of Staples, 27 Edward III. Stat 2, the courts of the Staple took over much of the commercial law business of the time. The Staple courts exercised jurisdiction over the growing body of mercantile law for 200 years.

This tribunal had cognizance of all questions which should arise between merchants, native or foreign. It was composed of an officer called the mayor of the staple, re-elected yearly by the native and foreign merchants who attended the particular staple, two constables appointed for life, also chosen by the merchants, a German and an Italian merchant, and six mediators between buyers and sellers of whom two were English, two German, and one Lombard. The Law administered was the *lex mercatoria* and there was a provision that causes in which one party was a foreigner should be tried by a jury one-half of whom were foreigners. The most important legislative content of the staples were the Statute of Acton Burnel (11 Edward I) by which merchants were enabled to sell the chattels of their debtor and attach his person for debt, 5 Edw. 1, c. 3, and 27 Edw. III, c. 2, called the Statute of the Staple. One object of which was to remove the staple formerly held at Calais to certain towns in England, Wales and Ireland. With the growth of commerce, the staple became more and more neglected and at last fell together into disuse under its name.

Other aspects of the Staple are provided by some of the old laws cited below:

By the St. 27 Edw. III. 2, if any by color of his office, or otherwise, take anything of merchants against their agreement, he shall be arrested by the mayor and baliffs of the place, if out of the staple, or by the mayor and minister of the staple if within the staple; and

speedy process shall be against him from day to day according to the law of the staple, and not of the common law.

And therefore, he shall have advantage of the law merchant, tho it be not conformable to the common law. [13 Edw. IV, 9.6; 2 Rol. 114.]

And therefore, where a merchant stranger delivers his goods to a carrier to be carried to a port, which are by him feloniously embezzled, he may sue in Chancery for relief, when there shall be speedy dispatch, and need not proceed at the common law. [13 Edw. IV 9.6.]

Several excerpts from Comyn's Digest of the Laws of England (1800) have a remarkable content.

By the statutes 11 Edw. I de Acton Burnel, a merchant may cause his debtor to come before the mayor of the staple, &c., and make recognizance of his debt, which shall be entered on the roll, with the seal of the debtor and the king, in custody of the mayor, &c.

By the Stat. de Mercatoribus, 13 Edw. I, he shall come before the mayor, &c or other sufficient men sworn thereto, if the mayor &c. cannot attend, and acknowledge his debt and day of payment; and the recognizance shall be enrolled, and the roll double; one part to remain with the mayor, &c., the other with the clerk thereto named; and the clerk shall make an obligation, to which the seal of the debtor shall be put with the king's seal, &c., of which the one part shall remain with the mayor, &c., the other with the clerk.

By which statutes the mayor, with the constables of the staple, may take recognizance of merchants of the staple for merchandise only of the same staple, and not of others. Stat. 23 Hen. VIII, 6.

By the Stat Act. Burnell 11 Edw. I and de Merc. 13 Edw. I, if the debtor does not pay, &c., the creditor shall bring his obligation to the mayor &c., who shall incontinent cause the moveables of the debtor, to the amount of the debt, to be sold and delivered to the creditor by the praisement of honest men, and the king's seal shall be put to the sale &c..

And if the mayor find no buyers, he shall deliver the said moveables to the creditor at a reasonable price, &c.

And the mayor may cause the body of the debtor (if lay) to be committed to the prison of the town till he agree the debt.

And therefore the mayor may make execution, where the conusee lives, and has lands and goods within his jurisdiction.

By the Stat. Act. Burnel 11 Edw. I, & Merc. 13 Edw. I, if the debtor have no moveables, of which the debt may be levied, or cannot be found within the jurisdiction of the mayor, he shall send the recognizance under the king's seal into the Chancery, and the Chancellor shall direct a writ to the Sheriff to seize the moveables, or the body of the debtor (if lay), and make him agree the debt in the same manner as the mayor, if he had been in his power.

So by the Stat. de Merc., 13 Edw. I, if the debtor agree not the debt in a quarter of a year, by sale of his goods and lands, all his lands shall be delivered to the merchants by reasonable extent, to hold till the debt be levied.

#### Lex Mercatoria:

Later, from the time of Henry VIII to Elizabeth lex mercatoria jurisdiction was turned over to the Court of Admiralty. The Law Merchant, therefore, developed a maritime flavor and it became natural for parties concerned with mercantile law to invoke the jurisdiction of the Court of Admiralty. However, the common law courts did not view this jurisdiction expansion of the Admiralty Court over commercial matters with acquiescence and succeeding in their opposition began to take over the Law Merchant around 1600. Incorporation of the Law Merchant into the system of common law proceeded slowly. Initially, Bills of Exchange were extended only to foreign merchants trading with the British, then to all merchants, and lastly to all persons whether traders or not.

In 1756, Lord Mansfield, Chief Justice of the King's Bench, incorporated vast additions of Civil Law into the system of Common Law and moved the action of assumpsit from law into equity, thereby denying trial by jury on writs of assistance. Arbitrary acts of mercantilism, under the jurisdiction of this civil law, sparked the American Revolution.

By the close of the 1700's, the basic principles of negotiable instruments had been defined by the decisions of the English courts which subsequently amplified and applied these principles to such an extent that by 1850 this branch

of the law had reached a fair state of maturity. The succeeding stage in the development of the law of negotiable paper was its codification.

Judge M. D. Chalmers was largely responsible for the codification of the law of bills of exchange, notes and cheques in England when he published a digest of this subject in 1878. Two years later, Judge Chalmers delivered an address before the Institute of Bankers on the theme of codifying the law of negotiable instruments. The Associated Chambers of Commerce joined the Institute in requesting Chalmers to prepare the draft of such a bill for introduction in Parliament. The Bills of Exchange Act became law in 1882 and was subsequently adopted throughout the British empire.

One of the avowed objects of the American Bar Association, organized in 1878, was to promote the enactment of uniform laws in the several states. In 1895, the National Conference of Commissioners on Uniform State Law directed its Committee on Commercial Law to draft a bill on commercial paper, based upon the English Bills of Exchange Act of 1882. In 1896 this act was approved by the Commissioners and recommended to the several states for adoption. Within two years after the Uniform Negotiable Law was recommended for adoption, it became law in fourteen states. It was later enacted in all states by 1924. This, the first of a series of uniform commercial acts, has worked its way deeply into our legal system.

Thus, out of the Law Merchant, developed our Uniform Commercial Code (U.C.C.) which states that, "unless displaced by the particular provisions of this Act, the principles of law and equity, including the Law Merchant, ... shall supplement its provisions." (U.C.C. 1103)

The Pulling in Littel's Law Library, appearing in the American edition, Philadelphia (1847) gives us an insight into the debtor-creditor relationship.

The most general comprehensive relation in which parties can stand with regard to each other, so as to create an account between them, is that of debtor and creditor, which, in fact, embraces all the other relations giving rise to matters of account.

The parties to this account are properly denominated debtor and creditor, for every debt legally implies a credit given by the party entitled to the money, no matter for how short or how long a period it may be (see *Cornforth v. Rivett*, 2 M. & S. 510), and no such account can therefore be said to arise in case of mere ready money transactions; for there the consideration

and the payments are prima facie deemed to be contemporaneous (See *Bassey v. Barnett*, 9 M & W 312. In cases of goods sold for ready money, and taken possession of by the purchaser without payment, the seller may, if he pleases, insist upon a return of the goods; *Howse v. Crowe*, R & M 414; *Bateman v. Elman*, Cro. Eliz. 867; but he may of course elect to treat the transaction as a sale on credit, and sue the purchaser immediately for the price).

Before considering the case of debtor and creditor accounts in the proper sense of the term, viz., where there are mutual credits or mutual payments, let us here see what are the general rights and duties arising from the bare relation of debtor and creditor. These consist in the first place in the payment or offer or tender of payment, by the former, and the receipt in the amount due in discharge or acquittance by the latter; but until this takes place, the creditor is entitled at any moment to enforce payment by legal process, which right can only be defeated by actual payment, or by accord and satisfaction by the debtor, or by the voluntary discharge or release of the debt by the creditor, or a compulsory discharge by operation of law.

#### The Determination Of Jurisdiction Over Law Merchant:

From a book entitled THE LAW OF BILLS, NOTES, AND CHEQUES:

We are concerned in this book with a branch which deals with the law of bills, notes, and cheques. This branch of the Law Merchant has retained throughout its life, to the present day, its essential characteristics, clearly marking it off from the common law ....

The term Law Merchant at the present time usually suggests the law of bills, notes, and cheques ....

Admiralty had already been exercising jurisdiction over instruments in the nature of bills of exchange and promissory notes pertaining to contracts in the commerce of the high seas;....

The Law Merchant is not even a modification of the common law; it occupies a field over which the common law does not and never did extend. [E]

So we see Common Law has no jurisdiction over Law Merchant - Law Merchant is part of the Civil Law system and, therefore, must be cognizable either under the jurisdiction of Equity or Admiralty.

The determination of which of these jurisdictions has cognizance over a particular controversy is governed by the subject matter and nature of the contractual right being enforced (see figure III-6).

If the subject matter and nature of the cause is exclusively maritime it is cognizable only in admiralty.

If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. [28 U.S.C., Rule 9(h)]

A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), 82 and the Supplemental Rules for Certain Admiralty and Maritime Claims. [28 U.S.C., Rule 9(h)]

The Law Merchant is founded on expediency and subject to changes with the "customs" of merchants. Our courts are bound by constitutional clauses and treaties, to take notice of these customs of merchants and all debtor/creditor relationships are within either the jurisdiction of equity or admiralty/maritime. And, if the subject matter and cause of action is exclusively maritime in nature it is an admiralty/maritime claim whether so identified or not! The supreme rule of this law Merchant is: he who trades with a merchant becomes a merchant for purposes of that transaction. Further, it makes any debtor liable on a summary judgment to any merchant who may bring a charge of default. The rule can also compel what is called an "action of account" on the debtor/creditor basis. Hence, the requirement of a debtor to keep and disclose records.

## Part V: Article I vs. Article III Courts

### Establishment Of Courts:

Article III, Section 1, of the United States Constitution states that 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 DETERMINATION OF JURISDICTION OVER THE LAW MERCHANTS

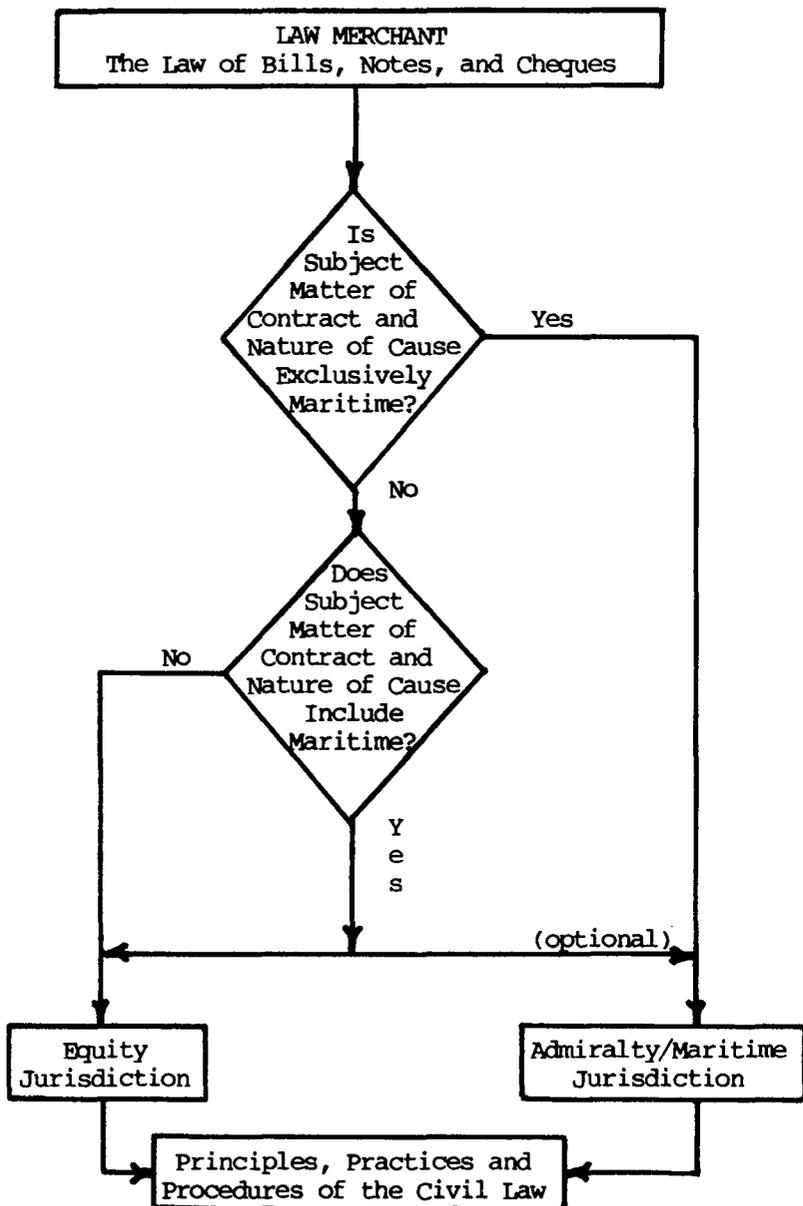


Figure: III-6

and prescribes in Section 2, that this power shall extend to cases and controversies of certain enumerated classes.

It was necessarily left to the legislative power to organize the Supreme Court, to define its powers consistently with the Constitution, as to its original jurisdiction; and to distribute the residue of the judicial power between this and the inferior court which it was bound to ordain and establish, defining their respective powers, whether original or appellate, by which and how it should be exercised. [Rhode Island v. Massachussets, 12 Pet. 657, 721 (1838); Chisholm v. Georgia, 2 Dall. 419, 432 (1793).]

It was further stated by Justice Story:

It would seem ... that Congress are bound to create some inferior courts, in which to vest all that jurisdiction which under the Constitution, is exclusively vested in the United States, and of which the Supreme Court cannot take original cognizance. They might establish one or more inferior courts; they might parcel out the jurisdiction amongst such courts, from time to time, at their own pleasure. But the whole judicial power of the United States should be, at all times, vested, either in an original or appellate form, in some courts created under its authority. [Martin v. Hunter, 1 Wheat. 304, 330-331 (1816)]

"Inferior courts" contemplated under Article III, Section 1, are "inferior" only in the technical sense that they are courts of special and limited authority erected on such principles and proceedings that must show their jurisdiction, their judgments being entirely disregarded for this purpose, and whose judgments are subject to revision by an appellate court. Their jurisdiction depends exclusively on the Constitution and the terms of the statutes passed in pursuance thereof, and must appear of record. [F]

Legislative Courts:

It long has been settled that Article III does not express the full authority of Congress to create courts, and that other articles invest Congress with powers in exertion of which it may create inferior courts and clothe them with

functions deemed essential or helpful in carrying those powers into execution.

In the case of Ex parte Bakelite Corporation this issue was brought before the Supreme Court on a jurisdiction challenge to the Court of Customs Appeals on grounds:

- (1) That the Court of Customs Appeals is an inferior court created by Congress under section 1 of article 3 of the Constitution, and as such it can have no jurisdiction of any proceeding which is not a case or controversy within the meaning of section 2 of the same article; and
- (2) That the proceeding presented by the appeal from the Traffic Commission is not a case in controversy in the sense of that section, but is merely an advisory proceeding in aid of executive action.

Following are pertinent excerpts from the Supreme Court decision:

But there is a difference in the two classes of courts. THOSE ESTABLISHED UNDER THE SPECIFIC POWER GIVEN IN SECTION 2 OF ARTICLE 3 ARE CALLED CONSTITUTIONAL COURTS. THEY SHARE IN THE EXERCISE OF THE JUDICIAL POWER DEFINED IN THAT SECTION, CAN BE INVESTED WITH NO OTHER JURISDICTION, and have judges who hold office in good behavior, with no power in Congress to provide otherwise. On the other hand, those created by Congress in the exercise of other powers are called legislative courts. Their functions always are directed to the execution of one or more such powers; and are prescribed by Congress independently of section 2 of article 3; and their judges hold for such term as Congress prescribes, whether it be a fixed period of years or during good behavior....

The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3rd article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses ...

Legislative courts also may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible

of it. The mode of determining matters of this class is completely within congressional control. Congress may reserve to itself the power to decide, may delegate that power to executive officers, or may commit it to judicial tribunals.

Conspicuous among such matters are claims against the United States. These may arise in many ways ... They all admit of legislative or executive determination, and yet from their nature are susceptible of determination by courts; but no court can have cognizance of them except as Congress makes specific provision therefor. Nor do claimants have any right to sue on them unless Congress consents; and Congress may attach to its consent such conditions as it deems proper, even to requiring that the suits be brought in a legislative court specifically created to consider them. The Court of Claims is such a Court....

The nature of the proceedings in the Court of Claims and the power of Congress over them are illustrated in *McElrath v. United States*, 102 U.S. 426, 26 L. Ed. 189, where particular attention was given to the statutory provisions authorizing that court, when passing on claims against the government, to consider and determine any asserted setoffs or counterclaims, and directing that all issues of fact be tried by the court without a jury. The claimant in that case objected that these provisions were in conflict with the Seventh Amendment to the Constitution, which preserves the right of trial by jury in suits at common law where the value in controversy exceeds \$20. The Court disposed of the objection by saying:

"There is nothing in these provisions which violates either the letter or spirit of the Seventh Amendment. Suits against the government in the Court of Claims, whether reference be had to the claimant's demand, or to the defence, or to any set-off, or counterclaim which the government may assert, are not controlled by the Seventh Amendment. They are not suits at common law within its true meaning...."

A duty to give decisions which are advisory only, and so without force as judicial judgments, may be laid on a legislative court, but not on a constitutional court established under article 3.

And in support of the argument it is said that in creating courts Congress has made it a practice to distinguish between those intended to be legislative by making no provision respecting the tenure of judges of the former and expressly fixing the tenure of judges of the latter. But the argument is fallacious. IT MISTAKENLY ASSUMES THAT WHETHER A COURT IS OF ONE CLASS OR THE OTHER DEPENDS ON THE INTENTION OF CONGRESS, WHEREAS THE TRUE TEST LIES IN THE POWER UNDER WHICH THE COURT WAS CREATED AND IN THE JURISDICTION CONFERRED...

As it is plain that the Court of Customs Appeals is a legislative and not a constitutional court, there is no need for now inquiring whether the proceeding under section 316 of the Tariff Act of 1922, now pending before it, is a case or controversy within the meaning of section 2 of article 3 of the Constitution, for this section applies only to constitutional courts. Even if the proceeding is not such a case or controversy, the Court of Customs Appeals, being a legislative court, may be invested with jurisdiction of it, as is done by section 316. [Ex parte Bakelite Corporation, 279 U.S. 438 (1929)]

Thus, we see that legislative courts are created by Congress in the exercise of powers outside Article III and invested with jurisdiction as specifically conferred by Congress; while Constitutional courts are created by Congress, pursuant to the power granted in Article III, and are invested with no other jurisdiction than the judicial power defined in Section 2 of Article III.

Many cases dealing with the character and distribution of judicial power and citing both section 1 and section 2 of Article 3 are noted under section 1 "Judicial power".

#### Article III Judicial Power And The Eleventh Amendment:

The Eleventh Amendment was proposed March 4, 1794; ratified February 7, 1795; and declared ratified January 8, 1798. The original version of Article III Section 2 of the Constitution read as follows:

The Judicial power shall extend to all cases in law and equity, arising under this Constitution, the Laws of the United States, and the treaties made, or which shall be made, under their authority; 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 States claiming lands under grants of different States, and between a State, or citizens thereof, and foreign States, citizens or subjects. [Article III, Section 2, Clause 1, United States Constitution]

As modified by the Eleventh Amendment this clause prescribes the limits of the Judicial power of the Courts. [United States v. Louisiana, 123 U.S. 32, 35 (1887)]

Article III, Section 2, clause 1, was modified as follows:

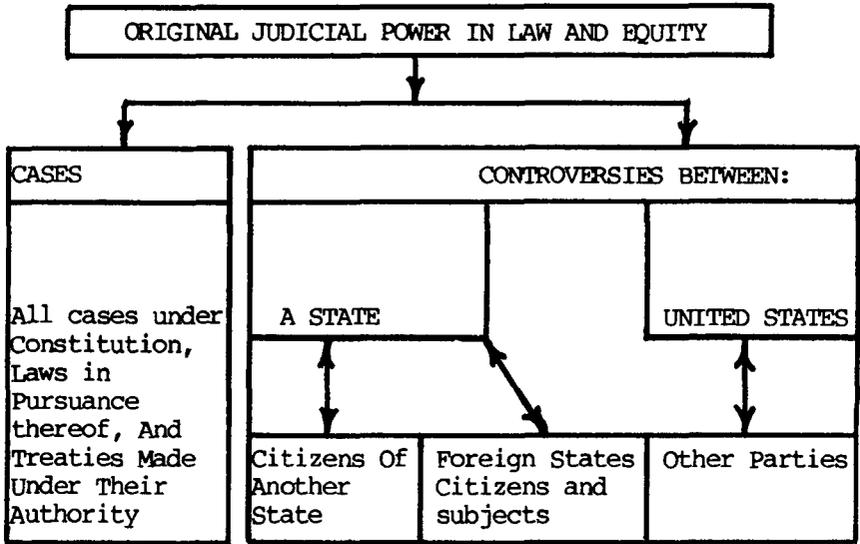
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any Foreign State. [Eleventh Amendment, United States Constitution]

This modification, and its wording, is depicted in Figure III-7. The force and effect of this Amendment was subsequently decided in numerous case decisions by the United States Supreme Court: [G]

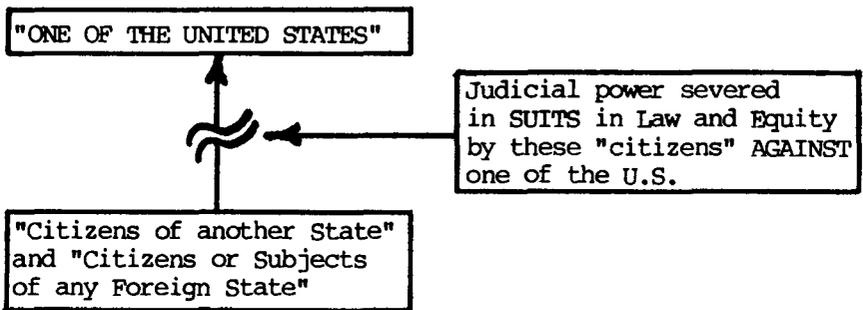
Purpose of Amendment.

It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. [G](1).

The Eleventh Amendment was proposed, almost unanimously, at the first meeting of Congress after the decision in *Chisholm v. Georgia*, which held that a State was liable to be sued by a citizen of another State or of a foreign country. "This amendment, expressing the will of the ultimate sovereignty of the whole



THE ELEVENTH AMENDMENT MODIFIED  
THIS JUDICIAL POWER AS FOLLOWS:



NOTES: (1) "Controversy" is a civil and not a criminal proceeding. It differs from "case," which includes all suits. Criminal as well as civil.

(2) "Suit" includes not only a civil action, but also a criminal prosecution, as indictment and information.

FIGURE III-7: JUDICIAL POWER AND THE ELEVENTH AMENDMENT

country, superior to all legislatures and all courts, actually reversed the decision of the Supreme Court." [G](2).

The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other States or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the mandate of judicial tribunals without their consent, and in favor of individual interests. [G](3).

#### In Law or Equity:

While the amendment speaks only of suits in law and equity, that language is the natural result of the intention to overrule the Chisholm case, which was a suit at law; the amendment cannot with propriety be construed to leave open a suit against a State in the admiralty jurisdiction by individuals, whether its own citizens or not. [G](4).

The recognized primary purpose of the amendment, viz, to over-rule the Chisholm case, cannot be regarded as restricting the scope of its express terms. It necessarily embraces demands for the enforcement of equitable rights. [G](5).

#### What Cases Unaffected by the Amendment.

While the amendment took from the Supreme Court all jurisdiction, past, present, and future, of all controversies between States and individuals; it left its exercise over those between States as free as it had been before. It does not comprehend controversies between a State and a foreign State. Nor did the amendment, though limited in terms to suits by citizens of other or foreign States, operate to authorize suits against a State (without its consent) by its own citizens. Those who deal in bonds of a sovereign State are aware that they must rely altogether on the sense of justice and good faith of the State, and the courts of the

United States are expressly prohibited from exercising jurisdiction. [G](6).

It remains the duty of the courts of the United States to decide all cases brought before them by citizens of one State against citizens of a different State, where a State is not necessarily a defendant. [G](7)

Suit Commenced or Prosecuted.

Prosecution of a writ of error to review a judgment of a State court claimed to be in violation of the Constitution or laws of the United States, does not "commence or prosecute a suit against the State. [G](8).

Record Not Conclusive as to Parties in Interest.

It must be regarded as a settled doctrine of this court, established by its recent decisions, that THE QUESTION WHETHER A SUIT IS WITHIN THE PROHIBITION OF THE ELEVENTH AMENDMENT IS NOT ALWAYS DETERMINED BY REFERENCE TO THE NOMINAL PARTIES ON THE RECORD, BUT IS DETERMINED BY A CONSIDERATION OF THE NATURE OF THE CASE AS PRESENTED ON THE WHOLE RECORD. [G](9).

A suit nominally against individuals, but restraining or otherwise affecting their action as State officers may be in substance a suit against the State which the Constitution forbids. [G](10).

Suits Against State Officers Not Upheld.

A suit against the governor solely in his official capacity, to recover moneys in the State treasury, was considered a suit against the State. [G](11).

Where it was sought affirmatively to compel the performance of a State's contract by mandamus against its officers requiring the application of funds in the State treasury, and the collection of a specific tax authorized by law for the retirement of State bonds, it was held to be a suit against the State, and an attempt to secure judicial interference with political activities. [G](12).

Where the State was nominally a party on the record, but examination of the pleadings showed it was suing for the use and on behalf of certain of its citizens to compel an officer to pay out public money in his possession on the State's obligations, the suit was held within

the inhibition. [G](13).

The Court will refuse to take jurisdiction of a suit to compel an officer to exercise the State's power of taxation, when it is clearly seen upon the record that the State is an indispensable party. [G](14).

A suit filed by aliens against the auditor, attorney general, and other officials of Virginia to enjoin the prosecution of suits in the name for the use of the State, under a State act, against taxpayers who had tendered in payment of taxes tax-receivable coupons cut from bonds of the State, was a suit against the State and within the meaning of the Eleventh Amendment. [G](15).

A suit against commissioners appointed under a State law to wind up the affairs of the State dispensary system, is also prohibited. [G](16).

A suit by a depositor in an Oklahoma bank against members of the State Banking Board and the Bank Commissioner to compel payments from the Depositors' Guaranty fund, is likewise within the prohibition. [G](17).

#### Suits Against State Officers Upheld.

Suits by individuals against defendants who claim to act as officers of a State and, under color of an unconstitutional statute, to recover for injury to property; or to recover money or property unlawfully taken from them in behalf of the State; or, for compensation for damages; or, in a proper case, for an injunction to prevent such wrong and injury; or, for a mandamus to enforce the performance of a plain legal duty, purely ministerial; are not, within the meaning of the amendment, suits against the State. [G](18).

Generally suits to restrain action of State officials can, consistently with the constitutional prohibition, be prosecuted only when the action sought to be restrained is without the authority of State law or contravenes the statutes or Constitution of the United States. [G](19).

Immunity from suit is a high attribute of sovereignty which cannot be availed of by public agents when sued for their own torts. The Eleventh Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured

one of the State's citizens. "The many claims of immunity from suit have therefore been uniformly denied, where the action was brought for injuries done or threatened by public officers. If they were indeed agents, acting for the State, they - though not exempt from suit - could successfully defend by exhibiting the valid power of attorney or lawful authority under which they acted. \* \* \* But if it appeared that they proceeded under an unconstitutional statute their justification failed and their claim of immunity disappeared on the production of the void statute \* \* \* In such cases the law of agency has no application - the wrongdoer is treated as a principal and individually liable for the damages inflicted and subject to injunction against the commission of acts causing irreparable injury." [G](20).

The Eleventh Amendment, which denies to the citizen the right to resort to a Federal court to compel or restrain State action, does not preclude suit against a wrongdoer merely because he asserts that his acts are within an official authority which the State does not confer. [G](21).

#### Waiver of Immunity.

The immunity from suit belonging to a State, which is respected and protected by the Constitution within the limits of the judicial power of the United States, is a personal privilege which it may waive at pleasure; so that in a suit, otherwise well brought, in which a State had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction; while, of course, those courts are always open to it as a suitor in controversies between it and citizens of other States. Such waiver of immunity from suit, however, does not extend to a surrender of any essential attribute of sovereignty. [G](22).

It is elementary that even if a State has consented to be sued in its own court by one of its creditors, a right would not exist in such creditor to sue the State in a court of the United States. [G](23).

## CHAPTER IV

### THE LAW OF NATURE AND NATIONS

#### Part I: Introduction

I mean the study of the Law of nations ... is at all times the duty, and ought to be the pride of all, who aspire to be statesmen; and, as many of our lawyers become legislators, it seems to be the study to which, of all others, they should most seriously devote themselves.

Upon the general theory of the law of nations, much has been written by authors of great ability and celebrity. At the head of the list stands that most extraordinary man Grotius, whose treatise "DeJure Belliet Pacis," was the first great effort in modern times to reduce into any order the principals belonging to this branch of jurisprudence, by deducing them from the history and practice of nations, and the incidental opinions of philosophers, orators, and poets. His eulogy has been already pronounced in terms of high commendation, but so just and so true that it were vain to follow or add to his praise.

Puffendorf, in a dry, didactic manner, has drawn out, in the language of the times, the sagacity of Barbeyrac, in his luminous Commentaries, has cleared away many obscurities, and vindicated many positions. Wolfius, who is better known among us in his elegant abridger. Vattel, has more elaborately discussed the theory with the improved lights of modern days.

Yet, how few have mastered the elementary treatises on this subject, the labors of Albericus Gentilis, and Zouch, and Grotius, and Puffendorf, and Bynkershoek, and Wolfius, and Vattel? ... How few have aspired, even in vision, after the comprehensive researches into the law of nations, .... [From "Miscellaneous Writings of Joseph Story" - 1852]

The latter part of this quote from Justice Story's writings was a sad commentary on our legislators and those "who aspire to be statesmen" (Many of whom are lawyers). According to Story, within 76 years after the Declaration of Independence, few contemporaries had mastered even the elementary treatises on the subject. And yet, this was the

law, and its principles, upon which this country was founded. It was the authority for the Declaration of Independence, and its principles are embodied in that Declaration, the First Organic Law of the United States. The authors and signers of the Declaration were avid students of the teachers and writers of the Law of Nations:

Thus, may the first principles of sound politics be fixed in the minds of youth ... Grotius, Puffendorf, and some other writers of the same kind may be used.... [Benjamin Franklin - 1749]

I am much obliged by the kind present you have made us of your editions of Vattel. It came to us in good season, when the circumstances of a rising State make it necessary frequently to consult the law of nations. Accordingly, that copy which I kept (after depositing one in our own public library here, and sending the other to the College of Massachusetts Bay, as you directed) has been continually in the hands of the members of our Congress now sitting, who are much pleased with your notes and preface, and have entertained a high and just esteem for their author. [Benjamin Franklin "Letter to Dumas" Philadelphia, December 19, 1775.]

Thus, if we are to understand our First Organic Law, we must first have an understanding and mastery of the elementary treatises on the Law of Nations. Selected excerpts from various writers on the subject follows:

Part II: Samuel de Puffendorf "The Law of Nature and Nations," London -1729:

"The Law of Nature and Nations" was written by Puffendorf and translated into French by Barbeyrac. The English translation was made from the French by Basil Kennett for the 1729 edition:

Many Authors do farther rank under the Title of the Law Of Nations, several Customs mutually observ'd by tacit Consent, amongst most People pretending to Civility; ....

However, these Reasons not being general, cannot constitute any Law of an universal Obligation. Especially since as to any Restraints which depend on tacit Agreement, it seems rea-

sonable that either Party should have the Liberty of absolving themselves from them; BY MAKING EXPRESS DECLARATION THAT THEY WILL BE HOLDEN BY THEM NO LONGER, AND THAT THEY DO NOT EXPECT TO REQUIRE THE OBSERVANCE OF THEM FROM OTHERS ... Neither have those Men any good reason of Complaint, who censure this Doctrine as a Notion by which the Security, the Interest, and the Safety of Nations are robb'd of their surest Guards and Defence. For the Ensurance of these Advantages and Blessings doth not consist in the Practice of such mutual Favours, but in the Observance of the Law of Nature; a much more sacred Support; ....

As for those persons who rank under the Law of Nations, the particular Compacts of two or more States, Concluded by Leagues and Treaties of Peace, to us their Notion appears very incongruous. For although the Law of Nature, in that part of it concerning the keeping of the Faith, doth oblige us to stand to such Agreements; yet the Agreements themselves cannot be call'd Laws, in any Propriety of Speech or of Sense ....

Of all the Divisions of Natural Law, that seems to us most accurate and most convenient, which considers, in the first place, a Man's Behaviour towards himself, and then towards other Men. Those Precepts of the Law of Nature which bear a Regard to other Men, may be again divided into Absolute and Hypothetical, or Conditional. The former are such as oblige all Men in all States and Conditions, independent from any human Settlement or Institution. The latter presuppose some publick Forms and civil Methods of Living to have been already constituted and received in the World. Which distinction Grotius hath thus express'd in other Words; "The Law of Nature is concern'd, not only about such things as exist antecedent to human Will, but likewise about many things which follow upon some Acts of that Will." ....

Wherefore Man, in his Endeavours to fulfill the Laws of Society, to which he is by his Creator directed and designed, hath good Reason to imploy his first Pains and Study on himself; since he will be able to discharge his Duty towards others with so much more Ease and Success, the more diligent he hath been in advancing his own Perfection. Whereas he who is unuseful to himself, and idle in his proper Con-

cerns, can give other Men but little Reason to expect Advantage from his Pains ....

Amongst the Opinions then which highly concerns all Men to settle and to embrace, the chief are those which relate to Almighty GOD, as the Great Creator and Governor of the Universe... That this Eternal Being exercises a Sovereignty not only over the whole World, or over Mankind in general, but over every Individual Human Person: Whose Knowledge nothing can escape: Who, by Virtue of his Imperial Right, hath enjoin'd Men such certain Duties by Natural Law, the Observance of which will meet with his Approbation, the Breach or the Neglect, with his Displeasure: And that he will for this Purpose require an exact Account from every Man, of his Proceedings, without Corruption and without Partiality ....

Nay, there are not wanting Persons, who from the Experience of Long Travels, pretend to affirm, that Christianity hath not been able to alter the common dispositions of some Nation Towards particular Vices; and that 'tis not easy to discover the Truth of that Holy Religion, from the Manners and Practices of those who profess it. Though I should imagine the Reason of that Unhappiness to be chiefly this, because the Christian Doctrine and Worship, being received by most Men, not upon their own Choice and Judgment, but from the Custom of the State in which they happen to be born, resides rather in their Mouth than in their Heart; ....

To Self-Preservation, which not only the tenderest Passion, but the exactest Reason recommends to Mankind, belongs Self-Defense, or the warding off such Evils or Mischiefs as tend to our Hurt, when offer'd by other Men ... For the Obligation to the Exercise of the Laws of Nature and the Offices of Peace, is mutual, and binds all Men alike; neither hath Nature given any Person such distinct Privilege, as that he may break these Laws at his Pleasure, towards others, and the others be still oblig'd to maintain the Peace towards him. But the Duty being mutual, the Peace ought to be mutually observ'd. And therefore when another, contrary to the Laws of Peace, attempts such things against me, as tend to my Destruction, it would be the highest Impudence in him to require me at the same time to hold his person as Sacred and Inviolable:

that is, To forego my own Safety, for the sake of letting him practice his Malice with Impunity.

But Since in his Behaviour towards me he shows himself unsociable, and so renders himself unfit to receive from me the Duties of Peace, all my Care and Concern ought to be how to effect my own Deliverance from his hands; which if I cannot accomplish without his Hurt, he may impute the Mischief to his own Wickedness, which put me under his Necessity. For otherwise, all the Goods which we enjoy either by the Gift of Nature, or by the Procurement of our own Industry, would have been granted us in vain, if it were unlawful for us to oppose those in a forcible manner, who unjustly invade them. And honest Men would be expos'd a ready Prey to Villians, if they were never allow'd to make use of Violence in resisting their Attacks. So that upon the whole, to banish Self-defense though pursued by Force, would be so far from promoting the Peace, that it would contribute to the Ruin and Destruction of Mankind. Nor is it to be imagin'd that the Law of Nature, which was instituted for a Man's Security in the World, should favour so absurd a Peace, as must necessarily cause his present Destruction, and would in fine, produce any Thing sooner than a sociable Life ....

Since then Human Nature agrees equally to all Persons, and since no one can live a social Life with another, who does not own and respect him as a Man; it follows as a Command of the Law of Nature, that every Man esteem and treat another as one who is Naturally his Equal, or who is a Man as well as he ....

The next office of Humanity mention'd by Grotius, is that we allow every Man the Privilege of procuring for himself, by Money, Work, exchange of Goods, or any other lawful Contract, such things as contribute to the convenience of Life; and that we do not abridge him of his Liberty, either by any Civil Ordinance, or by any unlawful Combination, or Monopoly. For that as Trade and Commerce highly promote the Interest of all Nations, by supplying the unkindness of the Soil, which is not every where alike Fertile, and by making those Fruits seem to be born in all places of the World, which are to be found in any one: So it cannot be less than In-

humanity to deny any "Son of the Earth" the use of those good Things, which our common Mother affords for our support; provided our peculiar Right and Propriety be not injured by such a Favour ....

If upon some particular Reason we are unwilling to be obliged to a certain Person, in this Case it is lawful for us to refuse the Benefit he offers. But then great Care must be taken to do this without giving the least Suspicion of Contempt; since otherwise, to reject a voluntary Favour, carries in it a manifest Affront.

When Men have once engaged themselves by Pacts, their Nature obliges them as sociable Creatures, most religiously to observe and perform them. For were this Assurance wanting Mankind would lose a great part of that common Advantage, which continually arises from the mutual Intercourse of good Turns ....

Take away Covenants, and you disable Men from being useful and assistant to each other....

WE ARE THEREFORE TO ESTEEM IT A MOST SACRED COMMAND OF THE LAW OF NATURE, AND WHAT GUIDES AND GOVERNS, NOT ONLY THE WHOLE METHOD AND ORDER, BUT THE WHOLE GRACE AND ORNAMENT OF HUMAN LIFE, THAT EVERY MAN KEEP HIS FAITH, OR WHICH AMOUNTS TO THE SAME, THAT HE FULFILL HIS CONTRACTS, AND DISCHARGE HIS PROMISES ....

Prudence will advise us, that we rely not too on the bare Faith of others; but that we believe the Observations of all Compacts to be then best ascertain'd, when either they are grounded on the mutual Advantage of the Parties, or when 'tis in our Power to force those with whom we treat, to be just and honest. But where Perfidiousness is encouraged by Hopes of Profit, and not restrain'd by Fear of Punishment, there it were Madness to think, that bare Covenants should be able to warrant our Safety ....

To conclude: The last Dispute upon his Head commonly is, concerning the Excellency of particular Forms of Government, and which ought to be preferr'd to another: whether that under which the publik Welfare may with more Expedition, and more Certainty be procured, or that where the Sovereign Authority is less exposed to Corruption and Abuse. Now as to the Point of Comparison, thus much in the first place is evident, that no Frame of Civil Constitution can be so exactly model'd, and so well guarded by

Laws, but that either through the Negligence or the Wickedness of those who bear Rule, the same Government which was instituted for the Security of the Subjects, may turn to their Prejudice and Mischief. The Reason of which is, because Government was first establish'd as a Defence against those Evils, which Men are capable of bringing on each other. But at the same time, they who were to be invested with this Government were likewise Men, and consequently not free from those Vices which are the Spurs to mutual Injury. [Samuel de Puffendorf, "The Law Of Nature And Nations," London - 1729]

John Locke had the following to say about the Law of Nature, and how it relates to societies, the individual and the Will of God:

The Obligations of the Law of Nature, cease not in Society, but only in many Cases are drawn closer, and have by human Laws known Penalties annexed to them, to enforce their Observation. Thus the Law of Nature stands as the Eternal Rule to all Men, Legislators as well as others. The Rules that they make for other Men's Actions, must, as well as their own, and other Men's Actions, be conformable to the Law of Nature, i.e., to the Will of God ....

The Natural Liberty of Man is to be free from any superior Power on Earth, and not to be under the Will or legislative Authority of Man, but to have only the Law of Nature for his Rule. The Liberty of Man, in Society, is to be under no other legislative Power, but that established, by Consent, in the Commonwealth; nor under the dominion of any Will, or restraint of any Law, but what that Legislative shall enact, according to the Trust put in it ... This Freedom from absolute, arbitrary Power, is so necessary to, and closely joyned with a Man's Preservation; that he cannot part with it, but by what forfeits his Preservation and Life together. For a Man, not having the Power of his own Life, cannot, by Compact, or his own Consent, enslave himself to any one, nor put himself under the absolute, arbitrary Power of another, to take away his Life, when he pleases. No body can give more Power than he has himself; and he that cannot take away his own Life, cannot give another

Power over it. [John Locke "Of Civil-Government" - 1689]

Part III: Emerich de Vattel "The Law of Nations or Principles of the Law of Nature"

"The Law of Nations or Principles of the Law of Nature" was translated from the French and printed at Northampton, Massachussets in 1805:

To establish on a solid foundation the obligations and laws of nations, is the design of this work. The Law of Nations is the Science of the Law subsisting between Nations and states, and of the obligations that flow from it ....

IT IS EVIDENT FROM THE LAW OF NATURE, THAT ALL MEN BEING NATURALLY FREE AND INDEPENDENT, THEY CANNOT LOSE THOSE BLESSINGS WITHOUT THEIR OWN CONSENT. Citizens cannot enjoy them fully and absolutely in any state, because they have surrendered a part of these privileges to the sovereign. But the body of the nation, the state, remains absolutely free and independent with respect to all men, or to foreign nations, while it does not voluntarily submit to them.

Men being subject to the laws of nature, and their union in civil society not being sufficient to free them from the obligation of observing these laws, since by this union they do not cease to be men; the entire nation, whose common will is only the result of the united wills of the citizens, remains subject to the laws of nature, and is obliged to respect them in all its proceedings. And since the law arises from the obligation, as we have just observed, the nation has also the same laws that nature has given to men, for the performance of their duty.

We must then apply to nations the rules of the law of nature, in order to discover what are their obligations, and what are their laws; consequently the law of nations is originally no more than the law of nature applied to nations

...

We call that the necessary law of nations that consists in the application of the law of nature to nations. It is necessary, because nations are absolutely obliged to observe it - This law contains the precepts, prescribed by the law of nature to states, to whom that law is

not less obligatory than to individuals; because states are composed of men, their resolutions are taken by men, and the law of nature is obligatory to all men, under whatever relation they act. This is the law Grotius, and those who follow him, call the internal law of nations, on account of its being obligatory to nations in point of conscience. Several term it the natural law of nations.

Since the necessary law of nations consists in the application of the law of nature to states, and is immutable, as being founded on the nature of things, and in particular on the nature of man; it follows, that the necessary law of nations is immutable.

This is the principle by which we may distinguish lawful conventions or treaties, from those that are not lawful; and innocent and rational customs from those that are unjust and censurable ... ALL THE TREATIES AND ALL THE CUSTOMS CONTRARY TO WHAT THE NECESSARY LAW OF NATIONS PRESCRIBES, OR THAT ARE SUCH AS IT FORBIDS, ARE UNLAWFUL ....

The first general law, which the very end of the society of nations discovers, is that each nation ought to contribute all in its power to the happiness and perfection of others.

But the duty towards ourselves having incontestibly the advantage over our duty with respect to others, a nation ought in the first place, preferably to all other considerations, to do whatever it can to promote its own happiness and perfection. (I say whatever it can, not only physical, but in a moral sense, that is, what it can do lawfully, and consistently with justice and integrity.) When therefore it cannot contribute to the welfare of another, without doing an essential injury to itself, the obligation ceases on this particular occasion, and the nation is considered as under an impossibility of performing that office.

Nations being free and independent of each other, in the same manner as men are naturally free and independent, the second general law of their society is that each nation ought to be left in the peaceable enjoyment of that liberty it has derived from nature. The natural society of nations cannot subsist if the rights each has received from nature, are not respected. None would willingly renounce its liberty; it would

rather break off all commerce with those that should attempt to violate it.

From this liberty and independence it follows, that every nation is to judge of what its conscience demands, of what it can or cannot do, of what is proper or improper to be done; and consequently to examine and determine whether it can perform any office for another, without being wanting in what it owes itself. In all cases then, where a nation has the liberty of judging what its duty requires, another cannot oblige it to act in such a manner. For the attempting this would be doing an injury to the liberty of nations.

A right to offer constraint to a free person, can only be invested in us, in such cases where that person is bound to perform some particular thing for us, or from a particular reason that does not depend on his judgment; or, in a word, where we have a complete authority over him.

In order to perfectly understand this, it is necessary to observe that the obligation, and the right correspondent to it, or flowing from it, is distinguished into external and internal. The obligation is internal, as it binds the conscience, and as it comprehends the rule of our duty: it is external, as it is considered relatively to other men, and as it produces some right between them. The internal obligation is always the same in nature, though it varies in degree: but the external obligation is divided into perfect and imperfect, and the right that results from it is also perfect and imperfect. The perfect right is that to which is joined the right of constraining those who refuse to fulfil the obligation resulting from it; and the imperfect right is that unaccompanied by this right of constraint. The perfect obligation is that which produces the right of constraint; the imperfect gives another only the right to demand.

It may now be comprehended without difficulty, why the right is always imperfect, when the obligation which it answers to it depends on the judgment of another. For in this case, was there a right of constraint, it would no longer depend on the other to resolve what ought to be done in order to obey the laws of conscience. Our obligation is always imperfect in relation to another, when the decision of what we have to do is reserved in ourselves, and this decision

is reserved to us on all occasions where we have a right to be free .... (See Figure IV-1)

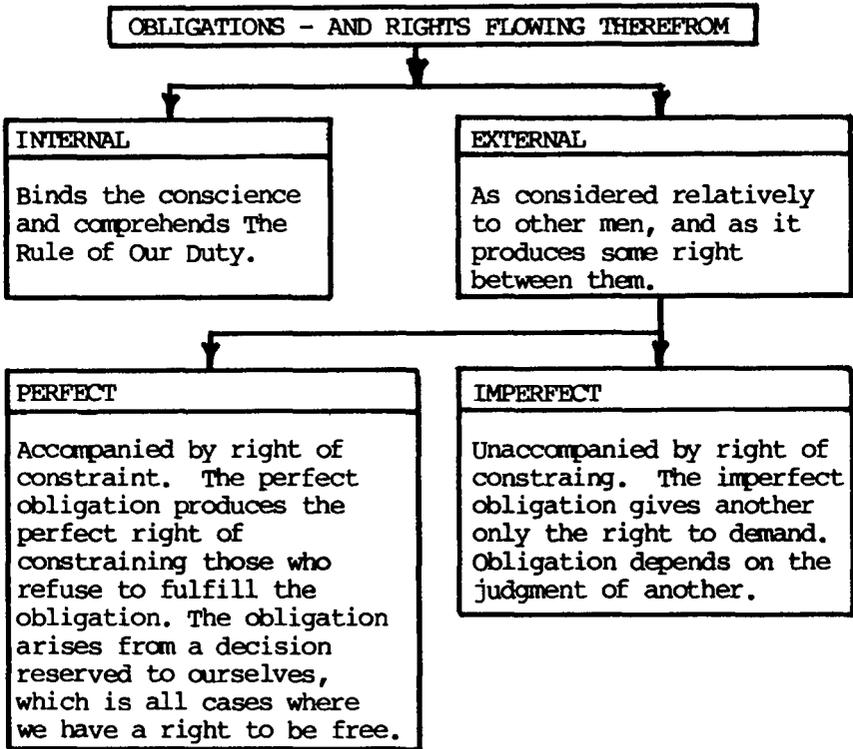


FIGURE IV-1

Every one in fact pretends to have justice on his side in the differences that may arise, and neither one nor the other ought to interest itself in forming a judgment of the disputes of other nations. The nation that has acted wrong, has offended against its conscience; but as it may do whatever it has a right to perform, it cannot be accused of violating the laws of society ....

The laws of natural society are of such importance to the safety of all states, that if they accustom themselves to trample them under their feet, no people can flatter themselves

with the hopes of self-preservation, and of enjoying tranquility at home, whatever wise, just and moderate measures they may pursue. [Emerich de Vattel, "The Law of Nations or Principles of the Law of Nature" - 1758.]

As we have seen, Puffendorf treated the Law of Nature and the Law of Nations as one and the same in all respects. In the application to subjects thereof, we can substitute individuals for nations, and vice-versa, in all cases. Vattel recognizes the common source, but distinguishes these laws by way of the nature of the subjects to which they are applied:

But as the application of a rule cannot be just and reasonable, if it be not made in a manner suitable to the subject; we are not to believe that the law of nations is precisely, and in every case, the same as the law of nature, the subjects of them only excepted; so that we need only substitute nations for individuals. A state or civil society is a subject very different from an individual of the human race; whence, in many cases, they follow, in virtue of the laws of nature themselves, very different obligations and rights; for the same general rule applied to two subjects cannot produce exactly the same decisions, when the subjects are different; since a particular rule that is very just with respect to one subject, is not applicable to another subject of a very different nature. There are then many cases in which the law of nature does not determine between state and state, as it would between man and man. We must therefore know how to accommodate the application of it to different subjects, and it is the art of applying it with justness founded on right reason, that renders the law of nations a distinct science. [Vattel (supra)]

On this subject, James Wilson, signer of the Declaration of Independence and Delegate from Pennsylvania to the Constitutional Convention subsequently wrote:

Puffendorf thought that the law of nature and the law of nations were precisely the same, he has not, in his book on these subjects, treated of the law of nations separately, but has everywhere joined it with the law of nature, properly

so called. His example has been followed by the greatest part of succeeding writers. But the imitation of it has produced a confusion of two objects, which ought to have been viewed and studied distinctly and apart. Though the law of nations, properly so called, be a part of the law of nature; though it spring from the same source; and though it is attended with the same obligatory power; yet it must be remembered that its application is made to very different objects. The law of nature is applied to individuals: the law of nations is applied to states. [James Wilson, "Study of Law in the United States", 1790-1791.]

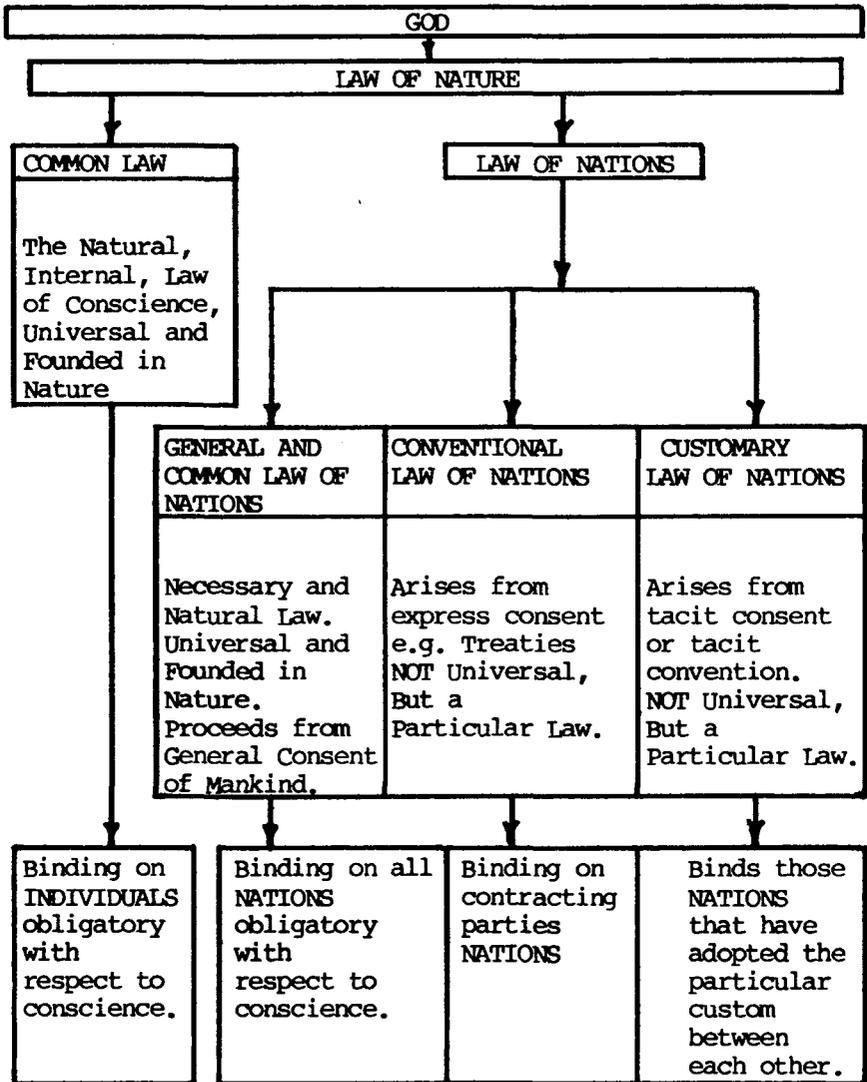
Vattel further distinguished aspects of the law of nations originating from other sources than the natural or internal law of conscience. These he called the "conventional" and the "customary" branches of the law of nations, which were voluntary in nature as contradistinguished from the internal law of conscience: (See Figure IV-2)

The several engagements into which nations may enter, produce a new kind of the law of nations, called conventional or of treaties. As it is evident that a treaty binds only the contracting parties, the conventional law of nations is not an universal but a particular law. All that can be done on this subject in a treatise on the law of nations, is therefore to give the general rules that ought to be observed by nations in relation to their treaties. That the particulars of the different agreements, relate to what passes between certain nations; but the law and the obligations resulting from it, is matter of fact, and belongs to history.

Certain maxims and customs consecrated by long use, and observed by nations between each other as a kind of law, form the Customary law of nations, or the custom of nations. This law is founded on tacit consent, or if you will, on a tacit convention of the nations that observe it with respect to each other. Whence it appears, that it is only binding to those nations that have adopted it, and that is not universal, any more than conventional laws ....

... if that custom is in its own nature indifferent, and much more if it be a wise and useful one, it ought to be obligatory to all those nations who are considered as having given

THE LAW OF NATURE AND NATIONS



"But if that custom (or convention, or treaty) contains anything unjust or illegal, it is of no force; and every nation (or individual) is under an obligation to abandon it, nothing being able to oblige or permit a nation (or individual) to violate a natural law." Vattel

FIGURE IV-2

their consent to it. And they are bound to observe it with respect to each other, while they have not expressly declared that they will not adhere to it. But if that custom contains any thing unjust or illegal, it is of no force; and every nation is under an obligation to abandon it, nothing being able to oblige or permit a nation to violate a natural law.

These three kinds of the law of nations, voluntary, conventional, and customary, together compose the positive law of nations. For they proceed from the volition of nations; the voluntary law, from their presumed consent; the conventional law, from an express consent; and the customary law, from a tacit consent: and as there can be no other manner of deducing any law from the will of nations, there are only these three kinds of the positive law of nations ....

To give at present a general direction, in relation to the distinction between necessary and voluntary laws, we shall observe, that the necessary law being always obligatory with respect to conscience, a nation ought never to lose sight of it, when it deliberates on the part it is to take, in order to fulfil its duty; but when it is requisite to examine what it may require from other states, it ought to consult the voluntary law, the maxims of which are consecrated to the safety and advantage of universal society. [Vattel, supra]

Proof that early members of our judiciary were students of Vattel is found in the 1796 Supreme Court case of *Ware v. Hylton, et al*:

The law of nations may be considered of three kinds, to wit: general, conventional, or customary. The first is universal, or established by the general consent of mankind, and binds all nations. The second is founded on express consent, and is not universal, and only binds those nations who have consented to it. The third is founded on tacit consent; and is only obligatory on those nations who have adopted it. [*Ware, Administrator of Jones v. Hylton, et al* (1796), 3 Dall. 197]

Few, if any, of our present day legislators, attorneys, and Judges have mastered even the rudiments of the principles of the Law of Nature and Nations; And this should give

us cause to pause. Article VI of the U.S. Constitution states:

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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

How is it possible to Legislate and Adjudicate laws "made in pursuance thereof; and all Treaties ... under the Authority" with intelligence and competence, while lacking knowledge of even the rudiments of these principles?

#### Part IV: Physiocracy--The Rule of Nature: [A]

The physiocrats were scientists of the natural order who embraced the principles of the Law of Nature and Nations. The natural order, they observed, was compulsory upon all living things, and worked to the happiness of man. It was superior to the artificial order, which was compulsory upon all persons agreeing to what Jean-Jacques Rousseau called the "Social Contract."

First stated by Francois Quesnay in 1756, the Rule of Nature held that all social facts are linked together in the bonds of inevitable laws, and that individuals and governments would obey these laws if they only knew them. The physiocrats boldly declared that solutions to societal problems had always been at hand. All social relations between men, far from being haphazard and in need of management by government, are admirably regulated and controlled by nature.

Physiocrat Dupont de Nemours wrote:

There is a natural society whose existence is prior to every other human association.

These self-evident principles, which might form the foundation of a perfect constitution, are also self-revealing. They are evident not only to the well-informed student, but also the simple savage as he issues from the lap of nature.

Said Mercier de la Riviere:

Property, security, and liberty constitute

the whole of the social order.

ITS LAWS ARE IRREVOCABLE, PERTAINING AS THEY DO TO THE ESSENCE OF MATTER AND THE SOUL OF HUMANITY. THEY ARE JUST THE EXPRESSION OF THE WILL OF GOD ... All our interests, all our wishes, are focused on one point, making for harmony and universal happiness. We must regard this as the work of a kind providence, which desires that the earth should be peopled by happy human beings.

The Physiocrats regarded private property to be the perfect product of the natural order and believed if artificial governments were removed, the natural order would resume its usual course at once.

La Physiocrasie became popular in Europe, and many of the European royalty began auditing the physiocrats. Some even attempted to convert their foedums into physiocracies, but they soon discovered that achieving natural order in their realms meant dissolving their hold and power over their subjects; an unacceptable proposition to those accustomed to ruling by way of the Civil Law.

Francois Quesnay died in 1774, and soon thereafter, physiocratic literature ceased to be published on the continent of its origin. Even the word "physiocrat" was eliminated in schools and press and replaced with the word "economist" as Rousseau's doctrine of the "social contract" swept Europe, resulting in the socialization of the entire European continent under Roman Civil Law.

Only one pupil of the Physiocrats was able to return to his country, dissolve the crown-servant bondage, and establish a nation based on the science of natural order, The Law of Nature and Nations, the self-evident laws of Nature and nature's God. THAT PUPIL WAS THOMAS JEFFERSON! Architect of the Declaration of Independence! And contrary to the teachings of our "educators," the principles of law this nation was founded upon, did not come from England, but came from France. What was imported from England was a feudal system functioning under the Civil Law, a system imposed on England in the year 1066 by William the Conqueror, which rules that country to this day under the illusory and fictitious nomenclature of "the Common Law of England", and was transplanted within our system of jurisprudence under the same fictitious name. And so, "The constant ideological conflict" between these two systems of law continues down through the ages.

## CHAPTER V

### THE COMPELLING REASONS FOR THE CONSTITUTIONAL CONVENTION

#### Part I: National v. Federal

As shown in the prologue, the major reasons for the constitutional convention were stated to be:

... for the purpose of revising the Articles of Confederation and perpetual Union between the United States of America, and ... establishing in these states a firm National government.

This "National" government was specifically established along side of, and in contradistinction to, a "Federal" government pursuant to the principles of the Law of Nature and Nations. In convention on June 8, 1787, James Wilson stated:

Federal liberty is to States what civil liberty is to private individuals. And States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of his personal sovereignty, which he enjoys in a State of nature.

In this regard Madison said:

It remained for the British Colonies, now United States of North America, to add to those examples, one of a more interesting character than any of them: which led to a system without a precedent ancient or modern, a system founded on popular rights, and so combining a federal form with the forms of individual Republics, as may enable each to supply the defects of the other and obtain the advantages of both. [Madison, Preface to the Debates in Convention of 1787.]

#### Part II: The Malady of Paper Money

In addition to establishing, "a firm National government," delegates to the convention recognized another problem of paramount importance that required a revision to the Articles of Confederation; the problem was the "havoc" caused by paper money. When the constitutional convention

was convened in Philadelphia on May 14, 1787, Randolph, governor of Virginia, drew attention to paper money in his opening speech by reminding his hearers that the patriotic authors of the confederation did their work "In the infancy of the science of constitutions and confederacies, when the havoc of paper money had not been foreseen." [A]

So, what provisions were made in the Constitution to solve this problem? The answer is in Article I, Section 8, and Article I, Section 10, Clause 1, but first a little background: Beginning as long ago as 1690, the colonies had periodically experimented with credit and unbacked paper as a form of public money. The documented effects of these experiments deserves our study and analysis:

#### History Of The First Issue Of Bills Of Public Credit (Inflation) In The American Colonies From 1690 To 1755-6:

##### Massachussets:

Dec. 1690 - Issued "seven thousand pounds of printed bills of equal value with money." [A](1)

May, 1691 - Issued thirty thousand pounds of printed bills. [A](2)

July, 1692 -Made "all" these "bills of public credit current within this province in all payments equivalent to money, excepting specialties and contracts made before the publication" of this new law. (Legal Tender Law) [A](3)

As a result, almost immediately all coin then in Massachusetts was exported to England and new stock followed as fast as it came in from abroad. Trade and commerce declined and hard times came upon the people.

Dec. 1697 - Passed legislation prohibiting "the export of coin, silver money or bullion." [A](4)

June, 1700 - Established a committee to consider how to revive trade, and to find out some equitable medium to supply the scarcity of "money." [A](5)

NOTE: The word "money" in all colonial legislation was used exclusively for gold and silver coin.

Nov., 1702 -First issue of bills of credit of Massachusetts after it became a royal province for ten thousand pounds, in value "equal to money." [A](6)

##### South Carolina:

May, 1703 - Enacted that not only its new emission of paper bills for six thousand pounds should be a "good payment and tender in law," but that whoever should refuse them should "forefeit double the value of bills so refused." For a short time, from June 1716, the fine was "treble the value." (Legal Tender Law) [A](7)

**Great Britain:**

1709 - Made a sudden requisition on the American colonies to aid in the conquest of the French possessions in North America. To meet this, all the New England colonies emitted paper bills, and the paper of each one of them found some circulation in the others.

**New Hampshire:**

1709 - Original act by which New Hampshire emitted its first paper money was destroyed by fire; a supplemental act of the following year seems to show that they were left to find their own way into circulation. [A](8)

**Connecticut:**

June, 1709 - Made its first emission of bills for eight thousand pounds, soon followed by eleven thousand more which were to "to be in value equal to money, and to be accordingly accepted in all public payments."

**New York:**

Nov., 1709 - Had entered into the defense of its northern frontier and for the first time involved itself in the use of bills of credit. [A](9)

**Rhode Island:**

July, 1710 - First emitted bills of credit, declared them equal in value to "money," and made them receivable in all public payments. [A](10)

Nov. 1711 - Discharged a claim by a loan of its bills of credit to the amount of three thousand pounds for four years, free of interest. [A](11)

**South Carolina:**

July, 1712 - Gave a wider development of this new form of using paper. Its legislature, on the pretext of creating a fund to sink former bills of credit and to encourage trade and commerce, ordered fifty-two thousand pounds in new bills of credit to be stamped and put out at interest in loans.

**Massachussets:**

1712 - The terms of issue of Massachussets, which was delayed until 1710, corresponded with those of Connecticut; but in 1712 the statute book complains that "money," which in those days meant only coin, "was not to be had"; and it was enacted that for any debt contracted within ten years after the last day of October, 1705, no debtor, after tendering payment of his full debt in lawful bills of credit on the province, should be disturbed in person or estate.

The law punishing counterfeiters of its own bills was courteously extended to the bills of other New England colonies; but the emissions of one colony were never made a tender in any of the other. [A](12)

The intercolonial circulation of each other's bills brought a new uncertainty in prices, for which the currency of each one of the four was steadily declining; it declined in each with unequal speed.

**Massachussets:**

Nov., 1714 - Ordered fifty thousand pounds to be let out by trustees of the inhabitants of the province for five years on real security at five pounds per cent per annum, to be paid back in five annual installments. [A](13)

The passion for borrowing spread like wildfire. The loan of bills of credit was managed at the seat of government. Rationalization went something like this: Why should Boston be favored? "that the husbandry, fishery, and other trade of the province might be encouraged and promoted". [A](14).

**Massachussets:**

1716 - Bills of credit on the province to the amount of one hundred thousand pounds were ordered to be distributed through a loan office in each county.

More rationalization: But why should borrowers in the smaller townships be forced to travel to their shire town? Let a public moneylender be near every man's door.

**Massachussets:**

March, 1721 - Fifty thousand pounds were distributed among borrowers in each several town according to its proportion in the last province tax. [A](15)

1728 - Again, sixty thousand pounds in bills of credit were proportionately loaned among the several towns. [A](16)

Of course, "money" disappeared from the province of Massachussets. Not even a silver penny was to be had; the small change became of paper. [A](17)

New Hampshire:

1717 - Remained one of the most cautious of the colonies but did issue fifteen thousand pounds of paper money by loans.[A](18)

Connecticut:

1718 - To prevent oppression by the rigorous exaction of "money" declared its bills of credit legal tender for debts contracted between the twelfth day of July, 1709, and the twelfth day of July, 1727. The time for the operation of this law was subsequently extended to 1735. (Legal Tender Law). [A](19)

1733 - Loaned interest bearing bills for nearly fifty thousand pounds. May, 1740 - Issued thirty thousand pounds of a new tenor.[A](20)

Pennsylvania:

March, 1723 - Issued bills of credit for loans to individuals, and not only compelled creditors to receive the bills at par or "lose their debts," but ordered sellers to receive them at their nominal value in the sale of goods or lands or tenements, or "forfeit a sum from thirty shillings to fifty pounds." (Legal Tender Law). [A](21)

This law, so wrote Adam Smith, "bears the evident mark of a scheme of fraudulent debtors to cheat their creditors ...."

Maryland:

1733 - Brought ninety thousand pounds in its bills of credit into circulation by loans at four percent.

The next development of the colonial system of paper money was a partial repudiation and recognition of the evils of such a practice. The people of South Carolina had already recorded their sense of mistake in the statute of the eleventh of December, 1717, in which they said: "It is found by experience that the multiplicity of the bills of credit hath been the cause of the ruin of our trade and commerce and hath been the great evil of this province, and that it ought with all expedition to be remedied." [A](22)

On the ninth of January, 1739, the General Court of Massachusetts made this confession: "The emission of great quantities of bills of public credit without certain provis-

ion for their redemption by lawful money in convenient time, hath already stript us of all our money and brought them into contempt to the great scandal of the government; for the remedy thereof, this province hath fixed the value of their bills in lawful money and the time of their redemption in 1742." [A](23)

But that year went by and relief had not been found. In 1744, James Allen, the preacher of the annual election sermon addressed the governor from the pulpit thusly:

Be the means of delivering us from the perplexing difficulties we are involved in by an unhappy medium uncertain as the wind the land mourneth, and the cries of many are going up into the ears of the Lord of Sabaoth. [A](24)

In February, 1748, Massachussets invited the governors of Connecticut, New Hampshire and Rhode Island to join in abolishing the use of bills of credit; but as no one of the three gave effectual heed to the summons, the people of Massachussets proceeded alone.

#### Massachussets:

Jan. 1749 - Passed act redeeming the bills of the old tenor at the rate of 45 shillings, those of the new tenor at the rate of 11 shillings and 3 pence, for one Spanish silver dollar. The bills of credit of New Hampshire, Rhode Island, and Connecticut were excluded by most stringent laws. [A](25)

Massachussets, with its quickened industry and established credit, subsequently "sat as a queen among the provinces."

#### Great Britain:

Jan., 1751 - Enacted that "no paper currency, or bills of credit of any kind issued in any of the said colonies or plantations, shall be a legal tender in payment of any private dues whatsoever within any of them." [A](26)

"No law," wrote Adam Smith, "could be more equitable." [A](27)

In his work, "A Caveat Against Injustice, or an Inquiry into the Evil Consequences of a Fluctuating Medium of Exchange." Roger Sherman, the great statesman from Connecticut, wrote the following in 1752:

Money ought to be something of certain value, it being that whereby other things are to be valued ... And this I would lay down as a principle that can't be denied, that a debtor ought not to pay any debts with less value than was contracted for, without the consent of or against the will of the creditor ... If what is used as a medium of exchange is fluctuating in its value, it is no better than unjust weights and measures, both which are condemned by the laws of God and man; and, therefore, the largest and most universal custom could never make the use of such a medium either lawful or reasonable ... But so long as we part with our most valuable commodities for such bills of credit as are no profit, we shall spend great part of our labor and substance for that which will not profit us; whereas if those things were reformed we might be as independent, flourishing and happy a colony as any in the British "dominions." [B]

Paper Money (Inflation) In America From The Beginning Of The Seven Years War To The Constitutional Convention Of The United States From 1755-6 To May, 1787:

Connecticut:

Nov., 1756 - Excluded the bills of paper money of Rhode Island and redeemed every nine shillings of its paper money with one shilling in specie.

Virginia:

April, 1757 - Involved in measures of war from May, 1755, as a result of the establishment of a post by France at the junction of the rivers which form the Ohio, issued paper bills which from the beginning were made a lawful tender for private debts. It was further ordered that any seller who should demand more for his goods in notes than in gold or silver coin, should "forfeit twenty per cent of their value." (Legal Tender Law) [A](28)

The treaty between England and France, which was ratified in the early part of 1763, left the middle and southern colonies under extreme embarrassment from their issue of paper. Massachusetts had stood firm by the sole use of coin. Rhode Island put on its statute book: "Lawful money of this colony is, and shall hereafter be, silver and gold coin; and nothing else." [A](29)

New Hampshire fixed 1771 as the limit for its paper, which in that year totally disappeared. [A](30)

Connecticut went through the French war without issuing bills of credit; but in 1770 relapsed into the old abuse. [A](31)

In 1770, New York passed an act emitting one hundred and twenty thousand pounds in bills of credit to be put out on loan. The King promptly gave it his negative, but it was successfully re-enacted in February of the following year. [A](32)

The war for independence exhibited a new development of the system of credit by the reckless disregard of its bounds. Promises of money were scattered over the land alike by the states and by the United States, until "bills," to use the words of John Adams, "became as plenty as oak leaves." The paper currency of the congress was printed in such exorbitant amounts that wages and prices skyrocketed, forcing the Legislature to enact harsh wage and price controls. When these failed, moral sounding laws reeking of piety and patriotism were enacted in an attempt to chain the people under penalty of violence to the government's absurd money, such as:

If any person shall hereafter be so lost to all virtue and regard for his Country as to refuse to accept its notes, such person shall be deemed an enemy of his Country. [C](1)

The depreciation of paper currency relative to coin followed the same sickening course our paper currency follows today. (Have you ever thought about the fact that a silver dime will buy as much, or more, gas today as it would forty or fifty years ago?) In 1779, the paper Continental Dollar depreciated from 8 to 1 to over 38 to 1 against the Spanish Milled Dollar. In January, 1781, these notes were redeemable 100 to 1. In May 1781, they ceased passing as currency and quietly died in the hands of their owners. Repeatedly, new series were issued, only to follow a similar pattern. [C](2)

A contemporary of the Revolution, Peletiah Webster, records it this way:

It ceased to pass as currency (in May, 1781), but was afterwards bought and sold as an article of speculation, at very uncertain and desultory prices, from 500 to one thousand to one.

Paper money polluted the equity of our laws, turned them into engines of oppression, corrupted the justice of our public administration, destroyed the fortunes of thousands who had confidence in it, enervated the trade, husbandry,

and manufactures of our country, and went far to destroy the morality of our people. [C](3)

Another contemporary writer, Breck, gives us this ridiculous aspect of inflation's effects in the 1780's:

The annihilation was so complete that barber shops were papered in jest with the bills; and sailors, on returning from their cruises, being paid off in bundles of this worthless money, had suits of clothes made of it, and with characteristic light-heartedness turned their loss into a frolic by parading through the streets in decayed finery which in better days had passed for thousands of dollars. [C](4)

Meanwhile, to continue with the saga of the state's folly:

#### North Carolina:

1780 - Directed the emission of more than a million pounds, and such further sums as the exigencies of the state might require. [A](33)

1781 - Gave authority to issue twenty six and a quarter millions of paper dollars, being six per cent interest. [A](34)

#### Virginia:

March, 1781 - Directed the emission of ten million pounds, and authorized five millions more. Made the continental paper and its own legal tender in discharge of all debts and contracts, except contracts which expressly promised the contrary. (Legal Tender Law) [A](35)

The experience of the Revolution completed the instruction of our fathers on the wastefulness and injustice of attempting to conduct affairs on the basis of paper promises, indefinite as to their time of payment. In less than a month after the surrender of Cornwallis, Virginia enacted that the paper issues of the state shall, from the passing of this act, cease to be a tender in payment of debt. [A](36)

#### South Carolina:

Feb., 1782 - After declaring that "laws making bills of credit legal tender are found inconvenient," enacted "that from and after the passage of this act, no bill or bills of credit or paper currency whatever shall be con-

sidered, taken, or received as a legal tender, payment, or discharge of any debt, or demand whatsoever." [A](37)

#### Rhode Island:

Nov., 1782 - Ordered all bills and notes to be brought into the treasury. They were struck out of circulation, and new notes, bearing interest, given in their stead. The increase of paper money in the state was arrested for the coming four years. [A](38)

Washington, in his circular letter of June, 1783, to the governors of the several United States wrote that "honesty will be found on every experiment to be the best and only true policy," being convinced that "arguments deduced from this topic could with pertinency and force be made use of against any attempt to procure a paper currency." [A](39)

In June, 1783, Alexander Hamilton, in resolutions for a new constitution of the United States of America, set forth explicitly; "To emit an unfunded paper as the sign of value ought not to continue a formal part of the constitution, nor even hereafter to be employed; being, in its nature, pregnant with abuses, and liable to be made the engine of imposition and fraud; holding out temptation equally pernicious to the integrity of government and to the morals of the people." [A](40)

These temptations were still being succumbed to in some of the states at the time Hamilton made his observations:

#### Pennsylvania:

1783 - Issued three hundred thousand dollars in what is called treasury notes.

1785 - Issued one hundred and fifty thousand pounds.

#### North Carolina:

1783 - Emitted one hundred thousand pounds. [A](41)

1785 - Emitted one hundred thousand more. [A](42)

#### South Carolina:

1785 - Lent among its constituents one hundred thousand pounds in paper bills of the state. [A](43)

#### New York:

1786 - Placed an emission of two hundred thousand pounds in bills of credit with loan officers, to be loaned on mortgage security; and they were to be made a legal tender in any suit for debt or damages, and the costs of the suit. The bills were further to be received at the port of New York by the state. (Legal Tender Law) [A](44)

New Jersey:

1783 - Issued thirty-one and a quarter thousand pounds.

In 1786, in New Jersey, an attempt was made to issue a larger amount. William Paterson, subsequently a member of our Supreme Court, resisted the proposal with words as follows:

An increase of paper money, especially if it be a tender, will destroy what little credit is left, will bewilder conscience in the mazes of dishonest speculation, will allure some and constrain others into the perpetration of knavish acts, will turn vice into a legal virtue, and sanctify iniquity by law. Men have, in the ordinary transactions of life, temptations enough to lead them from the path of rectitude; why then pass laws for the purpose, or give legislative sanction to positive acts of iniquity? Lead us not into temptation is a part of our Lord's Prayer, worthy of attention at all times, and especially at the present. [A](45)

In the summer of 1785, Richard Henry Lee, then president of Congress, warned Washington of a plan for issuing a large sum of paper money in the next assembly of their state, adding as his opinion:

The greatest foes in the world could not devise a more effectual plan for ruining Virginia. I should suppose every friend to his country, every honest and sober man, would join heartily to reprobate so nefarious a plan of speculation. [A](46)

Washington answered in August:

I have never heard, and hope never shall hear any serious mention of a paper emission in this state. Yet ignorance is the tool of design, and often set to work suddenly and unexpectedly. [A](47)

In the same year, George Mason wrote:

They may pass a law to issue paper money, but twenty laws will not make the people receive it. Paper money is founded upon fraud and knavery. [A](48)

On the first of August, 1786, Washington wrote to Jefferson:

Other states are falling into very foolish and wicked plans of emitting paper money.  
[A](49)

Later in the year the proposal to issue paper money was brought up in the house of delegates of Virginia. Madison spoke as follows:

Paper money is unjust; to creditors, if a legal tender; to debtors, if not a legal tender, by increasing the difficulty of getting specie. It is unconstitutional, for it affects the right of property as much as taking every equal value in land. It is pernicious, destroying confidence between individuals, discouraging commerce, enriching sharpers, vitiating morals, reversing the end of government, conspiring with the examples of other states to disgrace republican governments in the eyes of mankind.[A](50)

To Jabez Bowen, of Rhode Island, Washington wrote on the 9th of January, 1787:

Paper money has had the effect in your state that it will ever have, to ruin commerce, oppress the honest, and open the door to every species of fraud and injustice. [A](51)

Stone, a member of the senate of Maryland, appealed to Washington to allow his opinion on the case as it stood in Maryland to be publically known. Just three months before the opening of the constitutional convention in Philadelphia. Washington answered:

I do not scruple to declare, that if I had a voice in your legislature, it would have been given decidedly against a paper emission upon the general principles of its utility as a representative, and the necessity of it as a medium ... The wisdom of man, in my humble opinion, cannot at this time devise a plan, by which the credit of paper money would be long supported; consequently depreciation keeps pace with the quantity of emission, and articles for which it is exchanged rise in a greater ratio than the sinking value of the money. Wherein, then, is

the farmer, the planter, the artisan benefited? An evil equally great is, the door it immediately opens for speculation, by which the least designing, and perhaps most valuable, part of the community are preyed upon by the more knowing and crafty speculators. [A](52)

Across the whole country its best men were seeking remedies for what Madison called "the epidemic malady of paper money". Among the evils for which the new constitution should provide a remedy, Madison enumerated the "familiar violation of contracts in the form of depreciated paper made a legal tender". [A](53). In his notes for his own guidance in the federal convention he laid down the principle that: "Paper money may be deemed an aggression on the rights of other states". [A](54). Just five weeks before the time for the meeting of the convention, he wrote from congress in New York to Edmond Randolph: "There has been no moment since the peace, at which the federal assent would have been given to paper money." [A](55)

These were strong statements and opinions expressed by renowned statesmen and individuals who subsequently had a decisive input into the writing of the United States Constitution. It appears, that after many experiments with paper (artificial money), these thinkers had finally connected the elusive cause and effect relationship of inflation; i.e. the cause being compelled acceptance of artificial money via Legal Tender Laws and the effects, in the extreme, as follows:

Blood running in the streets, Mobs of rioters and demonstrators threatening banks and legislatures. Looting of shop and home. Credit ruined. Strikes and unemployment. Trade and distribution paralyzed. Shortages of food. Bankruptcies everywhere. Court dockets overloaded. Kidnappings for heavy ransom. Sexual perversion, drunkenness, lawlessness rampant .... [C] p.11

Washington wrote to Madison in 1786:

The wheels of government are clogged, and we are descending into the vale of confusion and darkness. No day was ever more clouded than the present. We are fast verging to anarchy and confusion. [C](5)

On February 3, 1787, Washington wrote to Henry Knox:

If any person had told me that there would have been such a formidable rebellion as exists, I would have thought him fit for a madhouse.  
[C](5)

The Constitutional Convention, Philadelphia, May 14th To September 17th, 1787:

The convention was organized by electing George Washington as its president. Randolph, governor of Virginia, drew attention to paper money in his opening speech by reminding his hearers that the patriotic authors of the confederation did their work, "in the infancy of the science of constitutions and of confederacies, when the havoc of paper money had not been foreseen." [A](56)

The eighth clause of the seventh article, in the first draft of the constitution, was as follows:

The legislature of the United States shall have the power to borrow money and emit bills on the credit of the United States.

In convention, August 16th, the following discussion and action occurred - as documented by James Madison: [D] pp. 556, 557.

MR. GOVERNOUR MORRIS moved to strike out "and emit bills on the credit of the United States" - If the United States has credit such bills would be unnecessary: if they had not, unjust and useless.

MR. BUTLER, seconded the motion.

MR. MADISON, will it not be sufficient to prohibit the making of them a tender? This will remove the temptation to emit them with unjust views. And promissory notes in that shape may in some emergencies be best.

MR. GOVERNOR MORRIS, striking out the words will leave room still for notes of a responsible minister which will do all the good without the mischief. The monied interest will oppose the plan of Government, if paper emissions be not prohibited.

MR. GHORUM was for striking out, without inserting any prohibition. If the words stand they may suggest and lead to the measure.

COL. MASON had doubts on the subject. Congress he thought would not have the power unless it were expressed. Though he had a mortal hatred of paper money, yet he could not foresee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

MR. GHORUM. The power as far as it will be necessary or safe, is involved in that of borrowing.

MR. MERCER was a friend to paper money, though in the present state & temper of America, he should neither propose nor approve such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government to deny it a discretion on this point. It was impolitic also to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their attachment with the loss of the opposite class of Citizens.

MR. ELSEWORTH thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made, were now fresh in the public mind and had excited the disgust of all the respectable part of America. By withholding the power from the new government more friends of influence would be gained to it than by almost anything else. Paper money can in no case be necessary. Give the Government credit, and other resources will offer. The power may do harm, never good.

MR. RANDOLPH. Notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions which might arise.

MR. WILSON. It will have a most salutary influence on the credit of the United States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs

are remembered, and as long as it can be resorted to, it will be a bar to other resources.

MR. BUTLER. Remarked that paper was a legal tender in no Country in Europe. He was urgent for disarming the Government of such a power.

MR. MASON was still averse to tying the hands of the Legislature altogether. If there was no example in Europe as just remarked, it might be observed on the other side, that there was none in which the Government was restrained on this head.

MR. READ, thought the words, if not struck out, would be as alarming as the Mark of the Beast in Revelations.

MR. LANGDON had rather reject the whole plan than retain the three words "(and emit bills)"

On the motion for striking out: N.H. ay Mas. ay Ct. ay N.J. no Pa. ay Del. ay Md. no Va. ay N.C. ay S.C. ay Geo. ay.

The clause for borrowing money, agreed to nem con.

So the convention, by a vote of 9 to 2, refused to grant the legislature of the United States the power "to emit bills on the credit of the United States." Madison wrote: "Striking out the words cut off the pretext for a paper currency, and particularly for making the bills a tender either for public or private debts." [A](57)

By refusing to the United States the power of issuing bills of credit, the door was shut, but not barred, on paper money by constitutional law. Although Congress was not authorized to issue notes of the United States, the borrowing clause, thought absolutely necessary for emergencies, left an easy out for friends of paper money to borrow notes of another entity into circulation. For example, notes of a private banking corporation, on the credit of the United States. The result of the above action appears in Article I, Section 8, of the United States Constitution:

The Congress shall have power ... to borrow money on the credit of the United States; ... to coin money, regulate the Value thereof, and of foreign coin, and Fix the Standard of Weights and Measures.

The first draft of the constitution had forbidden the states to emit bills of credit without the consent of the legislature of the United States; in convention on the 28th of August, the following discussion occurred: [D] pp. 627, 628.

MR. WILSON & MR. SHERMAN moved to insert after the words "coin money" the words "nor emit bills of credit, nor make any thing but gold & silver coin a tender in payment of debts" making these prohibitions absolute; instead of making the measures allowable (as in the XIII art:) with the consent of the Legislature of the U. S..

MR. GHORUM thought the purpose would be as well secured by the provision of art: XIII which makes the consent of the Gen Legislature necessary, and in that mode, no opposition would be excited; whereas an absolute prohibition of paper money would rouse the most desperate opposition from its partisans.

MR. SHERMAN thought this a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money, would make every exertion to get into the Legislature in order to license it.

The question being divided; on the 1st part - "nor emit bills of credit" N.H. ay Mas. ay Ct. ay Pa. ay Del. ay Md. divided Va. no N.C. ay S.C. ay Geo. ay.

The remaining part of Mr. Wilson's & Mr. Sherman's motion was agreed to nem con:

The result of this action appears in Article I, Section 10, Clause 1, of the United States Constitution. Its most salient feature is "No State shall make any thing but gold and silver coin a tender in payment of debts; ...." meaning that no State has authority and jurisdiction to compel any citizen to pay a debt with any thing but gold and silver coin, regulated in value by Congress pursuant to its authority found in Article I, Section 8.

The Miracle Of A Stable Monetary Standard:

After the constitutional convention, it took nearly a year for the states to ratify the Constitution and then

another to set up the new government. The most immediate relief brought about by the Constitution was economic. The cause of this economic relief was Article I, Section 10, prohibiting the states from enforcing payment in anything but gold and silver coin. Citizens could use anything they wanted as a medium of exchange between themselves, but when it came to the state's participation in anyone's economic life, such as enforcing fines, taxes, judgements, etc., the medium had to be gold and silver coin.

The results (effects) were literally astounding:

June 3, 1790, Washington wrote to the Marquis de LaFayette;

You have doubtless been informed, from time to time, of the happy progress of our affairs. The principle difficulties seem in a great measure to have been surmounted. Our revenues have been considerable more productive than it was imagined they would be. I mention this to show the spirit of enter- prise that prevails.  
[C](6)

The December 16, 1789, edition of the Pennsylvania Gazette exclaimed;

Since the federal constitution has removed all danger of our having a paper tender, our trade is advanced fifty percent.

March 19, 1791, Washington again wrote to LaFayette;

Our country, my dear sir, is fast progressing in its political importance and social happiness. [C](7)

July 19, 1791, Washington wrote to Catherine Macaulay;

The United States enjoys a sense of prosperity and tranquillity under the new government that could hardly have been hoped for. [C](8)

July 20, 1791, Washington wrote to David Humphreys;

Tranquillity reigns among the people with the disposition towards the general government which is likely to preserve it. Our public credit stands on that high ground which three years ago

it would have been considered as a species of  
madness to have foretold. [C](9)

Thus, the compelling need for the constitutional convention was to establish a government in pursuance of our First Organic Law - The Declaration of Independence. The Principles of which are founded in the Law of Nature and Nations. This required: (1) A totally new experiment in the history of formally established governments. As Madison said, "There being no technical or appropriate denomination applicable to the new and unique System, the term 'National' was used with a confidence that it would not be taken in a wrong sense"; and (2) A stable monetary standard devoid of paper money having the effect "it will always have, to ruin commerce, oppress the honest, ... open the door to every species of fraud and injustice," and pollute the equity of our laws, turning them into "engines of oppression."

## CHAPTER VI

### THE ADMIRAL GOES TO WORK

Part I: Development Of The Approach (1797-1825) [A]

Almost before the ink was dry on the Constitution, mercantile interests were busily at work to subvert the new "National" Constitution and subject the inhabitants of the United States of America, once again, to a federal/feudal system under the jurisdiction of Admiralty/Maritime. On September 1, 1797, Thomas Jefferson wrote to Colonel Arthur Campbell:

It is true that a party has come up among us which is endeavoring to separate us from all friendly connection with France, to unite our destinies with those of Great Britain, and to assimilate our government to theirs. Our lenity in permitting the return of the old tories, gave the first body to this party; they have been increased by large importations of British merchants and factors, by American merchants dealing on British capital, and by stock dealers and banking companies, who by the aid of a paper system, are enriching themselves to the ruin of our country and SWAYING THE GOVERNMENT BY THEIR POSSESSION OF THE PRINTING PRESSES, AND OTHER MEANS not always honorable to the character of our countrymen.

On December 19, 1801, Jefferson wrote to John Dickerson:

The federalists have retired into the judiciary as a stronghold. There the remains of federalism are to be preserved and fed from the treasury, and from that battery, all the works of republicanism are to be beaten down and eras- ed. By a fraudulent use of the Constitution, which has made judges irremovable, they have multiplied useless judges merely to strengthen their phalanx.

And on October 10, 1802, Jefferson wrote to Robert Livingston:

THE FEDERALISTS SAY WE LIED THEM OUT OF POWER. AND OPENLY AVOW THEY WILL DO THE SAME TO US.  
But it was no lies or arguements on their part

which dethroned them, but their own foolish acts, sedition laws, taxes, extravagences and heresies. Every decent man among them revolts at their filth ...

The semi-direct approach failed miserable and the federalists resorted to lies and total deception as promised. On April 16, 1804, Jefferson wrote to Gideon Granger:

The federalists know, that so nomine they are gone forever. Their object, therefore, is how to return to power under some other form. Undoubtedly, they have but one means, which is to divide the republicans, join the minority, and barter with them for the cloak of their name ... The minority, having no other means of ruling the majority, will give a price for auxiliaries, and that price must be principle. THUS A BASTARD SYSTEM OF FEDERO-REPUBLICANISM WILL RISE ON THE RUINS OF THE TRUE PRINCIPLES OF OUR REVOLUTION.

On January 20, 1809, Jefferson wrote to Washington Boyd:

... These elements of explanation, history cannot fail of putting together in recording the crime of combining with the oppressors of the earth to extinguish the last spark of human hope, that here, at length, will be preserved a model of government securing to man his rights and the fruits of his labor, by an organization constantly subject to his own will.

The crime indeed, if accomplished would immortalize its perpetrators and their names would descend in history with those of Robespierre and his associates, as the guardian genii of despotism, and demons of human liberty. I do not mean to say that all who are acting with these men are under the same motive. I know some of them personally to be incapable of it. Nor was that the case with the disorganizers and assassins of Paris. Delusions there, and party perversions here, furnish unconscious assistants to the hired actors in these atrocious scenes

....

Jefferson to General Henry Dearborn, August 14, 1811:

Backed by England, they (the federalists) never lose hope that their day is to come when the terrorism of their earlier power is to be merged in the more gratifying systems of deportation and the guillotine.

Jefferson to William Johnson, June 6, 1823:

... The original objects of the federalists were, 1st, to warp our government more to the form and principles of monarchy, and 2d, TO WEAKEN THE BARRIERS OF STATE GOVERNMENT AS COORDINATE POWERS. In the first they have been so completely foiled by the universal spirit of the nation, that they have abandoned the enterprise, shrunk from the odium of their old appellation, taken to themselves a participation of ours, and under the psuedo-republican mask, are now aiming at their second object, and strengthened by unsuspecting or apostate recruits from our ranks, are advancing fast towards an ascendancy ....

Jefferson to Samuel H. Smith, 1823:

The federalists in their schemes to monarchise us, have given up their name ... taken shelter among us under our own name. But they have only changed the point of attack. On every question of the usurpation of State powers by the foreign General Government, the same men rally together, force the line of demarcation; and consolidate our government. The judges are at their head as heretofore, and are their entering wedge ....

Jefferson to William Short, January 8, 1825:

Monarchy, to be sure, is now defeated, and they wish it should be forgotten that it was ever advocated. They see that it is desperate, and treat its imputation to them as a calumny; and I verily believe that none of them have it now in direct aim.

Yet the spirit is not done away. The same party takes now what they deem to be the next best ground, THE CONSOLIDATION OF THE GOVERNMENT, by unlimited constructions of the Constitution, A CONTROL OVER ALL THE FUNCTIONS OF THE

## STATES, AND CONCENTRATION OF ALL POWER ULTIMATELY IN WASHINGTON.

Thus, Jefferson identified the objectives and general plan for the commission of high crimes against the American people, and against humanity itself, by mercantile interests "the guardian genii of despotism, and demons of humanity." These crimes were to be accomplished via fraudulent use of the Constitution, lies and subterfuge, with the assistance of recruits from our own ranks (dupes and pawns in the game).

### Part II: Laying The Groundwork (1851-1913)

#### Limited Liability Act (1851):

On March 3, 1851, Congress enacted the Limited Liability Act (Codified at 46 USC 181-189). The purpose of this Act was to limit the liability for the payment of debts of persons who were ship owners involved in Maritime Commerce. This act was the result of a U.S. Supreme Court decision titled *The New Jersey Steam Navigation Co. vs. The Merchants Bank*, 6 Howard 342 (1848).

In the *New Jersey Steam Navigation* case, the high court ruled that under the Common Law, if a party were to ship goods on board a ship and something happened to the goods such as being destroyed or damaged by the perils of the sea, the ship owner was responsible to the owner of the goods. The ship owner must pay to the owner of the goods the amount the goods were worth. If the ship owner did not pay the debt, the owner of the goods could sue the ship owner and collect. If the ship owner failed to pay, the creditor could then file a lien on the ship, which does not require possession of the object, called a maritime lien. This Act specifically gives limited liability on shipments of "bills of any bank or public body."

The Congress decided, in 1851, that as a result of the *New Jersey Steam Navigation* case, persons would no longer be drawn into ownership of ships because of the liability involved. Shipping on the high seas is very risky, and was especially so at that period in time.

After the Limited Liability Act was enacted, the U.S. Supreme Court, in the case of *Butler vs. Boston & Savannah Steamship Co.*, 130 U.S. 527 (1889), ruled as follows:

But it is enough to say that the rule of limited responsibility is now our maritime rule. It is the rule by which through the Act of Congress we have announced that we propose to ad-

minister justice in maritime cases. The rule of limited liability prescribed by the Act of 1851 is nothing more than the old maritime rule administered in courts of admiralty in all countries except England from time immemorial and if this were not so, THE SUBJECT MATTER ITSELF IS ONE THAT BELONGS TO THE DEPARTMENT OF MARITIME LAW.

#### The Fourteenth Amendment (1868):

Since federalism must function within the jurisdiction of Civil Law and a federal government (the crown) must have subjects in order to exist and flourish, a subject population had to be created in the United States. Those sovereign individuals running about, minding their own business, had somehow, to be induced to come aboard the federal ship-of-state.

One of the foremost preliminary steps in accomplishing this objective was the Fourteenth Amendment to the Constitution of the United States of America. Proposed by resolution on June 13, 1866; ratified July 9, 1868; certified July 29, 1868, this Amendment stated:

All persons born or naturalized in the United States, AND SUBJECT TO THE JURISDICTION THEREOF, are citizens of the United States and of the State wherein they reside. . .

Article IV, Section 2, of the "National" Constitution acknowledges only State citizenship. Now comes the Fourteenth Amendment, stated in a way that conceals its real consequences. Those consequences are: If you are born or naturalized in the United States, you can have United States citizenship if you will subject yourself to the jurisdiction of the United States federal government!

The distinction between citizenship of the United States and citizenship of a State is here clearly recognized and established.

Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from

each other, and which depend upon different characteristics or circumstances in the individual. [Slaughter House Cases, 16 Wall. 36, 74 (1873).]

While the amendment did not create a national citizenship it has the effect of making that citizenship "paramount and dominant" instead of "derivative and dependant" upon State citizenship. [Colgate v. Harvey, 296 U.S. 404, 427 (1935).]

So, how does a sovereign individual become subject to the jurisdiction of the federal government? One way is to violate a law that the government is authorized, and granted jurisdiction, to prosecute (treason, counterfeiting and crimes against the Law of Nations); another way is to be in its employ; the third way, least known and understood by trusting inhabitants of the various states, is by applying for its privileges and/or partaking of its benefits.

THE PHRASE "SUBJECT TO THE JURISDICTION" RELATES TO TIME OF BIRTH, and one not owing ALLEGIANCE AT BIRTH cannot become a citizen save by subsequent naturalization, individually or collectively. The words do not mean merely geographical location, but "COMPLETELY SUBJECT TO THE POLITICAL JURISDICTION." [Elk v. Wilkins, 112 U.S. 94, 102 (1884), holding that an Indian born within the United States in a recognized tribe, although he surrender his tribal relations, if that SURRENDER is not accepted by the United States, does not become a citizen of the United States by virtue of the first sentence of the 14th Amendment.]

{ With incredible success, the federal pied pipers subsequently played their tune, "Something for Nothing" until the shipmates were firmly bound to the ship by their feudal bonds.

Tontine Insurance (1868 - ? ) [B]

In order to evade the usuary laws which had prevented the growth of a funded system of national insurance, governments had frequently resorted to the issue of annuities and child endowments as a means of raising funds. The tontine was a somewhat later development, having been put into operation in France during the year 1689. It took its name from its originator, Lorenzo Tonti, a Neopolitan by birth, who was

attracted to Paris by the regime of Mazarin. In its original form the tontine was a loan in which the premium was never to be repaid, but the entire interest on the loan was to be divided each year among the survivors or the original subscribers. The chief characteristic, and trademark, of the tontine is the pool of assets that is divided among the survivors at the options of those subscribers who dropped out, or did not survive until the time for distribution had arrived. The Equitable Life Insurance Company, in 1868, introduced the deferred dividend system, which was really an application of the tontine principle. The most serious flaw in the deferred dividend system was the inability of the insured to compel an accounting. The general rule is the policy holder is not entitled to compel the company to account for dividends. Nor can the policy holder "compel the distribution of the surplus fund in other manner or at any time, or in any other amounts than that provided for in the contract."

As stated in the report of the Armstrong Committee, "the plan of deferring dividends for long periods...has undoubtedly facilitated large accumulations, providing apparently abundant means for doubtful uses on the one hand, while concealing on the other the burden imposed upon the policy holders..." [B](1). According to George L. Armhein, Instructor in Insurance at the University of Pennsylvania,

... deferred dividends were prohibited by law in the legislation (Pa.) of 1906 and subsequent years. Thus came to an end a system which in 1898 had superseded to a very large extent that of annual dividends, and which in 1915 seemed antiquated. [B](2).

Question: What made it "antiquated" in 1915? According to Mr. Armhein, it was outlawed in 1906 but did not seem antiquated until 1915!

John K. Tarbox, The Commissioner of Insurance for the State of Massachusetts had this to say about tontine in his annual report:

The false idea of life insurance as investment begat the equally false conception of life insurance as a bet, and the latter gave birth to the modern tontine, which is a wager.

... In the tontine the forfeitures go to enrich the individual survivors of the special class of policy holders who enter the compact, constituting a company liability instead of a company asset, for the protection of its policy obligations ... The stake played for, rather

than the game itself constitutes the chief offense. Our law condemns, forbids, and makes void the contract of forfeiture.

As was truly testified before the committee of the New York assembly, in 1877, ... the tontine policy is taken for purposes of investment by a set of men who would not insure their lives at all. The inducement to the investment is ... the expected profits from forfeitures ....

Aside from the moral quality of the matter, - concerning which I waive controversy, - the considerations which the public aspect seems to me principally to invite are these: First, whether it is prudent to make of our insurance companies great banking establishments. ... and, second, whether an institution organized as the life insurance system was, for a benevolent and unselfish use, shall be combined with enterprises of selfish speculation as the tontine undeniably is.

I AM STRONGLY PERSUADED OF THE IMPOLICY AND POSITIVE DANGER OF MAGNIFYING THE BANKING FEATURE OF LIFE INSURANCE INSTITUTIONS, TO ACCOMMODATE MODERN PLANS OF TONTINE SPECULATION AND ENDOWMENT INVESTMENT. [B](3).

John Tarbox was clearly saying that, at that time, there were modern plans to make insurance companies (specifically, tontine insurance companies) great banking institutions.

The Sixteenth Amendment (1913):

#### The De Facto Sixteenth

Proposed by resolution July 2, 1909; ratified February 3, 1913; certified February 25, 1913; the Sixteenth Amendment specified that Congress shall have the power to:

... lay and collect taxes on incomes, FROM WHATEVER SOURCE DERIVED, without apportionment among the several states, and without regard to any census or enumeration.

Insight into the intent, force and effect of this Amendment can be gleaned from House of Representatives Report No. 416, dated March 14, 1912. This report addressed the need for an interim excise tax while preparing "the public mind for a fuller appreciation of the justice and desirability of an income-tax law":

The Committee on Ways and Means, to whom was referred the bill (H.R. 21214) to extend the special excise tax, now levied with respect to doing business by corporations, to persons, and to provide revenue for the Government by levying a special excise tax with respect to doing business by individuals and copartnerships, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

#### WHY EXCISE TAX IS NEEDED NOW.

The legislative action proposed by H.R. 21214 is prompted at this time by the desire of the committee to place sugar on the free list, evidenced by H.R. 21213, and to provide for any resulting loss to the revenue of the Nation. The action of the committee concerning sugar has been taken in deference to a very general and persistent public demand. With the earnest desire to assist the people in acquiring this important food product at reduced prices, the committee has been compelled to seek another source from which to provide for the consequent loss in revenue. After a thorough investigation of the entire field of revenue possibilities, the most just and practicable solution of the problem appeared to be extend the operation of the corporation-tax law of 1909 to individuals, firms and copartnerships, and this the committee is doing by favorably reporting H.R. 21214. ...

#### COMMITTEE FAVORS INCOME-TAX LAW.

The committee desires to go on record as favoring an income-tax law, but does not report such a measure at this time for the following reasons: (1) The Supreme Court has declared a general income-tax law unconstitutional for lack of apportionment, and provision has been made whereby the States are now considering the acceptance or rejection of the proposed sixteenth amendment to the Constitution giving to Congress the undisputed authority to impose such a general tax, and (2) through the decision of the Supreme Court in upholding the constitutionality of the existing corporation-tax law the committee has conceived the idea of extending the provisions of this law in the manner pro-

posed in H.R. 21214, and to secure in this way the practical results of an income-tax law without violating the ruling of the Supreme Court in rejecting the income-tax law of 1894.

According to information obtained from the Department of State, the adoption of the proposed income-tax amendment has been favorably voted upon by 28 States, leaving only 8 States yet required for its approval. The enactment of H.R. 21214 will serve the valuable purposes of meeting the immediate revenue requirements and at the same time aid in preparing the public mind for a fuller appreciation of the justice and desirability of an income-tax law.

#### THE LEGAL ASPECT.

As heretofore stated, the legislation proposed by H.R. 21214 is an extension of the special excise tax levied by the act of August 5, 1909, with respect to doing business by corporations, joint-stock companies or associations, and insurance companies, firms or copartnerships and individuals. In other words, it is proposed to take certain provisions and administrative features both from section 27 of the excise tax act of 1898 and the corporation act of 1909, which have been held valid in all respects by the Supreme Court, and combine and embrace the same in one act applying to individuals and copartnerships. The constitutionality of the act thus proposed is undoubtedly sustained by the corporation-tax cases, *Flint v. Stone Tracy Co.* (220 U.S. 107); it is in no sense an income tax, and its validity is in nowise affected by the decision of the Supreme Court in the income-tax cases, *Pollock v. Farmers' Loan and Trust Company* (157 U.S., 420; s. c., 158 U.S. 601).

On the contrary, this decision plainly indicates that if the act of 1894 had been drawn in the form of the law now proposed, and had levied an excise tax upon business measured by income, it would have been sustained, as clearly shown by Mr. Chief Justice Fuller, who said, in the opinion after reargument:

"We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have

not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such." (158 U.S., p. 635.)

Nowhere in the books has the taxing power of the Government under the Constitution been more accurately and concisely stated than by Mr. Chief Justice Chase in the license tax cases (5 Wall., 471), when he said:

"Congress can not tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion."

The constitutionality of the proposed tax therefore becomes apparent if these two propositions can be sustained:

1. The proposed tax is not a direct tax upon the property, real or personal, of the copartnerships of individuals, but a special excise upon the carrying on or doing business by such copartnerships or individuals, and it, therefore, needs no apportionment among the States according to population as required by the Constitution with reference to direct taxes.

2. The proposed tax is uniform throughout the United States.

If it be true that the tax is an excise, its indirect character is at once established. (Pacific Insurance Co. v. Soule, 7 Wall., 433; Springer v. United States, 102 U.S., 585; Sprecckles Sugar Refining Co. v. McClain, 192, U.S., 397.)

While it has been in the past a subject for considerable argument, it is now well settled that the terms "duties, imposts, and excises" must be treated as embracing all the indirect forms of taxation contemplated by the Constitution. Mr. Chief Justice Fuller stated the conclusion from all the cases when, in the Pollock case, (157 U.S., 557), he said:

"Although there have been from time to time intimations that there might be some case which

was not a direct tax, nor included under the words duties, imposts, and excises, such a tax for more than 100 years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue."

The proposed tax is an excise because,

(a) The tax is legislatively intended as an excise, as shown by the plain language of the bill.

(b) The subject of the tax is the conduct or transaction of business which, according to a uniform line of decisions by the Supreme Court of the United States, is a proper subject of excise tax.

(c) The fact that the tax is to be measured by the net income of the taxable person or firm does not change its real character.

**B. THE SUBJECT OF THE TAX IS THE CONDUCT OR TRANSACTION OF BUSINESS WHICH, ACCORDING TO A UNIFORM LINE OF DECISIONS BY THE SUPREME COURT OF THE UNITED STATES, IS A PROPER SUBJECT OF EXCISE TAX.**

As before stated, the bill itself plainly declares the subject of the tax as the "carrying on or doing business." In many cases the Supreme Court has held that the carrying on or doing business of a particular kind is a proper subject of an excise tax. The only step which that court must take in order to sustain the proposed law is one which is perfectly logical, if not absolutely irresistible, for IT WILL ONLY BE NECESSARY TO HOLD THAT A LAW WHICH LAYS AN EXCISE UPON THE CARRYING ON OR DOING BUSINESS NOT ONLY OF A PARTICULAR KIND, BUT OF ALL KINDS, designates a proper subject of excise tax. The question seems to be settled by *Spreckles Sugar Refining Company v. McClain* (192 U.S., 397), construing the act of 1898, which provided "that every person, firm, corporation, or company, carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line transporting oil or other products, whose gross annual receipts exceed \$250,000, shall be subject to pay annually a special excise tax equivalent to one-

quarter of 1 per cent on the gross amount of all receipts of such persons, firms, corporations and companies in their respective business," etc. ...

The Income Tax cases, *Pollock v. Farmers Loan & Trust Co.*, (157 U.S., 429 s. c., 158 U.S., 601), do not weaken but rather strengthen the force of the decisions heretofore quoted. The *Pollock* case expressly noted the difference between a general income tax and a tax on business income. The Chief Justice said:

"We do not mean to say that an act, laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations (p. 637)."

If the question had been before the court, there can be no doubt that the court would have even more expressly differentiated between a general income tax and a tax on the transaction of business which is merely measured by either business income or general income. To interpret the Income Tax cases correctly, the safest plan is doubtless to accept the subsequent interpretation of the Supreme Court itself.

In *Knowlton v. Moore* (178 U.S., 81) the Supreme Court said:

"Undoubtedly in the course of the opinion in the *Pollock* case, it was said that, if a tax was direct within the constitutional sense, the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement as to apportionment. But THIS LANGUAGE RELATED TO THE SUBJECT MATTER UNDER CONSIDERATION, and was but a statement that a tax which was in itself direct, because imposed upon property solely by reason of its ownership, could not be changed by affixing to it the qualification of excise or duty."

Under the proposed law the citizen is not taxed upon his income nor is any tax measured by his income unless it be first shown that he is doing business within the meaning of the act. The very fact that some citizens, possessing

large means, would under the proposed law escape taxation measured by their incomes, because they are not engaged in business, while unfortunate in its effect upon the revenues, is an added circumstance to show that this tax is an excise upon a business and not a tax upon income.

It may be contended that the corporation tax cases do not justify the position here taken, because the court held the subject of taxation in those cases to be the distinctive privilege which comes from the advantages which inhere in the corporate capacity of those taxed and which are not enjoyed by private firms or individuals.

The thing taxed is not the mere dealing in merchandise in which the actual transaction may be the same whether conducted by individuals or corporations, but THE TAX IS LAID UPON THE PRIVILEGES WHICH EXIST IN CONDUCTING BUSINESS with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. Those advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere to the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. IT IS THIS DISTINCTIVE PRIVILEGE WHICH IS THE SUBJECT OF TAXATION, not the mere buying or selling or handling of goods which may be the same, whether done by corporation or individuals.

C. THE FACT THAT THE TAX IS TO BE MEASURED BY THE NET INCOME OF THE TAXABLE PERSON OR FIRM DOES NOT CHANGE ITS REAL CHARACTER.

This proposition is amply sustained by the decisions of the Supreme Court in both the Spreckles case and the corporation-tax cases. In the latter, Mr. Justice Day, after reviewing the decisions, said:

"There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court, which held that where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the State or nation, the measure of such tax may be the income from the property of the corporation although a part of such income is derived from property in itself nontaxable. The distinction lies between the attempt to tax the property as such and to measure a legitimate tax upon the privilege involved in the use of such property."

While the bill H.R. 21214 embodies a new application of taxes it carries all the modern philosophy of taxation. It proposes to oblige the citizen to contribute annually a fair and just portion of his net gains to the maintenance of the Government. As already stated, this bill, if enacted into law, will accomplish in the main all the purposes of a general income-tax law and at the same time escape the disapproval of the Supreme Court, as it keeps well within the principles laid down by that court in sustaining the constitutionality of the corporation-tax law. As defined by the Supreme Court in the corporation-tax case, the term "business" embraces everything about which a person can be employed and all activities which occupy the time, attention, and labor of persons for the purpose of a livelihood or profit. ... [House of Representatives, 62d Congress, 2d Session, Report No. 416, March 14, 1912]

The alleged purpose of the sixteenth amendment was to remove the necessity of apportioning such "income taxes" as direct: [C]

This amendment permits Congress to levy income taxes without the necessity of apportionment among the States according to population. Prior to its adoption, Congress had power to levy income taxes without apportionment, provided they were indirect. But, in *Pollock v. Farmers' Loan & T. Co.* [C](1) the Supreme Court had held that a tax on income from property was direct, and subject to apportionment under article I, section 2, clause 3. Therefore, the purpose of this amendment (adopted in 1913) is to remove the necessity of apportioning such

income taxes as are direct. THE AMENDMENT DOES NOT EXTEND THE POWER OF CONGRESS TO TAX INCOME WHICH, PRIOR TO 1913, IT HAD NO POWER TO TAX. [C](2).

So, why the Sixteenth Amendment? Was it really an exercise in futility and redundancy? NOT AT ALL! The phrase: "from whatever source derived," while not creating any new taxing powers of Congress, removed any, and all, restrictions and limitations on the subject matter and nature of the source of income from which Congress could levy an excise tax. The abolition of all restrictions was a significant and necessary step in the implementation of federalist plans, as will become apparent later on in our story.

#### The De Jure Sixteenth?

M.J. "Red" Beckman and the Montana Historians have unveiled some rather astounding facts relative to the de jure aspects of the sixteenth amendment:

The Montana Historians proceeded with their investigation (into ratification background of the 16th Amendment) and the first thing they found was Senate Document 240 ... This document was put together and printed in 1932. It is supposed to be the official canvass of the ratification to the United States Constitution. This document gave the historians a starting point, which itself indicated that fraud was involved. Over a period of many months and a great many letters to the forty-eight states (year 1913), a picture began to emerge. The 16th amendment was a fraud and the evidence was in our hands ....

... A report created by the Department of State in regard to the ratification of the 16th amendment is the most damning document you have ever seen. It was put together by the legal staff for the Department of State. You will read in this report how they used assumptions to arrive at some very important conclusions. They determined that 38 States had ratified even though 11 of these states changed the wording of the amendment. These lawyers assumed these changes to be errors. The record (shows) how those 11 States used deliberate process to change the amendment. [D]

It appears that the Montana Historians have accumulated conclusive evidence that the 16th amendment was never ratified pursuant to the constitutional amendment process. Such being the case, the amendment is VOID from its inception - meaning Congress was never given lawful authority to levy an income tax "from whatever source derived." The legal force and effect of failure to comply with the amendment process as specified in the constitution is further discussed in reference to the seventeenth amendment.

### The Seventeenth Amendment (1913):

#### The De Facto Seventeenth

The federalists were advancing rapidly with minimal opposition. Proposed May 13, 1912; ratified April 8, 1913 and certified May 31, 1913, the Seventeenth Amendment had cleared the constitutional obstacles to the planned conversion of a once proud Republic into a Democracy (the "bastard system of federo-republicanism," as Jefferson foretold). It converted the members of the Senate from being representatives of the states as provided for in Article I, Section 3, of the original Constitution, to being representatives of the people:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, ....

The intent of a Senate elected by the State legislatures was specifically to guard against "the evils we experience (that) flow from the excess of democracy," as Elbridge Gerry said:

The people do not want virtue, but are the dupes of pretended patriots. In Masss; it has been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by false reports circulated by designing men, and which no one on the spot can refute.

This Amendment gave less than 100 representatives of the people as much power as more than 400 representatives of the people in the other House.

It abolished representation of State interests in the, soon to be, all powerful federal government centralized in Washington, D.C.. It made possible for monied interests, the super-merchants of the world, to control the legislative

power within our national borders by merely gaining influence and/or control over a handful of Federal Senators.

This Amendment set the stage for "the usurpation of state powers by the foreign General Government" in accordance with federalist "schemes to monarchise us," as Madison forwarned.

#### The De Jure Seventeenth (?) [E]

As a result of the Seventeenth Amendment we have a de facto (in fact and deed) popularly elected Senate. The question now presented for discussion and analysis is whether this Senate is a de jure one (sitting lawfully and of right)?

The intent of the founding fathers was clearly stated in Federalist Paper No. 39 (38):

The House of Representatives will derive its powers from the people of America; ... The Senate, on the other hand, will derive its powers from the States ...

This intent was incorporated into Article I, Section 3, of the United States Constitution:

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

On May 31, 1913, William Jennings Bryan certified the seventeenth amendment as being a valid change to the constitution. This declaration was made in the exercise of the Duties of Secretary of State which:

Consist of knowing how many States there are ... and of being able to count them correctly. [E](1).

The significance of a correct count of the number of states in the authorized amendment process is specified in Article V, U.S. Constitution:

... amendments ... shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, ... provided that ... no State, without its consent, shall be deprived of its equal suffrage in the Senate.

The exception was a result of the fears expressed by Roger Sherman on September 15, 1787, two days before the end of the Constitutional Convention:

Mr. Sherman expressed his fears that three-fourths of the States might be brought to do things fatal to particular states, by abolishing them entirely or depriving them of their equality in the Senate. [Madison's Notes. (2 Farrand, pp. 629-631)]

Thus, an amendment ratification by a three-fourths majority of the states is permissible except for this one permanent exception, as explained in Columbia Law Review:

As chief Justice Marshall said in *Gibbons v. Ogden*, "It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent; for it would be absurd, as well as useless, to except from a granted power, that which was not granted ...." It is clear, therefore, that ratification by three-fourths applies to every amendment except the one specifically excepted. [(COL LR 20.515)]

Any change in suffrage of the State legislatures via constitutional amendment requires the consent of all states. The last clause of Article V is called the "EXCEPTION" to the amending process in Federalist Paper # 43:

The exception in favor of the quality of Suffrage in the Senate was probably meant as a palladium to the residuary sovereignty of the States, implied and secured by that principle of representation in one branch of the legislature; ....

and it is well settled that:

(the) Federalist papers are considered by the Courts as a great authority "and as" a complete commentary on our Constitution. [Cohen v. Virginia, 19 US 264]

William Jennings Bryan's declaration as to the validity of the Seventeenth Amendment was apparently, made from the false premise that the exception to the amendment process had no application to this amendment and a mere three-fourths majority was required for ratification. Even from

this premise his declaration was flawed. Bryan counted thirty-six (exactly three-fourths of forty-eight) states at the time as having consented to giving up their proxy in the Senate. One of these states was Ohio which was not admitted into the Union until August 7, 1953:

OHIO ...STATEHOOD - Observed date: March 1, 1803; Rank: 17th; (Because of an oversight, the admission of Ohio to the Union was not formally approved by Congress and the President until August 7, 1953, which would rank 48th. A suit was filed this week seeking to prevent Ohioans from voting, it calls the 1953 admission action unconstitutional); Buckeye State: Ohioan [USA Today, July 5, 1984]

Thus, the actual count status at the time of the so-called "ratification" of the Seventeenth Amendment was:

- (1) Thirty-five states had given their consent.
- (2) Ohio had given its consent and was counted as a state; However Ohio had not been duly admitted into the Union.
- (3) Two states were on record as objecting (Utah and Delaware) and nine states withheld their consent by simply failing to act. [Senate Document No. 240]

Louisiana subsequently gave its approbation one year later, June 11, 1914.

#### A Jurisdictional Defect

Clearly the Seventeenth Amendment was not ratified pursuant to the amendment process specified in ARTICLE V of the Constitution.

The United States is entirely a creation of the Constitution. Its powers and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. [Reid v. Covert, 354 U.S. 1; 77 S. Ct. 1222]

Article III, Section 2, Clause 2, U.S. Constitution, states that the President:

... shall have power, by and with the advice and consent of the Senate, to make treaties, ... and by and with the advice and consent of the Senate, shall appoint ambassadors, other public

ministers and consuls, Judges of the supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, which shall be established by law:

And it was early stated:

(The Judicial Power) is to be exercised by courts organized for the purpose and brought into existence by an effort of the legislative power of the Union. [E](2).

The jurisdictional implications and ramifications of a Senate functioning without sanction of the Constitution are far reaching:

Their jurisdiction, ("inferior courts") depends exclusively on the Constitution and the terms of the statutes passed in pursuance thereof, and must appear of record. [E](3).

This means: No lawful treaties have been made since 1913; There is no supreme court Judge lawfully appointed by the President and confirmed by the Senate; There are no Appellate or District courts lawfully in session; And there are no lawful Article III judges in the United States:

This case presents a question of substantial constitutional importance: whether a person lacking the essential attributes of an article III judge - life tenure and protection against diminution of compensation - may none the less exercise the judicial power of the United States

...

... only those judges enjoying article III protections may exercise the judicial power of the United States ...

HISTORICAL ACCEPTANCE AND GOVERNMENTAL EFFICIENCY ARE NOT UNIMPORTANT. THEY WILL NOT, HOWEVER, SAVE (A PRACTICE) IF IT IS CONTRARY TO THE CONSTITUTION. [United States of America v. Janet Woodley, 726 F. 2d 1328 (1983)]

It means there are no lawful legislative (article I) Courts in session. It means there has been no federal statute passed in pursuance of the Constitution since April 8, 1913. And it means this condition extends down throughout all state courts.

One reason that lack of legality of the federal court system brings down the integrity of everything below was stated by Alexander Hamilton in Federalist Paper #82:

Agreeable to the remark already made, the national and State systems are to be regarded as ONE WHOLE.

Later we will see that this "ONE WHOLE" is now governed by the Law of Merchants under the nomenclature of "Federal Law Merchant," and by "specialized federal common law" created by federal judges; Judges whose appointments have never been confirmed by a lawful Senate and who, therefore lacking the essential attributes required by Article III of the Constitution, have no authority at law to exercise the judicial power of the United States. We will see this "Federal Law Merchant" and "specialized federal common law" has the force and effect of being binding on all courts.

In conclusion, the so-called seventeenth amendment disabled the entire legislative process. The powers of the Senate have no other source outside the Constitution and this body can only act in accordance with all limitations imposed by the Constitution. Our popularly elected Senate is incapable of performing any lawful act, and has been so incapacitated since April 8, 1913!

For this and other reasons yet to be examined, no court in the land has jurisdiction conferred by law over any individual, thing or subject matter. These courts can only acquire jurisdiction by express or implied consent of the parties involved, i.e., for failure of the parties to properly and timely challenge the jurisdiction being asserted by the court:

(The Judicial) power is capable of acting only when the subject is submitted to it, by a party who asserts his rights in the form prescribed by law. [E](4).

Conversely, a jurisdictional challenge to the exercise of the judicial power itself must be made by a party who asserts his rights in the form prescribed by law. Jurisdiction, when properly and timely challenged, must be proved as a matter of fundamental law.

Part III: The Federal Reserve Act-The Legislative coup de gras (December 23, 1913).

Background: [F]

The evils inherent in private control of the nation's monetary system came to a head in 1907. The Standard Oil group, owners of "Amalgamated Copper," had set about to break one Mr. Heinze, central figure in the rival "Union Copper Company." They drove down the price of Union Copper stock from 60 to 10. Depositors became uneasy and began withdrawing money from banks in which Heinze was heavily involved. Morgan publically declared one of those banks weak (Knickerbocker Trust Company), causing the crash of this bank with many others following, plunging the country into a severe depression.

Morgan reappeared on the scene, raised funds here and abroad and, through President Theodore Roosevelt, secured \$35 million from the U.S. Treasury. He saved the last Heinze bank, the Trust Company of America, in consideration for the right to purchase, below value, the bank's controlling stock in the Tennessee Coal and Iron Company (Birmingham, Alabama). Its potential value was enormous. Morgan's agent in Washington persuaded the President that economic conditions made it necessary to allow Morgan to add this company to his own United States Steel Company, not-withstanding anti-trust laws. [F](1).

Morgan then secured the president's approval to print and issue over \$200 million in Clearing House Certificates, in the name of the New York Banker's Clearing House Association, secured solely by the banker's promise to pay. In a slightly different form, the certificates were paid out at the teller's windows and functioned as money. The depression was under control and a privately owned clearing house had acquired a gift of the right to create paper money and pass it on.

The possibilities of the scheme were limitless and the bankers exerted all possible pressure toward the goal of making this innovation a permanent policy of the government. First, they secured passage of the Aldrich-Vreeland Act of 1908, a continuation of the Clearing House scheme to serve until they could get the bill they wanted.

Several other steps were required to achieve their goal. It was necessary to create a popular demand for a change in the monetary system. For this purpose, the bankers sponsored article after article in the press, and a clamor for reform spread throughout the land.

In 1908, Congress authorized a National Monetary Commission to study the problem, and Senator Nelson Aldrich secured the position of chairman, who had already used his position to sponsor a series of laws favorable to moneyed interests.

The Commission went to Europe for their answer and returned with more than twenty massive volumes on European banking. Typical of these works is the thousand-page his-

tory of the Reichbank, the central bank which controlled money and credit in Germany, and whose principal stockholders were members of the Warburg family.

Ostensibly as a partner of the Rothschild dominated bank of Kuhn, Loeb and Company in New York, Paul Warburg arrived on the scene from Germany. He devoted much of his time writing and lecturing on money and banking, and advocating reform of the American system. These activities brought him recognition as an expert in his field. His seeming passionate desire to clip the banker's wings prepared the people's minds for what was to follow.

On the night of November 22, 1910, Senator Aldrich slipped out of New York to board a train in Hoboken, New Jersey. With Senator Aldrich was A.P. Andrews, professional economist and Assistant Secretary of the Treasury, who had traveled with Aldrich in Europe. Coming separately to the train were Frank Vanderlip, president of the National Bank of New York City, Harry P. Davidson, senior partner of J.P. Morgan Company, Charles D. Norton, President of Morgan's First National Bank of New York, Paul Warburg, partner of the banking house of Kuhn, Loeb and Company of New York and Benjamin Strong of J.P. Morgan Company. The train rolled out of the yard on the way to J.P. Morgan's estate at "Millionaires Club," Jekyll's Island, Georgia. They went to write a new monetary bill for Senator Aldrich to present to Congress.

After nine days at Jekyll's Island the plan had been perfected with Paul Warburg as the chief architect. Over Warburg's objections, the bill was to be presented to Congress as "The Aldrich Plan." Warburg had argued in vain that use of the Aldrich name would disclose the fact the bill represented the great Wall Street interests and would make the bill hard, if not impossible to pass.

The next problem was to sell it to the American people. The national banks contributed five million dollars for propaganda. The great universities to which the financiers contributed served as centers from which to mislead the nation.

Congressman Patman's "A Primer on Money," states:

The main reform proposed was a central bank with power to regulate. The central bank was to be privately owned and privately controlled.

[F](2)

A presidential election was just ahead. The Republican Party incorporated the Aldrich Plan into its platform and pledged to enact it into law. However, an independent investigation by the House of Representatives disclosed the fact that a few Wall Street tycoons controlled almost all

the financial power of the nation, and public aversion to the Aldrich Plan set in. As a result of the prior propaganda, there persisted a wide public demand for a Central Authority to regulate all banks and to maintain reserves for them. With this demand, there was now the determination that all should be under the ownership and control of the United States Government. This suggested a new avenue for the bankers. If the Republicans could not pass the bill as the Aldrich Plan, could it be renamed "The Federal Reserve Act", a name suggesting that it is part of the government, and be passed into law by the Democrats? Of course it could! And Woodrow Wilson was the man to do it.

Woodrow Wilson was a minister's son, an educator, a man the people trusted. One who had spoken so idealistically of the people's ownership of their monetary system. Yet, one already in the banker's camp, and beholden to them. The bankers checked again. Frank Vanderlip who had helped write the Aldrich Plan invited Wilson to luncheon with James Stillman, president of the National City Bank. Subsequently, Wilson was nominated. The bankers could not lose. The Republicans carried the bill as the "Aldrich Plan", the Democrats carried it as "The Federal Reserve Act." Woodrow Wilson promised the people a money and credit system free from Wall Street influence and was elected President of the United States in 1912. Wilson's campaign had been almost entirely financed by Cleveland H. Dodge of Kuhn, Loeb's National Bank, Jacob Schiff, senior partner in Loeb's National Bank, Henry Morgenthau, Sr., Bernard Baruch, and Samuel Untermyer. An intimate associate of these bankers, Edward House, was assigned to Wilson as "advisor." He stood always by Wilson's side and seemed to direct every important move of that administration.

The Federal Reserve Act was passed into law on December 23, 1913, under pressure of adjournment and was signed into law immediately. Further details of all this can be found in H.S. Keenan's The Federal Reserve Banks. [F](3). The foregoing scenario was addressed by Congressman McFadden in the House of Representatives on June 10, 1932 as follows:

In 1912 the National Monetary Association, under the chairmanship of the late Senator Nelson W. Aldrich, made a report and presented a vicious bill called the National Reserve Association bill. This bill is usually spoken of as the Aldrich bill. Senator Aldrich did not write the Aldrich bill. He was the tool, but not the accomplice, of the European-born bankers who for nearly 20 years had been scheming to set up a central bank in this country and who in 1912 had

spent and were continuing to spend vast sums of money to accomplish their purpose.

The Aldrich bill was condemned in the platform upon which Theodore Roosevelt was nominated in the year 1912, and in that same year, when Woodrow Wilson was nominated, the Democratic platform, as adopted at the Baltimore convention, expressly stated: "We are opposed to the Aldrich plan for a central bank." This was plain language. The men who ruled the Democratic party then promised the people that if they were returned to power there would be no central bank established here while they held the reins of government. Thirteen months later that promise was broken, and the Wilson administration, under the tutelage of those sinister Wall Street figures who stood behind Colonel House, established here in our free country the worm-eaten monarchical institution of the "king's bank" to control us from the top downward, and to shackle us from the cradle to the grave. The Federal Reserve Act destroyed our old and characteristic way of doing business; it discriminated against our one-name commercial paper, the finest in the world; it set up the antiquated two-name paper, which is the present curse of this country, and which has wrecked every country which has ever given it scope; it fastened down upon this country the very tyranny from which the framers of the Constitution sought to save us.

One of the greatest battles for the preservation of this Republic was fought out here in Jackson's day, when the Second Bank of the United States, which was founded upon the same false principles as those which are exemplified in the Federal Reserve Act, was hurled out of existence. After the downfall of the Second Bank of the United States in 1837, the country was warned against the dangers that might ensue if the predatory interests, after being cast out, should come back in disguise and unite themselves to the Executive, and through him acquire control of the government. That is what the predatory interests did when they came back in the livery of hypocrisy and under false pretenses obtained the passage of the Federal Reserve Act.

The danger that the country was warned against came upon us and is shown in the long train of horrors attendant upon the affairs of the

traitorous and dishonest Federal Reserve Board and the Federal Reserve banks. Look around you when you leave this chamber and you will see evidences of it on all sides. This is an era of economic misery and for the conditions that caused that misery, the Federal Reserve Board and the Federal Reserve banks are fully liable. This is an era of financial crime and in the financing of crime, the Federal Reserve Board does not play the part of a disinterested spectator.

It has been said that the draughtsman who was employed to write the text of the Federal Reserve bill used the text of the Aldrich bill for his purpose. It has been said that the language of the Aldrich bill was used because the Aldrich bill had been drawn up by expert lawyers and seemed to be appropriate. It was indeed drawn up by lawyers. The Aldrich bill was created by acceptance bankers of European origin in New York City. It was a copy and in general a translation of the statutes of the Reichsbank and other European Central Banks.

Half a million dollars was spent on one part of the propaganda organized by those same European bankers for the purpose of misleading public opinion in regard to it, and for the purpose of giving Congress the impression that there was an overwhelming popular demand for that kind of banking legislation and the kind of currency that goes with it, namely, AN ASSET CURRENCY BASED ON HUMAN DEBTS AND OBLIGATIONS instead of an honest currency based on gold and silver values. Dr. H. Parker Willis had been employed by the Wall Street bankers and propagandists and when the Aldrich measure came to naught and he obtained employment from Carter Glass to assist in drawing a banking bill for the Wilson administration, he appropriated the text of the Aldrich bill for his purpose. There is no secret about it. The text of the Federal Reserve Act was tainted from the beginning.

Not all of the Democratic Members of the Sixty-third Congress voted for this great deception. Some of them remembered the teachings of Jefferson; and, through the years, there have been no criticisms of the Federal Reserve Board and the Federal Reserve banks so honest, so outspoken, and so unsparing as those which have been voiced here by Democrats. Again, although

a number of Republicans voted for the Federal Reserve Act, the wisest and most conservative members of the Republican Party would have nothing to do with it and voted against it. A few days before the bill came to a vote, Sen. Henry Cabot Lodge, of Massachusetts wrote to Sen. John W. Weeks as follows:

"New York City, December 17, 1913."

"MY DEAR SENATOR WEEKS: \*\*\* Throughout my public life I have supported all measures designed to take the government out of the banking business \*\*\* This bill puts the government into the banking business as never before in our history and makes, as I understand it, all notes government notes when they should be bank notes.

The powers vested in the Federal Reserve Board seem to me highly dangerous, especially where there is political control of the board. I should be sorry to hold stock in a bank subject to such domination. The bill as it stands seems to me to open the way to a vast inflation of the currency. There is no necessity of dwelling upon this point after the remarkable and most powerful argument of the senior Senator from New York. I can be content here to follow the example of the English candidate for Parliament who thought it enough "to say ditto to Mr. Burke." I will merely add that I do not like to think that any law can be passed which will make it possible to submerge the gold standard in a flood of irredeemable paper currency.

I had hoped to support this bill, but I can not vote for it as it stands, because it seems to me to contain features and to rest upon principles in the highest degree menacing to our prosperity, to stability in business, and to the general welfare of the people of the United States.

Very sincerely yours,

Henry Cabot Lodge."

In the 18 years which have passed since Senator Lodge wrote that letter of warning all of his predictions have come true. The government is in the banking business as never before. Against its will it has been made the backer of horsethieves and card sharps, bootleggers, smug-

glers, speculators, and swindlers in all parts of the world. Through the Federal Reserve Board and the Federal Reserve banks the ruffraff of every country is operating on the public credit (debit) of the United States Government. Meanwhile, and on account of it, we ourselves are in the midst of the greatest depression we have ever known. Thus the menace to our prosperity, so feared by Senator Lodge, has indeed struck home. From the Atlantic to the Pacific our country has been ravaged and laid waste by the evil practices of the Federal Reserve Board and the Federal Reserve banks and the interests which control them. At no time in our history has the general welfare of the people of the United States been at a lower level or the mind of the people so filled with despair.

Recently in one of our states 60,000 dwelling houses and farms were brought under the hammer in a single day. According to the Rev. Father Charles E. Coughlin, who has lately testified before a committee of this House, 71,000 houses and farms in Oakland County, Mich., have been sold and their erstwhile owners dispossessed. Similar occurrences have probably taken place in every county in the United States. The people who have thus been driven out are the wastage of the Federal Reserve Act. They are the victims of the dishonest and unscrupulous Federal Reserve Board and the Federal Reserve banks. Their children are the new slaves of the auction block in the revival here of the institution of human slavery.

In 1913, before the Senate Banking and Currency Committee, Mr. Alexander Lassen made the following statement:

"But the whole scheme of a Federal Reserve bank with its commercial-paper basis is an impractical, cumbersome machinery, is simply a cover, to find a way to secure the privilege of issuing money and to evade payment of as much tax upon circulation as possible, and then control the issue and maintain, instead of reduce interest rates. It is a system that, if inaugurated, will prove to the advantage of the few and the detriment of the people of the United States. It will mean continued shortage of actual money and further extension of credits: for when there is a lack of real money people have to borrow credit to their cost."

A few days before the Federal Reserve Act was passed Sen. Elihu Root denounced the Federal Reserve bill as an outrage on our liberties and made the following prediction:

"Long before we wake up from our dreams of prosperity through an inflated currency, our gold, which alone could have kept us from catastrophe, will have vanished and no rate of interest will tempt it to return."

If ever a prophesy came true, that one did. It was impossible, however, for those luminous and instructed thinkers to control the course of events. On December 23, 1913, the Federal Reserve bill became law, and that night Colonel House wrote to his hidden master in Wall Street as follows:

"I want to say a word of appreciation to you for the silent but no doubt effective work you have done in the interest of currency legislation and to congratulate you that the measure has finally been enacted into law. We all know that an entirely perfect bill, satisfactory to everybody, would have been an impossibility, and I feel quite certain fair men will admit that unless the President had stood as firm as he did we should likely have had no legislation at all. The bill is a good one in many respects; anyhow good enough to start with and to let experience teach us in what direction it needs perfection, WHICH IN DUE TIME WE SHALL THEN GET. In any event you have personally good reason to feel gratified with what has been accomplished."

... The foregoing letter affords striking evidence of the manner in which the predatory interests then sought to control the Government of the United States by surrounding the Executive with the personality and the influence of a financial Judas. Left to itself and to the conduct of its own legislative functions without pressure from the Executive, the Congress would not have passed the Federal Reserve Act. According to Colonel House, and since this was his report to his master, we may believe it to be true, the Federal Reserve Act was passed because Wilson stood firm; in other words because Wilson was under the guidance and control of the most ferocious usurers in New York through their hireling, House. The Federal Reserve Act became law the day before Christmas Eve in the year 1913, and shortly afterwards the German,

international bankers, Kuhn, Loeb & Co., sent one of their partners here to run it., [Congressman McFadden, Congressional Record, pages 12596-12603, June 10, 1932]

#### Key Provisions:

The Act provided for 12 Federal Reserve Banks, with branches, "to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, AND FOR OTHER PURPOSES." [Federal Reserve Act, Sixty-Third Congress, Sess. II, Ch. 6, December 23, 1913 (H.R. 7837, Public Law No.43)]

Congressman Charles A. Lindberg, Sr. warned the people, to no avail, what "other purposes" were on December 22, 1913: [A].

THIS ACT ESTABLISHES THE MOST GIGANTIC TRUST ON EARTH. When the President signs this bill, the invisible government by the Monetary Power will be legalized. The people may not know it immediately, but the day of reckoning is only a few years removed. The trusts will soon realize that they have gone too far even for their own good. THE PEOPLE MUST MAKE A DECLARATION OF INDEPENDENCE TO RELIEVE THEMSELVES FROM THE MONETARY POWER.

Some key provisions of the Act that enabled the establishment of this gigantic trust, and legalized invisible government by the Merchants of the Earth (the Monetary Power) were:

- (1) The Federal Reserve Bank Corporation was chartered as a private corporation;
- (2) The Federal Reserve Banks were exempt from audit by the U.S. Government;
- (3) The private banking corporation was authorized to CREATE credit and "lend" its credit creation to the U.S. Government;
- (4) Interest was to be paid to the Federal Reserve Corporation in gold; and
- (5) Federal Reserve Notes were designated debt obligations of the United States (i.e. an asset currency).

Nature of the Act:

# Federal Reserve System is a "TONTINE INSURANCE SCHEME"

The Federal Reserve Act was nothing more than a Tontine Insurance scheme, dressed in new garb, for a public trust. The "beneficiaries" of the trust had no say in its management that was placed exclusively in the hands of a private, mercantile, corporation, owned and operated by the super-merchants of the world.

Representative McFadden had previously served as president of the First National Bank, Canton, Pa. and later served as chairman of the Committee on Banking and Currency. Following are selected excerpts from his address to the House of Representatives which relate to the nature of the Federal Reserve Banking Corporation: [G]

Some people think the Federal Reserve Banks are United States Government Institutions. They are not government institutions. They are private credit monopolies which prey upon the people of the United States for the benefit of themselves and their foreign customers;

They should not have foisted that kind of currency, namely an ASSET CURRENCY on the United States Government. They should not have made the government liable on the private debts of foreigners;

The Federal Reserve Notes, therefore, in form have some of the qualities of government paper money, but, in substance, are almost purely ASSET CURRENCY POSSESSING A GOVERNMENT GUARANTY AGAINST WHICH CONTINGENCY THE GOVERNMENT HAS MADE NO PROVISION WHATEVER.

Mr. Chairman, there is nothing like the Federal Reserve pool of confiscated bank deposits in the world. It is a public trough of American wealth .... I see no reason why the American taxpayers should be hewers of wood and drawers of water for the European and Asiatic customers of the Federal Reserve Banks.

Is not it high time that we had an audit of the Federal Reserve Board and the Federal Reserve Banks and an examination of all our governments bonds and securities and public moneys instead of allowing the corrupt and dishonest Federal Reserve Board and the Federal Reserve Banks to speculate with those securities and this cash in the notorious open discount market of New York City?

Every effort has been made by the Federal Reserve Board to conceal its power but the truth is the Federal Reserve Board has usurped the Government of the United States.

Mr. Chairman, when the Federal Reserve Act was passed the people of the United States did not perceive that a world system was being set up here that the United States was to be lowered to the position of a coolie country..and was to supply financial power to AN INTERNATIONAL SUPERSTATE - A SUPERSTATE CONTROLLED BY INTERNATIONAL BANKERS AND INTERNATIONAL INDUSTRIALISTS ACTING TOGETHER TO ENSLAVE THE WORLD FOR THEIR OWN PLEASURE. [McFadden, supra]

Congressman Wright Patman, of the House Banking and Currency Committee said in 1952: [G](1).

In fact there has never been an independent audit of either of the 12 banks of the Federal Reserve Board that has been filed with the Congress where a Member would have an opportunity to inspect it. The General Accounting Office does not have jurisdiction over the Federal Reserve.

Question: Why does not the General Accounting of the United States have jurisdiction over the Federal Reserve to demand an accounting?

The answer is accountability of the Federal Reserve is not in the contract, the Federal Reserve Act, just as it was not in the contract of tontine insurance policies. The Federal Reserve Act provides for accountability of "member banks" but by definition, in the Act itself, the Federal Reserve banks are not "member banks" and, therefore are exempt from accountability.

We may ask ourselves another question at this point:

Question: Is the Federal Reserve a maritime lender or is it an insurance underwriter to the United States?

Some additional information from an Essay on Maritime Loans, may help us to decide this question:

The contract of maritime loan approaches more nearly to that of Insurance. There is a strong analogy between them. In their effects they are construed on the same principles.

In one contract, the lender bears the sea risks, in the other, the underwriter.

In the one, the maritime interest is the price of the peril; and this term corresponds

with the premium which is paid on the other.

[H]

So we see that it really is immaterial under maritime law whether the Federal Reserve is thought of as a maritime lender or as an insurance underwriter to the United States. In either case the lender or underwriter bears the risks and the maritime laws compelling performance in paying the interest or premium are one and the same.

Also, in either case, assets can be hypothecated as security for the price of the peril. Speaking of risk, what risk is the Federal Reserve incurring as lender or underwriter to the United States in exchange for United States Securities?

Mariner Eccles, former chairman of the Federal Reserve Board, held the following exchange with Congressman Patman before the House Banking and Currency Committee on September 30, 1941: [G](1).

Congressman Patman: Mr. Eccles, how did you get the money to buy those two billions of government securities?

Mr. Eccles: We created it.

Patman: Out of what?

Mr. Eccles: Out of the right to issue credit money.

And, from further testimony from the Federal Reserve Board itself: In a publication from the Federal Reserve Bank of Chicago, entitled "Two Faces of Debt, Readings in Economics and Finance":

Currency is so widely accepted as a medium of exchange that most people do not think of it as debt.

In another Chicago bank publication entitled "Modern Money Mechanics, a Workbook on Deposits, Currency and Bank Reserves":

Neither paper currency nor deposits have value as commodities. Intrinsically, a dollar bill is just a piece of paper. Deposits are merely book entries. Coins do have some intrinsic value as metal, but for less than their face amount.

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 real goods and services whenever they choose to do so.

Confidence in these forms of money also seems to be tied in some way to the fact that assets exist on the books of the government and the banks equal to the amount of the money outstanding, even though most of these assets are no more than pieces of paper (such as customer's promissory notes), and IT IS WELL UNDERSTOOD THAT MONEY IS NOT REDEEMABLE IN THEM.

Deposits are merely book entries... demand deposits are liabilities of commercial banks. The banks stand ready to convert such deposits into currency or transfer their ownership at the request of depositors.

From the Federal Reserve bank of St. Louis Review:

But what induces the nonbanking public to accept liabilities of private, profit-making institutions such as banks?

The decrease in purchasing power incurred by holders of money due to inflation imparts gains to the issuers of money ....

The gains which accrue to issuers of money are derived from the difference between the costs of issuing money and the initial purchasing power of new money in circulation. Such gains are called "seigniorage." If the goods and services for which the issuer exchanges money have a market value greater than that of resources used to produce the money, then the issuer receives a net gain.

In the Federal Reserve Bank of Philadelphia publication entitled "The National Debt" ✓

Open market operations are one of the Federal Reserve's most important tools for influencing bank lending.

In effect, THE FEDERAL RESERVE BUYS GOVERNMENT SECURITIES AND PAYS OUT OF SPECIAL MONEY the banks can use as reserve to increase their lending capacity ...

Used recklessly, it (debt) has the power to make us slaves.

From a book entitled "The Federal Reserve System - its Purposes and Functions":

FEDERAL RESERVE BANK CREDIT resembles bank credit in general, but under the law it has a limited and special use - as a source of member bank reserve funds. IT IS ITSELF A FORM OF MONEY AUTHORIZED FOR SPECIAL PURPOSES, convertible into other forms of money, convertible therefrom, and readily controllable as to amount.

FEDERAL RESERVE BANK CREDIT, therefore, as already stated, does not consist of funds that the Reserve authorities "get" somewhere in order to lend, but CONSTITUTES FUNDS THAT THEY ARE EMPOWERED TO CREATE. [I].

In his notes entitled "A Primer on Money", Congressman Patman tells that upon hearing that Federal Reserve Banks hold a large amount of cash, he went to two of its regional banks. He asked to see their bonds. He was led into vaults and shown great piles of government bonds upon which the people are taxed for interest. Mr. Patman then asked to see their cash. The bank officials seemed confused. When Mr. Patman repeated the request, they showed him some ledgers and blank checks. Mr. Patman warns us to remember that:

The cash, in truth, does not exist and never has existed. What we call "cash reserves" are simply bookkeeping credits entered upon the ledgers of the Federal Reserve Banks. These credits are created by the Federal Reserve Banks and then passed along through the banking system. [F].

So, by the testimony of the Federal Reserve itself, we see:

(1).The Fed creates "special" money out of thin air - at no cost or risk to the Federal Reserve System - from its right to create credit, granted in the Federal Reserve Act.

(2).The Fed gains from the inflation it creates.

(3).Money is not redeemable in Federal Reserve liabilities.

(4).Federal Reserve vaults are full of government bonds, obligations of the United States for which the people are taxed for interest. These bonds are purchased with its "special" money which constitutes funds they are empowered to CREATE in order to LEND.

(5).The currency provided by the Federal Reserve System for the people to use is DEBT.

(6).The Federal Reserve gains, as issuers of credit money, are the difference between the cost of creating that credit (essentially nothing) and the initial purchasing power when the new money is put into circulation.

In a reprint of the book "The Federal Reserve System - its Purposes and Functions," [I] S.W. Adams, uses the Federal Reserves own published figures to give us an example, of how lucrative this no risk scheme is to the Federal Reserve:

The pauper (the Federal Reserve System) with assets of only \$52 billion with no productive know-how, with no productions of goods and less than 100,000 stockholders, loaned(?) the rich man (The United States of America) with a trillion in productive capacity and know-how with well over \$500 billion in assets and 170 million stockholders, including the aforesaid 100,000 bank stockholders, \$250 billion to fight World War II.

Can you imagine the greatest corporation on earth. The Government of the U.S., with 170 million alert full-of know-how stockholders, and assets running over \$600 billion, turning to a small segment of its population, with less than 100,000 stockholders and assets of only \$52 billion to borrow money?

Can you conceive of Rockefeller saying to his chauffeur, "Tom, I am transferring my personal bank account which is well over \$1 billion, to your account. You may spend it as you please; provided as often as I ask for money, you will let me have it. Of course, I will give you my note for cash I receive, and try to rustle from my children enough money to pay you interest on the borrowed money. (A hypothetical trust is created)

Well, that is exactly what Congress did in 1913 when it passed the Reserve Act. To fight World War II, we gave the bankers of the United States \$250 billion in U.S. Bonds that we might use our own, the Nation's credit. In addition, we permitted them to take credit in their reserve accounts for \$250 billion. This gave them \$1 trillion 250 billion bank credit.

They now want to make it double! These credits are to the bankers what your deposits

100,000  
Stock-  
holders

are to you. They can lend it, or use it to buy investment obligations - it is cash to them!

So adding the \$250 billion in U.S. Bonds we absolutely gave to them their \$1 trillion 250 billion bank credit, and we find that the bankers (the then paupers) came out of World War II \$1,500 billion richer, and the (then rich man) the United States Government came out \$250 billion in debt to the bankers (the paupers) thanks to the stupidity and/or venality of our Congressmen, newspapers, journals, and educated people of the nation.

Clearly, by their own testimony, the Federal Reserve, as a maritime lender or insurer, has nothing at risk; i.e., nothing to lose in the maritime venture for profit. This is the same formula used by the tontine insurance schemes, a sure bet with no accountability.

On Trusts:

The Board of Governors of the Federal Reserve were given control of our public money system - a trusteeship whereby the invisible government of the Monetary Power was legalized and chartered to manage "the most gigantic trust on earth." The government of the United States had, indeed, been usurped by the Federal Reserve Board.

Nature of Trusts [J], [K]

When trusts first appeared in English law they were known as uses, from the fact that the person in whose hands the property was placed held the same for the use of others and not for himself. The first legal records we have of these uses shows them to be a result of established and well known usage. [K](1). For a long time during the development of the law of uses, the courts refused to recognize that the beneficiary, or cestui que use, had any rights enforceable in court. After a time, however, the chancellor in Equity began to recognize the duty of the "feoffee to uses" (the trustee) to do as he had agreed.

The recognition by equity of the rights of the cestui did not in any way affect the legal ownership of the feoffee to uses. In other words, the rights of the cestui que use were not an estate in the lands themselves, but only a personal right against the trustee that he should do his duty by keeping his agreement.

Modern trusts are in reality nothing but a development and lineal descendant of the old use, and partakes of the same fundamental characteristics. The trustee owns the

property, both at law and in equity, in spite of loose language used at times by the courts seeming to indicate the contrary. The only right of the cestui (beneficiary) is, in essence, to have the chancellor, by acting in personam, compel the trustee to perform his conscientious obligation.

### Classification of Trusts

Fundamentally all trusts were, as to origin, of two kinds: ① trusts based upon the expressed intention of the parties; ② trusts based not upon any intention or agreement of the parties, but imposed or constructed by equity upon the principle that no one shall unjustly enrich himself at the expense of another; and class (1) is then divided into (a) express trusts and (b) trusts implied in fact (Figure: VI-1).

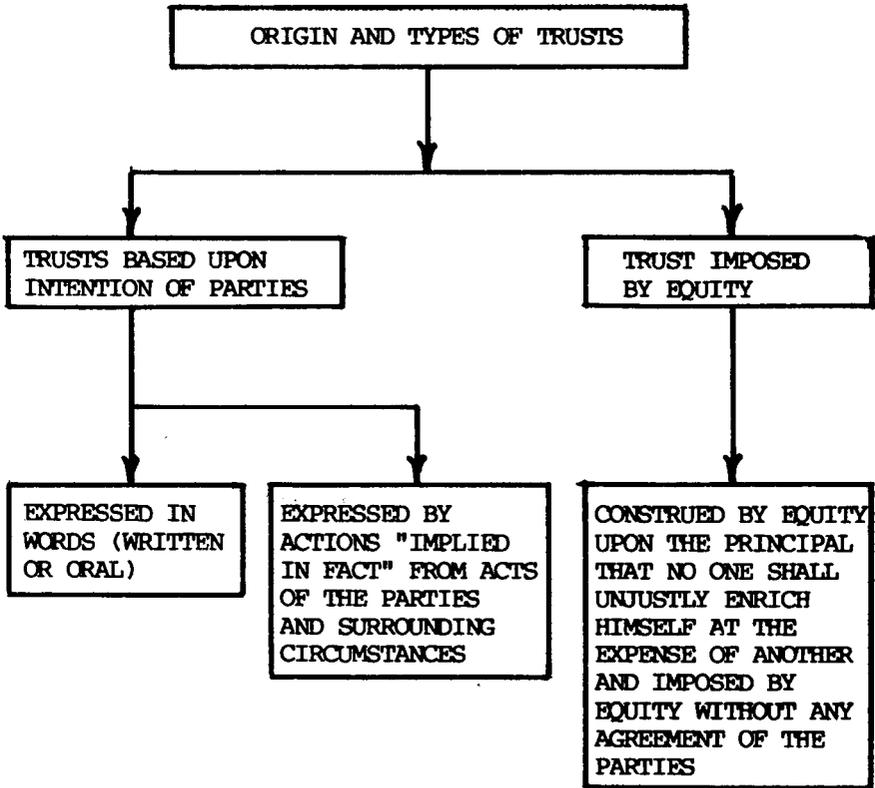


FIGURE: VI-1

Express trusts can be created either in writing (e.g., a will), or orally. To create a trust, it is not necessary the word "trust" be used but if the language fairly interpreted means that the one to whom the property is transferred or who is alleged to have made a declaration of trust is to be legally bound to use it for the benefit of others, a trust arises.

Trusts implied in fact are sometimes called "resulting trusts," which are based upon an intention of the parties. This intention, however, is not expressed in words, at least not directly so, but is implied from the acts of the parties and the surrounding circumstances. In such cases, the trust arises because of an intention that is shall arise, expressed however, not in words but in acts. Indeed, in this situation, "actions speak louder than words."

Trusts created on the principle of unjust enrichment are called "constructive trusts." A direct analogy can be drawn between the classification of trusts and the classification of contracts, viz. (1) contracts and (2) quasi-contracts, the former being divided into: (a) express contracts and (b) contracts implied in fact. The quasi-contract corresponds to the constructive trusts as here defined:

**Quasi-contracts.** The usual classification of contracts is objected to by Prof. Keener in his law of Quasi-contracts. A true contract exists, he says because the contracting party has willed, in circumstances to which the law attaches the sanction of an obligation, that he shall be bound. His contract may be implied in fact, or, express. Which of the two it is, is purely a question of the kind of evidence used to establish the contract. In either case the source of the obligation is the intention of the party. "Contract implied in law" is, however, a term used to cover a class of obligations, where the law, though the defendant did not intend to assume an obligation, imposes an obligation upon him, notwithstanding the absence of intention on his part, and, in many cases, in spite of his actual dissent. Such contracts, according to the work cited, may be termed quasi-contracts, and are not true contracts. They are founded generally:

1. Upon a record.
2. Upon statutory, official, or customary duties.
3. Upon the doctrine that no one shall be allowed to enrich himself unjustly at the

expense of another. The latter is the most important and numerous class. [See also ADS. Contr. 6th ed. 7; 2 Harv. L. Rev. 64; Louisiana v. New Orleans, 109 U.S. 285.]

### Public Or Charitable Trusts

Another kind of trust exists when property is vested in trustees for the benefit of a class of persons; The individual members of which are not specifically named or described in the instrument creating the trust. Such trusts are known as public or charitable trusts in which no specific cestui is necessary. The matter of charitable trusts is largely affected by the statute 43 Elizabeth, c.4, which describes many of the purposes for which such trusts may be created but as Mr. Justice Gray said in one of the leading cases on the subject:

A precise and complete definition of a legal charity is hardly to be found in the books. The one most commonly used in modern cases, originating in the judgment of Sir William Grant, confirmed by that of Lord Eldon, in *Morice v. Bishop of Durham*, 9 Ves. 299, 10 Ves. 522 - that those purposes are considered charitable which are enumerated in St. 43 Eliz. or which by analogies are deemed within its spirit and intentment - leaves something to be desired in point of certainty, and suggests no principle.

Later on in the same case the learned justice attempts a definition of a charitable trust as follows:

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence or education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described to show that it is charitable in its nature.

The reader who desires to obtain a more detailed discussion of the purposes and objects for which these trusts may be created is referred to this case (*Marice v. Bishop of Durham*) as containing an exhaustive discussion of the whole subject with an elaborate review of the cases.

### Enforcement Of Public Or Charitable Trusts

Inasmuch as the beneficiaries of the public or charitable trust are an indefinite number of unidentified persons, the due administration of the trust obviously must be enforced at the suit of someone else. The government is regarded as being interested in such cases, and the suit is brought by the appropriate law officer of the government, i.e., usually the attorney-general. If it is not a charity, the government has no interest in the matter and so the attorney-general cannot be a plaintiff.

### A Corporation May Be A Trustee

Originally, it seems it was held that corporations, although they could hold property, could not be trustees for others. The idea back of this seems to have been that a corporation was a "dead body, although it consists of natural persons; and in this dead body a confidence cannot be put, but in bodies natural." [K](2). But as early as 1743 it was held that corporations could be trustees and the rule thus established is universally recognized. [K](3).

### Of Powers

The powers with which we are most familiar in this country are the common law authorities, of simple form and direct application; such as a power to sell land, to execute a deed, to make a contract, or to manage any particular business; and with instructions more or less specific, according to the nature of the case. But THE POWERS NOW ALLUDED TO, ARE OF A MORE LATENT AND MYSTERIOUS CHARACTER, and they derive their effect from the statute of uses. They are declarations of trust, and modifications of future uses; and the estates arising from the execution of them have been classed under the head of contingent uses....

ALL THESE POWERS ARE, IN FACT, POWERS OF REVOCATION AND APPOINTMENT. Every power of appointment is strictly a power of revocation;

for it always postpones, abridges, or defeats, in a greater or less degree, the previous uses and estates....

The use arising from the act of a person nominated in a deed or settlement, is a use arising from the execution of a power. It is a future or contingent use until the act be done, and then it becomes an actual estate by the operation of the statute. By means of powers the owner is enabled either to reserve to himself a qualified species of dominion, distinct from the legal estate, or to delegate out of the trustee, and give it a new direction. The power operates as a revocation of the uses declared or resulting, by means of the original conveyance, and as a limitation of new uses....

A power is usually defined to be an authority whereby a person is enabled to dispose of an interest vested either in himself or in another. The exercise of these powers usually depends upon the discretion of the donee of the power, and NO PERSON CAN TAKE BY VIRTUE OF THE POWER UNLESS THE DONEE THEREOF CHOOSES TO EXERCISE THIS DISCRETION. [Kents' Commentaries, 12 Ed. 1889, Lecture LXI, of Powers.]

#### Example Of A Charitable Public Trust [L]

#### Its Benefits - Explained

The good white father recognizes their (the Lakota, Sioux, Indian's) hunting grounds and intends to act in a manner that protects the whole ...

Your white father will reach out with acts of kindness. He will send traders for your convenience ...

Your white father will ... (not) permit any whiteman to molest you or interfere with your ways. This talking-leaf (treaty) says so.

For a long while none had reached for the marker which the speaker held out to the leaders. But, finally, one by one, they had touched-the-stick.

#### Price Of The Benefits - Unexplained

And wherever they raise this flag, ... they take hold. Even now they speak saying that all Lakota hunt on ground that belongs to the white-

man. They say that from this day forward the whites shall protect the Lakotah and for good reason: the Lakotah accepts the whiteman as his superior, as his PROTECTOR as his father and grandfather ....

For certainly this leaf recorded the response of a confused tribe who (unknowingly) had pledged to permit strangers to decide the Lakotah good.

#### Implementation Of The Power

By virtue of the powers granted in this compact the "good white father," as trustee of this charitable public trust, decided all matters relating to the "Lakotah good." The Lakotah had no say in these matters.

Thus, for the "good of the whole," the Lakotah were herded onto reservations whereon the trustees could more efficiently discharge their obligation to protect the beneficiaries. Those Lakotah who refused were either forceably kept on the Reservation or exterminated - pursuant to the Law of trusts. The trustees merely performed their duty and obligation to protect the whole, and exercised their power to enforce obedience of the beneficiaries to that end:

According to tradition and logic, the state gives protection to all men within its confines, and in return exacts their obedience to its laws; and the process is reciprocal. When men within the confines of the state are obedient to its laws they have a right to claim its protection. It is a maxim of the law, quoted by Coke in the sixteenth century, that "PROTECTION DRAWS ALLEGIANCE, AND ALLEGIANCE DRAWS PROTECTION." It was laid down in 1608, by reference to the case of Sherley, a Frenchman who had come to England and joined in a conspiracy against the King and Queen, that such a man "owed to the King obedience, that is, SO LONG AS HE WAS WITHIN THE KING'S PROTECTION." ["The New Meaning Of Treason," by Rebecca West: New York, The Viking Press, 1964, p. 128.]

The Public Pledge Of Revenue Assurance For The Public Debt:

... 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. [Declaration of Independence, 1776]

This mutual pledge served notice to all the world that the new United States of America would honor its public debts. In effect, it was an introductory statement of a Public Pledge of Revenue Assurance for the Public Debt of the United States of America. This Public Pledge was subsequently, and more specifically, expressed as follows:

All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States; and the Public Faith are hereby solemnly PLEDGED. [Articles of Confederation, Article XII]

It is agreed that CREDITORS on either side shall meet with no lawful Impediment to Recovery of the Full Value in Sterling Money of all bona fide DEBTS heretofore contracted. [Treaty of Peace, September 3, 1783]

All debts contracted and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation. [United States Constitution, Article VI, Section 1]

The validity of the Public Debt of the United States AUTHORIZED BY LAW, including debts incurred for the payment of pensions and bounties for services in suppressing insurrection or rebellion shall not be questioned. [United States Constitution, Amendment XIV, Section 4]

Of paramount importance is an understanding of the significance of this public pledge for Revenue Assurance to service the Public Debt of the United States, as it relates to the people of the United States and the private Federal Reserve Bank Corporation. Recall that Congressman McFadden described Federal Reserve Notes as ASSET currency for which the United States Government had made no provision whatever to meet its obligations created thereby. First, we need to understand what Mr. McFadden meant by "Asset Currency."

ASSETS: All the stock in trade, cash, and all available property belonging to a merchant or company. The property belonging to a merchant or company. The property in the hands of

an heir, executor, administrator, or trustee, which is legally or equitable chargeable with the obligation which such heir, executor, administrator, or other trustee is, as such, required to discharge.

LEGAL ASSETS: Such as constitute THE FUND FOR PAYMENT OF DEBTS according to their legal priority. [Bouvier's Law Dictionary]

In his address to the House of Representatives on June 10, 1932, Congressman McFadden gives us further insights into this relationship and its effects on the American people (Congressional Record. pages 12596-12603):

I believe that the nations of the world would have settled down after the World War more peacefully if we had not the standing temptation here - this pool (fund) of our bank depositor's money given to private interests and used by them in connection with illimitable drafts upon the public credit (debt) of the United States Government....

The Federal Reserve Board and the Federal Reserve banks have been international bankers from the beginning, with the United States Government as their enforced banker and supplier of money...

Federal Reserve Notes are taken from the United States Government in unlimited quantities. Is it strange that the burden of supplying these immense sums of money to the gambling fraternity has at last proved too heavy for the American people to endure? ...

They are putting the United States Government in debt to the extent of \$100,000,000 a week (year 1932), and with this money they are buying up our government securities for themselves and their foreign principals ...

In 1930, while the speculating banks were getting out of the stock market at the expense of the general public, the Federal Reserve Board and the Federal Reserve banks advanced them \$13,022,782,000. This shows that when the banks were gambling on the public credit (debt) of the United States Government as represented by Federal Reserve currency, they were subsidized by the Federal Reserve Board and the Federal Reserve banks. When the swindle began to fail, the banks knew it in advance and withdrew from the market. They got out with whole skins and

left the people of the United States to pay the piper....

This is the John Law swindle over again. The theft of Teapot Dome was trifling compared to it...

They have been peddling the credit (debt) of this government and the signature of this government (as trustees??) to the swindlers and speculators of all nations. This is what happens when a country forsakes its Constitution (National) and gives its sovereignty over the public currency to private interests...

A few days ago the President of the United States, with a white face and shaking hands, went before the Senate on behalf of the moneyed interests and asked the Senate to levy a tax on the people so that foreigners might know that the United States would pay its debts to them. Most Americans thought it was the other way around. What does the United States owe to foreigners? WHEN AND BY WHOM WAS THE DEBT INCURRED? It was incurred by the Federal Reserve Board and the Federal Reserve banks when they peddled the signature of this government to foreigners for a price. It is what the United States Government has to pay to redeem the obligations of the Federal Reserve Board and the Federal Reserve Banks.

Mr. Speaker, it is a monstrous thing for this great Nation of people to have its destinies presided over by a traitorous government board acting in secret concert with international usurers: Every effort has been made by the Federal Reserve Board to conceal its power but the truth is the Federal Reserve Board has usurped the Government of the United States.

The man who deceives the people is a traitor to the United States. The man who knows or suspects that a crime has been committed and who conceals or covers up that crime is an accessory to it.

The people have a valid claim against the Federal Reserve Board and the Federal Reserve Banks. If that claim is enforced, Americans will not need to stand in breadlines or to suffer and die of starvation in the streets. Homes will be saved, families will be kept together, and American children will not be dispersed and abandoned.

Here is a Federal Reserve Note. Immense numbers of these notes are now held abroad. They constitute a claim against our government and likewise against the money our people have deposited in the member banks of the Federal Reserve System.

THROUGH THE FEDERAL RESERVE BOARD AND THE FEDERAL RESERVE BANKS, THE PEOPLE ARE LOSING THE RIGHTS GUARANTEED TO THEM BY THE CONSTITUTION (National). THEIR PROPERTY HAS BEEN TAKEN FROM THEM WITHOUT DUE PROCESS OF LAW ... ASSET CURRENCY, the device of the swindler should be done away with.

So, our currency is "asset currency," created by the Federal Reserve out of its "right" to create credit as provided for in the Federal Reserve Act. This credit is created at no cost or risk to the private Federal Reserve Bank Corporation and becomes debt obligations of the United States. The Federal Reserve does not back its credit creations with anything - THAT is the obligation of the United States Government and the "beneficiaries" of this wonderful money making machine. Being an asset currency with no provision whatever specified in the Federal Reserve Act to meet the obligations flowing from the acceptance and use of this private bank credit, WHAT, do you suppose, becomes the backing (security) for this currency?.

SECURITY: Something given as a pledge of repayment; bonds, stocks, etc.. [Webster's New World Dictionary]

SECURITY: That which renders a matter sure; an instrument which renders certain the performance of a contract. [Bouvier's Law Dictionary]

Enclosure 2 to Exhibit 7 is the full text of a letter from Russel L. Munk, Assistant General Counsel (International Affairs) for the Department of the Treasury in response to questions posed by a colleague of the author about the money of the United States. Following are pertinent quotes for discussion from the viewpoint of our present context:

Federal Reserve Notes are legal tender currency (31 U.S.C. 5102). They are issued by the twelve Federal Reserve Banks pursuant to Section 16 of the Federal Reserve Act of 1913 (12 U.S.C. 411) ...

In addition to being liabilities of the Federal Reserve Banks, Federal Reserve notes are

obligations of the United States Government (12 U.S.C. 411). Congress has specified that a Federal Reserve Bank must hold collateral (chiefly gold certificates and United States securities) equal in value to the Federal Reserve notes which the Bank receives (12 U.S.C. 412). The purpose of this section initially enacted in 1913, was to provide backing for the note issue

...

Federal Reserve notes are not redeemable in gold or silver or in any other commodity. They have not been redeemable since 1933 ...

In the sense that they are not redeemable, Federal Reserve notes have not been backed by anything since 1933 ...

IN ANOTHER SENSE, BECAUSE THEY ARE LEGAL TENDER, FEDERAL RESERVE NOTES ARE "BACKED" BY ALL THE GOODS AND SERVICES IN THE ECONOMY.

So, just what is Mr. Munk telling us?

First: The Fed must hold, chiefly, gold certificates and United States securities equal in value to the Federal Reserve notes received. Congressman Wright Patman described seeing huge Federal Reserve Bank vaults filled with United States securities (instruments rendering certain the performance of a contract - a pledge of repayment) whereupon the people pay interest to the Federal Reserve Banks. According to Patman, these securities are the chief collateral held by the Fed.

Second: Mr. Munk says the notes are a "first lien" on all the assets of the Federal Reserve Banks - but then goes on to say they are not redeemable in anything and have not been since 1933: Clearly, then, they are neither redeemable in, nor backed by, any real assets of the Federal Reserve Banks - further proof that the Federal Reserve has no vested interest, no risk, in this public credit/debt venture.

Third: Mr. Munk finally tells us how WE are to fulfill our obligations to redeem these "liabilities" of the Federal Reserve Banks; And that is with backing of "ALL THE GOODS AND SERVICES IN THE ECONOMY:"

GOODS: In Contracts. The term ... applies to inanimate objects, and does not include animals or chattels real, as a lease for years of house or land ... In a more limited sense, goods is used for articles of merchandise.

SERVICE: In Contracts. The being employed to serve another.

In Feudal Law. That duty which the tenant owed to his lord by reason of his fee or estate.

In Civil Law. A servitude.

**SERVITUDE:** In Civil Law. The subjection of one person to another person, or of a person to a thing, or of a thing to a person, or a thing to a thing ... A personal servitude is the subjection of one person to another: if it consists in the right of property which a person exercises over another, it is slavery. When the subjection of one person to another is not slavery, it simply consists in the right of requiring of another what he is bound to do or not to do: **THIS RIGHT ARISES FROM ALL KINDS OF CONTRACTS OR QUASI-CONTRACTS.** [Bouvier's Law Dictionary]

Thus, the nature of the obligations of the U.S. Government is revealed to us. For the privilege of using the private bank credit creation of the Federal Reserve (the life blood of a mercantile public trust), we are bound by the public pledge of revenue assurance to make good on the public debt to the Federal Reserve. Not only are all our goods pledged as backing for this debt currency, but our **SERVITUDE** via contracts or quasi-contracts; hence, "it is not slavery." This scheme is in direct violation of the Necessary and Positive Law of the Law of Nations.

By way of the Federal Reserve Act, a Charter was granted to the private Federal Reserve Bank Corporation whereby the Fed acquired a hypothecation in the public pledge of revenue assurance for the Public Debt. The Federal Reserve Act, and acts amendatory thereof, is nothing more than a modern Tontine policy dressed up in the garb of a revenue policy. In other words, a pretended assurance, founded on an ideal risk, where the Federal Reserve Bank Corporation has no interest in the Public Debt underwritten; and, in consideration of premiums collected from the American people can therefore sustain no loss by the happening of any of the misfortunes assured against.

#### **Basic Elements of A Wager Policy:**

1. Indemnification is sought for a loss that was not suffered.
2. The contract is based upon an ideal risk (sure bet).
3. An insurable interest is lacking between the insurer and the thing or person assured.
4. The Contract operates to provide a double satisfaction.

A parallel can be drawn between what the Federal Reserve Bank Corporation has done and what an arsonist accomplishes.

The arsonist, like the Bank, represents a false value in the insurance contract. Indemnification is obtained by the arsonist for a loss not suffered. The arsonist gains a huge profit at the expense of the public common stock because he profits from the losses of those who risked a real consideration.

Further, the arsonist policy is based on an ideal risk. It is a sure bet when the arsonist sets fire to the thing insured he will collect a handsome profit from the losses of others, UNLESS the fraud is discovered in time.

Each and every essential element of a Wager Policy are present in the Federal Reserve operation. The contractual and or quasi-contractual duties and obligations imposed on its "beneficiaries" are founded on an HYPOTHECATION of the public pledge of revenue assurance for the public debt; a pledge to redeem the obligations of the Federal Reserve Board and the Federal Reserve Banks in consideration of a pretended assurance by the private Federal Reserve Bank Corporation - WHICH IS A WAGERING POLICY!

#### Part IV: HJR-192, Another Legislative Coup (June 5, 1933)

The Federal Reserve precipitated the crash of '29 by inflating the currency and then increasing the member bank reserve requirements, thereby forcing a huge liquidity squeeze. This set the stage for what was to follow in 1933 by way of bankrupting the treasuries of the states and federal governments. They could no longer pay their debts at law to the Federal Reserve. Drastic measures were obviously necessary, we had a "National Emergency" on our hands!

On April 5, 1933, President Roosevelt issued an executive order calling for the return of all gold in private hiding to the Federal Reserve by May 1 under pain of ten years imprisonment and \$10,000 fine. Hoarders were hunted and prosecuted, Attorney General Cummings declared:

I have no patience with people who follow a course which in war time would class them as slackers. If I have to make an example of some people, I'll do it cheerfully.

On May 12, 1933, the California Assembly and Senate adopted Assembly Joint Resolution No. 26. This resolution stated in part:

Whereas, it would appear that, with proper use and control of modern means of production and distribution, it would be possible for practically all persons to have and enjoy a fair

share of material goods in return for services. Whereas, such use and control and appropriate economic planning are not feasible except through the direction and supervision of a single, centralized agency and the removal of certain constitutional limitations; now, therefore be it Resolved by the Assembly and Senate, jointly, that the legislature of the State of California hereby memorializes the Congress to propose an amendment to the constitution of the United States reading substantially as follows:

"The Congress and the several states, by its authority and under its control, may regulate or provide for the regulation of hours of work, compensation for work, the production of commodities and the rendition of services, in such manner as shall be necessary and proper to foster orderly production and equitable distribution, to provide remunerative work for the maximum number of persons, to promote adequate compensation for work performed, and to safeguard the economic stability and welfare of the nation;"

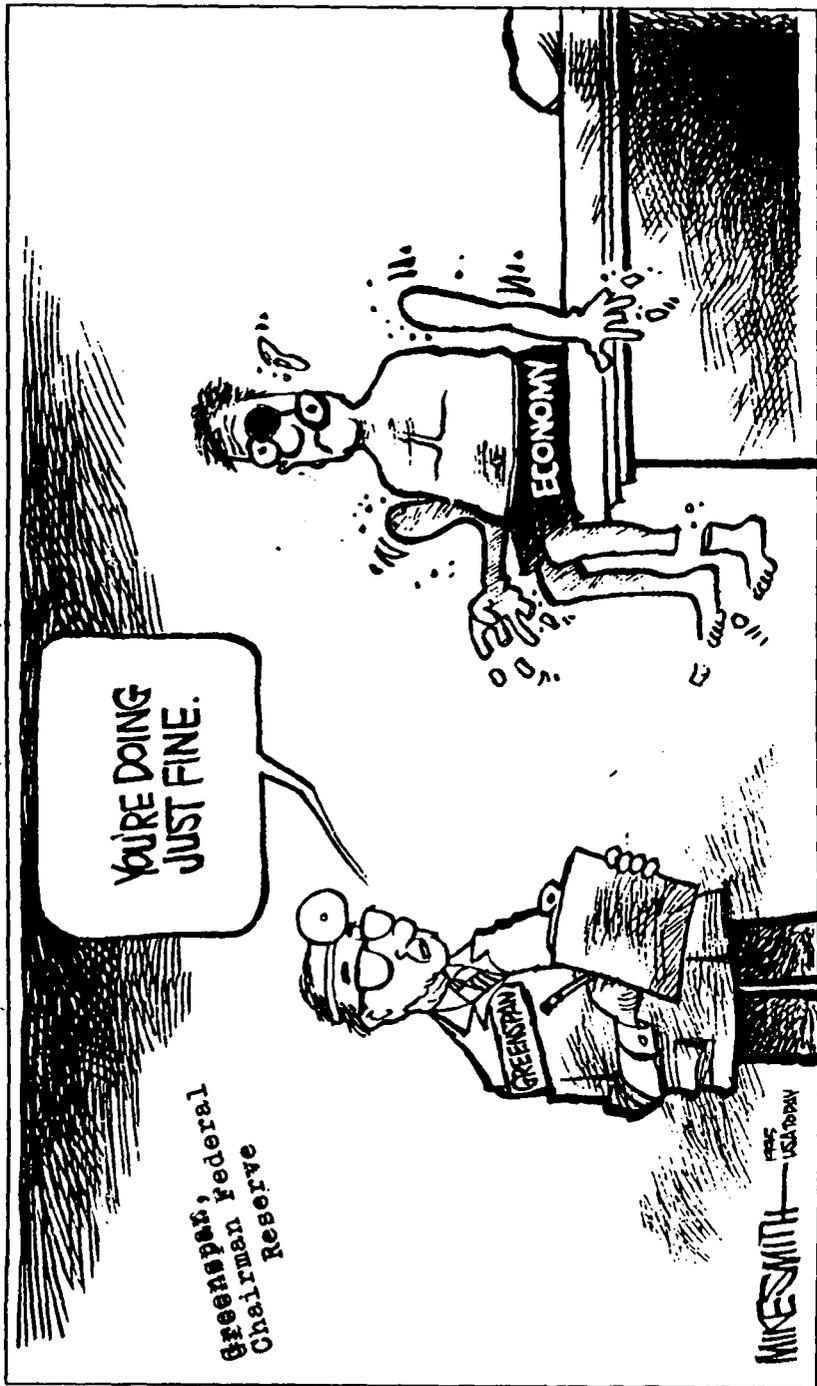
Resolved, that the legislature of California respectfully urges that, pending the submission and adoption of such amendment, the Congress provide for such economic planning and regulation as may be necessary and proper under present economic conditions and LEGALLY POSSIBLE UNDER THE EXISTING PROVISIONS OF THE CONSTITUTION; and be it further Resolved, that the chief clerk of the Assembly is hereby instructed forthwith to transmit copies of this resolution to the President of the United States, and to the President of the Senate, the Speaker of the House of Representatives and each of the senators and representatives from California in the Congress of the United States.

Other state legislatures beseeched Congress in similar fashion. On June 5, 1933, Congress took steps, "legally possible under existing provisions of the Constitution" to "resolve" our economic crises by enactment of House Joint Resolution 192 to suspend the gold standard and abrogate the gold clause.

This resolution declared:

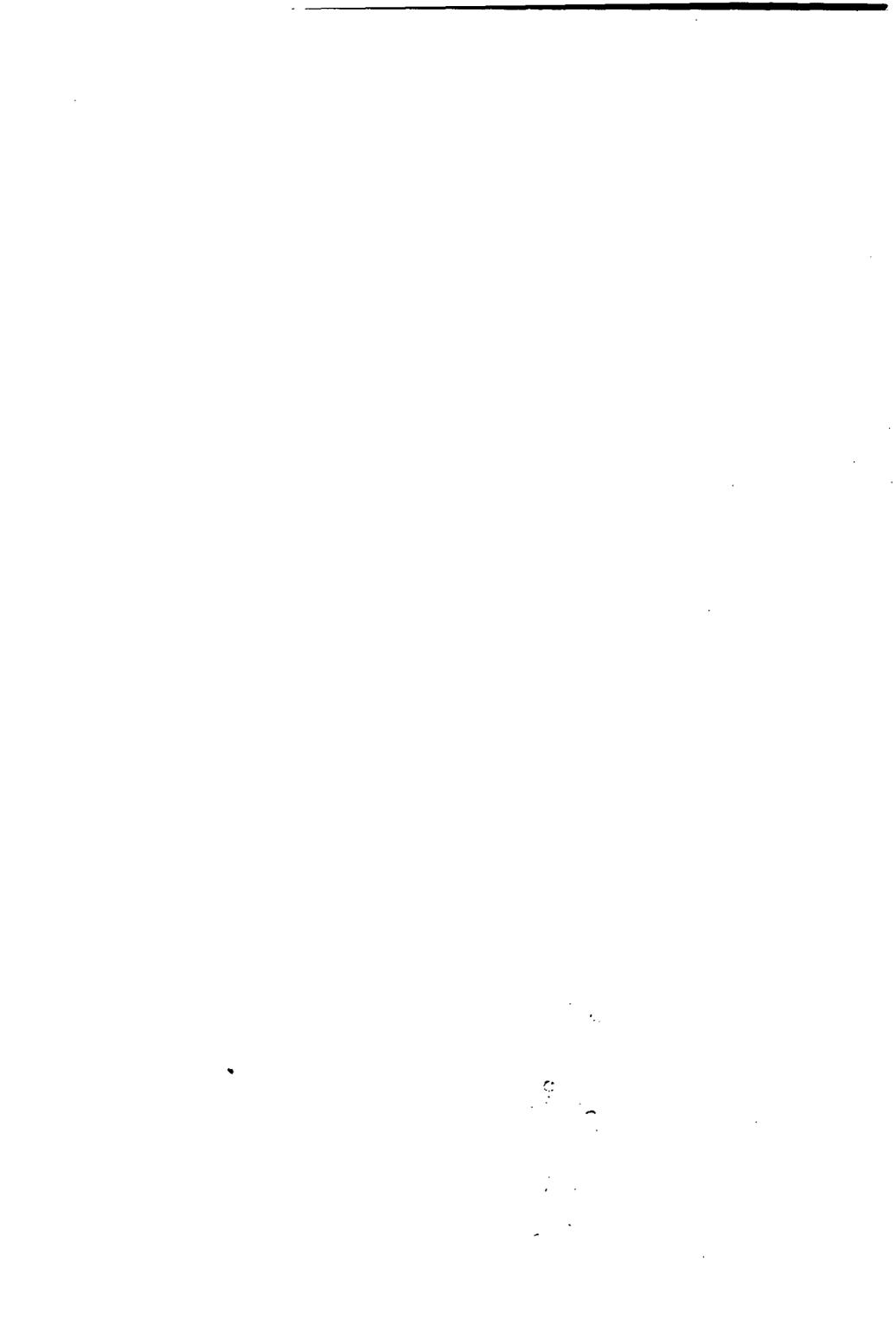
Whereas the holding or dealing in gold affect the PUBLIC INTEREST, and are therefore subject to proper regulation and restriction; and where-

THE EDITORIAL PAGE



Greenspan, Federal  
Chairman Reserve

MIKE SMITH FOR USA TODAY



as the existing emergency has disclosed that provisions of obligations which purport to give the obligee a RIGHT TO REQUIRE PAYMENT in gold or a particular kind of coin or currency ... ARE INCONSISTENT WITH THE DECLARED POLICY OF CONGRESS IN THE PAYMENT OF DEBTS.

This resolution also declared that any obligation requiring:

... PAYMENT in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, IS DECLARED TO BE AGAINST PUBLIC POLICY; AND ... EVERY OBLIGATION, HERETOFORE OR HEREAFTER INCURRED, SHALL BE DISCHARGED upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. ...

And that:

All coins and currencies of the United States (including Federal Reserve Notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, SHALL BE LEGAL TENDER for all debts, public and private, public charges, taxes, duties, and dues, ... [House Joint Resolution 192, 73 d Congress, Sess. I, Ch. 48, June 5, 1933 (Public Law No. 10)]

Note that "payment of debt" is now against Congressional and "public" policy and henceforth, "Every obligation ... Shall be discharged."

In the case of Stanek v. White, 172 Minn. 390, 215 H.W. 784, the court explained the legal distinction between the words "payment" and "discharge."

There is a distinction between a "debt discharged" and a "debt paid." When discharged the debt still exists though divested of its character as a legal obligation during the operation of the discharge. Something of the Original vitality of the debt continues to exist, which may be transferred, even though the transferee takes it subject to its disability incident to the discharge. The fact that it carries something which may be a consideration for a new

Discharged Debts (181)

promise to pay, so as to make an otherwise worthless promise a legal obligation, makes it the subject of transfer by assignment.

Thus, as a result of HJR-192 and from that day forward (June 5, 1933), no one has been able to pay a debt. The only thing one can do is tender in transfer of debts, and the debt is perpetual. The suspension of the gold standard, and prohibition against paying debts, removed the substance for our common law to operate on, and created a void, as far as the law is concerned. This substance was replaced with a "public National Credit System" where debt is "Legal Tender" money (the Federal Reserve calls it "monetized debt").

HJR-192 was implemented immediately. The day after President Roosevelt signed the resolution the treasury offered the public new government securities, minus the traditional "payable in gold" clause.

Article I, Section 10, Clause 1, proscribes the states making any thing but gold and silver coin a tender in payment of debt, but this Article does not contain an absolute prohibition against the states making something else a tender in transfer of debt.

HJR-192 prohibits payment of debt and substitutes, in its place, a discharge of an obligation. Thereby, not only subverting, but totally bypassing the "absolute prohibition" so carefully engineered into the Constitution. Perpetual debt, bills, notes, cheques, and credits fall within a totally different jurisdiction than that contemplated by Article I, Section 10, Clause 1.

Absolved from the responsibility of paying our debts at law, we were placed in the position (like it or not) of having the "benefit" of limited liability for payment of debt under the jurisdiction of Admiralty/Maritime in all controversies involving this subject matter.

§ 31 USC 315 (b) provided that:

No gold shall after January 30, 1934, be coined, and no gold coin shall after January 30, 1934, be paid out or delivered by the United States; provided however, that coinage may continue to be executed by the mints of the United States for foreign countries ....

This exception was necessary because foreign countries, being recognized as sovereign, could not be held to the internal "public policy" of the United States. HJR-192 was binding only upon those persons who were beneficiaries of the public charitable trust under the monetary powers of the Federal Reserve system.

Furthermore, in the case of Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, the court said:

[ The court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. [124 U.S.581] ] ⊗

Thus, if one avails himself of any benefits of the public credit system he waives the right to challenge the validity of any statute pertaining to, and/or conferring "benefits" of this system on the basis of constitutionality. Two years after HJR-192, Congress passed the Social Security Act. This was subsequently upheld as a valid Act, imposing a valid tax by the Supreme Court in the case of Charles C. Steward Mach. Co. v. Davis, 301 U.S. 548 (1937). Anyone who applies for a Social Security Card is on record as being an expectant beneficiary of the public credit system; and therefore is bound by contract to pay the designated interest or premium. By virtue of this fact alone, such beneficiary is a "taxpayer" within the Internal Revenue Code and the IRS is the enforcing agency for the contracting parties. The "tax" is valid because the obligation to pay is voluntarily incurred by the solicitation of benefits via the Social Security Application. The applicant binds himself to the coercive terms of the contract.

Part V: Erie Railroad v. Tompkins - The Judicial coup de grace (1938) [M]

Introduction:

In 1938, the Supreme Court decided what a member of the Court quite justifiably called "one of the most important cases at law in American legal history." The case was Erie Railroad v. Tompkins, and since that decision there has developed what is commonly called the "Erie Doctrine." [M](1).

The core of the Erie Doctrine is the substantive law to be applied by the federal courts in any case is State law, EXCEPT when the matter before the court is governed by the United States Constitution, an Act of Congress, a treaty, international law, the domestic law of another country, or, in special circumstances, by "federal common law."

The Erie decision, and the doctrine subsequently developed, modified the conception of federal authority that prevailed prior to Erie under the doctrine of Swift v. Tyson, 16 Pet. [M](2). The central issue in Swift v. Tyson and in Erie was the proper construction of Section 34 of the

Judiciary Act of 1789 - the famous Rules of Decision Act. This statute provided:

The laws of the several states, except where the Constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.

Although amended in 1948, the Rules of Decision Act has remained substantially unchanged to this day.

The crucial question of construction, posed by the Act, is whether "laws of the several states" encompasses not only state legislative enactments but also the decisions of state courts; and therefore, whether state court decisions are controlling at least in some situations in the federal courts. *Swift v. Tyson* held that:

... laws of the several states that the federal courts were bound to apply to the Rules of Decision Act included, in addition to state constitutions and statutes, only those state judicial decisions that either construed state constitutional or statutory provisions or dealt with questions of real property or other immovable matters. The decisions of state courts on matters of commercial law, however, could be disregarded by the federal courts in favor of the general principle and doctrines of commercial jurisprudence.

The *Swift v. Tyson* decision could have been limited to questions of commercial law, but was not so limited by the Court:

In addition to questions of purely Commercial law, "general law" was held to include the obligations under contracts entered into and to be performed within a State, the extent to which a carrier operating within a State may stipulate for exemption from liability for his own negligence or that of his employee; the liability for torts committed within the state upon persons resident or properly located there, even where the question of liability depended upon the scope of a property right conferred by the State; and the right to exemplary or punitive damages. Furthermore, state decisions construing local deeds, mineral conveyance, and even

devises of real estate, were disregarded. [Erie R.R. v. Tompkins (supra) - The Court's footnotes 11-19.]

"General" law was also held to encompass determinations of conflict of laws. Usually, state law was respected on questions of real property, but even on that subject the federal courts were allowed to take their own view if the existing state decisions were thought to be unsettled.

Although the doctrine of *Swift v. Tyson* grew and flourished during the latter half of the Nineteenth Century, it was to come under increasingly heavy attack both from within the Court itself and from scholars and lawyers. Accordingly, the *Swift* doctrine was subsequently narrowed, but the end did not come until 1938 with the decision in *Erie Railroad Company v. Tompkins*.

Development Of The Erie Doctrine:

#### The Erie Case

The Erie case hardly appeared to be of much significance when it began. Harry Tompkins was walking along the right-of-way of the Erie Railroad at Hughestown, Pennsylvania. As a train came by he was struck by something that looked like a door projecting from one of the moving cars. Under at least one view of Pennsylvania law, the courts of that state would have regarded Tompkins as a trespasser and consequently held that the railroad would not be liable except for wanton or willful misconduct. The "general law", recognized by the federal courts under *Swift v. Tyson*, gave Tompkins the status of a licensee, and imposed liability for ordinary negligence. Since the Railroad was a New York corporation, and Tompkins was a citizen of Pennsylvania, he was able to invoke diversity jurisdiction and bring suit in federal court. He eventually obtained a judgment for \$30,000, which was affirmed by the Second Circuit on the theory that the question was not one of local but of general law. The railroad successfully petitioned for certiorari. In its brief to the Supreme Court the railroad said "we do not question the finalty of the holding of this Court in *Swift v. Tyson* /...," and the argument, both in the brief and orally, was that the Pennsylvania cases as to the duty owed someone in Tompkins' position declared a Pennsylvanian rule sufficiently "local" in nature to be controlling. Tompkins argued that the issue was a question of "general" common law and therefore governed by the existing federal precedents. In other words, both sides relied on *Swift v. Tyson*; they simply disagreed on how it should be applied in the particular case.

NEVERTHELESS, when the decision was handed down on April 25, 1938, Justice Brandeis began his opinion for the Court by stating:

The question for decision is whether the oft-challenged doctrine *Swift v. Tyson* shall now be disapproved.

Having posed this somewhat surprising question, Justice Brandeis was quick to answer it in the affirmative by summarily announcing the new principle which was to become the heart of the Erie Doctrine:

EXCEPT in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in nature or "general", be they commercial law or part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts ...

In disapproving (the doctrine of *Swift v. Tyson*) ... we do not hold unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the constitution to the several states. [*Erie* (supra)]

The case was remanded to the Second Circuit to determine whether Pennsylvania law in fact was as restrictive as the railroad contended, and on remand *Tompkins* ended up without his \$30,000 judgment.

On the surface, the ruling appears innocuous enough. How then, did this decision change our entire system of jurisprudence, both state and federal, and create the federal giant we have today, while purportedly returning to the states a power that for nearly a century had been exercised by the federal government?

Henry J. Friendly, Judge, United States Court of Appeals for the Second Circuit subsequently gave us the following insights into the significance of this decision:

The clarion yet careful pronouncement of Erie, "There is no federal general common law" opened the way to what, for want of a better term, we may call SPECIALIZED FEDERAL COMMON LAW. I doubt that we sufficiently realize how far this development has gone - let alone where it is likely to go.

Since most cases relating to federal matters were in the federal courts and involved "general law", the familiar rule of Swift v. Tyson usually gave federal judges all the freedom they required in pre-Erie days and made it unnecessary for them to consider a MORE ESOTERIC SOURCE OF POWER ... BY FOCUSING ATTENTION ON THE NATURE OF THE RIGHT BEING ENFORCED, ERIE CAUSED THE PRINCIPLE OF A SPECIALIZED FEDERAL COMMON LAW, BINDING IN ALL COURTS BECAUSE OF ITS SOURCE, to develop within a quarter century into a powerful unifying force. Just as federal courts do not conform to state decisions on issues properly for the states, state courts must conform to federal decisions in areas where Congress, acting within powers granted to it, has manifested, be it ever so lightly, an intent to that end .... The federal giant ..., "Professor Gilmore" has written, "is just beginning to stir with his long-delayed entrance we are, it may be, at last catching sight of the principle character." [M](3).

So, by focusing attention on the nature of the right being enforced, federal judges acquired an esoteric source of power binding in all courts because of its source. Let us see if we can catch sight of the principle character involved in this metamorphosis and, more importantly, what jurisdiction he wanders in.

#### Further Development - Three Landmark Cases

The law has gone far beyond the simple holding of Erie, to the point at which one competent scholar refers to "the Erie jurisprudence that has developed a doctrine completely foreign to the decision that is its putative source." [M](4); and another to the "myth of Erie." [M](5). Three decisions of the Court following the Erie decision did more than simply explicate the developing Erie doctrine; rather, each of them redefined the scope and thrust of Erie in such a manner as to yield an entirely new conceptualization of it. These cases are: Guaranty Trust Company of New York v.

York, 1945; Byrd v. Blue Ridge Rural Electric Cooperative, Inc., 1958 and Hanna v. Plummer, 1965. [M](6).

In Guaranty Trust, the Court stated the issue to be:

This case reduces itself to the narrow question whether, when no recovery could be had in a State court because the action is barred by the statute of limitations, a federal court in equity can take cognizance of the suit because there is a diversity of citizenship between the parties.

The imperative that federal court enforcement of state-created rights mirror state court enforcement also dictated that the classifications of "substance" and "procedure" must be applied in light of the purpose of Erie. The Guaranty Trust opinion recognized that Erie questions cannot be answered by adopting the distinctions between "substance" and "procedure" that have been drawn for other purposes. The court held that under the Rules of Decision Act state statutes of limitations are binding in diversity cases. But the significance of Guaranty Trust was much broader than its holding concerning the application of state statutes of limitations. The effect of the decision was to transform the command of Erie (and the Rules of Decision Act) that federal courts apply state law except in matters governed by the Constitution or by Acts of Congress into a policy of duplicating state court results in diversity cases according to an "outcome-determinative" test.

The court struggled for thirteen years with the outcome-determinative test but there were inevitable difficulties. Applied literally, very little would remain of the Federal Rules of Civil Procedure in diversity cases inasmuch as almost EVERY PROCEDURAL RULE MAY HAVE A SUBSTANTIAL EFFECT ON THE OUTCOME OF A CASE.

The Erie question presented by the case of Byrd v. Blue Ridge Rural Electric Cooperative, Inc. in 1958 was whether the factual issues raised by an affirmative defense were to be decided by the judge or by the jury. A South Carolina state court decision had held that it was for the judge alone to decide on the evidence whether a defendant was a statutory employer and entitled to immunity. Federal court practice, on the other hand, required that all disputed questions of fact be decided by the jury. In an opinion by Justice Brennan, the Supreme Court held that notwithstanding the contrary rule, the federal court practice was to be followed. The court conceded that were "outcome" the only consideration, a strong case might appear for saying that the federal courts should follow the state practice. But

the court went on to hold that "outcome" was not the sole consideration, and that, at least in the case before it, there were "affirmative countervailing considerations."

In many respects, the opinion in Byrd is the most puzzling of the Supreme Court's major Erie Decisions. It rules out the more extreme interpretations of York that federal courts in the exercise of their diversity jurisdiction must transform themselves into state courts. It provides at best an ambiguous guidance as to when, aside from the precise circumstances present in Byrd, federal rules will prevail in the face of contrary state rules.

One ambiguity is precisely which federal interest, or "affirmative countervailing consideration," justified departure from the state rule in Byrd? Was it "the influence, if not the command, of the Seventh Amendment? If so, the opinion might be given a narrow construction, limited to cases in which the federal constitutional right to jury trial is implicated. Another possibility suggested by the court's opinion is the judge-jury relationship and practice in the federal courts that provide a "countervailing consideration." Yet, a third possibility is "the federal system ... (as) an independent system for administering justice to litigants who properly invoke its jurisdiction." If this was the basis for the Court's decision, Byrd can be given a very broad sweep indeed. [M](7).

The Erie question presented by the case of *Hanna v. Plumer* in 1965 was whether, in a federal diversity case, the adequacy of service of process was to be measured by state law or by Rule 4 (d) (1) of the Federal Rules of Civil Procedure.

Broadly viewed, the question in *Hanna* was the same as that in *Erie*, *York* and *Byrd*; whether a federal court in a diversity case must decide an issue according to state decisions, the relevant federal law in *Hanna* was a Federal Rule of Civil Procedure, promulgated pursuant to the Rules Enabling Act. Enacted by Congress in 1934, the Rules Enabling Act provides, in pertinent part:

The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice of the district courts of the United States in civil action ....

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury ... [28 U.S.C.A., Section 2072]

Chief Justice Warren, writing for the Court in *Hanna*, found first that Rule 4(d)(1) was within the scope of the

Rules Enabling Act, and then came to the heart of his opinion. Not only did the strict outcome-determinative argument for the application of state law, run counter to Erie and York as reconsidered by the court but it contained a "more fundamental flaw," "the incorrect assumption that the rule of Erie ... constitutes the appropriate test of the validity and therefore the applicability of a Federal Rule of Civil Procedure. Rather, the Chief Justice explained when a Federal Rule is at issue, such as in Hanna, the question is controlled by the Rules Enabling Act.

"Outcome determination analysis" is not repudiated by Hanna; rather, it is refined by tying it to the policies of Erie, and is limited to those genuine Erie cases in which the choice-of-law question does not involve a Federal Rule.

Although Hanna is the Supreme Court's last major contribution to the Erie doctrine, the other principle cases, Erie, York and Byrd certainly cannot be disregarded. The four decisions build upon and inform one another. None of them can be adequately understood in isolation.

#### The Constitutional Basis (?)

If only a question of statutory construction were involved, "Justice Brandeis wrote in the Erie decision," we should not be prepared to abandon a doctrine so widely applied throughout nearly a century. But the unconstitutionality of the course pursued has now been made clear, and compels us to do so.

Perhaps no aspect of the Erie decision has so perplexed the commentators as this statement. For a decision overruling, on what purports to be constitutional grounds, a concept of federal court jurisdiction and power as important and long-standing as has the doctrine of *Swift v. Tyson*. The constitutional discussion in Erie is remarkably abbreviated. It basically consists of but five sentences:

Congress has no power to declare substantive rules of common law applicable in a state whether they be local in nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts....

The doctrine of *Swift v. Tyson* is, as Mr. Justice Holmes said, "an unconstitutional as-

sumption of powers by the Courts of the United States...." In disapproving that doctrine we do not hold unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states. [Erie, (supra)]

A few of the puzzling features of this "constitutional discussion" are noteworthy. Although Justice Brandeis asserts in the first sentence that Congress has no power to declare substantive rules of common law applicable in a state, the Rules of Decision Act did not involve any attempt by Congress to do so. Indeed, Justice Brandeis apparently recognized this for he expressly disavowed holding as unconstitutional "Section 34 of the Federal Judiciary Act of 1789 (the Rules of Decision Act) or any other act of Congress." Instead it was the Court's own conduct that was regarded as unconstitutional. But we are not told which provision of the Constitution was violated by the course pursued under *Swift v. Tyson*; instead, Justice Brandeis states only that no clause in the Constitution purports to confer upon the federal courts the power to declare substantive rules of common law applicable in a state, and that the federal courts "have invaded rights which in our opinion are reserved by the Constitution to the several States." Presumably this last reference is to the Tenth Amendment, but it is unusual to have a constitutional decision that avoids making specific reference to the constitutional provision thought to be involved.

For 18 years after *Erie* the Court refrained from referring again to the Constitution in an *Erie* context. This silence was perhaps most significant in *Guaranty Trust Company of New York v. York*. In the course of that major redefinition of the *Erie* doctrine, Justice Frankfurter referred at three separate places to the "policy" of federal jurisdiction embodied in the *Erie* case. It is odd that what had seemed to Justice Brandeis a constitutional imperative (undefined) was reduced to a mere "policy", in the eyes of Justice Frankfurter and the Court for which he spoke.

The first reference to the Constitution after *Erie* itself was in 1956 in *Bernhardt v. Polygraphic Company of America, Inc.*, [M](8). The next reference to the Constitution was in *Hanna v. Plummer* (supra). These two cases, like *Erie*, glosses over some hard questions, particularly concerning the extent to which Article III implies the general power in the federal government, and the Necessary and Proper Clause of Article I warrants congressional implementation.

The only other "Erie" decision in which the Court has mentioned the Constitution is *Prima Paint Corporation v. Flood and Conklin Manufacturing Company* in 1967. [M](9). That case, like *Bernhardt*, was a diversity action involving the enforceability of an arbitration clause under Section 3 of the United States Arbitration Act. But in *Prima Paint* the underlying contract clearly involved INTERSTATE COMMERCE. As interpreted in *Bernhardt*, Section 3, therefore was applicable. But would it be constitutional to apply the Arbitration Act in these circumstances? The Court's answer, with Justice Fortas writing, was an affirmative one.

... (Citing *York*) The question in this case, however, is not whether Congress may fashion federal substantive rules to govern questions arising in simple diversity cases. See *Bernhardt* ... and concurring opinion, ... Rather, the question is whether Congress may prescribe how federal courts are to conduct themselves with respect to SUBJECT MATTER over which Congress plainly has power to Legislate. The answer to that can only be in the affirmative. And it is clear beyond dispute that the federal arbitration statute is based upon and confined to the INCONTESTABLE FEDERAL FOUNDATIONS OF "CONTROL OVER INTERSTATE COMMERCE AND OVER ADMIRALTY."  
[*Prima Paint* (supra)]

So, what precisely was the constitutional question decided in *Erie*, and on what ground? *Erie* ultimately rests on the principle that the federal government as a whole, including Congress and the federal courts, has no more authority than that given by the Constitution. Of course, the converse of this principle is that Congress and the federal courts may create rules of law if authorized to do so under the Constitution.

First, consider the congressional power to declare substantive rules of law. Under the Commerce Clause of Article I, augmented by the Necessary and Proper Clause, Congress undoubtedly could have passed a law declaring the duty of care owed by interstate railroads to those walking along their right-of-ways, thus bringing the issue in *Erie* within the ambit of federal law after all via "incontestable federal foundations of control over interstate commerce and over admiralty."

Are we, at last, beginning to catch sight of the "principle character" of the "Federal Giant?"

Federal Common Law Or "Specialized" Common Law

Although, since Erie, there is no "general" federal common law, it is now recognized that in certain narrowly defined but extremely important circumstances the federal courts may fashion "specialized" federal common law (Friendly in praise of Erie, supra.) - substantive rules of decision not expressly authorized by either the Constitution or any Act of Congress that supplanted state law. Indeed, the very day the Court interred "federal general common law" in Erie, it announced in another case, with Justice Brandeis again writing for the Court, that:

... whether the water of an interstate stream must be apportioned between ... two states is a question of "federal common law" upon which neither the statutes nor the decisions of either State can be conclusive. [Hinderliter v. La Plata River and Cherry Creek Ditch Co., 1938, 58 S. ct. 803, 822; 304 U.S. 92, 110, 82 L. Ed. 1202]

The manifestations of this "Specialized" power of the federal courts are extremely diverse and the governing principles amorphous. By and large, however, they all share certain characteristics: [M](10).

1. The "federal common law" that has developed since Erie differs from the general federal common law applied by federal courts under Swift v. tyson because it falls within an area of federal on national competence; indeed, the development of federal common law now must be supported by some express or implied affirmative grant of power to the national government.

2. Unlike the federal law developed under Swift, post-Erie federal common law is truly federal law in the sense that, by virtue of the Supremacy Clause, it is binding on state courts as well as in the federal courts.

3. Congress can override this post-Erie federal common law. Usually, federal common law is exercised only when Congress has not spoken to an issue. But when Congress does speak to the issue, its statement prevails over today's federal common law.

4. A case "arising under" federal common law presents a federal question and as such is within the original jurisdiction of the federal courts and is not dependent upon the diversity of citizenship.

Although categorization is always a risky business, it is possible to make the broad statement that federal common law has been developed in three contexts:

First: There are those situations involving "significant" conflict between some FEDERAL POLICY OR INTEREST and the use of state law. In these cases, a federal rule of decision is "necessary to protect uniquely federal interests." [M](11).

Second: There are those "areas of judicial decision with which the POLICY of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed GOVERNED BY FEDERAL LAW." [M](12).

Third: There are cases involving federal common law in areas in which there is a STRONG NATIONAL OR FEDERAL CONCERN. The most significant groups of cases in this category involve controversies between states, ADMIRALTY MATTERS [M](13), and foreign relations.

THE POWER OF THE FEDERAL COURTS TO CREATE A FEDERAL COMMON LAW TO GOVERN ADMIRALTY SUITS WAS RECOGNIZED QUITE EARLY AND IS WELL ESTABLISHED. In *Southern Pacific Company v. Jensen* [M](14), the Supreme Court found that the constitutional grant of admiralty jurisdiction gave to the federal courts (and Congress) the power to construct A UNIFORM BODY OF SUBSTANTIVE FEDERAL MARITIME LAW APPLICABLE IN ADMIRALTY AND NON-ADMIRALTY COURTS ALIKE. Writing for the majority, Justice McReynolds stated:

Article III, Section 2, of the Constitution extends the judicial power of the United States "to all cases of admiralty and maritime jurisdiction;" and Article I, Section 8, confers upon the Congress 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."

Considering our former opinions, it must now be accepted as settled doctrine that, in consequence of these provisions, Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country.... And further that, in the absence of some controlling statute, the general maritime law, as accepted by the Federal courts, constitutes part of our national law, applicable to matters within the admiralty and maritime jurisdiction.

THE APPLICATION OF FEDERAL COMMON LAW IN ADMIRALTY CASES IS CONSISTENT WITH ESSENTIAL PRINCIPLES OF THE ERIE DOCTRINE [M](15). ADDITIONAL SUPPORT CAN BE FOUND IN THE NATIONAL

INTEREST IN UNIFORMITY AS TO THE LAW GOVERNING MARITIME COMMERCE. [M](16).

It should be noted that in its 1981 decision in Northwest Airlines, Inc. v. Transport Workers Union of America, AFL-CIO, the Supreme Court took pains to emphasize that THE LAWMAKING ROLE OF THE FEDERAL JUDICIARY IN ADMIRALTY SUITS WAS "SPECIAL," and it stood in contrast to the general presumption against lawmaking by courts of limited jurisdiction. The Northwest Airlines decision did recognize that admiralty law is judge-made to a great extent (an esoteric source of power?) but, in emphasizing the deference owed by federal courts to the legislative branch, the Court said:

Even in admiralty, however, where federal judicial lawmaking power may well be at its strongest, it is our duty to respect the will of Congress. [101 S. Ct. 1571; 67 L. Ed. 2d 750]

The best known Supreme Court case that serves to illustrate the operation of these principles is Clearfield Trust Company v. United States. [M](17). A check issued by the United States had been stolen and cashed on the basis of a forged endorsement. The United States sued a bank that had presented the check for payment and had guaranteed prior endorsements. The district court held that under the law of Pennsylvania, where the transaction had taken place, the delay of the United States in notifying the bank that the endorsement was forgery would bar recovery from the bank. The court of appeals reversed and the reversal was affirmed by a unanimous Supreme Court, which held that the rights and duties of the United States on its commercial paper are governed by federal common law. This case is reported in the "Handbook of the Law of Federal Courts" as follows:

... a unanimous court held that the rights and duties of the United States on commercial paper that its issues are governed by federal rather than local law. This does not mean that in choosing the applicable federal rule the courts may not occasionally select state law. But it was thought that such a course would be singularly inappropriate in the Clearfield case. The issuance of commercial paper by the United States is on a vast scale and transactions in that paper from issuance to payment will commonly occur in several states ...

THE DESIREABILITY OF A UNIFORM RULE IS PLAIN. TO FIND SUCH A UNIFORM RULE THE COURT LOOKED TO THE FEDERAL LAW MERCHANT ...

Federal courts have made similar decisions for themselves as to what the controlling rule is to be in other cases where the United States is a party and the suit involved commercial paper, or bonds issued by the United States, government contracts, or the effect of a federal lien ...

IF AN ISSUE IS CONTROLLED BY FEDERAL COMMON LAW, THIS IS BINDING ON BOTH STATE AND FEDERAL COURTS. A case "arising under" federal common law is a federal question case, and is within the original jurisdiction of the federal courts as such ....

THE BURGEONING OF A FEDERAL COMMON LAW BINDING ON FEDERAL AND STATE COURTS ALIKE HAS OCCURRED AT THE SAME TIME AS THE DEVELOPMENT OF THE ERIE DOCTRINE. ...

It is frequently said that the Erie doctrine applies only in cases in which jurisdiction is based on diversity of citizenship. Indeed in an action for wrongful death caused by a maritime tort committed on navigable waters, the Court curtly dismissed Erie as "irrelevant", since the district court was exercising its admiralty jurisdiction, even though it was enforcing a state-created right ...

DESPITE REPEATED STATEMENTS IMPLYING THE CONTRARY, IT IS THE SOURCE OF THE RIGHT SUED UPON, AND NOT THE GROUND, ON WHICH FEDERAL JURISDICTION IS FOUNDED, WHICH DETERMINES THE GOVERNING LAW.

The Clearfield principle has also been applied in government tort and property litigation:

Although the Clearfield case applied these principles to a situation involving contractual relations of the Government, they are equally applicable ... where the relations affected are contractual or tortious in character. [U.S. v. Standard Oil Co., 1947, 67 S.Ct. 1604, 1607, 332 U.S. 301, 305, 91 L.Ed. 2067.]

Have we just caught another view of the "principle character" of the "Federal Giant" and the "esoteric" source of power of federal judges? Is it not absolutely clear that, if the source of the right sued upon is a creation of the Federal Reserve Act and/or House Joint Resolution 192 (Rights, benefits and obligations via a gigantic public trust; contracts between the U.S. Government and a private

corporation; trust cur- rency being commercial paper, private bank credit, issued on a vast scale; bonds and obligations of the United States, held by the Federal Reserve who collects interest on these obligations; creditor/debtor relationship in all transac- tions; Limited Liability for payment of debts; etc.), that the controlling law in any controversy involving this sub- ject matter is the Federal Law Merchant? And that, because of the interstate and international commercial nature of the rights, duties, benefits, and obligations arising out of these contracts, and adhesion contracts thereto, this Federal Law Merchant is under the exclusive jurisdiction of Admiralty/Maritime? "IN THE ADMIRALTY, A MIXTURE OF PUBLIC LAW AND MARITIME LAW AND EQUITY WERE OFTEN FOUND IN THE SAME SUIT." [Kelver v. Seawall, supra]

## Part VI: The International Monetary Fund (1945) [N]

### Introduction:

Creation of the International Monetary Fund (IMF) involved years of careful planning. The IMF and the system it epitomizes were developed to replace the gold standard, which had been increasingly undercut and sabotaged by government meddling. Over the centuries, governments had acquired a monopoly over the minting of coins, passed legal tender laws, and resorted to the use of fiat paper money. They exempted banks from honoring their contractual obligations by permitting them to suspend the redemption of their notes in gold or silver upon demand and chartered specially privileged "central banks", which were granted a monopoly over the issuance of notes within each nation. With governments increasingly modifying and manipulating the gold standard and encouraging fractional-reserve banking, more and more paper credit was allowed to pyramid on top of gold and silver reserves. The 1913 creation of the U.S. Federal Reserve System, America's Central Bank, marked the beginning of the end of the gold standard. House Joint Resolution 192 terminated the gold standard within the United States in 1933 and placed all "United States citizens" in a perpetual sea of credit and debt under the absolute control of the Monetary Power via its legal tender clause.

The purpose of the IMF is to accomplish the identical thing for the Monetary Powers by making a one-world currency "legal tender."

### Birth Of The IMF:

Members of the Council on Foreign Relations (CFR) were busily engaged in planning the post-war world even before the Sunday-morning visit to Pearl Harbor by Japan in 1941. In several recommendations during the late 1930's and early 1940's, the War and Peace Studies groups of the CFR proposed that several international institutions were required to "stabilize" the World economy after the cessation of hostilities. For example, recommendation of P-B23 of July 1941 stressed the need for worldwide financial institutions to begin "stabilizing currencies and facilitating programs of capital investment for constructing undertakings in underdeveloped regions."

The idea was to set up a system after the war which would launch a global redistribution of wealth from productive Americans, in pursuance of the internationalist's plans congressman McFadden warned us about in 1932.

The Council's own records show that during the last half of 1941, and in the early months of 1942, the CFR was already formulating plans for remaking the world. These recommendations were forwarded to President Roosevelt and the State Department, where CFR agents were already in top positions of authority. Treasury advisor and CFR operative Jacob Viner wrote a memo proposing what would later turn out to be the IMF and World Bank. The note stated:

It might be wise to set up two financial institutions: one an international exchange stabilization board and one an international bank to handle short-term transactions not directly concerned with stabilization.

A world meeting of bankers and government planners was called by President Roosevelt to convene in July 1944. Officially called the United Nation's Monetary and Financial Conference, this historic occasion is generally referred to as the Bretton Woods Conference because it took place at the famed New Hampshire resort in Bretton Woods. That was the birthplace of the International Monetary Fund and the post-war monetary system.

The Bretton Woods Conference was dominated by two individuals, one from Great Britain and one from the United States. The American Banker for April 20, 1971, in a monograph history of the IMF, reported:

The main architects of the (International Monetary) Fund were Harry Dexter White and John Maynard Keynes - later Lord (Candy) Keynes - of the American and British Treasuries ... Keynes had written about a world central bank as early as 1930, while White had been instructed by the

U.S. Treasury only a week after Pearl Harbor to start drafting plans for an international stabilization fund after the war.

Keynes was the darling of the socialist British Fabian Society who promulgated a queer brand of economics which, among other things, strongly encouraged unrestrained government spending and deliberate budget deficits as a cure for inflation-caused recessions.

Harry Dexter White was a bird of an even more crimson hue. While all the standard histories of the IMF fail to mention it, Harry Dexter White was at once a member of the Council on Foreign Relations and a Soviet agent. Having taught economics at Harvard University, White had moved into various positions of importance in the U.S. Treasury Department where he carefully laid out plans for a new world monetary order.

On November 6, 1953, Attorney General Herbert Brownell revealed that Harry Dexter White's:

Spying activities for the Soviet Government were reported in detail by the F.B.I. to the White House ... in December of 1945. In the face of this information, and incredible though it may seem, President Truman went ahead and nominated White, who was then Assistant Secretary of the Treasury, for the even more important position of executive director for the United States in the International Monetary Fund.

In his 1954 book "The Web of Subversion", Professor James Burnham observed:

From its beginnings, and before its beginning, the International Monetary Fund has been closely encompassed by the web of subversion....

For more than three weeks Keynes, White, and thirteen hundred delegates had labored in New Hampshire to hammer out the details for formation of the IMF. According to the American Banker monograph:

Keynes wanted his international central bank to have power to create its own money.

While agreeing with Keynes that a centrally managed world fiat money was the ultimate goal, White was more cautious. He knew the dangers of going too far too fast, recalling how the Senate had kept the United States out of the League of

Nations in the aftermath of World War I. White was concerned the Senate would scuttle so obvious a move toward One-World Government. The proposals of the new international institutions were made to seem moderate as White and his planners judged every proposal by its chances of gaining congressional approval.

At the same time, massive amounts of propaganda to support the Bretton Woods coup were disseminated via the mass media. Typical was an article in Collier's for June 2, 1945, modestly entitled "Bretton Woods or World War III."

In 1945, Congress bought the whole United Nations/IMF/World Bank package. It is true that the internationalist bankers and industrialists did not get the full-blown world currency that they wanted; but they knew that, just as when they created the Federal Reserve in 1913, it was more important to establish the framework into which more power could be vested as it became available.

In short, the IMF is a gigantic mechanism for doing to the world what the Federal Reserve has done to the United States. To make a one-world currency work, it is necessary to have a world political state and world legal tender laws to enforce the acceptance. Enforcement will be under the Law of Merchants and within the jurisdiction of admiralty/maritime.

The Monetary powers have certainly not forgotten their aim of a fiat currency for the world. They planned for the day when gold would be unlinked and replaced by the centrally managed paper. In 1970, the IMF created out of thin air something called "Special Drawing Rights" (S.D.R.'s) as a step in that direction. The S.D.R. is an abstract unit based on a so-called "basket of currencies" which is a weighted average of several major fiat currencies. Neither have the Monetary Powers forgotten the necessity for a world political state, or authority, in the enforcement of this scheme.

Part VII: Public Law 95-147 (October 28, 1977)

In the case of Lewis v. United States, the United States Court of Appeals, Ninth Circuit, verified the fact the Federal Reserve Banks are privately owned corporations:

Examining the organization and function of the Federal Reserve Banks, and applying the relevant factors, we conclude that the Reserve Banks are not federal instrumentalities for purposes of the FTCA (Federal Tort Claims Act), but are independent, privately owned and locally controlled corporations....

The Banks are neither listed as "wholly owned" government corporations under 31 U.S.C. 846 nor as "mixed ownership" corporations under 31 U.S.C. 856. [680 F. 2d 1239 (1982)]

It appears the Ninth Circuit was right on point with the possible exception of its conclusion regarding where the control of these corporations reside. Just who is in control of these corporations was not at issue in this case. Apparently, fact finding was insufficient to expose the facade. The main thing to keep in mind is the Federal Reserve System consists of privately owned corporations engaged in the business of banking, created and organized under the Federal Reserve Act and acts amendatory thereto. Its purported object is to perform as the Central Bank of the United States.

Strangely enough, on October 28, 1977, House Joint Resolution 192 was quietly repealed by Public Law 95-147, which stated:

The joint resolution entitled "Joint Resolution to assure uniform value to the coins and currencies of the United States" approved June 5, 1933 (31 U.S.C. 463), shall not apply to obligations issued on or after the date of enactment of this section.

The reason for the repeal of HJR-192 is somewhat obscure. After 44 years of unchallenged implementation this public policy is clearly established by custom, usage and continued participation in the public credit system by the American public. Those of us operating on the privilege of limited liability, via the public credit created by the Federal Reserve, are still bound by the rules of the governing law, the "Federal Law Merchant," under the jurisdiction of Admiralty/Maritime.

But how about the Federal Reserve itself? It appears this repeal allows them to, once again, demand payment in gold for the interest on the public debt. The Federal Reserve Act contains a provision made with respect to an obligation purporting to give the obligee a right to require payment in gold, and that provision appears to be back in effect. If this is the case, is it possible for the Federal Reserve to foreclose on the United States (as any other private banking institution would foreclose on its debtors in default) if they present their demands knowing that there would not be enough gold to meet them, and no hope of acquiring enough gold?

This makes for interesting speculation. However, keeping in mind Congressman McFadden's warning that the Federal Re-

serve is a tool of international bankers and industrialists bent on establishing a world-wide, privately owned, mercantile superstate for their own benefit and selfish pleasure; an overt take over by foreclosure actions would not make much sense. It could serve to expose the powers behind the scenes, and this line of conduct is not in keeping with their modus operandi.

With this in mind, a far more plausible explanation for the enactment of P.L. 95-147 can be gleaned from an analysis of its specific provisions, which incorporate certain previously enacted public laws, to wit:

First: The Federal Reserve Bank Corporation on or about October 28, 1977, together with other subscribers thereto, entered into and became a party to, and carried out the following agreement: (a). Public Law 95-147, Stat. 1227, passed October 28, 1977, entitled "To Authorize the Secretary of the Treasury to invest public moneys, and for other purposes", and the Acts amendatory thereof, incorporates; (b) Public Law 171, ch. 339, 59 Stat. 512, passed July 31, 1945, entitled "To provide for the participation of the United States in the International Monetary Fund and the International Bank for Reconstruction and Development", and Acts amendatory thereof; and (c) Public Law 87, ch. 6, 48 Stat. 337, passed January 30, 1934, entitled "To protect the currency system of the United States, to provide for the better use of the monetary gold stock of the United States, and for other purposes", and Acts amendatory thereof.

Second: Pursuant to this agreement, the capital stock of the Federal Reserve Bank Corporation was transferred to "International Monetary Fund" and in lieu thereof Special Drawing Rights certificates were issued by the IMF Board of Governors.

Third: Pursuant to this agreement such of the parties thereto as were not then depositories of public money became depositories of public money and fiscal agents of the United States in the collection of taxes and other obligations owed the United States Treasury at Accelerated premiums in consideration of floating money market interest rates. The greater part in number and value of these rates is regulated by the Board of Governors of the IMF.

Fourth: The powers conferred upon the Board of Governors of the IMF by this government enables the said Board to monopolize the Faculty for Exchange of Debt Obligations in the United States, and is enabled to control at will the Exchange for Moneys that circulates in the United States.

Fifth: In exercise of the powers conferred by the agreement, the IMF Board of Governors controls the action of the Federal Reserve Bank Corporation and other depositories of Public Money who are parties to the agreement in the conduct of their business; and, thereby, controls and regulates the exchange for Moneys and Considerations of Debt Obligations in the United States.

So, the Federal Reserve Act enabled the Federal Reserve Board to usurp the government of the United States; and this Monetary Power was then transferred to, and consolidated within, the Board of Governors of the International Monetary Fund by enactment of Public Law 95-147 on October 28, 1977.

This agreement constitutes a combination to do an Act injurious to trade and commerce, to which the private Federal Reserve Bank Corporation is a party. It also constitutes a wager policy in favor of the Federal Reserve Bank Corporation and International Monetary Fund.

The author and his colleague, Dr. George E. Hill, have been involved in a series of correspondence on this subject with the Honorable Ron Paul, House of Representatives, Congress of the United States and his assistant on the House Banking Committee, Joe Cobb. This correspondence is appended to this work as Exhibits 1 through 8. I especially recommend the study and analysis of these exhibits to anyone inclined to believe that we can look to Congress alone for solutions. (X)

## Part VIII: Synopsis

### The Facts:

When Congress borrows money on the credit of the United States, bonds are legislated into existence and deposited as credit entries in Federal Reserve banks. United States bonds, bills and notes constitute "money" as affirmed by the Supreme Court Legal Tender Cases (110 U.S. 421). When deposited with the Fed this "money" becomes collateral from whence the Treasury may write checks against the credit thus created in the account (12 U.S.C. 391).

For example, suppose Congress appropriates an expenditure of \$1 billion. To finance the appropriation, Congress creates \$1 billion worth of bonds out of thin air and deposits it with the privately-owned Federal Reserve System. Upon receiving the bonds, the Fed credits \$1 billion to the Treasury's checking account, holding the deposited bonds as collateral. When the United States deposits its bonds with the Federal Reserve System, private bank credit is extended to the Treasury by the Fed. Under its power to borrow

money. Congress is authorized by the Constitution to contract debt, and whenever something is borrowed; it must be returned. When Congress spends the contracted private bank credit, each unit of credit is debt which must be returned to the lender or Fed. Since Congress authorized the expenditure of this private bank credit, the United States incurs the primary obligation to return the borrowed credit, creating a National Debt which results when credit is not returned.

However, if anyone else accepts this private bank credit and uses it to purchase goods and services, the user voluntarily incurs the obligation requiring him to make a return of income. Whereby a portion of the income is collected by the IRS and delivered to the Federal Reserve bankers. Actually the federal income tax imparts two separate obligations: the obligation to file a return and the obligation to abide by the Internal Revenue Code. The obligation to make a return of income for using private bank credit is recognized in law as an irrecusable obligation which, according to Bouvier's Law Dictionary (1914 ed.), is "a term used to indicate a certain class of contractual obligations recognized by the law which are imposed upon a person without his consent and without regard to any act of his own." This is distinguished from a recusable obligation which arises from a voluntary act by which one incurs the obligation imposed by the operation of law. The voluntary use of private bank credit is the condition precedent which imposes the irrecusable obligation to file a tax return, via a contract of adhesion. If private credit is rejected, then the operation of law which imposes the irrecusable obligation lies dormant and cannot apply - there is no contract.

In Brusababer v Union Pacific RR Co. [240 U.S. 1 (1916)] the Supreme Court affirmed that the federal income tax is in the class of indirect taxes, which include duties and excises. The personal income tax arises from a duty, i.e. charge or fee which is voluntarily incurred and subject to the rule of uniformity. A charge is a duty of obligation, binding upon him who enters into it, which may be removed or taken away by a discharge or performance (Bouvier. p. 459)

The Federal personal income tax is not really a tax in the ordinary sense of the word but rather a burden or obligation which the taxpayer voluntarily assumes. The burden of the tax falls upon those who voluntarily use private bank credit. Simply stated the tax imposed is a charge or fee upon the privilege of using private bank credit where the amount of credit used measures the pecuniary obligation. The personal income tax provision of the Internal Revenue Code is private law rather than public law. "A private law is one which is confined to particular individuals, associations, or corporations." (50 Am Jur 12, p. 28), and the

revenue code pertains to "taxpayers." A private law can be enforced by a court of competent jurisdiction when statutes for its enforcement are enacted (20 Am Jur 33, pgs. 58-59). The distinction between public and private acts is not always sharply defined when published statutes are printed in their final form [Case v. Kelly 133 U.S. 21 (1890)].

Statutes creating corporations are private acts, (20 Am Jur 35, p. 60). In this connection, the Federal Reserve Act is private law. Federal Reserve banks derive their existence and corporate power from the Federal Reserve Act [Armano v. Federal Reserve Bank 468 F: Supp. 674 (1979)]. A private act may be published as a public law when the general public is afforded the opportunity of participating in the operation of the private law. The Internal Revenue Code is an example of private law which does not exclude the voluntary participation of the general public.

Had the Internal Revenue Code been written as substantive public law, the code would be repugnant to the Constitution, since no one could be compelled to file a return and thereby become a witness against himself. Under the fifty titles listed on the preface page of the United States Code, the Internal Revenue Code (26 U.S.C.) is listed as having not been enacted as substantive public law, conceding that the Internal Revenue Code is private law. Bouvier declares that private law "relates to private matters which do not concern the public at large." It is the voluntary use of private bank credit which imposes upon the user the quasi-contractual or implied obligation to make a return of income.

In Pollock v. Farmer's Loan & Trust Co. [158 U.S. 601 (1895)] the Supreme Court had declared the income tax act of 1894 repugnant to the Constitution, holding that taxation of rents, wages and salaries must conform to the rule of apportionment. However, when this decision was rendered, there was no privately owned central bank issuing private bank credit and currency but rather public money circulated in the form of legal tender notes and coins of the United States. Public money is the lawful money of the United States which the Constitution authorized Congress to issue, conferring a property right; whereas the private credit issued by the Fed is neither money nor property, permitting the user an equitable interest but denying allodial title.

Today, we have two competing monetary systems. The Federal System with its private credit and currency, and the public money system consisting of legal tender United States notes and coins. One could use the public money system, paying all bills with coins and United States notes (if the notes can be obtained), or one could voluntarily use the private credit system and thereby incur the obligation to make a return of income.

U.S. Notes

"Payment of Debt" replaced with  
"Discharge of an obligation"

Under 26 U.S.C. 7609 the IRS has carte blanche authority to summon and investigate bank records for the purpose of determining tax liabilities or discovering unknown taxpayers [United States v. Berg 636 F.2d 203 (1980)]. If an investigation of bank records discloses an excess of \$1000 in deposits in a single year, the IRS may accept this as prima facie evidence that the account holder used private credit and is therefore a person obligated to make a return of income. Anyone who uses private bank credit, e.g., bank accounts, credit cards, mortgages, etc., voluntarily plugs himself into the system and obligates himself to file.

On June 5, 1933 the day of infamy arrived. Congress on that day enacted House Joint Resolution 192, which declared the "payment of debt" to be against public policy and substituted a "discharge of an obligation" in its stead. This Resolution also made Federal Reserve Notes legal tender for the first time and prohibited payments in gold or the measurement of values in weights of gold (48 Stat. 112). HJR-192 took us off the gold standard and placed us in a perpetual debt/credit system wherein anyone tendering this debt in discharge of an obligation was enjoying the "privilege" of limited liability for the payment of debt. Its legal tender provision was designed to compel the acceptance of private bank credit (Federal Reserve Notes) in the discharge of obligations. This debt/credit system was under the exclusive control and manipulation of private interests for their self-serving benefit. This Act consummated the delivery of the people and their wealth to the bankers.

As gold coinage was pulled out of circulation, large denomination Federal Reserve Notes were issued to fill the void. As a consequence, the public money supply in circulation was greatly diminished, and the debt-laden private bank credit of the Fed gained supremacy. This action made private individuals, who had been previously exempt from federal income taxes (actually interest or premium payments to the Federal Reserve), now liable for the privilege fees of using this credit for profit or gains (or the mere expectation of profit or gain). The general public began consuming and using large amounts of private bank credit without perceiving the intolerable fraud being perpetrated against them and the incredible price they were to pay for the "privileges" offered by the Pied Pipers to induce "voluntary" signups to the voyage.

All the case law prior to 1933 affirms that income is a profit or gain which arises from government granted privilege. After 1933, however, the case law no longer emphatically declares that income is exclusively corporate profit or that it arises from a privilege. So, what changed?

Two years after HJR-192, Congress passed the Social Security Act, which the Supreme Court upheld as a valid act im-

posing a valid income tax [Charles C. Steward Mac. Co. v. Davis, 301, U.S. 548 (1937)]. This, alone, makes every individual who applies for, and receives, a Social Security card a "taxpayer" within the definition of the Internal Revenue Code. This is one of the more obvious adhesion contracts (among many) that binds one to the ship, under the jurisdiction of admiralty/maritime.

In 1935, the Fed persuaded the Treasury to discontinue minting Dollars of Silver because the public preferred them over dollar bills (Federal Reserve "dollar" notes). In recent years the Eisenhower dollar coin received widespread acceptance, but the Treasury minted them in limited number which encouraged hoarding. The same fate befell the Kennedy half dollars, which circulated as silver sandwiched clads between 1965-1969 and were hoarded for their intrinsic value. Next came the Susan B. Anthony dollar, an awkward coin which was instantly rejected as planned. The remaining unit is the privately issued Federal Reserve "dollar" note, bearing interest to the Federal Reserve, with no viable competitors.

A major purpose behind the 16th Amendment was to give Congress authority to enforce private law collections of revenue. It was absolutely necessary in order to implement what was to come later - the Federal Reserve Act. Congress had plenary power to collect taxes arising from government granted privileges long before the 16th Amendment was ratified and, as the Supreme Court said, this Amendment did not grant Congress any additional taxing powers over and above those already granted, i.e., imposts, duties and excises. What it did do is allegedly give Congress the added power to enforce collections of excise (privilege) taxes or duties under private law: i.e., "income from whatever source derived"; And the "source" was to become the privilege or doing business in legal tender private bank credit.

With the 16th Amendment giving Congress the power to enforce collections of taxes from whatever source derived, it also became the authorization to declare private bank credit legal tender for all debts public and private, including taxes. Congress did this on June 5, 1933, with HJR-192. HJR-192 accomplished two very significant things for the federalists: (1) It forbid payment of debts and substituted instruments of debt as our currency for the purpose of discharging obligations; and (2) it declared these instruments of debt (private bank credit) to be legal tender. The significance of these actions with regard to the absolute prohibition of Article I, Section 10, Clause 1, of the U.S. Constitution against states making any thing but Gold and Silver coin a tender in payment of debt was explained by the federal court as follows:

Congress has decreed that Federal Reserve notes shall be legal tender for all debts, public and private including taxes. (31 U.S.C. 392). Because of the Supremacy Clause of the United States Constitution the state has no authority to alter this decree. [United States v. Rifen (8th Cir., 1978) 577 F. 2d 1111,1113]

Thus the states are enforcing federal law under the Supremacy Clause of the U.S. Constitution in all matters of taxation, fines, etc.; and that is the Federal Law Merchant within the jurisdiction of Admiralty/Maritime. A properly ratified 16th Amendment is absolutely essential to a lawful basis for this scheme.

According to Bouvier, public money is the money which Congress can tax for public purposes mandated by the Constitution. Private credit when collected in revenue can fund programs and be spent for purposes not cognizable by the Constitution. We have always had two competing systems of government under the Constitution, the National Government and the Federal Government. The first is the government of the people, whereas the latter is a feudal system founded in contract, or compact. Federal and state governments are, now, founded upon private law and funded by private bank credit, totally outside the Constitution; and there is not much left of our National Government. We are governed by private contracting parties who have usurped our Republic, via contract, and cunningly coerced and enticed us onto this privately owned Federal Ship - where there is no access to our rights preserved by a National Government.

Federal agencies and activities funded by this private credit include Social Security, bail out loans to bankers via the IMF, bail out loan to Chrysler, loans to students, FDIC, FBI, supporting the U.N., foreign aid, funding undeclared wars, etc., etc.; all of which would be unsustainable if funded by taxes raised pursuant to the Constitution. The personal income tax is not a true tax in the traditional sense, but rather an obligation or burden which is voluntarily assumed. Such revenue, being raised through voluntary contributions, can be spent for purposes unknown to the Constitution. Taxation for the purpose of giving or loaning money to private business enterprises and individuals is illegal (15 Am Rep. 39; Cooley, Prin. Const. Law, Ch. IV) however, Congress is not restricted by the Constitution when spending or disbursing the proceeds from private collections.

It is incorrect to say that the personal income tax is unconstitutional, since the tax code is private law and resides outside the constitution by contract. The Internal Revenue Code is non-constitutional because it enforces an

obligation which is voluntarily incurred, through acts of the individual who binds himself. This, of course, is all based on the premise that Congress was acting as a lawful body conferred with the legislative power of the United States when it consummated the contracts with the Federal Reserve Bank Corporation.

Five years after Congress enacted HJR-192, the U.S. Supreme Court announced the fact that "There is no federal general common law," and that "Except in matters governed by the Federal Constitution or by acts of Congress, the law applied in any case is the law of the state." (Erie R.R. v. Tompkins, supra)

In the subsequent development of the Erie Doctrine, this "general" common law was replaced by a "specialized federal common law," subsequently referred to as "federal common law." In tracing the development of the Erie Doctrine, we discovered that this "federal common law" is also known as the "federal law merchant" (the law of bills, notes and cheques at the federal level). Seeing that, as a result of HJR-192, private bank credit, borrowed into circulation by the U.S. government, was nearly our exclusive source of currency; we should now begin to understand what this esoteric source of power for federal judges actually is, and what the nature of the right being enforced is, and why it is binding in all courts because of its source. (Friendly in Praise of Erie, supra)

We have seen that such subject matters as hypothecation, limited liability, and bills, notes and cheques (commercial paper) issued by the U.S. Government are exclusively within the jurisdiction of admiralty/maritime - whether so identified or not.

Equally significant is the jurisdiction governing private bank credit, which was succinctly stated by the Supreme Court in the case of The Bank of Columbia v. Okely. The Bank of Columbia was chartered by the Maryland legislature, and, in this charter, the bank president was granted certain summary powers in the collection of overdue debts. A creditor in default needed only to receive a 10 day notice from the bank; if he did not make good on the default by the end of the 10 day period the bank president could notify the local court clerk to foreclose, attach, and sell the creditor's property - which they did.

Okely challenged this procedure on grounds that it violated his right to due process of law. Here is what the court said:

... The provisions of this Act are in derogation of the ordinary principles of private rights, and, as such, must be subjected to strict construction, ...

and here is the court's strict construction:

But to constitute particular tribunals for the adjustment of controversies, among them, to submit themselves to the exercise of summary remedies, or the temporary privation of rights of the deepest interest, are among the common incidents of life. Such are submissions to arbitration, such are stipulation bonds, forthcoming bonds, and contracts of service. And it was with a view to the voluntary acquiescence of the individual, nay, the solicited submission to the law of the contract, that this remedy was given. By making the note negotiable at Bank of Columbia, THE DEBTOR CHOSE HIS OWN JURISDICTION; IN CONSIDERATION OF THE CREDIT GIVEN HIM, HE VOLUNTARILY RELINQUISHED HIS CLAIMS TO THE ORDINARY ADMINISTRATION OF JUSTICE, AND PLACED HIMSELF ONLY IN THE SITUATION OF AN HYPOTHECATOR OF GOODS, with the power to sell on default, OR A STIPULATOR IN THE ADMIRALTY, whose voluntary submission to the jurisdiction of that court subjects him to personal coercion. [4 Fed. 559]

The subject matter in any controversy involving our debt currency is private bank credit under the exclusive jurisdiction of admiralty/maritime and:

... If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. [Federal Rules of Civil Procedure, Rule (h)]

and, regarding the states:

... A right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law. THUS THE STATE MUST FOLLOW THE SUBSTANTIVE MARITIME LAW, although it can enforce such law through any common-law remedy. [Cal Practice, Volume 1, Part 1, Section 8:183]

How does that compute with the Erie Doctrine, which takes cognizance of the nature of the right being enforced that is binding in all courts because of its source? It is the understanding of the facts presented thus far that enables us to discover our proper remedies at law.

Cong. Lindbergh, Sr.



As Congressman Lindbergh, Sr., warned us, The Federal Reserve Act "establishes the most gigantic trust on earth." In consideration of underwriting the public debt the Federal Reserve acquired an hypothecation of all assets of the people of the United States - and the Federal Reserve Board in effect, became the trustees of this gigantic trust and all government employees became agents of the Federal Reserve Board for the management of this trust. This is how the Federal Reserve Board usurped the government of the United States. A trustee is defined as:

A person holding property in trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another called the cestui que trust. [Reinecke v. Smith, Ill., 289 U.S. 172; 53 S.Ct. 570; 776 L.Ed. 1109]

In a strict sense a "trustee" is one who holds the legal title to property for the benefit of another, ... [State ex rel. Lee v. Satrorius, 344 Mo. 912; 130 S.W. 2d 547, 549, 550].

The cestui que trust referred to above is:

He for whose benefit another person is seised of lands or tenements or is possessed of personal property. He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. [2 Washburn, Real Prop. 163].

In this type of trust, the beneficiaries have no say in the management of the trust. The cestui que trust (you) is registered as a beneficiary via your Birth Certificate, which is registered in the Department of Commerce, Washington, D.C.. You are, then, an official item of "merchandise" in the corporate "City of Babylon," body and soul - piped on board by your parent, guardian, doctor, or mid-wife; whoever signed the Birth Certificate.

As a recorded beneficiary in this trust, all subsequent actions by you (or anyone having power of attorney to act in your behalf) which involve the application for benefits of this trust for profit or gain (or the mere expectation of profit or gain), or the proof of the receipt of a benefit, binds you to an obligation to perform and/or "pay your fair share." This is accomplished by way of "adhesion contracts," which are characterized by the fact that one party

to the contract (you) has no input or say as to the terms of the contract.

A classic example of one of these adhesion contracts is Social Security. Thus, the drive to have legal guardians apply for and obtain, a Social Security Card for all newborn infants. To my knowledge and understanding, all applications for, or receipt of, federal and state granted privileges (benefits) consummates an adhesion contract whereby the beneficiary of that privilege (or expected privilege) incurs the liability to perform on the contract, whatever its terms may be. The beneficiary has "voluntarily" relinquished his claims to the ordinary administration of justice and has "voluntarily" subjected himself to the personal coercion dictated by the terms of the contract. "Benefits" are the theme of every tune played by the Pied Pipers of Babylon, to entice you into its jurisdiction of admiralty/maritime where the phrase "God Given Rights" is just a memory from the distant past.

Dreamers and schemers have long pushed and pulled for the creation of a world fiat money system. The dreamers do not know better, but some of the schemers do. A centrally managed fiat currency is a crucial One World Government Objective. As Mariner Eccles, then governor of the Federal Reserve, declared in 1944, "An international currency is synonymous with international government." By way of a monopoly on inflation and contraction of the world's money supply, the Monetary Power would have the most profitable and powerful control anyone might possess - the ultimate monopoly. Inflation, an increase in the supply of money substitutes, is just another name for counterfeiting of claims on real wealth. Counterfeiting is profitable for the counterfeiter because he gets something for nothing.

This ultimate monopoly would be in the form of a World Central Bank with the ability to issue its own fiat currency as a world money. And a single fiat currency for the entire world is the goal of the Money Power - the international bankers and industrialists bent on enslaving the world for their own selfish interests and pleasures (as Congressman McFadden warned us). They are of course anxious to have whatever stopgap measures they can obtain to move the world closer to their goal. As these schemes break down, calls for a common international or regional currency become more insistent.

In an article entitled "A Monetary System For the Future," published in the Fall 1984 issue of the C.F.R. journal Foreign Affairs, Richard N. Cooper offers the following bold proposal on the opening page:

A new Bretton Woods conference is wholly premature. But is not premature to begin thinking

about how we would like international monetary arrangements to evolve in the remainder of this century. With this in mind I suggest a radical alternative scheme for the next century. The creation of a common currency for all of the industrialized democracies, with a common monetary policy and a joint Bank of Issue to determine the monetary policy.

This goal is no trivial pursuit on the part of the World Monetary Powers; and was not the first time their planners have openly advocated a world currency. In 1973, John P. Young, former director of the U.S. State Department's International Finance Division, offered a proposal at the Clairemont International Monetary Conference in which he claimed, "there is no satisfactory alternative" to a single world currency "to supplement and eventually replace" all national currencies, including the dollar.

Another such scheme was advocated by Byron L. Johnson, an economics professor at the University of Colorado who had, as a member of the Eighty-Sixth Congress, served on the House Banking and Currency Committee, and had previously worked with the Agency for International Development in the early Sixties. In the October 1971 issue of War/Peace Report, Johnson wrote:

A new world currency, which should be authorized by the U.N., should strengthen world institutions. Articles 57 and 63 of the U.N. Charter provides a legal basis by which the Economic and Social Council could begin the process, and invite alternative action by the General Assembly, to develop an agreement whereby the I.M.F. becomes, in effect, a central bank and a source of support for the U.N. and its specialized agencies. **CONTROL OF THE AMOUNT OF WORLD CURRENCY MUST BE IN THE HANDS OF THE I.M.F.** so that monetary reserves will be created for the purpose of promoting the orderly growth of world trade.

And there have been many other serious world-money schemes, the Stamp plan, the Bernstein plan, the White plan, the Keynes plan, and others. All these proposals envision a world fiat currency that would be issued by a world central bank, a sort of Federal Reserve for the planet. In almost all, the nucleus of this bank is seen as the International Monetary Fund.

The framework for establishment of this ultimate monopoly was drafted at the Bretton Woods Conference in 1944, and

U.S. participation in the scheme was authorized by Congress in 1945. To date, the Monetary Powers still have not met their objective of a one world currency under absolute control of the IMF. With the framework established, however, more power could later be poured into it, just as was done when they created the Federal Reserve Act in 1913. Public Law 95-147 was a giant step in that direction. The reader should now be able to recognize numerous other plans and proposals designed for that purpose.

#### The Law

The Federalists say we lied them out of power, and openly avow they will do the same to us. [Jefferson to Livingston, supra]

The Federalists have, indeed, fulfilled their promise to lie the American people out of power. In so doing, their legislation and all presidential appointments, by and with the advice and consent of the Senate, are null and void at law. As of April 8, 1913, the day they unlawfully stripped the State legislature of representation in the Senate, the judicial power of the United States could never lawfully be conferred upon any Judge appointed by a President; Likewise for any executive "officer" appointments.[O] The ramifications are so diverse they affect every aspect of life within the fabric of our society. This ludicrous web of deceit is based upon false premises relating to a lawful constitutional basis. Of particular significance within the framework of the Erie Doctrine, all judge-made "federal Common Law" and/or "Specialized federal common law" based on: The Federal Reserve Act, and acts amendatory thereto, House Joint Resolution 192; Public Law 95-147; U.S. commitments to the IMF, etc. etc., are nullities pursuant to Constitutional law.

Furthermore, research of Bill Benson, M.J. "Red" Beckman, and the Montana Historians has unlocked a Pandora's box of numerous criminal frauds perpetrated by public servants who have betrayed the trust of their masters. [P]

Called "The Golden Key" by the authors of their new book entitled THE LAW THAT NEVER WAS, the most damning of this evidence is contained in a memorandum of the Solicitor, United States Department of State, dated February 15, 1913. Not only does this memorandum identify the fact that the Sixteenth Amendment was never lawfully ratified, but the Fourteenth and Fifteenth Amendments as well. After extensive research, Bill Benson and "Red" Beckman have collected certified documents relating to the ratification of the Sixteenth Amendment from the forty-eight contiguous states

and the Capitol in Washington, D.C.. Thousands of documents were researched, copied and certified and are now available as "best evidence" proof that there is no Sixteenth Amendment pursuant to law. This nullity at law is being enforced on its victims at the federal level via Title 26, United States Codes. (Internal Revenue Code), and at the state level via state tax codes - all under the Supremacy Clause of the United States Constitution by way of "specialized federal common Law," the federal law merchant. Legal tender laws making private bank credit legal tender for all debts public and private enabled the states to fraudulently bypass the absolute prohibition against making any Thing but gold and silver coin a tender in Payment of debt. The subject matter and nature of the right being enforced then became a federal question in all tax cases - BINDING IN ALL COURTS BECAUSE OF ITS SOURCE!

O, what a tangled web we weave when we  
practice to deceive!

This web of deception involves a direct violation of the General Maritime Law of Nations. We will now examine this premise within the Framework of the Necessary and Positive Law of the Law of Nature and Nations - specifically the general Maritime Law of nations.

## CHAPTER VII

### THE GENERAL MARITIME LAW OF NATIONS DEALING WITH WAGER POLICIES

#### Part I: Introduction

From An Essay on Maritime loans, it is stated:

The contract of maritime loan approaches more nearly to that of Insurance. There is a strong analogy between them. In their effects they are construed on the same principles. In the one contract the lender bears the sea risks, in the other the underwriter. In the one the maritime interest is the price of the peril; and this term corresponds with the premium which is paid on the other...

So, we see that it is immaterial whether we think of the Federal Reserve, and now the IMF, as a Maritime lender, or an insurance underwriter to the United States. They are, in their effects, construed on the same principles - the governing law is the same. And further:

The Lender (of a maritime loan) was not prohibited from demanding pledges and hypothecations as an additional security; providing it was not a pretext for exacting maritime interest after the sea risk should be at an end.

IT IS ESSENTIAL TO THIS CONTRACT THAT THERE BE A RISK, AND THAT RISK BE INCURRED BY THE LENDER ... The stipulation interest or no interest is a real wager ... This is not permitted among us....

If the contract was void in its commencement, the maritime interest is not chargeable, because no maritime dangers were borne by the lender.

Difference between contracts of bottomry and those of Loan, Partnership and Insurance. Bottomry is different from the contract of loan because:

1. The peril of money, simply lent, concerns the borrower: whereas money lent at bottomry is at the risk of the lender.

2. In a simple loan, interest is not due but by positive stipulation whereas maritime interest is implied in the contract itself.

3. In a simple loan, the interest, among merchants, could not exceed the rate fixed by the prince, or, at most the custom of the country; whereas bottomry may carry any interest.

... Maritime interest is not subject to the limits of ordinary legal interest, but that it may be regulated by the degree of danger to which the lender exposes or believes he exposes his money. [An Essay on Maritime Loans from the French of M. Balthazard Marie Emerigon; Baltimore; published by Philip H. Nicklin Co., 1811]

Only maritime interest can be regulated by the lender, and only by way of a maritime contract can the private Federal Reserve regulate the interest rates in this country.

By their own admission, and other documented testimony, the Federal Reserve has no risk commensurate with its claims against the United States. It has acquired these claims by creating credit out of thin air, pursuant to its authorization to do so in the Federal Reserve Act itself, and "lending" those creations to the United States government. This, by definition, makes the Federal Reserve Act a WAGER POLICY.

Tontine insurance policies were wager policies because the requisite risk element, on the part of the underwriters, was non-existent. The Federal Reserve operation is nothing but a Tontine in disguise, the Social Security program is a Tontine within the Federal Reserve Act; and the IMF is yet another Tontine on a larger scale.

In The Seneca Case, decided by the court of appeals in Pennsylvania in 1829, the court said:

The jurisdiction of the district court, under the 9th section of the Judiciary Act of 1789 (1 Stat. 76), embraces all cases of maritime nature, whether they be particularly of admiralty cognizance or not; and such jurisdiction, and the law regulating its exercise, are to be sought for in the general maritime laws of nations, and are not confined to that of England, or any other particular maritime nation. [The Seneca Case, No. 12, 669; 12 Fed. Cas. 1081]

So we see that our admiralty and maritime courts are bound by the general maritime laws of all nations.

Now, let us look into some of the general maritime laws dealing with wager policies and see if we can determine why such policies must be within the purview of the general, necessary, and positive law of the Law of Nations - binding on all nations.

Part II: Some General Maritime Statutes:

The Statutes at Large from the 15th to the 20th year of King George II:

That from and after the first day of August, one thousand seven hundred and forty six, no assurance or assurances shall be made - interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering ... and that every assurance shall be null and void to all intents and purposes.

The reason for this enactment was stated to be:

Whereas, it has been found by experience that the making of assurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices, ... and by introducing a mischievous kind of gaming or wagering, under the pretense of ... the institution and laudible design of making assurances, hath been perverted; and that which was intended for the encouragement of trade and navigation, has in many instances, become hurtful, and destructive to the same. [Vol. XVIII, by Danby Pickering, of Gray's-Inn, Esq; Reader of the Law-Lecture to that Honorable Society, Printed by Cambridge University, 1765]

{ Here we have a clear and distinct statement that interest or no interest policies, and gaming and wagering contracts, are void because they are "productive of many pernicious practices."

This principle of law (at least as far as it applies to the assured) is practiced to the present day. For example: Assume I took out a \$100,000 life insurance policy on a stranger embarking on a plane trip from Los Angeles to New York, with no vested interest in his life. If the plane goes down and his life is lost, the insurance company will not pay me a dime on that policy because my action was nothing more than a wager (or bet) that the plane would not make it. However, if we had not been strangers and the person taking the flight owed me \$5000 - under the same circumstances of fate the insurance company would pay me \$5000 on my \$100,000 policy- the amount of my vested interest in the contract.

It is not difficult to see how the legalization of this kind of practice could lead to "many pernicious practices." Being legal, what is to stop me from going for a "sure bet" by taking steps to assure that the plane does not make it to New York? Would you say that it is in the Nature of Man to be tempted to perform such an unconscionable act?

The general and necessary branch of the Law of nations is founded in point of conscience, and upon the nature of man. That is why wager policies are outlawed by all maritime countries in the world; and that is why these laws are binding on all nations.

Equally pernicious practices of fraud, theft, etc. are involved when the maritime lender, or insurance underwriter, has no vested interest in the contract (i.e., no risk commensurate with the benefit he receives).

Halsbury's Statutes of England:

The Life Insurance Act, 1774 (14 Geo. 3c. 48)

1. No insurance to be made on lives, etc., by persons having no interest, etc. - From and after the passing of this Act no insurance shall be made by any persons, politick or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and that every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever. NOTES: At common law, wager policies were legal contracts.

The Marine Insurance Act, 1906, (6 Edw. 7c. 41)

1. Marine Insurance Defined. - A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in a manner and to the extent thereby agreed, against maritime losses, that is to say, the losses incidental to maritime adventure.

4. Avoidance of wagering or gaming contracts. - (1) Every contract of marine insurance by way of gaming or wagering is void. (2) A contract of marine insurance is deemed to be a gaming or wagering contract - (a) where the assured has not an insurable interest as defined by the Act, and the contract is entered into with no

expectation of acquiring such an interest; or (b) Where the policy is made "interest or no interest," or "without further proof of interest than the policy itself," ... or subject to any other like term.

5. Insurable Interest Defined. - (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a maritime adventure. (2) In particular a person is interested in a maritime adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or damage thereto, or by the detention thereof, or may incur liability in respect thereof.

#### Disclosure and Representations

17. ...A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, ...NOTE...if this good faith be not observed by either party, there being any concealment or non-disclosure of a material particular, the contract may be avoided by the injured party;

41. Warranty of Legality. - There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner ...NOTES:...it seems that the assured cannot hold the insurer to a waiver of illegality for ... only legal adventures can be insured.

The Marine Insurance (Gambling Policies) Act, 1909, (9 Edw. 7 c. 12)

1. Prohibition of gambling or loss by maritime perils. - (1) If-(a) Any person effects a contract of maritime insurance without having any bonafide interest, direct or indirect, ...or a bona fide expectation of acquiring such an interest;...the contract shall be deemed to be a contract by way of gambling on loss by maritime perils...

From the Marine Insurance Act of 1906, Supra:

82. Enforcement of return - where the premium or a proportionate part thereof, is by this Act, declared to be returnable, - (a) If already paid, it may be recovered by the assured from the insurer; and (b) If unpaid, it may be retained by the assured or his agent....

84. Return for failure of consideration. - (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured ... (3) In particular - (a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable provided that there has been no fraud or illegality on the part of the assured;

The disclosure and representation requirements are stated in the California Insurance Code, thusly:

#### 1900. Duty to disclose

In marine insurance each party is bound to communicate, in addition to what is required in the case of other insurance: (a) All the information which he possesses and is material to the risk, except such as is exempt from such communication in the case of other insurance. (b) The exact and whole truth in relation to all matters that he represents or, upon inquiry assumes to disclose.

Perhaps we are beginning to see a light at the end of the tunnel, the light of knowledge and understanding.

This entire mercantile superstructure, designed by international bankers and industrialists to enslave us for their own interests and pleasures, is built on a foundation of quicksand, pursuant to the law of admiralty and maritime itself.

## CHAPTER VIII

### REVELATIONS, THE CITY OF BABYLON, MERCHANTS AND THE LAW OF THE SEA

#### PART I: The Beast Out of The Sea (Rev. 13:1-10, 18)

Let us first examine this passage to see what it has to say about the beast rising out of the sea. This is a symbol and must be treated as such. The sea is symbolic of peoples, and therefore, includes the laws governing peoples. (Dan. 7:2,3; Rev. 17:1,15). The beast in Revelations refers to the rise of a kingdom, and more particularly to the Antichrist, the earthly head of the kingdom (Rev. 13:18). It also symbolizes a supernatural spirit out of the abyss. Beasts in Scripture symbolize kingdoms and kings (Dan. 2:38, 39; 7:2-7 with 7:17, 23), as well as supernatural powers which control the kingdoms. The personal Antichrist, his power, source of power, characteristics, mouth, titles, wars, exaltation, reign, etc., are the subject of this passage. For purposes of this work, we are specifically interested in the discovery of his source of power, the nature of his power; and his characteristics relevant thereto; i.e., what laws and what jurisdiction, or jurisdictions, thereunder does he adhere to as his source of power and authority to impose his will upon nations, and the people of those nations?

At the present, we cannot know for certain just who the Antichrist is. The question is unanswerable and will be until the Antichrist personally makes the covenant with Israel for seven years (Dan. 9:27). How are we to know what form this covenant is to be in, just who the signatory parties are to be, and just when it has actually been consummated? Is the Antichrist going to announce to "all nations deceived" that "this is THE covenant" referred to in Daniel? Can we not logically expect that a series of covenants would have to be made by his agents prior to his appearance and recognition?

Dan. 7:24 indicates that Antichrist cannot be revealed and be prominent in world affairs until after the ten kingdoms are formed inside the Roman Empire. According to the verse, the ten kingdoms must first be formed and exist for some time as the seventh kingdom, or Revised Rome. The Antichrist will arise and gain the whole ten kingdoms in the first three and one-half years of the Week. By the middle of the Week, he will be seen as the beast of Rev. 13 arising out of the sea (the power, authority and jurisdiction of the Law of the Sea?) already with the seven heads and ten horns, which he will have conquered before the middle of the Week.

His coming out of the sea will simply be the recognition of his power (already established) by the ten kingdoms and his acceptance of them from the ten kings and the dragon. (Rev. 13:2-4, 17:12-17). This verse further teaches, that because of his rise out of the ten kingdoms, he is to come out of obscurity and that his rise to power (recognition and acceptance thereof) will be quick. Daniel saw the "little horn" rising so suddenly among the ten that he was bewildered (Dan. 7:7-8, 19-24).

The fact that there will be ten separate kingdoms with ten separate capitols, and ten separate kings in the first three and one-half years shows that, up to the end of this time, the Antichrist does not have one capitol where he reigns over the ten kingdoms. Babylon will be his place of reign until he has conquered the ten kingdoms.

#### Power of The Beast:

The power will come from Satan, the spirit of the Abyss, and the ten kings who recognize and accept this power in the name of the people they represent. It is God who will permit Satan and his agents to give their power to the beast and inspire him in his evil designs (Dan. 8:24; 2 Thess. 2:8-12; Rev. 13:1,2). It is God who will put it into the hearts of the ten kings to give him their power for the purpose of destroying Babylon (Rev. 17:12-17). It is the satanic prince out of the abyss (Rev. 11:7; 17:3) who will be the executive of Satan's power to the beast and his agents will administer that power pursuant to certain man-made laws.

The power of the beast relevant to our specific purposes may be summarized as follows:

- (1) To conquer many nations (Dan. 7:8, 20-24; 11:36-45, Ezek. 38, 39).
- (2) To change times and laws (Dan. 7:25)
- (3) To control money and riches in his own realm (Dan. 11:38-43). (\*\*)
- (4) To cause great deceptions (2 Thess. 2:10-12; John 5:43; Dan. 8:25; Rev. 13: 1-18; Rev. 18:23).
- (5) To do according to his own will (Dan. 11:36).
- (6) To control religion and worship (Dan. 11:36; Thess. 2:4; Rev. 13: 1-18).
- (7) To control the lives of all men in his realm (Rev. 13: 12-18). (\*\*)
- (8) To control kings as he wills (Rev. 17: 12-17).
- (9) To make all other nations fear him (Rev. 13:4).

\*\* Translation from point of law: The individual must be in his realm to be under his jurisdiction and power.

... Come, I will show you the punishment of the great prostitute, who sits on many waters. [Rev. 17:1].

... There I saw a woman sitting on a scarlet beast that was covered with blasphemous names and had seven heads and ten horns. [Rev. 17:3]. This title was written on her forehead: [Rev. 17:5]

MYSTERY  
BABYLON THE GREAT  
THE MOTHER OF PROSTITUTES  
AND THE ABOMINATIONS OF THE  
EARTH

The ten horns you saw are ten kings ... [Rev. 17:12].

They have one purpose and will give their power and authority to the beast. [Rev. 17:13].

...The waters you saw, where the prostitute sits, are peoples, multitudes, nations and languages. [Rev. 17:15].

The "waters" are symbolic of the people who are within the realm and jurisdiction of the beast, and therefore, under his power and authority. Clearly we need to examine just how one can become subject to this jurisdiction, and just what is its nature.

## Part II: The City Of Babylon

What constitutes a city? A city is traditionally defined as a corporate entity which is a division of local government possessing a state granted charter fixing its boundaries and powers. It is a form of public trust governed by trustees for the benefit of the inhabitants of the city. The governors (mayor, city council, etc.) are trustees with a specified grant of powers and the inhabitants are the beneficiaries.

Would you say a world-wide, corporate, trust governed by the world monetary power could fit within the definition of a "city?" Would you say that the "gigantic trust" set up within the United States by the Federal Reserve Act, governed by the Monetary Power, fits the definition of a "city?" Have we been unknowingly living in the City of Babylon, within the realm of the Beast since 1913? I believe we have been doing just that. I would expect this "city" to be commercial in nature and governed in accordance with the Law of Merchants. I would also expect the inhab-

tants of a city of this size and character to be intimately involved in interstate, and international, commerce, and therefore, to be subject to the jurisdiction of admiralty/maritime in most, if not all, aspects relating to their livelihood; especially if their only viable currency is itself, the proper subject of admiralty/maritime jurisdiction.

I believe this "city," created in 1913, has been thriving and growing since that time; although it has not yet evolved to the growth state described in Revelations, it is fast reaching maturity.

For example, in Revelation 13:16-17, it is prophesied that everyone is forced to receive a mark on his right hand or on his forehead, so that no one could buy or sell unless he had the mark.

MARK: Sign/seal/mark of approval or disapproval

(Romans 4:11; Revelation 7:2, 3; Ezekial 9:4)

FOREHEAD: Mind (romans 7:25; Ezekial 3:8, 9)

HAND: Symbol of work (Ecclesiastes 9:10)

So, one whose MIND is captured and/or whose SERVITUDE is pledged to the Beast can expect to receive his sign, seal or mark of approval. All others can neither buy or sell within his realm.

This is a clear statement that, within the realm, the Monetary Power is in absolute control at this time. Well, what do the world monetary powers openly dream about today? They dream of the "cashless society," an economy absolutely devoid of currency, coins, or checks, but still based on private credit. Once this system is fully implemented, controls and regulations like nothing we have known in the past are not only likely, but nearly 100% predictable. Everybody within the realm will be affected and involved. It heralds a future of oppression far beyond anything we could presently imagine.

The hardware necessary for a truly cashless society is nearly here. The keys to making a cashless society work are capacity and speed of computers. Today's typical computer is capable of approximately seven million mathematical operations a second and the most advanced machines are even faster. How long will it take to reach the technology required for a total cashless society? Predictions are 10 years or less!

All the other elements needed for this brave new world exist now. Some of these elements will soon be deployed while others have been around for years.

How will this cashless society work on the individual level? In the future, the inhabitants of Babylon will make all purchases and sales via a "smartcard," The cestui que

trust (you) will hand the clerk, if there is a clerk, your "smartcard" and the transaction will be completed in a matter of seconds, a very convenient benefit. This smartcard is a credit card that has a permanent memory containing vital financial and personal information about you. The secret of this card is a small computer chip embedded within it. When the card is inserted into a terminal, it tells the terminal computer who you are by providing your bank account number. This smartcard will also provide the information needed to identify you and this allows the merchant's terminal access to your account.

The potential for this smartcard is virtually unlimited. By increasing its memory, it can not only function as a checkbook but also as a credit card, a savings passbook, security clearance card, drivers license and so on. Perhaps the thing that will be the most impressive part of the smartcard system is security. The card will contain, in its permanent memory, some information about a physical characteristic unique to you. A good example would be a fingerprint. Several possible methods of identifying the legitimate owner of the card have been proposed. The "retina scan" may become the standard means of identification.

The retina is the light sensing tissue at the back of the eye. It can be viewed optically and used to identify people in much the same way as a fingerprint. Each inhabitant of Babylon would have his unique retina pattern recorded in his smartcard's memory and also at his bank. Every terminal would have a retina scanner as one of its basic components. This identification system would work this way: You hand a merchant your card, he inserts it into the terminal. You are then asked to look directly at a small lens. This lens is the retina scanner and it reads your retina in a matter of seconds.

As for personal transactions at home, no need to worry. Laws will be enacted requiring all phones sold to be equipped with terminals, or you will be able to use a public terminal much like a pay phone. It is even possible that televisions will be outfitted so that you can conduct business via cable. The Universal Product Code (UPC) will be able to tell the computers exactly what products you are buying, and how much.

We can see the evolutionary stages leading to the totally cashless society all around us: Universal Product Code system in supermarkets; "direct deposit" of wages to the bank, and "automatic bill paying." Oil companies are now experimenting with totally automated gas stations; and patrol cars in San Jose, California have been outfitted with computer terminals.

The creators of our nation knew very well that economic freedom and political freedom are indivisible, you can not

have one without the other. They also knew that an individual with no privacy concerning his financial affairs had no economic freedom.

Is it possible to have it both ways - to take advantage of the marvels of technology and still remain free? The answer is a most definite and emphatic, YES! All one has to do is get out of "his realm," and stay out.

### Part III: The Merchants of Babylon

The commercial nature of Babylon is described in the following passages:

The merchants of the earth will weep and mourn over her because no one buys their cargoes any more ... [Rev. 18:11]

Cargoes of gold, silver, precious stones and pearls; fine linen, purple, silk and scarlet cloth; every sort of citron wood, and articles of every kind made of ivory, costly wood, bronze, iron and marble! [Rev. 18:12]

Cargoes of cinnamon and spice, of incense, myrrh and frankincense, of wine and olive oil, of fine flower and wheat; cattle and sheep; horses and carriages; and BODIES AND SOULS OF MEN. [Rev. 18:13]

... The kings of the earth committed adultery with her, and the merchants of the earth grew rich from her excessive luxuries. [Rev. 18:3]

... Every sea captain, and all who travel by ship, the sailors, and all who earn their living from the sea will stand far off. [Rev. 18:17]

They will throw dust on their heads, and with weeping and mourning cry out:

"Woe! Woe, O great city, where all who had ships in the sea became rich through her wealth!" ... [Rev. 18:19]

THE MERCHANTS WERE THE POWERS OF THE EARTH;  
AND THEIR SORCERIES DECEIVED ALL NATIONS.  
[Rev. 18:23]

The merchants of Babylon were the powers of the earth, and their modus operandi was lies, deceit, and deception; and bodies and souls of men were items of merchandise and cargoes of merchants. How does anything become a legitimate item of merchandise and cargo of merchants? By contract of course! Merchants being the powers of the earth, what law must be the prevailing and governing law on earth? The Law of Merchants of course!

If the world-wide currency is private bank credit, bestowing upon anyone who uses it the privilege and benefit of limited liability for payment of debt; if all property, both real and personal, has been hypothecated to a trust governed by the world monetary power; and if, the nature of rights and obligations created between the trustees and beneficiaries of this mercantile city are maritime, what jurisdiction must be invoked in order to enforce these rights and obligations, this Law of Merchants? Admiralty/Maritime of course!

Is it possible to sell your body and soul to Satan? Will God honor this contract when the time comes to determine the fate of your soul?

Then I heard another voice from heaven say:  
"Come out of her, my people, so you will not share in her sins, so you will not receive any of her plagues; for her sins are piled up to heaven, and God has remembered her crimes."  
[Rev. 18:4]

The formula of the Monetary Power for a world-wide program to deceive all nations has been stated thusly:

The intensification of armaments, the increase of police forces - are all essential for the completion of the aforementioned plans. What we have to get at is that there should be in all the States of the world, besides ourselves, only the masses of the proletariat, a few millionaires devoted to our interests, police and soldiers. Throughout all Europe, and by means of relations with Europe, in all other continents also, we must create ferments, discords and hostility. Therein we gain a double advantage. In the first place we keep in check all countries, for they will know that we have the power whenever we like to create disorders or to restore order. All these countries are accustomed to see in us an indispensable force of coercion. In the second place, BY OUR INTRIGUES WE SHALL TANGLE UP ALL THE THREADS BY WHICH WE HAVE STRETCHED INTO THE CABINETS OF ALL STATES. BY MEANS OF THE POLITICAL, BY ECONOMIC TREATIES, OR LOAN OBLIGATIONS. In order to succeed in this we must use great cunning and penetration during negotiations and agreements, but, as regards what is called the "official language," we shall keep to the opposite tactics and assume the mask of honesty and compliancy.

In this way the peoples and governments (all nations) whom we have taught to look only at the outside whatever we present to their notice, will still continue to accept us as the benefactors and saviours (trustees) of the human race. We must be in a position to respond to every act of opposition by war with the neighbors of that country which dares to oppose us: but if these neighbors should also venture to stand collectively together against us, then we must offer resistance by a universal war. The principal factor of success in the political is the secrecy of its undertakings; the word should not agree with the deeds of the diplomat. We must compel the governments ... to take action in the direction favored by our widely-conceived plan, already approaching the desired consummation, by what we shall represent as PUBLIC OPINION, SECRETLY PROMPTED BY US THROUGH THE MEANS OF THAT SO-CALLED "GREAT POWER - THE PRESS, WHICH, WITH A FEW EXCEPTIONS THAT MAY BE DISREGARDED, IS ALREADY ENTIRELY IN OUR HANDS." [A]

#### Part IV: Synopsis

The warfare in Babylon is between the spiritual and material forces. The Beast derives his power from materialism, deception, and ignorance of the Law. He exercises this power under the Law of Merchants within the jurisdiction of the Law of the Sea, specifically that of Admiralty/ Maritime because of the Maritime Nature of Babylon itself, the sum of its qualities or characteristics.

The account of her wealth in silver, gold, precious stones, fine raiment and, yes, even bodies and souls of Men; the merchant's fornication with her, and their consternation at her fall. All symbolic language that has its modern day correlate - the commercialist, his absorption in matter and obsession with material things. He has read this many times but has never seen in it a warning. In fact, as far as he is concerned, the wise of all ages may as well have never lived. And so he goes on his way plundering and despoiling. His objectives are financial profit and power in furtherance of his own selfish interests. His power base is the "wretched, and miserable, and poor, and blind, and naked" (the deceived ones). He has not intelligence enough to correct his own faults and weaknesses, therefore Nature must. Thus, we all become blind actors in a play we do not understand - we are indeed, deceived.

By succumbing to the materialistic lures and teachings of the Pied Pipers of Babylon, the true nature of Causation and the purpose of our own Being is hidden from us. So ignorant have we become under them, that we are now in the process of destroying what morality and virtue our forebears did develop; and from ignorance of the Law we give power to the beast.

We proclaim that we are fighting to regain access to our Common Law Birthright - yet we ignore the essence of Common Law to "Live Honestly," which first requires knowledge and understanding of the science of common law - the "science of mine and thine."

This is a matter of Conscience - we are what our conscience is. Therefore, if we are "wretched, and miserable, and poor, and blind, and naked," it is because our conscience is likewise. THAT IS Common Law!

What is the legacy we are going to leave to our posterity? Who is enlightened enough to LIVE AND TEACH THE LAW?

I counsel thee to buy me gold tried in the fire, that thou mayest be (truly) rich; and white raiment (spirituality), that thou mayest be clothed, and that the shame of thy (material) nakedness do not appear; and anoint thine eyes with eyesalve, that thou mayest see.  
[Revelation 3:18]

What can this "eyesalve" be but enlightenment? A "new dimension of consciousness" by which we may see the error of our ways and discern our false faiths? With this we will know the truth that will set us free! Once we know the truth, we are on solid ground:

Because thou has kept the word of my patience, I also will keep thee from the hour of temptation, which shall come upon all the world, to try them that dwell upon the earth.

Behold, I come quickly: HOLD THAT FAST WHICH THOU HAST, THAT NO MAN TAKE THY CROWN.  
[Revelations 3: 10-11]

Therein is the kingdom of the free, sovereign, individual at Common law!

## Part V: On Oaths

Today's jurors are asked to take an oath to the effect that they will take the law as the court gives it to them and apply that law to the facts of the case. The jurors who

do so have not only agreed to be nothing but "advisors" to the court, but have voluntarily subjected themselves to the possibility of perjury charges if they, even in good conscience, subsequently refuse to do so.

The oath serves to overtly subject them to an unwarrantable jurisdiction wherein they have no rights and duties as a common law juror. By their own voluntary actions they automatically become advocates of the state and therefore, cannot function as a bulwark of liberty. They officially become agents of the merchants of Babylon for the duration of the trial.

As in the case of other lures, snares and traps of the Pied Pipers; the solution to this dilemma can be found in the Holy Scriptures:

Again, ye have heard that it hath been said by them of old time, Thou shalt not foreswear thyself, but shalt perform unto the Lord thine oaths. [Matthew 5:33]

Jesus changed the law of the Old Testament regarding the taking of oaths. His new commandments were succinctly stated by Matthew and James:

But I say unto you, Swear not at all; neither by heaven; for it is God's throne; Nor by the earth; for it is his footstool; neither by Jerusalem; for it is the city of the great king. Neither shalt thou swear by thy head, because thou canst not make one hair white or black. But let your communication be Yea, Yea; Nay, Nay: for whatever is more than these cometh of evil. [Matthew 5:34-37]

But above all things, my bretheren swear not, neither by heaven, neither by the earth, neither by any other oath: but let your Yea be Yea; and your Nay be Nay; lest ye fall into condemnation. [James 5:12]

It is well settled that no one can be compelled to take an "oath" in violation of his spiritual training and beliefs. Upon proper and timely objection to a request to take an oath, however, a believer and follower of the above scriptures can expect to be told: "You don't have to take the oath, you can affirm instead." Many believers will make an affirmation in lieu of the oath, thinking they are not disregarding these commandments. **BEWARE ALL YOU BELIEVERS!** Satan's ways are indeed devious. How else can all nations be deceived?

Let us examine just what it means to "affirm" under penalties of perjury. From Webster's New Collegiate Dictionary:

- AFFIRM:** To testify or declare by affirmation.  
**AFFIRMATION:** A solemn declaration made under penalties of perjury by a person who conscientiously declines taking an oath.  
**SOLEMN:** Marked by the invocation of a religious sanction  
**PERJURY:** The voluntary violation of an oath or vow, either by swearing to what is untrue or by omission to do what has been promised under oath. False swearing.  
**OATH:** A solemn calling upon God or a god to witness to the truth of what one says or to witness that one sincerely intends to do what one says.  
**VOW:** To promise solemnly: Swear.  
**SWEAR:** To utter or take solemnly.

According to Webster, an affirmation constitutes swearing in all respects; Thus the act of affirming violates the commandments of the Holy Scriptures.

We are constantly being subjected to demands to sign various kinds of forms under penalties of perjury, to give depositions, to make certifications, to make affidavits, etc.. Analyze the implications of such actions in light of the commandments regarding oath taking. From Webster's New Collegiate Dictionary:

- DEPOSE:** To testify to under oath or by affidavit.  
**DEPOSITION:** Testimony taken down in writing under oath.  
**TESTIFY:** To make a solemn declaration under oath for the purpose of establishing a fact (as in court).  
**ATTEST:** To authenticate by signing as a witness; to put on an oath; to bear witness; Testify.  
**CERTIFY:** To attest authoritatively.

All of the above are succinctly translated into present day practices and procedures of law, as quoted below from the California Penal Code:

Section 118: Perjury defined.

Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer or

person, in any of the cases in which such an oath may by law of the State of California be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false, and every person who testifies, declares, deposes, or certifies under penalties of perjury in any of the cases in which such testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he knows to be false, is guilty of perjury....

Section 118a. False affidavit as to testimony as perjury; subsequent contrary testimony.

Any person who, in any affidavit taken before any person authorized to administer oaths, swears, affirms, declares, deposes, or certifies that he will testify, declare, depose, or certify before any competent tribunal, officer, or person, in any competent tribunal, officer, or person, in any case then pending or thereafter to be instituted, in any particular manner, or to any particular fact, and in such affidavit willfully and contrary to such an oath states as true any material matter which he knows to be false, is guilty of perjury....

Section 119. Oath defined

THE TERM "OATH" AS USED IN THE LAST TWO SECTIONS, INCLUDES AN AFFIRMATION AND EVERY OTHER MODE AUTHORIZED BY LAW OF ATTESTING THE TRUTH OF THAT WHICH IS STATED.

According to Bouvier's Law Dictionary, before penalties of perjury can attach, "THE OATH MUST BE TAKEN" AND "THE PARTY MUST BE LAWFULLY SWORN."

Thus, by definition, any statement, written or oral, under penalties of perjury constitutes the taking of an oath. Believers and followers of the Holy Scriptures should be aware of the fact and conduct themselves pursuant to the dictates of their consciences. Each should be very careful to find out and pursue his own way. A word of caution: One should never refuse to provide information on these grounds. He can, however decline to do so under penalties of perjury for reasons that his spiritual training and belief in his Supreme Being prohibits the taking of oaths.

The modern oath is godless; the court requires that we swear "to tell the truth, the whole truth, and nothing but

the truth," merely on our "oath or affirmation" and the court's demand. Such a court has placed itself and its oath outside of God and, thus, they are lies to begin with. The Christian in such a court DOES swear, whether the court language includes it or not. He does so by God, not by man, because he can recognize no other oath as anything but blasphemy. On the other hand, a godless court which still retains God in its oath is also guilty of taking the Lord's name in vain. An oath is God-centered. If state and/or church depart from God their use of the oath in any is profanity. They do not believe in God's judgment or curse - only in man's, and their use of the oath is thus false usage.

A godless oath is a personal affirmation in the name of the state. It constitutes swearing by a false god, Satan, clearly forbidden in Holy Scripture (Jer. 12:16; Amos 8:14). Perjury required the same penalty as in the case involved and the penalty against the accused would be the penalty against the false witness for or against him. (Deut. 19:16-21).

Whereas the oath is in the name of God to an agency of justice established by God, the vow is directly to God. Thus, neither oaths nor vows are to individuals. Our speech to men must be yea, yea, and nay, nay - straightforward and truthful. Because we are servants of God we cannot be servants of men, we cannot serve two masters, and we cannot bind ourselves to men by a careless word.

## Part VI: The Relativity Syndrome [B]

In an age when men deny God and His sovereignty, the world is torn between two conflicting claimants to the authority of God: The totalitarian state on the one hand, and the totalitarian, anarchistic individual on the other hand. The totalitarian state permits no dissent, and the anarchistic individual admits no possible loyalty outside of himself. When all the world is gray, no concept of gray is possible. Everything being gray, there is no principle of definition and description left. As everything moves to sameness the ability to define and recognize diminishes. Truth becomes more elusive.

The basic principle of the law of society today is relativism. Relativism reduces all things to a common color. As a result, there is no longer a definition for treason, or for a crime. The criminal is protected by law because the law knows no criminal, since so-called modern law denies that absoluteness of justice which defines good and evil. What cannot be defined cannot be limited or protected. A definition is a fencing and a protection around

an object: It separates it from all things else and protects its identity. An absolute law set forth by the absolute God separates good and evil and protects good. When that law is denied, and relativism sets in, there no longer exists any valid principle of differentiation and identification. What needs protecting from whom when all the world is equal and the same? Because the courts of law are increasingly unable to define anything due to their relativism, they are increasingly unable to protect the righteous, those who live the Law, in a world where crime cannot be properly defined. For Emile Durkheim, the criminal may be and often is an evolutionary pioneer, charting the next direction of society. In terms of Durkheim's relativistic sociology, the criminal may be a more valuable man than one living God's laws because the interests of the law-abiding citizen will be conservative or reactionary. [C]

The relativistic society is indeed an "open society," open to all evil and to no good. Since the relativistic society is beyond good and evil by definition, it cannot offer its citizens any protection from evil. Instead, the trustees of this society, the self-appointed "protectors of the human race," will seek to protect the people from those who seek to restore a definition of good and evil in terms of Scripture.

The law will always require inequality. The question is simply this; will it be an inequality in terms of fundamental justice, i.e., the rewarding of good and the punishing of evil, or will it be the inequalities of injustice and evil triumphant?

The commandment, "Thou shalt have no other gods before me," requires that we recognize no power as true and ultimately legitimate if it be not grounded in God and His law-word. It requires that we see true law as righteousness, the righteousness of God, and as a ministry of justice, and it requires us to recognize that the inequalities of just law faithfully applied are the basic ingredients of a free and healthy society. The body politic, no less than the physical body, cannot equate sickness with health without perishing.

The commandment, "Thou shalt have no other gods before me," means also "Thou shalt have no other powers before me," independent of me or having priority over me. The commandment can also read, "Thou shalt have no other law before me." The powers which today more than ever present themselves as the other gods are the antichristian states. The anti-christian state makes itself god and therefore sees itself as the source of both law and power. Apart from a Biblical perspective, the state becomes another god, and, instead of law, legality prevails.

This devotion to legality has a long history in the modern world. Gohler, minister of justice in France during the years of the Reign of Terror, came to be known as "the causist of the guillotine" because of his dedication to legality. Later, as a member of the Directory, when faced with the threat of Napoleon's seizure of power, he declared, "At the worst, how can there be any revolution in St. Cloud? As President, I have here in my possession the seal of the Republic." Stalin operated his continuing terror under the umbrella of legality. [B]

But legality is not law. A state can by strict legality embark on a course of radical lawlessness. Legality has reference to the rules of the game as established by a state and its courts. Law has reference to fundamental, God-given order. The modern state champions legality as a tool in opposing law. The result is a legal destruction of law and order.

Power and the law are not synonymous. In truth they are frequently in opposition and irreconcilable. There is God's Law from which all equitable laws of man emerge and by which men must live if they are not to die in oppression, chaos and despair. Divorced from God's eternal and immutable Law, established before the founding of the suns, man's power is evil no matter the noble words with which it is employed or the motives urged when enforcing it.

Men of good will, mindful therefore of the Law laid down by God, will oppose governments whose rule is by men, and, if they wish to survive as a nation they will destroy that government which attempts to adjudicate by the whim or power of venal judges.

-Cicero

When Chief Justice Frederick Moore Vinson of the U.S. asserted after World War II, "Nothing is more certain in modern society than the principle that there are no absolutes," he made it clear that, before the law, the one clear-cut evil is to stand in terms of God's absolute law. "The principle that there are no absolutes," enthroned as law, means warfare against the Biblical absolutes.

The modern courts act on this faith and the conclusion of such a course can only be the reign of terror magnified to encompass the world. Neither could the merchants become powers of the earth, nor could all nations be deceived under a system, and in a society, adhering to God's absolute law. The "relativity syndrome" is an essential element in the

Beast's acquisition of power within his realm, the City/Ship of Babylon.

With no absolutes it is easy to represent form as substance. Symbols, the form, are used to hide reality and are part of a scheme for confusing and controlling the people in a relativistic society. Those who rely on symbols deprive themselves opportunity to acquire the knowledge necessary to be their own governors. One who relies on symbols is a prime candidate for manipulation and destruction for lack of knowledge.

Pity the bull  
that cannot see  
which is the forest  
and which is the tree.

Yet more pity the matador  
who survives by deception  
when his cape is transparent  
to the bull's perception.

Seek the truth  
and you will survive  
for that is the essence  
of being alive.

Poem by Verl K. Speer

## CHAPTER IX

### LAND PATENTS AND ALLODIAL TITLES

#### Part I: Introduction

If the American people ever allow the banks to control issuance of their currency, first by inflation and then by deflation, the banks and corporations that grow up around them will deprive the people of all property until their children will wake up homeless on the continent their fathers occupied. [Thomas Jefferson]

While it is generally believed in America today that the purpose of the American Revolution was to resist taxation without representation, the actual reason was to eliminate the cause of this and many other injustices, and that cause was the admiralty jurisdiction imposed within the bodies of the counties. A major effect of this cause was a contractual feudal/serf relationship between the colonial landholders and the Crown - legal title being held by Great Britain and an equitable title being held by the colonist/serf in possession of and working the land.

This presumption of rightful legal title was challenged by the colonists, who insisted that the King of England did not own the land and, therefore, it was not his to grant to supportive colonists. After the Revolution, the land became the property of each State's people, with the authority of the people to parcel out the land to claimants in a fair and equitable manner. If some land remained unoccupied, Jefferson said that anyone occupying it has, by possession, the right of ownership. Land was to be held by allodial title, which simply means there is "No Superior or Overlord" to the land owner. He was Sovereign on his land.

One of the earliest statutes for granting land patents was passed by an Act of Congress, April 24, 1820, which prohibited the use of credit for the purchase of government land. In the debates in Congress prior to the passage of this Act, Senator King of New York said:

It (the Act) is calculated to plant in the new county a population of independent, unembarrassed freeholders ... it will put it in the power of every man to purchase a freehold, the price of which can be cleared in three years ... it will prevent the accumulation of an alarming debt, which experience proves never could or would be paid.

In 1862, the Homestead Act, Section 4, provided that:

No lands acquired under the provisions of this Act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the land patent.

The issue of allodial vs. feudal land titles in America was addressed by the Supreme Court of the State of Pennsylvania in the case of Wallace v. Harmstad in 1863:

I see no way of solving this question, except by determining whether our Pennsylvania titles are allodial or feudal ....

I venture to suggest that much of the confusion of ideas that prevails on this subject has come from our retaining, since the American Revolution, the feudal nomenclature of estates and tenures, as fee, freehold, heirs, feoffment, and the like.

Our question, then, narrows itself down to this: is fealty any part of our land tenures? What Pennsylvanian ever obtained his lands by openly and humbly kneeling before his lord, being ungirt, uncovered, and holding up his hands both together between those of the Lord, who sat before him, and there professing that he did become his man from that day forth, for life and limb, and certainly honour, and then receiving a kiss from his lord? This was the oath of fealty which was, according to Sir Martin Wright, the essential feudal bond so necessary to the very notion of a feud.

We are then to regard the Revolution and these Acts of Assembly as emancipating every acre of soil of Pennsylvania from the grand characteristics of the feudal system. Even as to the lands held by the proprietaries (city of Philadelphia) themselves, they held them as other citizens held, under the commonwealth, and that by a title purely allodial. [Wallace v. Harmstad, 44 Pa. 492, (1863)]

So, the people had a right to allodial land titles as a direct result of the Declaration of Independence and the War for Independence that followed. A holder of an allodial title (i.e. there being no Superior or Overlord) cannot be taxed on that property against his consent. There could be a transfer or sales tax imposed by the State at the time of purchase, but no taxation on the property itself against the

owner's consent. And yet, the taxation of property soon became the custom, and not the exception, in this country - Why and How?

When taxation of real property began, because of "the confusion of ideas that prevails on this subject," the people unknowingly, and voluntarily accepted the premise that government was the Superior and the legal title holder; and their interest in the land was merely an equitable one. This voluntary acceptance constituted tacit consent to a feudal contract. King George, once again, was back in America.

When the gigantic public trust was implemented in 1913 via the Federal Reserve Act, no immediate changes with regard to this master/serf relationship between government and landholder were necessary. Life went on as usual with no clues to the fact that all property had been hypothecated to the Board of Governors of the Federal Reserve; and as trustees, they held legal title. This was accomplished by allowing the same taxing agencies to act as administrating agents for this newly formed trust.

With the feudal tenant registered as a beneficiary of this trust via a Birth Certificate, and title to the land held in trust, further involvement and the consequent subjection to the controls of management was left to the individual. For example: The farmer/tenant was left to his own devices and discretion as to what to plant, when to plant, how much to plant, etc. - as long as he paid his tithes to the tax collector (now, in actuality, a collector of interest and/or insurance premiums). However, when he applied for, and received, such "benefits" as farm subsidy, government supported grain storage, etc., he became further bound to the trust and incurred certain additional obligations and duties, he voluntarily subjected himself to the coercive terms of adhesion contracts. Now, he could be ordered and directed as to what to plant, when to plant, how much of each crop, and even be ordered to destroy crops already in existence. If he thought that such coercive, and apparently insane, actions were violative of his rights to due process of law and went to court, as many farmers did, he lost; and the court did not tell him why, that a contract was being enforced against him in which he had voluntarily subjected himself to its coercive terms.

If he had understood the facts and the applicable law, as it applies to those facts, he could have used the law to extricate himself from such an intolerable situation, in lieu of having the law used against him.

The founding fathers knew free men could survive only as long as they owned allodial title to property, because it was this type of ownership that accounted for broad spectrum distribution of income and preservation of the common law

jury system, which they referred to as the "palladium," or the very cornerstone, of liberty. They also knew that manipulation of the money supply, via debt, would ultimately take from the people their substance by concentrating the property into the hands of a few.

According to conservative estimates, possibly half a million U.S. farmers will be driven from the land in the next several years. Jim Hightower has put the goal of the present administration at 10,000 super farms. Mr. Hightower is the Texas Commissioner of Agriculture. A total of 10,000 farms for the nation has been the goal of public policy, i. e., the policy of the Board of Governors of the Federal Reserve, our trustees, ever since its Committee for Economic Development wrote its Adaptive Program for Agriculture.

Mortgage foreclosures of equitable title interests are on the increase, and are the means of implementing this public policy.

The best title one can acquire from a title company today is a "Fee Simple Absolute;" defined as:

A fee simple absolute is an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition.

At first blush it would appear that this is the same title as "allodial;" defined as:

Free, not holden to any lord or superior;  
[Black's Law Dictionary]

In order to discover the legal distinction between the terms "allodial" and "fee simple absolute," we must define the word "estate" as used in the definition of "fee simple absolute."

ESTATE: The degree, quantity, nature, and extent of interest which a person has in real property is usually referred to as an estate, and it varies from absolute ownership down to naked possession. [Black's Law Dictionary]

Thus, "fee simple absolute" is an overbroad, catch-all, phrase that encompasses all interests in land from allodial down to naked possession. It in no way describes or defines your vested interest in the land. Clearly, if the land is in trust, with legal title being held by the trustees of that trust, you do not possess allodial title. In order to discover your particular interest in this "fee simple absolute" (your degree of serfdom), we must know of all adhesion

contracts you have consummated, placing additional burdens and restrictions upon your use of that land.

Maybe we are beginning to understand the legal basis for planning commissions, land use permits, building permits, etc., etc.. The bottom line is the degree, quantity, nature, and extent of interest; and which party to the contract(s) possesses what.

What we are going to examine now is how one, as a free sovereign, can claim allodial title to property hypothecated to a trust governed by the Monetary Power.

The formula of the Monetary Power for a world program to deprive landowners of their lands has been stated thusly:

We shall soon begin to establish huge monopolies, colossal reservoirs of wealth, upon which even the big ... properties will be dependent to such an extent that they will all fall together with the government credit on the day following the political catastrophe. The economists here present must carefully weigh the significance of this combination. We must develop by every means the importance of OUR SUPERGOVERNMENT, REPRESENTING IT AS THE PROTECTOR AND BENEFACTOR OF ALL WHO VOLUNTARILY SUBMIT TO US. (Join the Trust wherein "US" are the trustees)

The aristocracy ... as a political force has passed away. We need not take theirs into consideration. But, as owners of land, they are harmful to us in that they are independent in their sources of livelihood. THEREFORE, AT ALL COSTS, WE MUST DEPRIVE THEM OF THEIR LAND.

THE BEST MEANS TO ATTAIN THIS IS TO INCREASE THE TAXES AND MORTGAGE INDEBTEDNESS. These measures will keep land ownership in a state of unconditional subordination ...

At the same time IT IS NECESSARY TO ENROURAGE ... ESPECIALLY SPECULATION ... Without speculation, industry will cause private capital to increase and tend to improve the condition of Agriculture by freeing the land from indebtedness for loans by the land banks. It is necessary for industry to deplete the land both of and, through speculations, transfer all the money of the world into our hands....

To destroy ... industry, we shall, as an incentive to this speculation, encourage - a strong demand for luxuries, all enticing luxuries.

We will force up wages, which however will be of no benefit to workers, for we will at the

same time cause a rise in the prices of prime necessities, pretending that this is due to the decline of agriculture and cattle raising....

THAT THE TRUE SITUATION SHALL NOT BE NOTICED ... PREMATURELY, (before recognition of the Anti-Christ), WE WILL MASK IT BE A PRETENDED EFFORT TO SERVE THE WORKING CLASS AND PROMOTE GREAT ECONOMIC PRINCIPLES, FOR WHICH AN ACTIVE PROPAGANDA WILL BE CARRIED ON THROUGH OUR ECONOMIC THEORIES. [A]

## Part II: Color of Title [B]

Today, the American based system establishing land ownership consists of three key requirements. These three are the warranty deed or some other type of deed purporting to convey ownership of land, title abstracts to chronologically follow the development of these different types of deeds to a piece of property, and title insurance to protect the ownership of that land. These three ingredients must work together to ensure a systematic and orderly conveyance of a piece of property. None of these three by itself can act to completely convey possession of the land from one person to another. At least two of the three are always deemed necessary to adequately satisfy the legal system and real estate agents that the title to the property has been placed in the hands of the purchaser. Often times, all three are necessary to properly pass the ownership of the land to the purchaser. Yet does the absolute title and the ownership of the land really pass from the seller to purchaser with the use of any one of these three instruments or in any combination thereof? None of the three by itself passes the absolute or allodial title to the land, the system of land, ownership America originally operated under, and even combined all three can not convey this absolute type of ownership. What then is the function of these three instruments that are used in land conveyances; and what type of title is conveyed by the three? Since the abstract only traces the title and the title insurance only insures the title, the most important and therefore first group to examine are the deeds that purportedly convey the fee from seller to purchaser.

These deeds include the ones as follows: warranty deed, quitclaim deed, sheriff's deed, trustee's deed, judicial deed, tax deed, will, or any other instrument that purportedly conveys the title. Each of these documents state that it conveys the ownership to the land. Each of these, however, is actually a color of title. [G. Thompson, Title to

Real Property, Preparation and Examination of Abstracts, Ch. 3, Section 73, p. 93 (1919).]

A color of title is that which in appearance is title but which in reality is not title; [B](1) and, in fact, any instrument may constitute color of title when it purports to convey title to the land as well as the land itself, although it is void as a muniment of title. [B](2). The Supreme Court of Missouri has stated:

[w]hen we say a person has a color of title, whatever may be the meaning of the phrase, we express the idea, at least, that some act has been previously done ... by which some title, good or bad, to a parcel of land of definite extent has been conveyed to him. [St. Louis v. Gorman, 29 Mo. 593 (1860)]

In other words, a color of title is an appearance of apparent title, an "image" of the true title, hence the qualification "color of" which, when coupled with possession, purports to convey the ownership of the land to the purchaser. However, this does not say the color of title is the actual or true title itself, nor does it say the color of title itself actually conveys ownership. In fact the claimant or holder of a color of title is not even required to trace the title through the chain down to his instrument. [B](3). Rather it may be said a color of title is prima facia evidence of ownership of land, and rights to possession of the land until such time as that presumption of ownership is disproved by a better title or the actual title itself. If such cannot be proven to the contrary, then ownership of the land is assumed to have passed to the occupier of the land. To further strengthen a color of title holder's position, courts have held that the good faith of the holder of a color of title is presumed in the absence of evidence to the contrary. [B](4).

With such knowledge of what a color of title is it is interesting to discover what constitutes colors of title:

1. Warraanty deed - A warranty deed is like any other deed or conveyance, [B](5) and a warranty deed or conveyance is a color of title. [B](6).

2. Deeds generally - Deeds constitute colors of title [B](7) and a deed that purports to convey interest in land is a color of title. [B](8) A deed which, on its face, purports to convey a title constitutes a claim and color of title. [B](9).

3. Quitclaim deeds - A quitclaim deed is a color of title [B](10) and can pass the title as effectively as a warranty with full covenants. [B](11).

4. Sheriff's deeds, Judicial deeds, and tax deeds - Sheriff's deeds are also colors of title [B](12), as are Judicial deeds [B](13). The Illinois Supreme Court went into detail in its determination that a tax deed is only a color of title:

There the complainant seems to have relied upon the tax deed as conveying to him the fee, and to sustain such a bill, it was incumbent of him to show that all the requirements of the law had been complied with. [Huls v. Buntin, 47 Ill. 396 (1865)]

A simple tax deed by itself is only a color of title and does not meet all the requirements of the law for a fee simple, allodial, title. Thus any tax deed which purports, on its face, to convey title is a good color of title. [B](14).

5. Wills - A will passes only a color of title and can pass only so much as the testator owns, though it may attempt to pass more. [B](15).

6. Trustee's deed, mortgage and foreclosure - A trustee's deed, a mortgage and strict foreclosure [B](16) or any document defining the extent of a disseisor's claim or purported claim [B](17) have all been held to be colors of title:

[t]here is nothing here requiring a deed, to establish a color of title, and under the former decisions of this court, color of title may exist without a deed. [Baldwin v. Ratcliff, 125 Ill. 376, 383 (1888)]

Thus, a color of title does not mean the actual title, nor does the question of notice of outstanding title effect a color of title. [B](18).

None of these cases have been overruled and are still valid, well established, law. All of the documents described in these cases are the main avenues of claimed land ownership in America today; yet, none actually conveys the true and allodial title. They in fact convey something quite different.

When it is stated that a color of title conveys only an appearance of title, such a statement is correct but, perhaps, too vague to be properly understood in its correct legal context. Of better use are the more pragmatic statements concerning title. A title, or color of title, in order to be effective in transferring the ownership, or purported ownership, of the land must be a marketable or merchantable title.

A marketable or merchantable title is one that is reasonably free from doubt. [B](19). This title must be reasonably free from doubts as necessary to not affect the marketability or saleability of the property, and must be a title a reasonably prudent person would be willing to accept. [B](20). Such a title is often described as one which would ensure to the purchaser a peaceful enjoyment of the property [B](21); and it is stated that such a title must be obvious, evident, apparent, certain, sure or indubitable. [B](22).

Marketable Title Acts adopted in several states generally do not lend themselves to an interpretation that they might operate to provide a new foundation of title based upon a stray, accidental, or interloping conveyance. Their object is to provide for the re-recorded fee simple ownership an exemption from the burdens of old conditions, which at each transfer of the property interferes with its marketability. [B](23). What each of these legal statements in the various factual situations says is that the color of title is never described as the absolute or actual title, rather each says that is one of the types of titles necessary to convey ownership or ap-parent ownership. In order for a title to be effective it must be marketable - it must be a title which is good of recent record even if it may not be the actual title in fact. [B](24).

Authorities hold that to render a title marketable it is not only necessary that it shall be free from reasonable doubt; in other words, that a purchaser is not entitled to demand a title absolutely free from every possible suspicion. [Cummings v. Dolon, 52 Wash. 496, 100 P. 989 (1909)]

The record referred to is the title of abstract and all documentary evidence pertaining to it:

It is an axiom of hornbook law that a purchaser has notice only of recorded instruments that are within his chain of title. [1 R. Patton & C. Patton, Patton on Land Titles. Section 69, at 230-233. (2nd ed. 1957); Sabo v. Horvath, 559 P. 2d 1038, 1043 (Ak. 1976)]

Title Insurance then guarantees that a title is marketable but not absolutely free from doubt, and under the color of title system used most often in this country today, no individual operating under this type of title system has the absolute or allodial title. All that is really necessary to have a valid title is to have a relative clean abstract with

a recognizable color of title as the operative marketable title within the chain of title. It therefore becomes necessarily difficult, if not impossible after a number of years, considering the inevitable contingencies that must arise and the title disputes that will occur, to ever properly guarantee an absolute title. This is not necessarily the fault of the seller, but it is the fault of the legal and real estate systems for allowing such a diluted form of title to be controlling in an area where it is imperative to have the absolute title. In order to correct this problem, it is important to return to those documents the early leaders of the nation created to properly ensure that property remained one of the inalienable rights the newly established sovereign freeholders could rely on to always exist. This correction must be in the form of restricting or perhaps eliminating the widespread use of a marketable title and returning to the absolute title.

### Part III: Land Patents - Why They Were Created

The Americans had a choice as to how they wanted their new government and country to be formed. Having broken away from the English sovereignty and establishing themselves as their own sovereigns, they had their choice of types of taxation, freedom of religion, and most importantly ownership of land. The Founding Fathers chose allodial ownership of land for the system of ownership in this country:

After the American Revolution, lands in this state (Maryland) became allodial, subject to no tenure nor to any services incident thereto. [In re Waltz et al., *Burlew v. Security Trust and Savings Bank*, 240 P. 19 (1925), quoting *Matthews v. Ward*, 10 Gill & J. (Md.) 443 (1839)].

The tenure referred to in this case was the feudal tenure and the services or taxes required to be paid to retain possession of the land under the feudal system. This new type of ownership was acquired in all thirteen states.

[B](25).

The basis of English land law is the ownership of the realty by the sovereign and from the crown all titles flow. [B](26). It was stated this way in the case of *McConnell v. Wilcox*:

From what source does the title to the land derived from a government spring? In arbitrary governments, from the supreme head - be he the

emperor, king or potentate; or by whatever name he is known. In a republic, from the law making or authorizing to be made the grant or sale. In the first case, the party looks alone to his letters patent; in the second, to the law and the evidence of the acts necessary to be done under the law, to a perfection of his grant, donation or purchase ... The law alone must be the fountain from whence the authority is drawn; and there can be no other source. [1 Scam. Ill. 344, 367 (1837)]

The American people as newly established sovereigns after the Revolutionary War, became complete owners in their land beholden to no lord or superior, sovereign freeholders in the land themselves. These freeholders in the original thirteen states now held allodially the land they possessed before the war only feudally. This new and more powerful title protected the sovereigns from unwararanted intrusions or attempted takings of their land. More importantly, it secured in them a right to own land absolutely in perpetuity. By definition, the word perpetuity means:

Continuing forever. Legally, pertaining to real property, any condition extending the inalienability ... [Black's Law Dictionary, p. 1027 (5th ed. 1980).]

In terms of an allodial title, it is to have the property of inalienability forever. Nothing more need be done to establish the ownership of the sovereigns to their land, although confirmations were usually required to avoid possible future title confrontations.

The Constitution in its original form was ratified by a convention of the states on September 17, 1787. The Constitution and the government formed under it were declared in effect on the first Wednesday of March, 1789. Prior to this time, during the Constitutional Convention, there was serious debate on the disposal of what the convention called the "Western territories," now the states of Ohio, Indiana, Illinois, Michigan, Wisconsin and part of Minnesota, more commonly known as the Northwest Territory. This tract of land was ceded to the new American republic in the treaty signed with Britain in 1783.

Part of the method by which the new United States decided to dispose of its territories, was stipulated in Article IV, Section III, Clause 2, of the U.S. Constitution:

The Congress shall have the power to dispose of and make all needful Rules and Regulations

respecting the Territory or other Property belonging to the United States.

Thus, Congress was given the power to create a vehicle to divest the National government of all its right and interest in the land. This vehicle, known as the land patent, was to forever divest the government of its land and was to place such total ownership in the hands of the sovereign freeholders who collectively created the government. The land patents issued prior to the initial date of recognition of the United States Constitution were ratified by the members of Constitutional Congress. Those patents created by statute after March, 1789, had the Congressional intent behind such statutes as a reference and basis for the determination of their powers and operational effect.

There have been dozens of statutes enacted pursuant to Art. IV, Sec. III, Cl. II. [B](27). Some of these statutes had very specific intents of aiding soldiers of wars or dividing lands in a very small region of one state, but all had the main goal of creating in the sovereigns - freeholders on their lands - a status in which they were beholden to no lord or superior. One of these acts however, was the main patent statute in reference to the intent Congress had when creating the patents. That Statute is 3 Stat. 566.

In order to understand the validity of a patent in today's property law, it is necessary to turn to other sources than the acts themselves. These sources include the Congressional debates and case law citing such debates. The best source is the Abridgment of the Debates of Congress, Monday, March 6, 1820. This abridgment and the actual debates found in it concern 3 Stat. 566, one of the most important of the land patent statutes.

In this important debate, the reason for such a particular act in general and the protections afforded by the patent in particular were discussed. As Senator Edwards stated:

But, he said, it is not my purpose to discuss, at large, the merits of the proposed change. I will, at present, content myself with an effort, merely, to shield the present settlers upon public lands from merciless speculators, whose cupidity and avarice would unquestionably be tempted by the improvements which those settlers have made with the sweat of their brows, and to which they have been encouraged by the conduct of the government itself; for though they might be considered as embraced by the letter of the law which provides

against intrusion on public lands, yet, that their case has not been considered by the Government as within the mischiefs intended to be prevented is manifest, not only from the forbearance to enforce the law, but from the positive rewards which others, in their situation, have received, by the several laws which have heretofore been granted to them by the same right of preemption which I now wish extended to the present settlers. [Id. at 456.]

Further, Senator King from New York stated:

He considered the change as highly favorable to the poor man; and he argued at some length, that it was calculated to plant in the new country a population of independent, unembarrassed freeholders ... that it would cut up speculation and monopoly; that the money paid for the lands would be carried from the state or country from which the purchaser should remove; that it would prevent the accumulation of an alarming debt, which experience proved never would and never could be paid. [Id. at 456-57.]

In other statutes, the Supreme Court recognized much of these same ideas.

The object of the Legislation is manifest. It was intended to prevent speculation by dealings for rights of preference before the public lands were in the market. The speculator acquired power over choice spots, by procuring occupants to seat themselves on them and who abandoned them as soon as the land was entered under their preemption rights, and the speculation accomplished. Nothing could be more easily done than this, if contracts of this description could be enforced. The Act of 1830, however, proved to be of little avail; and then came the Act of 1838 (5 Stat. 251) which compelled the preemptor to swear that he had not made an arrangement by which the title might inure to the benefit of anyone except himself, or that he would transfer it to another at any subsequent time. This was preliminary to the allowing of his entry, and discloses the policy of Congress. [United States v. Reynes, 9 How. U.S. 127 (1850)]

Congress has the sole power to declare the dignity and effect of titles emanating from the United States and the whole legislation of the government must be examined in the determination of such titles. [B](28). It was clearly the policy of Congress, in passing the preemption and patent laws, to confer the benefits of those laws to actual settlers upon the land. [B](29). The intent of Congress is manifest in the determinations of meaning, force, and power vested in the patent. These cases illustrate the power and dignity given to the patent. It was created to divest the government of its lands, and to act as a means of conveying such lands to the generations of people that would occupy those lands. This formula, "or his legal representatives," embraces representatives of the original grantee in the land, by contract, such as assignees or grantees, as well as by operation of law, and leaves the question open to inquiry in a court of justice as to the party to whom the patent, or confirmation, should enure. [B](30). The Patent was and is the document and law that protects the settler from the merciless speculators, from the people that use avarice to unjustly benefit themselves against an unsuspecting nation. The patent was created with these high and grand intentions, and was created with such intentions for a sound reason.

#### Part IV: The Power And Authority Of A Patent

Legal titles to lands cannot be conveyed except in the form provided by law. [B](31). Legal title to property is contingent upon the patent issuing from the government. [B](32).

That the patent carries the fee and is the best title known to a court of law is the settled doctrine of this court. [Marshall v. Ladd, 7 Wall. (74 U.S.) 106 (1869).]

A patent issued by the government of the United States is legal and conclusive evidence of title to the land described therein. No equitable interest, however strong, to land described in such a patent, can prevail at law, against the patent. [Land Patents, Opinions of the United States Attorney General's Office. (Sept. 1869.)]

A patent is the highest evidence of title, and is conclusive against the government and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal. [Stone v. United States, 2 Wall. (67 U.S.) 765 (1865).]

The patent is the instrument which, under the laws of Congress, passes title from the United States and the patent when regular on its face, is conclusive evidence of title in the patentee. When there is a confrontation between two parties as to the superior legal title, the patent is conclusive evidence as to ownership. [B](33). Congress having the sole power to declare the dignity and effect of its titles has declared the patent to be the superior and conclusive evidence of the legal title. [B](34).

Issuance of a government patent granting title to land is 'the most accredited type of conveyance known to our law'. [United States v. Creek Nation, 295 U.S. 103, 111 (1935); see also United States v. Cherokee Nation, 474 F. 2d 628, 634 (1973).]

The patent is the only evidence of the legal fee simple title. [B](35). These various cases and quotes illustrate one fact that should be thoroughly understood. **THE PATENT IS THE HIGHEST EVIDENCE OF TITLE AND IS CONCLUSIVE OF THE OWNERSHIP OF LAND IN COURTS OF COMPETENT JURISDICTION.**

#### Part V: Treaties - The Substance Of Federal Land Patents

The question of supremacy of confirmed federal patent proceedings, pursuant to an 1851 Act that had been enacted to implement the Treaty of Guadalupe Hidalgo in 1848, versus a claimed public trust easement by the City of Los Angeles, and State of California, was decided by the United States Supreme Court in April, 1984 (Summa Corporation v. State of California, 104 U.S. 1751) In this case petitioner (Summa Corporation) owned the fee title to the Bailona Lagoon, a narrow body of water connected to a man-made harbor located in the City of Los Angeles on the Pacific Ocean. The lagoon became part of the United States following the war with Mexico, which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. Petitioner's predecessors-in-interest had their interest in the lagoon confirmed in federal patent proceedings pursuant to an 1851 Act to implement the treaty, which provided that the validity of claims to California lands would be decided according to Mexican law. California made no claim to any interest in the lagoon at the time of the patent proceedings, and no mention was made of any such interest in the patent that was issued.

Los Angeles brought suit against petitioner in a California state court, alleging that the city held an easement in the Bailona lagoon for commerce, navigation, fishing,

passage of fresh water to canals, and water recreation; such an easement having been acquired at the time California became a State. California was joined as a defendant as required by state law and filed a cross-complaint alleging that it had acquired such an easement upon its admission to the Union and had granted this interest to the city.

The trial court ruled in favor of the city and State, finding the lagoon was subject to the claimed public easement. The California Supreme Court affirmed, rejecting petitioner's arguments that the lagoon had never been tideland. Even if it had been, Mexican law imposed no servitude on the fee interest by reason of that fact, and such a servitude was forfeited by the State's failure to it in the federal patent proceedings. The Supreme Court ruled as follows:

The question we face is whether a property interest so substantially in derogation of the fee interest patented to petitioner's predecessors can survive the patent proceedings conducted pursuant to the statute implementing the Treaty of Guadalupe Hidalgo ...

CALIFORNIA ARGUES THAT SINCE ITS PUBLIC TRUST SERVITUDE IS A SOVEREIGN RIGHT, THE INTEREST DID NOT HAVE TO BE RESERVED EXPRESSLY ON THE FEDERAL PATENT TO SURVIVE THE CONFIRMATION PROCEEDINGS

...

The necessary result of the Coronado Beach decision (U.S. v. Coronado Beach Co., 255 U.S. 472 (1921)), is that even "sovereign" claims such as those raised by the State of California in the present case must, like other claims, be asserted in the patent proceedings or be barred

...

Those decisions control the outcome of this case. WE HOLD THAT CALIFORNIA CANNOT AT THIS LATE DATE ASSERT ITS PUBLIC TRUST EASEMENT OVER PETITIONER'S PROPERTY, WHEN PETITIONER'S PREDECESSORS-IN-INTEREST HAD THEIR INTEREST CONFIRMED WITHOUT ANY MENTION OF SUCH AN EASEMENT in proceedings taken pursuant to the Act of 1851. The interest claimed by California is one of such substantial magnitude that ... (it) must have been presented in the patent proceedings or be barred.

Part VI: The Land Acquisition Treaties [C]

Northwest Ordinance:

A resolution of Congress that merely stated its intent that the territory shall be divided into three to five states to be created upon the existence of a certain number of inhabitants required to become states of the Union. The Ordinance was not a treaty. Its subject matter was part of all territory gained from Great Britain under the Treaty of Peace with Great Britain, 1783, 8 Stat.80.

Treaty Of Peace, 8 Stat. 80 (1783):

The boundaries of the territory are given in Article II of the treaty, i.e., the western boundaries of those states today known as Mississippi, Tennessee, Kentucky, Illinois and Minnesota - all the states from the Mississippi River and eastward to include the original 13 colonies. Therefore, every federal land patent in every state thereof flows from that treaty.

Treaty Of Cession, 8 Stat. 200 (April 20, 1803):

This was the famous "Louisiana Purchase" from which was gained the following states: Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, Iowa, Wisconsin, North and South Dakota, Montana, Wyoming, and the Northeast two-thirds of Colorado.

Treaty Of Ghent: 8 Stat. 218 (October 20, 1818):

Merely established the northern boundary of the Louisiana Purchase as the 49th parallel to the Rocky Mountains.

The Oregon Treaty, 9 Stat. 869 (June 15, 1846):

An agreement with Great Britain that gave the United States undisputed claim to the Pacific Northwest south of the 49th parallel. The states created from this acquisition are Oregon, Washington, Idaho, and the southwest corner of Wyoming.

Treaty Of Guadalupe Hidalgo, 9 Stat. 922 (1848):

Following the War with Mexico, under this treaty, the United States paid Mexico \$15 million dollars in gold coin for reparations, and the territory now known as the states of California, Nevada, Utah, Arizona, and the western portions of Colorado and New Mexico.

It is noteworthy that all lands under this treaty, purchased by private individuals from the United States, were paid for in gold and silver coin; after which a federal

land patent was confirmed and issued to the private claimant.

Because of the confusion of land claims by the Gold Rush settlers on Mexican land grants, Congress enacted the Act of Congress, March 3, 1851, to ascertain and settle the private land claims in the State of California. For the first time, a Land Commissioner was established to confirm the claims and the Court of Private Land Claims was established to settle disputes before final confirmation by what is now known as the U.S. Bureau of Land Management under the present Department of the Interior of the United States. The Act of 1851 established a two year limit to contest claims, after which the confirmed land claims were closed forever by the issuance of a federal land patent that generally included the phrase:

given this day \_\_\_\_\_ to \_\_\_\_\_ his  
heirs and assigns forever.

No claims could be made after the issuance date of the patent. This is what Summa (supra) was all about. The two year limitation on contests of federal land patents issued to private land claimants was extended by the Act of March 3, 1891, and is still in force today.

Gadsden Purchase, 10 Stat. 1031 (Dec. 30, 1853):

This was a treaty between Mexico and the United States in which the U.S. paid \$10 million dollars in gold coin to Mexico for that southernmost strip of New Mexico. The treaty is significant because it refers back to the Treaty of Guadalupe Hidalgo and conferred all the same rights and privileges to citizens of that territory as in the 1848 treaty. Hence, that southernmost portion is, in actual fact included in the Treaty of Guadalupe Hidalgo. All feudal land patents in this area also flow from treaty law.

Cession Of Texas:

Texas was annexed to the United States by the independent vote of the inhabitants. While the Cession of Texas is a treaty, it was annexed as a House Joint Resolution (HJR) and it should be reasonably certain that its inhabitants had the same protections as those given under treaty law.

Part VII: The Supremacy Clause [C]

The lead case which said treaty law cannot be interfered with by a state legislature is Ware v. Hylton (1796), 3

Dall. (3 U.S. 199). In this case, the Supreme Court held that a treaty is the supreme law of the land, pursuant to Article VI, Section 2, of the United States Constitution:

... and the judges in every state shall be bound thereby, anything in the Constitution or the laws of any State to the contrary notwithstanding...

any act of the legislature cannot stand in its way because a treaty is the declared will of the people of all the United States and shall be superior to the constitution and laws of any individual state.

In other words, federal land patents put into evidence by a land owner cannot be challenged by a state court because it flows from a United States treaty and, therefore, no court has jurisdiction over title or ownership to land traced to this paramount source of title. Only private citizens were given federal land patents, hence the term "private land claim," or "PLC," used by the Bureau of Land Management as the date of the original patent.

Because all federal land patents flow from treaties that fall under the supremacy clause, no state, private banking corporation or other federal agency can question the superiority of title to land owners who have "perfected" their land by federal land patent. Jurisdiction by any state court is invalid. Since federal land patents cannot be collaterally attacked as to their validity or authenticity as highest evidence of title, no mortgage institution can claim title to land by its "lien." Certified federal land patents were given free and clear allodial title with no encumbrances, then and now!

43 USC 59 establishes duly certified copies of federal land patents shall be evidence in all cases where originals would be evidence. Section 57 covers the states of Oregon and California. Section 58 covers Louisiana.

43 USC 83 covers the evidentiary effect of certified federal land patents for all states. All the courts in the United States must take judicial notice of these federal patents and their evidentiary effect under these federal statutes. If the patents are not certified when entered into evidence, any court may ignore the patent and overrule it as evidence of superior or paramount title versus the mortgage lien, the county tax assessment, etc..

The Act of Congress, March 3, 1851, since updated by the Act of Congress, 1891, stated anyone who was establishing a claim had to have it confirmed by the United States Land Commission. If no one protested that claim within a two year period, it could no longer be attacked under any cir-

circumstances it was final. This is what the Summa case addressed. When the United States Supreme Court interprets a federal statute, the courts of every state are bound by that interpretation.

The key to finding case law in every state upholding federal treaty and its laws can be found in its law libraries in the Key Digest under "public Lands." Am. Jur. 2d is the best starting point to find the case law on treaties as they pertain to decisions in the states.

#### Part VIII: In Summary

The federal land patent is the paramount or common source of titles from the United States government. It is the mechanism and procedure for an individual to lay claim to his right to allodial title of land, as was established by the Declaration of Independence (our first Organic Law) and the War for Independence that followed.

A free sovereign individual who has a perfected federal land patent in his possession is in a very enviable position at law. No one can take that land from him without first proving they have a superior vested right in the land, and that is not possible.

For example, a title company insures "good title" and a bank has given a farmer a loan on those grounds. Basically the title insurance company is at fault; they did not search that title back far enough to its original source to see who owned the land. If the bank subsequently attempts to foreclose, the farmer who has done his homework properly should win. Any remaining controversy is between the bank and the title insurance company. In this example, it appears that it does not matter whether the farmer is an heir or assign, the bank has to prove it has superior title in that land in order to take it over.

Anyone who has purchased foreclosed lands has done so without guaranty of clear title, including IRS and state taxing agency foreclosures. By perfecting a federal land patent, a free sovereign should now be in a position to go on the offense.

#### Part IX: Common Law Liens [D]

It has been stated a common law lien is of no value in the legal and business community today. In part, this is because of the current misconception and confusion which surrounds a common law lien; and also, because of confusion over the extent to which it can be used in protecting an interest a person has in the property of another. First it

is important to understand how common law principles fit into the scheme of the American legal system. Only then can one understand how a common law lien works.

Principles, usages, and rules of the common law system are distinguished from law created by the enactment of the legislature. The common law SYSTEM, as recognized by our courts, comprises the body of those principles and rules of action relating to government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity (particularly the ancient and unwritten law of England), or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs. [D](1). As such, common law principles, usages and rules are the law of the land pursuant to the United States Constitution. In Article III, Section II, it is stated:

The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution.

As discussed in Chapter III, Part V, the Eleventh Amendment denied judicial power in suits in law and equity brought by "citizens" against federal and state governments. The Constitution was founded on the basic principles of the common law known to the forefathers at the time of the Constitutional Convention, and upon the principles of the Law of Nature and Nations as incorporated in the Declaration of Independence. Unless a state or federal statute specifically overrules or alters how a segment of the common law is applied, the common law principles in any area to be analyzed will still apply through their continued application by the courts. As stated in the Illinois case of *Robben v. Obering* [279 F. 2d 381 (1960)]:

The common law is in full force and effect in Illinois unless repealed by statute. General Assemblies have the power to broaden or restrict common law concepts, but until such actions are taken, the common law is as much a part of the state, where it has not been expressly abrogated by statute, as the statutes themselves. Also see [D](2).

In other words, the common law system of England is the basis of the common law system in the states, and as such is the law of those states unless altered by constitution or statute. [D](3). As we have seen, however, these alterations must not violate the Law of Nature and Nations for, if they do, they have no force and effect except that acquired by

tacit consent. The question then is whether a particular area of the common law system, specifically that of liens, has been altered by the passage of statutes by any state legislatures, since the federal legislature has not yet passed a law which abolishes common law liens in America.

In most states, common law liens have yet to be determined antiquated and then eliminated by statute. In some, the common law lien has been recognized by statute although the principles for such a lien are defined by its parameters in the common law. [D](4). Thus, in determining whether the common law lien still exists in a particular state, the judiciary and the legal professions need only look to see if the legislature of that state has legislatively abolished the lien. If such a statute has been passed, then that state's courts need only declare a common law lien null and void and any such lien which was filed can be immediately removed through equitable proceedings in the court. If no such statute has ever been passed, then the common law lien must be given full force and effect assuming the necessary criteria has been met in creating the lien. Therefore, the next question is what are the proper circumstances under which a common law lien can be filed and what are the rights under such a lien?

Liens can be created through only a few specific actions, those being: by contract, by statute, or by operation of law. Liens created by contract include mortgages which are also created in part by statute. Liens created by operation of law however are extremely limited in quantity, especially the different types of common law liens. These types of liens simply reinforce the idea that liens can only arise by some agreement, statute, or some fixed rule of law. [D](5). Trade and commerce may act to create a common law lien, however liens cannot be created by the courts, not even from a sense of justice and equity. [D](6).

American jurisprudence describes a common law lien as the right of one person to retain in his possession that which belongs to another until certain demands of the person are satisfied. The basis of a common law lien for materials and services arises when the claimant is entitled to be reimbursed for labor and materials which have enhanced the value of the property on which the lien is claimed; And a contractual relation, even if only by implication, must exist between the owner of the property and the person claiming the lien. [D](7). In the absence of a specific agreement, if a party has bestowed labor and skill on a chattel bailed to him for such purpose, and thereby improved it, he has by general law a lien on it for the reasonable value of his labor - or he has the right to retain it until paid for such skill and labor.

A mechanic of any kind has a lien upon all personal property, which is not a mechanic's lien, for manufacture or repairs while it remains in his possession. Thus, the Drummond Court said:

If property is delivered to a person, to be by his skill and labor, or by adding thereto property of his, enhanced in value, and he performs the labor or adds his own property to that delivered, he may retain possession of it until he is paid for his labor and services. This is the doctrine of common law, and the right is usually denominated as a 'common law' lien and it exists under a state of facts as we have just detailed. [Drummond Carriage Co. v. Mills, 74 N.W. 966, 967 (Neb. 1898)]

It has been determined: (1) where statutory and written contractual agreements are not controlling, a person lawfully in possession and making a repair by labor or skill for the protection or improvement of a thing has a lien upon such property. [D](8). (2) Such a lien is a charge whereupon the property itself and not the people interested in the property. [D](9). (3) As a general rule, common law liens attach to the property without any reference to ownership, and override all other rights in the property, whereas liens created by contract or statute are subordinate to all existing rights therein. [D](10). Such a lien is a qualified right, a proprietary interest in the property of another. [D](11). And, the law gives the right to hold such property only until the satisfaction of a debt to a particular thing. [D](12). Thus, the first general principle of common law liens has been defined.

The next principle is the requirement of possession. The right of a common law lien is based directly on the idea of possession, and it is indispensable that the one claiming it have an independent and exclusive possession of the property: [D](10).

At common law there can be no lien without possession. It is there defined, a right in one man to retain that is in possession belonging to another, till certain demands of him, the person in possession, are satisfied. [Peck v. Jenness, 7 How. (U.S.) 612, 620 (1849)]

Possession for common law liens can be either actual or constructive. [D](13). And:

Where possession is actually, or in the eyes of the law, retained and the property preserved or improved by the performance of labor and the furnishing of materials a lien of the common law exists and endures without the necessity of filing a lien statement if an action is commenced within limitations upon the principal obligation as well as within the time specified by statute for preservation of the lien. [Peck (supra). See also Robinson v. Exchange National Bank of Tulsa, 31 F. Supp. 350 (1940)]

The great difference between the equitable or statutory liens and the common law lien is that the former is not conditional upon the possession of the thing sought to be charged, while possession for the latter is absolutely essential:

A common law lien is lost by the lienholder voluntarily and unconditionally parting with possession or control of the property to which it attaches, and such a lien cannot be restored thereafter by resumption of possession. However, the possessory lien is not necessarily waived or destroyed as between the parties where there is an intention to preserve the lien, the lienholder only conditionally parting with the property, as where by special agreement he allows the owner to take the property into his possession without prejudice to the lien. But such a surrender of possession under such an agreement will destroy the lien as to third persons ... Priority of a possessory lien over that of a chattel mortgage is not lost where the property is taken from the actual possession of the lien claimant without his consent by force and fraud, where the property is taken from him involuntarily ... [Yellow Manufacturing Acceptance Corp. v. Bristol, 236 P. 2d 947 (1951)]

Thus, one in possession of property under such a lien is the owner of the property as against the world and even against the actual owner, until his claim is satisfied, and no one, not even the actual owner, has any right to disturb his possession without previous payment of claim. [D](14). Possession is essential and must not be given up freely in order to have an effective common law lien.

The third principle of the common law lien is its priority to other liens. It may be said that a lien which

arises by force of the common law may be, under certain circumstances, superior to prior existing contractual or statutory liens on the same property; and may have precedence over an existing mortgage. In *Drummond Carriage Co. v. Mills*, the court said:

I put down my decision on the ground that the mortgage, having allowed the mortgagor to continue in the apparent ownership of the vessel, making it a source of profit by means of earning wherewithal to pay off the mortgage debt the relation so created by implication entitles the mortgagor to do all that maybe necessary to keep her in an efficient state for that purpose ... Under these circumstances, the mortgagor did that which was obviously for the advantage of all parties interested. He put her into the hands of the defendant to be repaired, and according to all ordinary usage the defendant ought to have a right of lien ... so that those who are interested ... and who will be benefited by the repairs, should not be allowed to take her out of his hands without paying for them ... It is to be observed that the money expended in repairs adds to the value ... and looking to the rights and interests of the parties generally, it cannot be doubted that the mortgagor should be held to have power to confer a right of lien for repairs necessary.

As it is obvious that every ship will, from time to time, require repairs, it seems but reasonable under circumstances like these, to infer that the mortgagor had authority from the mortgagee to cause such repairs as should become necessary to be done, upon the usual and ordinary terms. Now what are the usual and necessary terms? Why, that the person by whom the repairs are ordered should alone be liable personally, but that the shipwright should have a lien upon the ship for the work and labor he has expended on her; nor are the mortgages at all prejudicially affected thereby. They have the property augmented in value by the amount of repairs. [*Drummond Carriage Co. v. Mills*, 74 N.W. 966, 969 (Neb. 1898)]

In cases where the mortgagor can be said to have expressed or implied authority from the mortgagee to procure repairs to be made on the mortgaged property, the common law lien will be superior and override the prior existing

mortgage lien. [D](15). In some cases the improvements need not even actually be made known to the mortgagee and yet the common law lien still has priority. This then allows the mortgagor who makes improvements or repairs to the mortgaged property, benefitting all interested parties, to collect the just compensation for such improvements or repairs so long as possession is maintained.

The final area for purposes of this case law analysis is the allowable level of damages. This is succinctly stated as follows:

[J]udgments on common law liens are based on charged fees that are fair, reasonable and unpaid through the rendition of services, materials, and performed labor. [Willimason v. Winningham, 186 P. 2d 644, 648 (Okla. 1947).]

Once valid liens are established and given legal existence, the lienholder has recourse against anyone who, knowing of the lien, disposes of or destroys the property subject to such a lien. [51 Am. Jur. Sect. 21.] Assuming that the criteria in this necessary though perhaps redundant analysis has been met or is assumed to have met, it is up to the courts to analogize between cases to make rules that are definitive in nature. In one particular area, the farming community, such analogization will help to prevent possible unjust enrichments in favor of the lending institutions.

Farmers, by trade practices today, routinely borrow money thereby creating mortgages on both real and personal property. Common law liens, as the above analysis has shown, do not apply to real property, but they do apply to personal additions to the real property which would enhance or maintain the upkeep of the farm. When a farmer improves the farm, he is benefiting all interested and secured parties, not just himself. This benefit to all is accomplished mainly through the relationship of the mortgagor and mortgagee to the property. Even if a mortgagor holds title, he is still doing everything for and making payments to the mortgagee as much as for himself. This is true even though a mortgage or deed of trust is technically no more than a lien and notes on personal property are no more than security interests. In any of these situations, nonpayment leads to default and forfeiture of the property to the mortgagee. Therefore, all actions by the possessor are designed to satisfy the debt held by the mortgagee.

Another prevalent criteria in all of these notes, whether on personal or real property, is the doctrine that waste must not be allowed to affect the value of that property. If such waste is allowed to occur, then even if the mortgagor is not delinquent, the note can be assumed to be in

default and again the property confiscated by the mortgagee. This usually will not occur if the property is being properly maintained and improved, but such actions show the authority wielded by the mortgagee in the commercial farming industry today. In these types of situations, farmers who may have farmed anywhere from one to fifty or more years are vulnerable to loss of all that which they have labored over, improved and maintained, often without ever being compensated for their labor and improvements. This then is what the common law forbade. During the history of the common law system, a lien was developed through case law which served to protect man from the loss of the fair value of services in the form of labor and management and materials expended in the good faith performance on the farm.

Improvements are needed repairs to personal property to make such personal property operational or to make it effectively new. A common law lien is one way to compensate the mortgagor-farmer when such equipment is lost to the mortgagee while the added value yet remains in the property. The other way lies in the materials, labor and management which are expended by the farmer to improve the value of the real property for the eventual benefit of the mortgagee. A farmer may lose the farm he has attempted to purchase, but such should not necessarily result in the loss of the value of the added work that went into developing that farm and creating a more viable operation. Either by tillage of the soil, or added fertilization, or improved conservation of the soil, or by means of new buildings, ditches, fences or other added fixtures, a farmer exerts effort and adds personal property to the real property, thereby enhancing its fair market value and making it more easily disposable, and he thus benefits all parties involved. This is exactly the situation the common law lien was designed to protect. A farmer who can properly prove actual expenses should be compensated for those expenses over and above the amount attributed to any assistance by the mortgagee. Equity requires that justice be done. Basic rules of law dictated the development of the common law lien but equitable principles now dictate, in part, that a farmer be protected from suffering the unnecessary loss that will occur if the farmer is divested of the improved property before he is compensated for those improvements and maintenance. As such, common law liens are very much alive and have a place in the modern law of property in this age of ever increasing farm foreclosures.

## CHAPTER X

### SOLUTIONS

#### I: Introduction

It is time we came to the realization that we are engaged in a spiritual war against powers and principalities, contracting parties in high places who have entangled us in their web of deceit via a multitude of non-disclosed adhesion contracts.

It is time to pay particular heed to the advice of Ben Franklin, given to his colleagues at the Constitutional Convention, June 28, 1787:

The small progress we have made after 4 or 5 weeks is methinks a melancholy proof of the imperfection of Human Understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. ... How has it happened that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings?

In the beginning of the contest with G. Britain, when we were sensible of danger, we had daily prayer in this room for the divine protection. Our prayers were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending providence in our favor. To that kind of providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? Or do we imagine that we no longer need his assistance?

I have lived a long time, and the longer I live, the more convincing proofs I see of this truth - that God governs the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured in the sacred writings, that "except the Lord build the House they labour in vain that build it."

I firmly believe that; and I also believe that without his concurring aid we shall succeed in this political building no better than the

Builders of Babel: We shall be divided by our little, partial, local, interests; our projects will be confounded, and we ourselves shall become a reproach and by word down to the future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing Government by Human wisdom and leave it to chance, war and conquest.

I therefore beg leave to move - that henceforth prayers imploring the assistance of Heaven and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business.... [House Document 398, p. 295]

Although not flawless, the framers of the Constitution did indeed, give us "A Republic, if you can keep it," as Ben Franklin said later. By way of something the framers had no control over, ignorance and apathy of their posterity - we failed to keep the best government ever devised by man.

The solution is to be found within ourselves. In our consciences attuned and responsive to the laws and commandments of God. In other words, we must look to Divine Providence, The Law of Nature and Nations, and our own consciences, just as our forefathers did over 200 years ago:

It is time to awaken from the American dream, face reality, acquire the knowledge necessary to prevent our destruction, and effectively apply that knowledge to that end.

In order to be successful in this battle I believe we will have to approach the problem from an overall systems viewpoint and strategy. We must define the essential, fundamental issues and marshal our facts and law in support thereof. We must analyze and understand the true nature of the adversary, and plan our strategy accordingly. To do otherwise will predictably result in failure.

For example, although it may be conclusively proven that the sixteenth and seventeenth amendments to the U.S. Constitution were never lawfully ratified, I would predict probable failure for anyone who makes this the sole issue and basis at law for his endeavours. Based on some experience in this regard and some understanding of the nature and power of the adversary, I would expect his strategy and arguments to be cunning, devious and specious; And I would expect them to include the following, whether so stated or not:

First - Ignore the issue. Stall as long as possible while developing alternative strategies and/or implementing those already developed for the purpose of remaining on course towards the world-wide superstate.

Second - When, and if, the issue must be addressed, employ circular arguments and reasoning in justification of

past, present, and future actions: such as (1) Custom and usage of over seventy years moots the issue of law and is all the legal basis necessary to continue on the present course; (2) To correct the "mistakes" of predecessors to the present trustees and agents would destroy society and create great hardship. Public policy dictates forgetting the past and making the best of the present situation - in the public interest and FOR THE GOOD OF THE WHOLE.

The adversary can be expected to use all the tools and tricks at his disposal - all under the banner of "public policy" or "public interest," and within the theme of the "good of the whole."

This can, and must, be refuted with absolute proof of exactly the opposite: (1) A system whose provable roots and entire operation is founded on lies, deceit and intolerable fraud cannot be functioning in the public interest for the good of the whole; (2) Institutionalized wagger policies are destructive to the very fabric of society. Any system proven to be founded on a wagger policy is, by definition, against public interest and in direct violation of the Necessary Law of Nature and Nations, and is VOID from its inception; (3) A system which compels, or attempts to compel, a reasonable person to go against his conscience and continue participating in what he now knows to be evil is contrary to God's laws and commandments. Such a system cannot be functioning in the public interest for the good of the whole; (4) Pursuant to God's commandments and the Law of Nature and Nations, one has the right and duty to recede from such a system upon discovery of its true nature.

These in my opinion, are the issues. We now have the facts and law marshalled to support these issues in the eyes of Man, and in the eyes of God.

No one man can change history, but he can choose not to be a part of something evil. He can choose to act on TRUTH AS IDENTIFIED TO HIM BY HIS CONSCIENCE; and he can stand on the strength of his convictions. A FIRE INSIDE BURNS HOTTER THAN A FIRE OUTSIDE!

## Part II: A Satisfactory Judgment

Clearly, as long as we are within the realm and jurisdiction of the beast - we have no rights - and our status at law is that of a serf/beneficiary. We can remain on board this city/ship of Babylon and enjoy her riches, luxuries and benefits; however, it is impossible to do so without partaking of her sins and receiving her plagues, the price for the benefits.

We were piped on board this alluring city/ship via its benefits offered; And were bound to its power and juris-

diction by a multitude of adhesion contracts. Fortunately, law is available for us to absolve ourselves from these obligations and recede from the power and jurisdiction of the Beast. Its principles, and our lawful authority to invoke it, are summarized as follows:

Many Authors do farther rank under the Title of the Law of Nations, several Customs mutually observ'd by tacit consent, amongst most people pretending to Civility; ...

However, these Reasons not being general, cannot constitute any Law of an universal Obligation. Especially since to any Restraints which depend on tacit Agreement, it seems reasonable that either Party should have the Liberty of absolving themselves from them; BY MAKING EXPRESS DECLARATION THAT THEY WILL BE HOLDEN TO THEM NO LONGER, AND THAT THEY DO NOT EXPECT OR REQUIRE THE OBSERVANCE OF THEM FROM OTHERS. [Puffendorf, "The Law of Nature and Nations"]

When it has been said that each man is bound as soon as he accedes, and that the consent may be either express or tacit, it has been asked, "What is a tacit consent or compact?" Does it not appear plain that those who refuse their assent can not be bound? If one is at liberty to accede or not, is he not also at liberty to recede on the discovery of some intolerable fraud and abuse that has been palm'd upon him by the rest of the high contracting parties? ... Those who want a full answer to them may consult Mr. Locke's discourses on government, M. de Vattel's Law of Nature and Nations, and their own consciences ... [James Otis, "The Rights of the British Colonies," Boston - 1764.]

The applicable principle being:

The Universal Society of the human race being an institution of nature of man, all men, in whatsoever station they are placed, are obliged to cultivate and discharge its duties. [Vattel, "The Law of Nations or Principles of the Law of Nature.]

This principle is embodied in our First Organic Law, the Declaration of Independence. The Constitution was established to create a government bound to the principles of the Law of Nature and Nations and, pursuant to that law, we have

the right to recede from any contract, custom, or usage, founded on tacit consent; upon our discovery of intolerable fraud and abuse foisted upon us by high contracting parties.

For those whose spiritual training causes them to believe as I do:

Amongst the Opinions then it highly concerns all Men to settle and to embrace, the chief are those which relate to Almighty God, as the Great Creator and Governor of the Universe. [Puffendorf, "The law of Nature and Nations"]

And, my God has commanded me to get out of Babylon:

Come out of her lest you partake of her sins and receive her plaques. [Rev. 18:4]

Congressman Charles A. Lindbergh, Sr., not only understood these laws and their principles, but also understood the true nature of the Federal Reserve Act:

This Act establishes the most gigantic trust on earth. ... THE PEOPLE MUST MAKE A DECLARATION OF INDEPENDENCE TO RELIEVE THEMSELVES FROM THE MONETARY POWER.

The solution and your authority for its implementation is the same as it has always been. It is beautiful in its simplicity!

### Part III: Defending Your Judgment

Although the solution may be beautiful in its simplicity, the implementation of this solution can be filled with obstacles, traps, and snares for the unknowledgable. First, your Declaration of Independence should not contain statements pertaining to your: (1) own personal moral code (2) your political views (3) your economic views or (4) your own philosophical beliefs. It must be based solely on Law - the Laws of God, Nature and Conscience as they relate to provable fact.

Second, after a proper Declaration has been executed the other parties to the various contracts being rescinded, and powers revoked, must be duly notified.

Third, you must sincerely implement steps which most likely will require drastic changes in your previous life-style. A first and foremost step is to extricate yourself from any banking connections to the Federal Reserve System.

Alternatives available are dealing in substance for substance, and/or privately operated barter associations.

Fourth, upon proper execution of the above, you are, at that moment - a freeborn sovereign at law, just as our forefathers were in 1776. Recall, however, that King George refused to abide by the law and initiated force in an attempt to reestablish the authority and jurisdiction he had lost; and thereby tested the convictions of the colonists to the limit. You can be sure your convictions will be tested in various ways; and that you will have to defend your judgment. There will be attempts to cunningly coerce you back on board the city/ship - threats of incarceration, threats of property confiscation, and numerous offers of "lets make a deal". Any "deal" constitutes an express agreement that not only places you squarely back on board the city/ship, but negates your Declaration of Independence in its entirety. The agents and Pled Pipers of Babylon are fully aware of this fact and will use all of the deceit, and coercion at their disposal to cause you to invalidate that Declaration. Never forget in whose behalf they are acting as agents.

Therefore, in order to defend your judgment it is absolutely essential that you possess a knowledge of the law as it pertains to your situation, the rules and strategy of the game, and an understanding of the battlefield upon which you will be called in defense of your judgment. This sounds like a big order, and it is; however, there are excellent educational programs and assistance available for those who are willing to help themselves. It is axiomatic that: only you can declare your independence, and only you can assert your God given rights as a free sovereign - others can only assist you in their defense.

Knowledge is indeed, power; And from knowledge comes assurance and self-confidence. Knowledge opens up many exciting and rewarding avenues for a free sovereign to defend his judgment. For example:

As A Defendant:

1. A defendant is entitled to know the nature of the charges brought against him, and he is entitled to discovery (Bill of Particulars, Interrogatories, Depositions, etc.) in order to expose their true nature and present a proper and adequate defense.

Knowing the true nature beforehand, a free sovereign can be justly rewarded. If the prosecution truthfully discloses, which is highly unlikely, his defense becomes easy. In any case:

a. A defendant charged with a law cognizable only under the jurisdiction of the beast, and who has properly executed a Declaration of Independence from his realm, can prove lack of lawful jurisdiction over his person by introducing these documents as evidence - by way of an "offer of proof." It now becomes the burden of proof of the prosecutor to show that (1) either his Declaration is invalid, or (2) produce a contract (or evidence thereof) whereby the defendant had voluntarily re-joined the city/ship subsequent to the Declaration.

b. By way of an "offer of proof," a defendant can prove lack of lawful subject matter jurisdiction for reasons that a VOID contract, consitituting a WAGER POLICY, is the sole basis of the charges. The contract being VOID pursuant to the Necessary and Positive Law of the Law of Nations.

During the winter and spring of 1984 the author and his colleague, Dr. George Hill, developed a tape/slide program, with supporting text and exhibits, entitled "You, the Law and the Great Deception." This program was created for educational purposes on general law and proof of the Federal Reserve Wager Policy in violation of the Necessary and Positive Law of the Law of Nations; it was an abbreviated version of the materials presented in this work relating to these subjects, and was primarily based on source materials from the Universal Life University Comman Law program and the researach efforts of Lee Brobst and Associates on the Tontine and Admiralty/Maritime connection. We were subsequently delighted to learn that these materials are now being used by many people as teaching aids.

Since development of this program the author and Dr. Hill have been subpoenaed into several federal and state courts to make the presentation in support of offers of proof. For the most part the presentation has been well received by the courts and the issues are admittedly valid and meritorious, however, as of yet, these issues are unresolved. One of the purposes of this book is the research and documentation of more detailed and complete evidence in support of these issues.

*Lee  
Brobst*

- c. By way of an "offer of proof", a defendant can prove lack of lawful jurisdiction for reasons that: No act of congress has been lawful since April 8, 1913 (seventeenth amendment); "Specialized Federal Common Law" is the ruling law of the case - and this "law" was created by federal judges never lawfully appointed. These judges were never vested in the judicial power of the United States and, therefore, the ruling law of the case, allegedly binding on all courts because of the subject matter and nature of the cause, is null and void.
- d. In other words, having marshalled his facts, a defendant is in a position to prove numerous instances of intolerable fraud in support of his right to recede from an unlawfully imposed jurisdiction - pursuant to the laws of God, Nature and Nations and conscience.

2. A defendant who truly believes, and lives accordingly, can offer proof that his spiritual training and belief in his Supreme Being absolutely forbids his voluntary participation in Babylon; for he is commanded by his Supreme Being to get out of Babylon and, therefore, has no choice in the matter; that his spiritual training and belief forbids his voluntary participation in Wager Policies which, by definition, are violative of God's law - being hurtful and destructive to Society in general, the defendant, and defendant's neighbors who he is commanded to "love as thyself," with all his heart and soul.

For reasons aforesaid, defendant stands ready with an "offer of proof" that: (1) he has totally and lawfully receded from the jurisdiction of Babylon; (2) It is his firm conviction and belief that imposition of this jurisdiction of Babylon is precisely what is being attempted by the prosecution in the instant case; (3) And by virtue of the above, defendant is being persecuted for his spiritual beliefs.

Offense - The Best Defense:

Going on the offense can be truly exciting and rewarding for the free sovereign. However, the reader should be aware that a more thorough knowledge of the law is required from an offensive posture than from a defensive posture. This is true because the burden of proof always rests with the plaintiff; and, being the plaintiff, you had better be ready

to prove, beyond a shadow of a doubt, each and every allegation. This requires, not only well documented facts and law, but a mastery of courtroom strategy and procedure in order to prosecute your case to victory. Fortunately, there are excellent educational programs, and assistance available for those who are willing to help themselves.

Keeping in mind that a properly executed Declaration of Independence reinstates the National Constitution and direct access to the Common Law - for that particular ex serf and now, free sovereign - the possibilities of offensive action against agents of Babylon, who refuse to comply with the law are limited only by the number of the agents' transgressions subsequent to being duly noticed of the individual's newly acquired status at Law. By this Declaration, the phantoms and ghosts of the past (common law principles as embodied in case decisions prior to 1913 and, most noticeably, prior to 1933), are relevant and applicable to this new free sovereign. In this regard, the biggest problem will be finding, or creating, a court of competent jurisdiction to hear common law issues and complaints (recall that admiralty courts have no jurisdiction to hear common law issues).

It is imperative that each natural born individual establish his status at law on any issue to be brought before a court of competent jurisdiction prior to filing an action. This principle was addressed by the Supreme court as applied to constitutional challenges to congressional acts thusly:

Plaintiff, alleging that he is the owner of a treasury bill, an obligation of the United States that is bought and sold on the open market, seeks a judgment (1) declaring the powers of the Federal Open Market Committee an unwarranted delegation of powers of the Federal Open Market Committee an unwarranted delegation of power by Congress; and (2) restraining its members from purchasing and selling obligations of the United States on the open market. The defendants filed a motion to dismiss the complaint, or in the alternative, for summary judgment on the grounds that: (1) PLAINTIFF LACKS STANDING TO MAINTAIN THE ACTION; (2) the court lacks jurisdiction over the subject matter; (3) the action is an unconsented suit against the United States; (4) the complaint fails to state a claim upon which relief can be granted; (5) the venue is improper; and (6) the court lacks jurisdiction over the persons of the defendants. The motion is supported by an affidavit of the assistant secretary of the Federal Open Market Committee. Briefs were filed by the

respective parties, and a hearing was held on defendants' motion. ...

It is defendants' first contention that plaintiff has no standing to challenge the constitutionality of the powers of the Federal Open Market Committee, in that he has no legally cognizable right to a given monetary policy to be followed by the federal government nor to any policy of buying and selling securities.

In *Massachusetts v. Mellon*, 1923, 262 U.S. 447, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078, the Court recognized that it had no power per se to review and annul acts of Congress on the ground that they are unconstitutional; that the question of constitutionality may be considered only "when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act". To invoke the judicial power to challenge acts and powers on the ground that a statute is unconstitutional the "party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally". In that case it was held that a taxpayer had NO STANDING to challenge the constitutionality of a statute which would result in increased taxes, the Court saying in part:

"If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect of the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained."

In *Tennessee Electric Power Co. v. T.V.A.*, 1939, 306 U.S. 118, 59 S.Ct. 366, 83 L.Ed. 543, the Court held that private power companies had NO STANDING TO CHALLENGE the constitutionality of the Tennessee Valley Authority, saying in part:

"The appellants invoke the doctrine that one threatened with direct and special injury by the

act of an agent of the government which, but for statutory authority for its performance, would be a violation of his legal rights, may challenge the validity of the statute in a suit against the agent. The principle is without application unless the right invaded is a legal right, - one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." (306 U.S. at 137-138m 59 S.Ct. at 369.) ...

Pauling v. McElroy, 1960, 107 U.S. App. D.C. 372, 278 F.2d 252, holding that the appellants, 39 individuals, who sought to enjoin the donation of nuclear weapons which might produce radiation and alleging that the Atomic Energy Act of 1954 was unconstitutional, had NO STANDING TO SUE since they did not "allege a specific threatened injury to themselves, apart from others \* \* \*"

The rule followed in the foregoing cases is applicable here. Plaintiff has alleged no direct injury and claims no specific damages. There is no contention that his treasury bill will not be paid at maturity. He claims only that its interim speculative value is affected and that he is unable to speculate in government obligations because the criteria for purchase and sale are secret and unknown to him. He has not alleged any injury to himself apart from that suffered by all other owners of government obligations. Paraphrasing *Massachusetts v. Mellon*, supra, if plaintiff could champion and litigate such a case, every other owner of government obligations affected by the operations of the Open Market Committee could do the same.

Plaintiff's brief is devoted largely to quotations from hearings before a Congressional Committee relative to the functions and operations of the Federal Open Market Committee. Plaintiff's complaint and views on the monetary policy of the United States may properly be presented to Congress. It is not the function of the judiciary to hear and determine claims of this nature. In other words, PLAINTIFF HAS NOT PRESENTED A JUSTICIABLE CASE OR CONTROVERSY.

In *Raichle v. Federal Reserve Bank*, supra, the court pointed out that defendant had "made a persuasive argument that upon the facts alleged

THE QUESTIONS RAISED ARE POLITICAL, AND NOT JUSTICIABLE", but stated that it had not discussed this argument "because without it the defendant's position seems to be unassailable". (34 F.2d at 916). The same is true here.

HAVING CONCLUDED THAT PLAINTIFF HAS NO STANDING TO SUE, IT IS UNNECESSARY TO DISCUSS AND RULE UPON THE OTHER QUESTIONS presented by defendants' motion to dismiss, many of which appear to be well taken. [Bryan v. Federal Open Market Committee, 235 F. Supp. 877 (1964)]

Thus, in the situations presented in the foregoing cases the courts consistently ruled in favor of public policy for the good of the whole. The individuals involved had no legally cognizable right to challenge public policy as declared in congressional acts because of lack of standing or status under constitutional law.

This sovereign, however, is now in a position to go into the admiralty courts themselves and force the issue of the lack of in personam and subject matter jurisdiction; demand exoneration from limited liability for payment of debt, via the private, public National credit system; prove the existence of wager policies and void the contract(s); and sue for refunds of all premiums and interest paid - pursuant to the General Maritime Law of Nations.

A free sovereign also has the status at law to file land patents granting allodial title to his land and make it stick in court.

Never forget, in all these exciting possibilities we are dealing in the law of contracts (or proof of the lack thereof). Accordingly, certain steps must be taken in advance of filing an offensive action in Court to properly set the stage for victory. The details of these requisite steps vary on an individual basis and are beyond the scope and space of this work, as are the details of law, procedure, and strategy requisite to the prosecution of a winning case.

#### Part IV: Where To Go For Help

##### 1. The Universal Life University Common Law Program:

The Universal Life University (ULU) Common Law Program is a systems approach (the first and only, to my knowledge) to the various aspects and fields of law, and their interrelationships. (See Exhibit 9 "Program Outline") It takes the student from history and philosophy of these fields through their development to present day procedure and practice, formulating the strategy necessary to effectively use this knowledge. It is a correspondence

program consisting of twenty-four courses which, upon satisfactory completion, leads to a Doctor of Common Law degree and permanent membership in the Universal Bar Association. The Universal Bar Association is a common law association for continuing education of its members, and mutual assistance and fellowship of members.

Students and graduates of this program are continually proving that they know who they are, where they come from, and they know where they are going. They, in other words, have acquired the power of knowledge that gives the self-confidence necessary to be a winner.

Information on this program can be obtained by writing for a free brochure:

Staff, Universal Life University  
School of Law  
P.O. Box 1796  
Modesto, CA 95393-1796

2. There are many individuals and organizations specializing in research and implementation of various aspects and subject matter presented herein. Research is continuing at an ever accelerating pace and situations have a tendency to change rapidly as new knowledge and expertise become available to more effectively combat the Beast. For that reason, the author has elected to forego listing specific references that too soon may become obsolete. Rather, the author suggests that anyone desiring further assistance or information on any particular subject presented herein should write to the Staff, Universal Life University, School of Law. The Staff will either provide direct assistance or recommend specialists to contact for assistance.

## REFLECTIONS OF THE AUTHOR

I entered this battle little realizing the true nature of the adversary, thinking that I could prevail by reason alone. Slowly I began to realize this to be a spiritual battle with powers and principalities, the Beast and City of Babylon whose merchandise includes the bodies and souls of Men.

I now see reason as something not always big enough for my encounters and will never again try fighting this battle with reason alone; Reason serves as the vehicle, my God-given power, for preparing myself for truth and virtue; Truth will not flow into one who refuses to prepare for truth; And virtue is never found in a place where evil lurks.

The purpose of virtue and truth is for spiritual growth; And as my reasoning and spiritual powers grow and coalesce, the whole shall become greater than the sum of the parts. I can then hope to achieve new dimensions of consciousness and knowledge, preparing myself to truly LIVE THE LAW as intended by my Supreme Being.

I believe this to be the path for all people who want to be their own governors and be at peace with themselves. Peace means Loyalty to self. Any peace, whether between two persons or between two nations, simply reflects loyalty to one's self. Loyalty to one's self means Living Honestly - never a gap between thought, speech and act.

How can there be loyalty to self if the individual tries to make peace with someone whom his conscience tells him is an enemy? By going against conscience he creates internal conflict, declares war on himself, and will never know peace. Peace exists only within the soul of each individual. And so the individual, ever loyal to self, accepts the demands of an expanding spirit. He learns to recognize his conscience which identifies truth but never compels him to act on truth. He then makes the choice, spiritual growth and peace with self, or stifled spirit and internal conflict. He exercises a power that belongs to Man alone, a selective-power for good or a power for self-destruction. A power of reason and choice given to him for the purpose of spiritual growth.

The nature of the adversary requires him to do all in his power to misdirect this reasoning power of the individual away from the spirit - to pipe the individual into spiritual bankruptcy, on-board the City/Ship Babylon. The adversary works very hard at suspending the reasoning of the individual. **WHOEVER PROMOTES A SUSPENSION OF MAN'S REASONING LOOKS FOR WAYS OF STIFLING MAN'S SPIRIT!**

Verl K. Speer

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- (15) *Drummond Carriage Co. v. Mills*, 74 N.W. 970; 51 Am. Jur. Sect. 21; *Shaw v. Webb*, 131 Tenn. 173, 177 (1914).

## GLOSSARY

**ABSTRACT OF TITLE** - a condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all conveyances, of whatever kind or nature, which in any manner affect said land, together with a statement of all liens, charges, or liabilities to which it is in any way material for purchaser to be apprised.

**ADMIRALTY** - A court which has a very extensive jurisdiction of maritime causes, civil and criminal. In American law, a tribunal exercising jurisdiction over all maritime contracts, torts, injuries, or offenses. Admiralty courts also have jurisdiction over cases of prize, i.e., war and the spoils of war.

**AFFIRMATION** - In practice. A solemn religious asserveration in the nature of an oath. Nature meaning "the essence or essential quality of a thing", an affirmation is, in truth and fact, an oath.

**ALLODIAL** - Free, not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal.

**ALLODIUM** - An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. In the U.S. the title to land is essentially allodial, and every tenant in fee simple has an absolute and unqualified dominion over it; yet in technical language his estate is said to be in fee, a word which implies a feudal relationship, although such relation has ceased to exist in any form, while in several states the lands have been declared to be allodial. In England there was no allodial tenure, for all land is held mediately or immediately of the king; but the words "tenancy in fee simple" are there properly used to express the most absolute dominion which a man can have over his property.

**ASSETS** - The word has come to signify everything which can be made available for the payment of debts. The word is always used when speaking of the means which a party has, as compared with his liabilities or debts. All the stock in trade, cash, and all available property belonging to a merchant or company.

The property in the hands of an heir, executor, administrator, or trustee, which is legally or equitable chargeable with the obligations which heir, executor, administrator, or other trustee is, as such, required to discharge.

**ASSET CURRENCY** - A currency that is backed by all who are legally or equitable chargeable with its obligations; and with everything which can be made available for the payment of debt.

**ASSUMPSIT** - To assume, to undertake. In contracts. An undertaking, either express or implied, to perform a parol agreement.

**ATTACHMENT** - Taking into custody of the law the person or property of one already before the court or of one whom it is sought to bring before it.  
A writ for the accomplishment of this purpose. This is a more common sense of the word.

**BENEFICIAL INTEREST** - Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. A cestui que trust has the beneficial interest in a trust estate while the trustee has the legal estate.

**BENEFICIARY** - A term suggested by Judge Story as a substitute for cestui que trust and adopted to some extent.

**BOTTOMRY** - In Maritime Law. A contract in the nature of a mortgage, by which the owner of a ship, or the master, as his agent, borrows money for the use of the ship, and for a specified voyage, or for a definite period, pledges the ship (or the keel or bottom of the ship) as a security for its repayment, with maritime or extraordinary interest on account of the marine risks to be borne by the lender; it being stipulated that if the ship be lost in the course of the specified voyage, or during the limited time, by any of the perils enumerated in the contract, the lender shall also lose his money.

**CASE** - Case, or more fully, action upon the case, or trespass on the case, includes in its widest sense assumpsit and trover, and distinguishes a class of actions in which the writ is framed according to the special circumstances of the case.

A form of action which lies to recover damages for injuries for which the more ancient forms of action will not lie.

**CERTIORARI** - In Practice. A writ issued by a superior court to an inferior court of record, requiring the latter to send in to the former some proceeding therein pending, or the records and proceedings in some cause already terminated in cases where the procedure is not according to the course of the common law.

**CESTUI QUE TRUST** - He for whose benefit another person is seised (has the right of immediate possession according to the nature of the estate) of lands or tenements, or is possessed of personal property.

He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another.

He may be said to be the equitable owner but has no legal title to the estate, as he is merely a tenant at will if he occupies the estate; and, therefore, may be removed from possession in an action of ejectment by his own trustee.

**CESTUI QUE USE** - He for whose benefit is held by another person. He who has a right to take the profits of lands of which another has the legal title and possession, together with the duty of defending the same and to direct the making estates thereof.

**CHANCELLOR** - An officer appointed to preside over a court of chancery.

**CHATTEL** - Every species of property, moveable or immovable, which is less than freehold.

**CHOSE IN ACTION** - A right to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action.

**CIVIL ACTION** - In Practice. In The Civil Law. A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil.

At Common Law. An action which has for its object the recovery of private or civil rights or compensation for their infraction.

**CIVIL LAW** - This term is generally used to designate the Roman jurisprudence, or Roman Civil Law. In its most extensive sense, the term Roman law comprises all those legal rules and principles which were in force among the Romans, without reference to the time when they were adopted. But in a more restricted sense we understand it

by the law compiled under the auspices of the Emperor Justinian.

This system of law is the antithesis of the Common law in that its fundamental premise is that sovereignty resides in a ruler, or ruling body; whereas the fundamental premise of the Common law is that sovereignty resides in the individual, and in the people as a whole.

The influence upon (and, indeed, the usurpation of) principles, practices and usages of the Common Law System in the United States by Roman Civil law jurisprudence cannot be denied by the impartial inquirer.

**COLLATERAL** - That which is by the side, and not the direct line; That which is additional to or beyond a thing.

**COLOR OF TITLE** - The appearance, semblance, or "simulacrum" of title. Also termed "apparent title." Any fact extraneous to the act or mere will of the claimant, which has the appearance on its face, of supporting his claim to a present title to land, but which, for some defect, in reality falls short of it. Any instrument having a grantor and a grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives color of title to the lands described.

Such an instrument purports to be a conveyance of title, and because it does not, for some reason, have that effect, it passes only color or the semblance of title.

**COMMON LAW** - The Law of Conscience as applied to governing the affairs and actions of the individual, and the affairs between individuals. Its essence is the golden rule. Its science is the science of living honestly with one's self and with other individuals. It is the coalescing of the two great powers bestowed upon Man by his Creator - the power to reason and the power of the spirit, working together in harmony with the laws of God and Nature. It is loyalty-to-self, loyalty-to-truth, as revealed to each individual through his conscience.

Being the Law of Conscience, it cannot be written - it can only be written about. All that can be written about the Common Law is how it manifests itself through the individual who is loyal to self - loyal to his conscience.

It is frequently said that Common Law is custom and usage from immemorial antiquity, that Common Law is the judgments and decrees of courts recognizing these usages and customs, that Common Law is the statutory and case law background of England and the American Colonies before the American Revolution - and now, our courts tell us that there is such a thing as "specialized federal common

law," or just "federal common law." None of these are Common Law in its true sense and meaning. At best, they are manifestations of individual decisions and actions in particular situations, pursuant to conscience. At worst, they are manifestations of decisions and actions in situations wherein reason, spirit, and conscience of the individuals involved were stifled or suspended. To say otherwise is to lose or change the important thing - the true meaning of Common Law.

**COMMON LAW SYSTEM** - A system devised by man for the sole purposes of creating a forum in which the Common Law, the Law of Conscience, can flourish and function in the resolution of controversies, and in the determination and application of justice. The heart of this Common Law System is a Common Law Jury of twelve randomly selected from the community in order to maximize the probability that, by each individual juror being loyal to his own conscience, the jury will represent the conscience of the community as a whole. Any system, or any aspect of a system, that suspends or interferes with the reasoning power and conscience of a juror is not a common law system, or any part thereof.

**CONSTRUCTIVE** - That which amounts in view of the law to an act, although the act itself is not really performed.

**CONTRACT OF ADHESION** - A contract in which one predominate unilateral will dictates its law to an undetermined multitude rather than to an individual - as in all employment contracts of big industry, transportation contracts of big railroad companies, and all those contracts which, as the Romans said, resemble a law much more than a meeting of the minds.

**CORPOREAL HEREDITAMENTS** - Substantial, permanent objects which may be inherited. The term land will include all such.

**CORPOREAL PROPERTY** - In the common law, the term to signify property in possession. It differs from incorporeal property, which consists of choses in action and easements, as a right of way, and the like.

**COURT OF CHANCERY** - In American Law. A court of general equity jurisdiction. The terms equity and chancery, court of equity and court of chancery, are constantly used as synonymous in the United States.

**CREDIT** - The ability to borrow, on the opinion conceived by the lender that he will be repaid. A debt due in consequence of a contract of hire or borrowing of money.

**CREDITOR** - He who has a right to require the fulfillment of an obligation or contract.

**DE FACTO** - Actually, in fact, in deed. A term used to denote a thing actually done.

**DE JURE** - Rightfully, of right, lawfully, by legal title. Contrasted with de facto. Of right: distinguished from de gratia (by favor). By law: distinguished from de equitable (by equity).

**DEBT** - In Contracts. A sum of money due by certain and express agreement. All that is due a man under any form of obligation or promise.

**DEED** - A sealed instrument containing a contract or covenant, delivered by the party to be bound thereby, and accepted by the party to whom the covenant or contract runs. A writing under seal by which lands, tenements, or hereditaments are conveyed for an estate not less than freehold.

**DELICT** - In Civil Law. The act by which one person, by fraud or malignity, causes some damage or tort to some other. In its most enlarged sense, this term includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally, without evil intention. But more commonly by delicts are understood those small offenses which are punished by a small fine or imprisonment. Private delicts are those which are directly injurious to a private individual. Public delicts are those which affect the whole community in their hurtful consequences. Quasi-delicts are the acts of a person who, without malignity, but by an inexcusable imprudence, causes an injury to another.

**DETINUE** - In Practice. A form of action which lies for the recovery, in specie, of personal chattels from one who acquired possession of them lawfully but retains it without right, together with damages for the detention.

**DUTY** - A human action which is exactly conformable to the laws which require us to obey them.

It differs from legal obligation, because a duty cannot always be enforced by the law; it is our duty, for example, to be temperate in eating, but we are under no legal obligation to do so; we ought to love our neighbors, but no law obliges us to love them.

**DUTIES** - In its most enlarged sense, this word is nearly equivalent to taxes, embracing all impositions or charges levied on persons or things; in its more restrained sense, it is often used as equivalent to customs, or imposts.

**EQUITY** - In the broad sense in which this term is sometimes used, it signifies natural justice.

In a more limited application, it denotes equal justice between contending parties. This is its moral signification, in reference to the rights of parties having conflicting claims; but applied to courts and their jurisdiction and proceedings, it has a more restrained and limited signification.

One division of courts is into courts of law and courts of equity. And equity, in this relation and application, is a branch of remedial justice by and through which relief is afforded to suitors in the courts and jurisdiction of equity.

The avowed principle upon which the jurisdiction was first exercised was the administration of justice according to honesty, equity, and conscience. This jurisdiction is exercised by a chancellor in accordance with principles, rules and usages of the civil law - and the "conscience" referred to is the conscience of the king, ruler, or ruling body.

This jurisdiction is extensive and has many diverse component parts. In the context of this work it is worthy of note that it exists where, from a relation of trust and confidence, the parties do not stand on equal ground in their dealings with each other: as, the relations of attorney and client, principal and agent, executor and administrator, trustee and cestui que trust.

**ESOTERIC** - Meant for or understood by only a chosen few.

**ESTATE** - The degree, quantity, nature and extent of interest which a person has in real property, and it varies from absolute ownership down to naked possession.

**EX CONTRACTU** - From contract. A division of actions is made in the common and civil law into those arising ex contractu (from contract) and ex delicto (from wrong or tort).

**EXCISE** - An inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale.

**FEE SIMPLE** - An estate of inheritance.

**FEE SIMPLE ABSOLUTE** - An estate limited absolutely to a man and his heirs and assigns forever without limitation or condition.

Although allodial in nature, a fee simple absolute title may include lands subject to feudal duties or burdens.

**FEUDUM** - A feud, fief, or fee. A right of using and enjoying forever the lands of another, which the lord grants on condition that the tenent shall render fealty, military duty, and other services. The early English writers generally prefer the form feodum; but the meaning is the same.

**FIAT** - A decree, order. A sanction.

**FIDUCIARY** - Fiduciary may be defined in trust, in confidence.

**FRANCHISE** - A special privilege conferred by government on individuals, and which does not belong to citizens of the country generally by common right.

**FRAUD** - The unlawful appropriation of another's property, with knowledge, by design, and with criminal intent. Fraud is sometimes used as a term synonymous with covin, collusion, and deceit, but improperly so. Covin is a secret contrivance between two or more persons to defraud and prejudice another of his rights. Collusion is an agreement between two or more persons to defraud another under the forms of law, or to accomplish an illegal purpose. Deceit is a fraudulent contrivance by words or acts to deceive a third person, who, relying thereupon, without carelessness or neglect of his own, sustains damage thereby.

**FREEHOLD** - An estate for life or in fee. A freehold estate is a right of title to land. An estate to be a freehold must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) Indeterminate duration, for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.

GOODS - In Contracts. The term applies to inanimate objects and does not include animals or chattels real, as a lease for years of house or land, which chattels does include. In a more limited sense, goods is used for articles of merchandise.

GOODS AND CHATTELS - In Contracts. a term which includes not only personal property in possession, but choses in action and chattels real, as a lease for years of house or land, or emblements (the profits of the land sown).

HYPOTHECATION - A right which a creditor has over a thing belonging to another, and which consists in a power to cause it to be sold, in order to be paid his claim out of the proceeds. Hypothecation, properly so called, is that which is contracted without delivery of the thing hypothecated.

Conventional hypothecations are those which arise by agreement of the parties.

General hypothecations are those by which the debtor hypothecates to his creditor all his estate which he has or may have.

Legal hypothecations are those which arise without any contract therefor between the parties, express or implied.

Tacit hypothecations are such as the law gives in certain cases, without the consent of the parties, to secure the creditor. They are a species of legal hypothecation. Thus, the public treasury has a lien over the property of public debtors. Code 8.15.1. The landlord has a lien on the goods in the house leased, for the payment of his rent, etc..

IMPOSTS - Taxes, duties or impositions. A duty or imported goods or merchandise.

The Constitution of the United States gives congress power "to lay and collect taxes, duties, excises, and imposts", and prohibits the states from laying "any imposts or duties on exports or imposts" without the consent of congress. U.S. Const. Art. I, Sect. 8, n.1; Art. I, Sect. 10, n.2.

IN PERSONAM - A remedy where the proceedings are against the person, in contradistinction to those which are against specific things, or in rem.

IN REM - A technical term used to designate proceedings or actions instituted against the thing, in contradistinc-

tion to personal actions, which are said to be in personam.

**INDEMNITY** - That which is given to a person to prevent his suffering damages.

**INSURABLE INTEREST** - Such an interest in a subject of insurance as will entitle the person possessing it to obtain insurance. It is essential to the contract of insurance, as distinguished from a wager policy, that the assured should have a legally recognizable interest in the insured subject, the pecuniary value of which may be appreciated and computed or valued. It is also essential to the contract that the insurer incur a risk in the underwriting venture.

**INSURANCE** - A contract whereby, for an agreed premium, one party undertakes to indemnify the other against loss on a specified subject by specified perils.

**INTEREST** - In Contracts. The right of property which a man has in a thing. (See Insurable Interest).  
On Debts. The compensation which is paid by the borrower of money to the lender for its use, and generally, by a debtor to his creditor in recompense for his detention of the debt.

**JURISDICTION** - The authority by which judicial officers take cognizance of and decide causes. Power to hear and determine a cause. It includes power to enforce the execution of what is decreed.

**JURISPRUDENCE** - The science of the law. By science is understood that connection of truths which is founded on principles either evident in themselves or capable of demonstration - a collection of truths of the same kind, arranged in methodical order.  
In another sense it is the habit of judging the same questions in the same manner, and by this course of judgments forming precedents.

**LAND** - The word "land", in its legal signification, includes all soil or earth generally. But in our law it includes everything attached to it or constructed upon it, as houses, bridges, buildings of every description; and a grant of a parcel of land carries with it not only the things upon the surface of the land, but also everything above and below the surface, from the center of the earth to the highest heavens, the maxim being "the landowner owns the sky". So that a pond of water passes with the

land as land covered by water, and the mines and minerals below the surface pass with a grant of land. Land is classified as corporeal (visible/tangible), immovable, tenements (things held), hereditaments (things capable of being inherited), real property, real estate.

**LAND GRANT** - A donation of public lands to a subordinate government, a corporation, or an individual; as from the United States to a state, or to a railroad company to aid in the construction of its roads.

**LAND PATENT** - An instrument conveying a grant of public land; also the land so conveyed. A patent of the United States is the conveyance by which the Nation passes its title to the public domain and is the highest evidence of derivative title known to law; it is conclusive as against the government, and all persons claiming under junior patents or titles, until set aside or annulled by some competent tribunal. When delivered to and accepted by the grantee, it passes the full legal title to the land, and carries with it the presumption that all the prerequisites of law have been complied with. To conform strictly to the letter of the law, the patent must be signed in the name of the President, either by himself or his duly appointed secretary, sealed with the seal of the General Land Office, and countersigned by the Recorder. Until all of these have been done, the United States has not executed a patent for a grant of lands. Each and every one of the integral parts of the execution is essential to the perfection of the patent. They are of equal importance under the law, and one cannot be dispensed with more than another. Neither is directory, but all mandatory, and neither the signing nor the sealing, nor the countersigning can be omitted any more than the signing or the sealing, or the acknowledgment by a grantor or the attestation by witnesses, when by statute such forms are prescribed for the due execution of deeds by private parties for the conveyance of lands. Where, however, the patent is regular upon its face, then a presumption arises that it is valid and that it passes title.

**LIABILITY** - Responsibility, the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed.

**MARITIME CAUSE** - A cause from a maritime contract, whether made at sea or on land.

**MARITIME CONTRACT** - One which relates to the business of navigation upon the sea, or to business appertaining to commerce or navigation to which courts of admiralty have jurisdiction concurrent with courts of common law.

**MARITIME LOAN** - A contract or agreement by which one, who is the lender, lends to another, who is the borrower, a certain sum of money, upon condition that if the thing upon which the loan has been made should be lost by any peril of the sea, or inevitable accident, the lender shall not be repaid unless what remains shall be equal to the sum borrowed; and if the thing arrive in safety, or in case it shall not have been injured but by its own defects or the fault of the master or mariners, the borrower shall be bound to return the sum borrowed, together with a certain sum agreed upon as the price of the hazard incurred. It is essential to this contract that the lender have a risk, otherwise the contract is void by reason of being a wager.

**MUNIMENTS** - The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which he is enabled to defend the title of his estate.

**NATURE** - From the Latin nasci, be born. The essential quality of a thing, essence.

**OATH** - An outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God.

**OBLIGATION** - A duty. A tie which binds us to pay or do something agreeably to the laws and customs of the country in which the obligation is made. Express or conventional obligations are those which the obligor binds himself in express terms to perform the obligation is one which arises by operation of law.

**OLERON, LAWS OF** - A maritime code promulgated by Eleanor, duchess of Guienne, Mother of Richard I, at the isle of Oleron, - whence their name. They were modified and enacted in England under Richard I, and again promulgated under Henry III and Edward III, and are constantly quoted in proceedings before the admiralty courts, as are also the Rhodian laws.

**PAROL** - A term used to distinguish contracts which are made verbally, or in writing not under seal, which are called

parol contracts, from those which are under seal, which bear the name of deeds or specialties.

**PARTITION** - The division which is made between several persons of lands, tenements, or hereditaments, or of goods and chattels, which belong to them as co-heirs or co-proprietors.

**PENDENTE LITE** - Pending the continuance of an action while litigation continues.

An administrator is appointed pendente lite, when a will is contested.

**PERJURY** - In Criminal Law. A wilful false oath by one who, being lawfully required to depose the truth in any judicial proceeding, swears absolutely in a matter material to the point in question, whether he be believed or not. The wilful giving, under oath in a judicial proceeding or course of justice, of false testimony material to the issue or point of inquiry.

The oath must be taken and the falsehood asserted with deliberation and a consciousness of the nature of the statement made.

The party must be lawfully sworn and the oath must be false.

**PETITORY ACTION** - That which demands or petitions: that which has the quality of a prayer or petition; a right to demand. A petitory suit or action is understood to be one in which the mere title to property is to be enforced by means of a demand, petition, or other legal proceeding, as distinguished from a suit where only the right of possession and not the mere right of property is in controversy.

**PILOTAGE** - A compensation given to a pilot for conducting a vessel in or out of port. Pilotage is a lien on the ship, when the contract has been made by the master or quasi-master of the ship or some other person lawfully authorized to make it.

**PLENARY** - Full, complete. In the courts of admiralty, and in the English ecclesiastical courts, causes or suits in respect of the different course of proceedings in each are termed plenary or summary. Plenary, of full and formal, suits are those in which the proceedings must be full and formal; The term summary is applied to those causes where the proceedings are more succinct and less formal.

**POSSESSORY ACTION** - A possessory action is a real action in which the plaintiff, called the demandant, seeks to recover the possession of land, tenements and hereditaments.

**PRIMA FACIA** - At first view or appearance of the business; as, the holder of a bill of exchange, endorsed in blank, is prima facia its owner.  
Prima facia evidence of fact is in law sufficient to establish the fact, unless rebutted.

**PROPERTY** - That which is peculiar or proper to any person; that which belongs exclusively to one. In the strict sense, an aggregate of rights which are guaranteed and protected by the government. The term is said to extend to every species of valuable right and interest. More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The highest right a man can have to anything; being used to refer to that right which one has to lands or tenements, goods or chattels, which no way depends on another mans courtesy.

**QUASI-CONTRACT** - In Civil Law. The lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties.  
In contracts, it is the consent of the contracting parties which produces the obligation; in quasi-contracts no consent is required, and the obligation arises from the law or natural equity, or the facts of the case. These acts are called quasi-contracts because, without being contracts, they bind the parties as contracts do.

**QUASI-DELICT** - In Civil Law. The act by which a person, without malice, but by fault, negligence or imprudence lot legally excusable, causes injury to another.  
A quasi-delict may be public or private: the neglect of the affairs of a community, when it is our duty to attend to them, may be a crime.

**REAL PROPERTY** - Something which may be held by tenure, or will pass to the heir of the possessor at his death, instead of his executor, including lands, tenements and hereditaments, whether the latter be corporeal or incorporeal.  
In respect to property, real and personal correspond very nearly with immovables and movables of the civil law.

**REPLEVEN** - In Practice. A form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully. In most of the states of the United States the action extends to all cases of illegal taking, and in some of the states it may be brought wherever a person wishes to recover specific goods to which he alleges title. The object of the action is to recover possession; and it will not lie where the property has been restored.

**RESCISSION OF CONTRACTS** - The abrogation or annulling of contracts. The equity of rescission and cancellation of agreements, securities, deeds, and other instruments arises when a transaction is vitiated by illegality or fraud, or by reason of its having been carried on in ignorance or mistake of facts material to its operation.

**RESPONDENTIA** - In Maritime Law. A loan of money, on maritime interest, on goods laden on board of a ship, upon the condition that if the goods be wholly lost in the course of the voyage, by any of the perils enumerated in the contract, the lender shall lose his money; if not, that the borrower shall pay him the sum borrowed, with the interest agreed. It differs from bottomry in that bottomry is a loan on the ship; respondentia is a loan upon the goods.

**REVOCAION** - The recall of a power or authority conferred, or the vacating of an instrument previously made.

**THE REVOCAION OF POWERS CONFERRED UPON AGENTS.** Naked powers, not coupled with an interest, may always be revoked by the express act of the constituent, whenever he so elects, he being bound by all the acts of the agent until notice of the revocation. Until notice of revocation, the agent is entitled to compensation and indemnity for all acts done and all liabilities incurred. The act of revocation is merely provisional and contingent until notice is communicated to the agent.

**RHODIAN LAWS** - A code of maritime laws adopted by the people of Rhodes, who had by their commerce and naval victories obtained the sovereignty of the sea, about nine hundred years before the Christian era. There is reason to suppose this code has not been transmitted to posterity, at least not in perfect state. A collection of marine constitutions, under the denomination of Rhodian Laws may be seen in Vinnius; but they bear evident marks of a spurious origin.

**RIGHT** - A well-founded claim. The ideas of claim and that the claim must be well-founded always constitute the idea of right. If these claims inhere in the very nature of man himself, they are called inherent, inalienable rights.

Right and obligation are correlative ideas.

The idea of a well-founded claim becomes in law a claim founded in or established by the law; so that it is said that a right in law is an acknowledged claim.

Thus, at law, no right is brought into existence until a well-founded claim is made in a proper and timely manner.

**SEISEN** - The completion of the feudal investiture by which the tenant was admitted into the feud and performed the rites of homage and fealty.

**SERVICE** - In Contracts. The being employed to serve another. In Feudal Law. That duty which the tenant owed to his lord by reason of his fee or estate. In Civil Law - a servitude.

**SERVITUDE** - In Civil Law. The subjection of one person to another person, or of a person to a thing, or of a thing to a person, or of a thing to a thing. A personal servitude is the subjection of one person to another: If it consists in the right of property which a person exercises over another, it is slavery. When the subjection of one person to another is not slavery, it consists simply in the right of requiring of another what he is bound to do or not to do: this right arises from all kinds of contracts or quasi-contracts.

**SOVEREIGN** - The chief ruler with supreme power. A king or other ruler with limited power.

Strictly speaking, in our republican forms of government the absolute sovereignty of the nation is in the people of the nation; and the residuary sovereignty of each state, not granted to any of its public functionaries (trustees), is in the people of the state.

**SUIT** - In its most extended sense, the word suit includes not only a civil action, but also a criminal prosecution as, indictment, information, and a conviction by a magistrate. Hammond, Nisi p. 270. Suit is applied to proceedings in chancery as well as law, 1 Smith, Chanc. Dec. 26, 27, and is, therefore, more general than action, which is almost exclusively applied to matters of law.

**TENURE** - The mode by which a man holds an estate in lands. Such a holding as is coupled with some service, which the holder is bound to perform as long as he continues to hold.

The thing held is called a tenement; the occupant, a tenant; and the manner of his holding constitutes the tenure.

An estate held by allodial title necessarily excludes the idea of any tenure, since the occupant holding allodial title owes no services or allegiance to any superior as the condition of his occupation.

**TITLE** - The means whereby the owner of lands comes into legal possession of his property. The union of all the elements which constitute ownership. The right to or ownership in lands; also the evidence of such ownership. A **PERFECT TITLE** requires the union of possession and the right to the thing possessed.

**TONDINE** - In French Law. The name of a partnership composed of creditors or recipients of perpetual or life rents or annuities, formed on the condition that the rents of those who may die shall accrue to the survivors, either in whole or in part.

This kind of partnership took its name from Tonti, an Italian, who first conceived the idea and put it in practice.

**TORRENS TITLE SYSTEM** - A system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct issuance of a certificate of title. With exceptions, this certificate is conclusive as to the applicant's estate in land. System of registration of land title as distinguished from registration or recording of "evidence" of such title.

**TORT** - A private or civil wrong or injury. A wrong independent of contract.

The commission or omission of an act by one without right whereby another received some injury, directly or indirectly, in person, property, or reputation.

**TRESPASS** - Any misfeasance or act of one man whereby another is injuriously treated or damaged.

Any unlawful act committed with violence, actual or implied, to the person, property, or rights of another.

Any unauthorized entry upon the realty of another to the damage thereof.

**TROVER** - In Practice. A form of action which lies to recover damages against one who has, without right, converted to his own use goods or personal chattels in which the plaintiff has a general or special property. It differs from detinue and replevin in this, that it is brought for damages and not for the specific articles; and from trespass in this, that the injury is not necessarily a forcible one.

**TRUST** - A right of property, real or personal, held by one party for the benefit of another.

The party holding is called the trustee, and the party for whose benefit the right is held is called the cestui que trust, or, using a better term, the beneficiary.

Sometimes the equitable title of the beneficiary, sometimes the obligation of the trustee, and, again, the right held, is called the trust.

But the right of the beneficiary is in the trust; the obligation of the trustee results from the trust; and **THE RIGHT HELD IS THE SUBJECT-MATTER OF THE TRUST**. Neither of them is the trust itself. All together they constitute the trust.

**VESTED INTEREST** - An estate is vested in interest when there is a present fixed right of future enjoyment.

**WAGER** - A bet, a contract by which two parties or more agree that a certain sum of money, or other thing, shall be paid or delivered to one of them on the happening or not happening of an uncertain event.

In general, it seems that a wager is legal and may be enforced in a court of law, if it be not contrary to public policy, or immoral, or if it does not in some other respect tend to the detriment of the public, or if it do not affect the interest, feelings, or character of a third person.

In the case even of a legal wager, the authority of a stakeholder, like that of an arbitrator, may be rescinded by either party before the event happens. And if, after his authority has been countermanded and the stake has been demanded, he refuses to deliver it, trover or assumpsit for money had and received is maintainable.

And where the wager is in its nature illegal, the stake may be recovered, even after the event, on demand made before it has been paid over.

**WAGER POLICY** - One made when the insured has no insurable interest; or the insurer has nothing at risk, i.e., nothing to lose in the event of the occurrence insured against. A wager policy has nothing in common with in-

surance but the name and form. Such contracts being against the policy of the law, are void.

Following is an interview with Dr. George Hill and the editor of Duck Club News Digest, Box 99148, Stockton, California. This article was subsequently copied and distributed in large quantities by the Populist Party and, thereby, initiated a correspondence series between Congressman Ron Paul/Joe Cobb, Assistant to the Congressman for Banking Legislation, and George Hill/Verl Speer. This correspondence is presented herein as Exhibits 2 through 8:

## REVIEW OF SITUATION

### Interview with George Hill of Universal Life University School of Law

DCND: Mr. Hill, please explain for our readers what can happen after the statute of limitations is reached on Oct. 29th, 1984.

HILL: The opportunity will be wide open for the Federal Reserve System to issue the new currency they have had ready for some time, and by changing the wording on the new FRN's to: "This note is legal tender for all Public Debts," they can declare the Federal debt uncollectible and foreclose on the property of all US citizens.

DCND: How could that be possible?

HILL: Well, of course they must get Congress to amend Section 26 of the Monetary Control Act of 1977, but since the US government cannot pay "our" debt of approximately 1 1/2 trillion dollars to the FED and since the majority of the members of Congress are already bought and paid for by the "present real government of the US - the FED" it can be expected that they will do the bidding of their master.

DCND: I don't understand just what they can gain by foreclosing on the people's property. Can they send US marshalls to our homes and kick us out?

HILL: Yes, of course. But they are not likely to do that. They will let us continue to live on the properties until they have a special need for them - such as a time when they bring in foreigners whom they want to set up in various businesses or in to the better homes. And of course since the FED now owns our properties outright they can start charging us rent, even though the properties were paid for when or since purchased.

DCND: You state that we have until Oct. 29 to prevent such a foreclosure from happening. Just what CAN we do?

HILL: Well the FED itself was voted into law in 1913 by our Congress, but that act was actually void because it was illegal, unconstitutional and a violation of the law of Nations upon which this Nation was founded, as per the wording of the Declaration of Independence. What we as citizens must do is to bring to the attention of Congress the fact

that the FED is nothing but a "wagering organization" which is unlawful according to every test that can be given to it and that we the people DEMAND it to be repealed and the so called public debt to the FED was illegally passed and therefore must be cancelled.

DCND: How can we force a Congress that is already bought and paid for to take this action?

HILL: First, as many Patriots as can handle it should sue the FED in the Federal District Courts. We must deluge these Courts with such cases to call attention to Congress that we mean business. These cases must be filed as soon as possible by Patriots all over the U.S. Then further, we must present a Constructive Notice to all members of Congress that the Federal Reserve System is operating a wagering policy with the citizens of the U.S. as silent (and unwilling) third parties in a contract between the Congress and a private organization, to wit - the Fed. and that the FED operates unlawfully against the Law of Nations and thus must be voted out of existence by the Congress.

DCND: How are the Patriots to know what to do? Can we supply them with the information needed to file proper suits, and can we get written explanation to send to the Congress?

HILL: We are presently involved in court cases working towards this and plan to have ready a complete packet of information, case materials, briefs, etc., so these will be immediately ready to be used by people all over the country. You can print in your paper that these can be ordered now and will be ready for mailing by August 15, 1984.

DCND: Can the average pro se Patriot use this material in Court, or must he/she be a lawyer or attorney?

HILL: Well, a pro se with some previous court experience can do it provided he studies the Maritime and Admiralty laws thoroughly. The person who is going to volunteer to help us get this done must of course obtain a complete set of Maritime and Admiralty materials as soon as possible because this is the only jurisdiction involved. These materials have been prepared by the Universal Life University School of Law (ULUSofL). They are available at seminars the staff of ULUSofL are presently putting on around the Nation, or are available from your newspaper, DCND. ...

DCND: Will the staff of ULUSofL be available to assist the Patriots in this?

HILL: Yes. If they need more information they should write ULUSofL, attention George Hill, or Verl Speer, Box 1796, Modesto, CA 95353, ...

DCND: Can't Patriots contact attorneys in their own area to assist them in their suits?

HILL: In our contacts around the country so far we have found that neither attorneys nor judges understand much about Admiralty and Maritime laws. If you don't mind looking for a needle in a haystack you might find one, but we are right now on the last lap of our life as a free nation, and we have no time to fiddle around. If we don't succeed in moving Congress to act before the 7 year statute of limitations on the Monetary Control Bill of 1977 expires on Oct. 29, 1984 we can all kiss goodbye to our property that we still call our own but will lose otherwise.

DCND: I can't believe that all this can be true. Further, I don't believe one out of 100 reading this will believe it. We have been told many times that we are just spreading gloom and doom, and we believe ~~are~~ readers will say we are still doing it. *our*

HILL: If they want to sit on their hands and refuse to help us who are working our south ends off trying to save our country, they will wake up after it's too late to do anything. We ask all Patriots to get the Maritime and Admiralty materials made available to them at low cost and study up on it NOW. ....

DCND: Thank you Mr. Hill.

RON PAUL

22ND DISTRICT TEXAS

COMMITTEE ON BANKING,  
FINANCE, AND URBAN AFFAIRS

RAISING REPUBLICAN  
SUBCOMMITTEE ON CONSUMER AFFAIRS AND  
COMMAGE

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**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

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DALLAS, TEXAS 75401  
(714) 696-0653

136 OYSTER GIBEL DRIVE  
LAKE JACKSON, TEXAS 77566  
(409) 297-2961

WEEKLY RECORDED MESSAGE:  
HOUSTON: (713) 968-0840  
LAKE JACKSON: (409) 297-0302

August 30, 1984

George Hill or  
Verl Speer  
Postal Box 1796  
Modesto, CA 95353

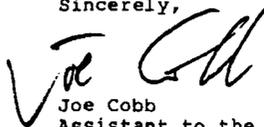
Gentlemen:

Enclosed is a copy of Public Law 95-147 and a copy of Section 16 of the Federal Reserve Act. A lady from Texas has sent us a copy of a handbill distributed by the Populist Party in which you are cited as making several frightening and untrue claims about P.L. 95-147 and Sec. 16 of the Federal Reserve Act.

Why are you spreading this disinformation -- urging patriots to waste their time and money on lawsuits in response to this phoney issue when there are so many real battles to fight?

By using up the time, money and energies of patriots on false issues the Federal Reserve then doesn't have to fight on our real issues -- and risk losing! Which side are you on?

Sincerely,



Joe Cobb  
Assistant to the Congressman  
for Banking Legislation

cc: Populist Party

Honorable Ron Paul  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515  
ATTN: Joe Cobb, Assistant to the  
Congressman for Banking Legislation

September 21, 1984

RE: Your letter of August 30, 1984, to George Hill or Verl Speer.

Gentlemen;

In response to your letter referenced above, it appears that we either have a fundamental disagreement on the "real issues" or (hopefully) a misunderstanding due to lack of communication.

Admittedly, because of the esoteric nature of the subject matter involved with the Federal Reserve Act, and acts amendatory thereto, the ramifications of all acts of Congress relating to the private Federal Reserve Bank Corporation are an enigma. For this very reason, speculation and guesswork was, of necessity, involved in the handbill article distributed by the Populist Party; however, the article did accomplish its purpose of alerting readers to a most serious problem by speculation and discussion of one tip of a many faceted iceberg.

We have devoted years of research and study into cause and effect relationships of the Federal Reserve Act, and acts amendatory thereto (the cause), and the erosion and destruction of basic, substantive, rights of American citizens (the effects) in every courtroom in this land. We have researched and documented fact and law which leads to certain broad and inescapable conclusions. These are:

1. The, private, Federal Reserve Bank Corporation acquired a HYPOTHECATION in the Public Pledge of Revenue Assurance on the Public Debt, by way of the Federal Reserve Act in 1913, in consideration of a pretended assurance of the Public Debt underwritten.

Said assurance is non-existent for the simple, and proveable, fact that the Federal Reserve Bank Corporation has nothing at risk in the Public Debt underwritten -- making the contract, by definition, a WAGER POLICY.

2. a. Subsequent to the passage of House Joint Resolution 192, June 5, 1933, The Federal Reserve Bank Corporation monetized the Public Debt, thereby converting our currency to nearly 100% BANK CREDIT created by the Federal Reserve and its subsidiary commercial banks.

b. These joint actions by Congress and the Federal Reserve made it impossible for an American citizen to pay a debt at law, via the currency of the United States; and imposed perpetual TRANSFER of debt obligations in BANK CREDIT in lieu of PAYMENT (see Stanek v. White, 172 Minn. 390, 215 N.W. 784 for the legal distinction between "transfer" and "payment" of debt).

c. These joint actions of Congress and the Federal Reserve, from a jurisprudence viewpoint, brought Admiralty/Maritime jurisdiction inland (from its ancient and proper boundaries of the ebb and flow of the tide), within the body of the counties of the several states (see The Bank of Columbia v. Okely, 4 Fed. 559 for insight into proper jurisdiction over matters involving bank credit).

d. The above-referenced actions of Congress and the Federal Reserve also converted all land titles in this country from ALLodial, as established by the Declaration of Independence, and the War for Independence itself, to FEUDAL fee simple titles.

e. The above-referenced actions of Congress and the Federal Reserve effectuated a total HYPOTHECATION of property, people and resources to the creator

of our Public Credit (Bank Credit), The Federal Reserve Bank Corporation.

It has been stated many times by officials in the Department of the Treasury and Federal Reserve "Our money" (i.e., Bank Credit created by the Federal Reserve) "is backed by the goods, services and productivity of the American people." If this be so, are we not then, in fact, hypothecated to the private Federal Reserve Bank Corporation????

3. a. In 1938, the Supreme Court ruled that: "There is no federal general common law," (Erie R.R. v. Tompkins, 304 U.S. 64, 1938) thereby overturning the Swift v. Tyson decision of 1842 (16 Peters 1, 1842) on this subject.

Regarding the Erie decision, Henry J. Friendly, Judge, United States Court of Appeals, subsequently wrote"

Since most cases relating to federal matters were in the federal courts and involved 'general law', the familiar rule of Swift v. Tyson usually gave federal judges all the freedom they required in pre-Erie days and made it unnecessary for them to consider a more Esoteric source of power . . . By focusing attention on the nature of the right being enforced, Erie caused the principle of a specialized federal common law, binding in all courts because of its source, to develop within a quarter century into a powerful unifying force.

'The federal giant;' . . . professor Gilmore has written, is just beginning to stir with his long-delayed entrance we are, it may be, at last catching sight of the principle character." (Friendly in Praise of Erie - and the New Federal Common Law, 1964, 39 N.Y.U.L. Rev. 383).

b. In our opinion, the questions to be placed in the public eye from this series of facts are these:

1. What is the Esoteric source of power being exercised by federal (and state) judges since the Erie decision in 1938?
2. What caused the Erie court to overturn the Swift v. Tyson decision and rule that there was no longer a general federal common law?
3. What is the nature of the right being enforced that is binding in all courts because of its source (including state courts)?
4. What is the principle character of the federal giant referred to by Judge Friendly?

c. Our research has disclosed the following:

1. Proper jurisdiction of any action or claim, particularly as to contracts, is determined by the subject matter and nature of the cause.
2. That BANK CREDIT, notes issued by the United States, evidences of debt borrowed into circulation by the United States, limited liability actions, HYPOTHECATIONS, and maritime contracts are exclusively within Admiralty/Maritime jurisdiction -- WHETHER SO IDENTIFIED OR NOT!
3. That Admiralty/Maritime courts have no jurisdiction to hear common law issues.
4. There are no RIGHTS in Admiralty/Maritime, only PRIVILEGES.
5. That, today, we have no access to substantive common law rights and issues in any court in this land, and extensive research indicates that there has been no access to this law since 1938.

d. From these and other facts, fully supported by documentation, our inescapable conclusions are:

1. Because of the subject matter and nature of the cause (i.e., Bank Credit as our currency, perpetual limited liability for payment of debt; and hypothecation of all our goods, services and productivity to the Federal Reserve Bank Corporation) every administrative proceeding and every court proceeding in this land is, by definition, exercising Admiralty/Maritime jurisdiction, and its Roman Civil Law procedures, upon all citizens of this Republic -- thereby barring access to their Common Law BIRTHRIGHT.

2. It is general public knowledge that said perpetual debt/credit system is the creation of a private corporation known as the Federal Reserve Bank Corporation. We have in our possession documented testimony of Federal Reserve Representatives, publications of Federal Reserve Banks, and publications of The Federal Reserve Board that the private corporation of the Federal Reserve has NO RISK in this venture for profit by way of a maritime contract with the United States government.

3. Pursuant to the general maritime law of nations (The Necessary and Positive Law of the Law of Nations), a maritime contract in which the lender, or insurance underwriter, has no risk is, by definition, a WAGERING POLICY.

4. Pursuant to the general maritime law of nations, a wagering policy is ABSOLUTELY FORBIDDEN, and a contract by way of gaming or wagering is VOID FROM ITS INCEPTION.

4. PUBLIC LAW 95-147: Our specific research and analysis of this Public Law, in connection with acts related thereto, compels us to make the following allegations in the NAME OF GOD AND COUNTRY, AMEN:

FIRST, The Federal Reserve Bank Corporation is a private, domestic, corporation, engaged in the business of Banking, created and organized under and pursuant to the Act of the Congress of the United States of 38 Stat. 251, ch.6, passed December 23, 1913, and entitled "Federal Reserve Act," and Acts amendatory thereof; whose certificate of incorporation, filed on or about December 23, 1913, declares its name to be "The Federal Reserve Bank Corporation," its place of business at Constitutional Avenue and 21st Street, Washington, D.C., 20551, and its object is to perform as the Central Bank of the United States.

SECOND, In violation of law and in abuse of its powers, and in exercise of Privileges and Franchises not conferred upon it, The Federal Reserve Bank Corporation on or about October 28, 1977, together with other subscribers thereto, entered into and became a party to and carried out the following agreement, namely:

a. Public Law 95-147, Stat. 1227, passed October 28, 1977, and entitled "To Authorize the Secretary of the Treasury to invest Public moneys, and for other purposes," and the Acts amendatory thereof; and incorporates

b. Public Law 171, ch. 339, 59 Stat. 512, passed July 31, 1945, and entitled "To provide for the participation of the United States in the International Monetary Fund and the International Bank for Reconstruction and Development," and the Acts amendatory thereof; and

c. Public Law 87, ch.6, 48 Stat. 337, passed January 30, 1934, and entitled "To protect the currency system of the United States, to provide for the better use of the monetary gold stock of the United States, and for other purposes," and the Acts amendatory thereof.

FOURTH, Pursuant to the agreement, the capital stock of the Federal Reserve Bank Corporation was transferred to "International Monetary Fund" and in lieu thereof Special Drawing Rights certificates were issued by the Board of Governors.

FIFTH, Pursuant to such agreement such of the parties thereto as were not then depositories of Public money became depositories of Public money and fiscal agents of the United States in the collection of taxes and other Obligations owed the United States, and transferring said Obligations to the Secretary of the United States Treasury at Accelerated Premiums in consideration of floating money-market interest rates. The greater part in number and value of said rates is regulated by said Board of Governors of the International Monetary Fund.

SIXTH, By means of the agreement, and the powers thereby conferred upon the Board of Governors of aforesaid International Monetary Fund, the said Board monopolizes the Faculty for Exchange of Debt Obligations in the United States, and is enabled to control at will the Exchange for Moneys, that ebbs and flows in the United States.

SEVENTH, In exercise of the powers conferred by the agreement, the Board of Governors of the International Monetary Fund controls the action of the Federal Reserve Bank Corporation and the other said depositories of Public money, parties to the agreement, in the conduct of their business, and controls and regulates the Exchange for Moneys and Considerations of Debt Obligations in the United States.

EIGHTH, In the exercise of said powers, the Board of Governors of the International Monetary Fund has NARROWED the Commerce and Accelerated the Premiums in Consideration of Debt Obligations in the United States.

NINTH, The agreement constitutes a combination to do an Act injurious to trade and commerce, to which The Federal Reserve Bank Corporation is a party.

TENTH, The agreement constitutes a WAGER POLICY in favor of The Federal Reserve Bank Corporation and International Monetary Fund.

ELEVENTH, High contracting parties, instead of protecting Rights, have imposed UNNECESSARY restrictions for their own purposes, and for the purposes of those wielding the authority of The Federal Reserve Bank Corporation; and have interfered capriciously to subvert and deprive all American citizens of Rights which are nominally assured to the people; for it is:

"We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, 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." (Preamble of U.S. Constitution).

Mr. Paul, our motives, objectives and energies have been, and still are, directed to one purpose; i.e., separating cause from effect and addressing the cause. It has long been our opinion that we all have been fighting the effects too long, while the disease rages on and on, ad infinitum.

We renounce not only the despotic form, but the despotic principle as well, of being governed, as to our persons and property, by private, mercantile interests under the law and jurisdiction of Admiralty/Maritime. Our primary objectives are identical to those of our forefathers:

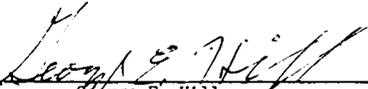
1. Eliminate Admiralty/Maritime jurisdiction from within the body of the counties and restrict said jurisdiction to the ebb and flow of the tide (its proper and ancient boundaries).
2. Restore the right to allodial land titles to each and every American citizen.
3. Restore access to our Common Law Birthright in the courts.

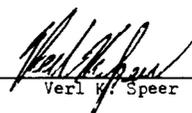
Our question resolves itself to this: Will victory on the "real issues" that you espouse accomplish items 1 through 3 above?

Please explain in sufficient detail such that we can determine which side you are on, without ambiguity.

We would be most happy to share the details and results of our education and research program on this subject -- please advise if you are interested in pursuing this matter, and, also, if you are interested in our assistance in so doing.

Sincerely

/s/   
George E. Hill

/s/   
Verl W. Speer

RON PAUL

22ND DISTRICT, TEXAS

COMMITTEE ON BANKING,  
FINANCE, AND URBAN AFFAIRS

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LAKE JACKSON: (409) 287-0202

Congress of the United States  
House of Representatives  
Washington, D.C. 20515

October 17, 1984

Messrs. George E. Hill  
Verl K. Speer  
Postal Box 1796  
Modesto, CA 95353

Dear Sirs:

We would have responded earlier to your letter of September 21, but you did not put your return address on the letter. It is impossible to help you when you fail to follow simple, commonsense practices like putting your address at the top of your correspondence.

Your 4-page, single-space letter displays an obvious and serious concern with the legal institutions of our Nation, but we are not impressed by your attempt to use big words as a substitute for legal reasoning. First, in the United States there is no legal distinction between "allodial" and "fee simple" land titles. Of course the definition of allodial is more pleasing to one who loves liberty -- since allodial is the opposite of feudal; but "fee simple absolute," which is how U.S. property titles are registered, is the same thing as "allodial." You are attempting to make a distinction without a difference. Look up the words in Black's Law Dictionary.

As for the heart of your argument, let me just quote it back to you to demonstrate how silly it is:

e. The above-referenced actions of Congress and the Federal Reserve effectuated a total HYPOTHECATION of property, people and resources to the creator of our Public Credit (Bank Credit), The Federal Reserve Bank Corporation.

It has been stated many times by officials in the Department of the Treasury and Federal Reserve "Our money" (i.e., Bank Credit created by the Federal Reserve) "is backed by the goods, services and productivity of the American people." If this be so, are we not then, in fact, hypothecated to the private Federal Reserve Bank Corporation????

- 1 -

Mssrs. Hill and Speer  
October 17, 1984

You ask: "If this be so?" The answer, simply, is: No, this be not so! You have invented a hypothetical hypothecation that is false. You have been fooled by some anonymous Treasury or Federal Reserve official, whom you decline to identify.

No one should fail to notice that your source for the bogus quotation is anonymous. If you want to make a legal argument, you need to cite either an Act of Congress or a Supreme Court Decision that has not been subsequently reversed by the Supreme Court. Your logic falls on its face because you rely on, as your major premise, a silly generalization -- in the form of an anonymous bogus quotation -- about the "backing" of money, and it is simply a false premise.

Federal Reserve notes are not "backed" by anything -- they are simply bills-of-credit issued by the U.S. Treasury under the authority of Juilliard v. Greenman, 110 U.S. 421 (1884). The Treasury does not spend them into circulation, however, as President Lincoln did; it lends them under authority of statute (12 U.S.C. 414) exclusively to the 12 privately owned Federal Reserve District Banks -- there are 12 separate private corporations, not just one as you seem to believe. The F.R. banks then pay interest to the Treasury on the bills of credit they have borrowed into circulation, but at a "below-market" rate, due to the special monopoly privileges, and exemption from all taxes, enacted in 1913.

It seems to me that one of the "real issues" that should concern all of us is the existence of this privileged monopoly over currency and banking in the United States. But instead of telling people about that real issue, you have invented some theory about P.L. 95-147 (October 28, 1977). This is the law that re-legalized gold clauses in private contracts, and you claim this law somehow gives the Federal Reserve the power to seize an individual's property -- but you never say how.

How? What is the connection between giving private citizens back the right to use gold clauses in their private contracts and your spectre of John Doe losing his home to a gang of thugs from the regional Federal Reserve Bank? Even if you believe "Our money is backed . . . by the American people," how do you conclude that John Doe will be the one who will pay, due to some foreclosure?

Your continual references to Admiralty/Maritime law are a useless spinning of wheels. Based on the obvious illogic of your arguments so far, I doubt that you even know what Admiralty/Maritime law is. You obviously don't like "wagering" (did you have a bad time in Las Vegas recently?), but there is nothing in P.L. 95-147 that has anything to do with Admiralty/Maritime law -- nor anything with a seven-year statute of limitation. Federal law prohibits any financial institution from participating in lotteries (12 U.S.C. 339), so where do you get this phoney issue from?

Mssrs. Hill and Speer  
October 17, 1984

The "real issues" that I referred to in my earlier letter are (1) the absence in this country of a legal-tender gold or silver coinage, we must persuade Congress to enact legislation to re-establish such a coinage, as in H.R. 4226 or H.R. 4332. (2) The monopoly privilege of the Federal Reserve over the paper currency must be eliminated, and ideally the Treasury should stop printing paper currency, since the Constitution prohibits "bills of credit," i.e. debt-money, paper "obligations of the United States" such as Lincoln greenbacks and Federal Reserve notes.

If you want to do some genuine legal research, instead of the wheel spinning you have done up to now, there are two excellent books you should read:

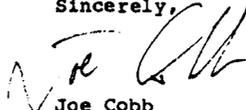
- Henry Mark Holzer, Government's Money Monopoly: its source and scope and how to fight it (New York: Books in Focus, 1982), \$19.95; and
- Edwin Vieira, Jr., Pieces of Eight: the monetary powers and disabilities of the United States Constitution, a study in Constitutional law (Greenwich: Devin-Adair, 1983), \$19.95;

Both of these authors would like to abolish the Federal Reserve instantly, and both are experts in the law -- not amateurs. Both books can be obtained from

Laissez Faire Books  
206 Mercer Street  
New York, NY 10012  
212/460-8222

The Holzer book is on sale for only \$12.95; add \$2.25 for shipping within the U.S.

Sincerely,



Joe Cobb  
Banking Committee

P.S. Will you reprint this letter in your little newspaper, or will you be too embarrassed?

George E. Hill & Verl K. Speer  
P.O. Box 1769  
Modesto, CA 95353-1769

November 5, 1984

Honorable Ron Paul  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515  
ATTN: Joe Cobb, Assistant to the  
Congressman for Banking Legislation

RE: Your letter of October 17, 1984, to George E. Hill/Verl K. Speer

We will attempt to confine our response to issues and concerns without introducing new "big words." We will also restrain ourselves from emotional outbursts and/or the casting of sticks and stones - we are not politicians.

1. You say: "First, in the United States there is no legal distinction between 'allodial' and 'fee simple' land titles. . . but 'fee simple absolute,' which is how U.S. property titles are registered, is the same thing as 'allodial.' You are attempting to make a distinction without a difference. Look up the words in Blacks Law Dictionary."

Even though there are better sources to draw from, let's do that:

ALLODIAL: "Free, not holden of any lord or superior; owned without obligation or vassalage or fealty."

ALLODIUM: "Land held absolutely in ones own right, and not of any lord or superior; land not subject to feudal duties or burdens. An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof."

FEE SIMPLE ABSOLUTE: "A fee simple absolute is an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition."

At first blush it would appear that you may have a point well taken, but before we concede, let's look a little farther and see if there are any legal distinctions between "an estate held in absolute ownership without recognizing any superior" and "an estate limited absolutely . . . without limitation or condition."

ESTATE: "The degree, quantity, nature, and extent of interest which a person has in real property is usually referred to as an estate, and it varies from absolute ownership down to naked possession."

Thus, pursuant to Black's Law Dictionary, a title of "fee simple absolute" can include any interest which one has in lands "from absolute ownership down to naked possession" (including an interest beholden to a lord or superior), while a purely "allodial" title is specifically limited to absolute ownership having no duty to a superior on account thereof. An allodial title is a fee simple absolute title, but a fee simple absolute title is not necessarily an allodial title. The distinction is more than academic in light of the fact that the Declaration of Independence and Revolutionary War that followed absolutely guaranteed citizens of these Union of States the right to allodial land titles.

Thus, our questions and issues relative to this subject remain unanswered, i.e., just what are the conditions and circumstances in which land "owners" stand with

regard to their property in this country? If you have any doubt we suggest that you exercise the right of an allodial title holder by refusing to pay property taxes. We guarantee that evidence of an overlord will quickly manifest itself. This fact raises the question of whether the county taxing agency is the overlord or are they merely acting as agents for the overlord? Who, or what, is in fact the overlord?

2. You say that: "Federal Reserve notes . . . are simply bills-of-credit issued by the U.S. Treasury under the authority of Juilliard v. Greenman, 110 U.S. 421 (1884)," and subsequently state that: "ideally the Treasury should stop printing paper currency, since the Constitution prohibits 'bills of credit.'"

We agree that the Constitution prohibits bills of credit, but categorically deny the thesis suggested that the Supreme Court has the authority and jurisdiction to grant the U.S. Treasury "authority" to print bills of credit in the face of this constitutional prohibition. Either the U.S. Treasury is violating the law on a regular basis or there is more to the problem than you have suggested.

3. You say: Federal Reserve notes are not 'backed' by anything," but admit they are "debt-money, paper 'obligations' of the United States."

Our question still remains relative to this subject matter, i.e., what are the nature of these obligations of the United States - and to whom are they owed? If they are not backed by anything, how can an obligation attach and what is its nature?

4. You say: "The Treasury does not spend them (FRN's) into circulation, however, as President Lincoln did; it lends them under authority of statute (12 U.S.C. 414) exclusively to the 12 privately owned Federal Reserve District Banks. . . The F.R. banks then pay interest to the Treasury on the bills of credit they have borrowed into circulation. . . ."

Please explain the fundamental differences between this scenario and the one depicted by the following experts and authorities on this subject matter:

"Federal Reserve Bank Credit resembles bank credit in general, but under the law it has limited and special use - as a source of member bank reserve funds. It is itself a form of money authorized for special purposes, convertible into other forms of money, convertible therefrom, and readily controllable as to amount.

Federal Reserve Bank Credit, therefore, as already stated, does not consist of funds that the reserve authorities 'get' somewhere in order to lend, but constitutes funds they are empowered to create."

The Federal Reserve System - its Purposes and Functions,  
published by the Federal Reserve Board in 1939.

Rep. Louis T. McFadden rose to become president of the First National Bank, Canton, Pa. Later he served as Chairman of the Committee on Banking and Currency and fought for fiscal integrity and a return to constitutional government. On June 10, 1932, in the midst of the Great Depression, he addressed the House of Representatives. His historic speech was included in his testimony later before the Rules Committee, in connection with his Herculean efforts to obtain a sweeping investigation of the entire Federal Reserve System, and has been widely reprinted since then. The complete text of his prophetic message appears on pages 12596-12603 of the Congressional Record. Following are selected excerpts from his address:

"Some people think that the Federal Reserve Banks are United States Government

Institutions. They are not government institutions. They are private credit monopolies which prey upon the people of the United States for the benefit of themselves and their foreign customers;

"They should not have foisted that kind of currency, namely an asset currency, on the United States Government. They should not have made the government liable on the private debts of individuals and corporations and, least of all on the private debts of foreigners.

"The Federal Reserve Notes, therefore, in form have some of the qualities of government paper money but, in substance are almost purely asset currency possessing a government guaranty against which contingency the government has made no provision whatsoever.

"Every effort has been made by the Federal Reserve Board to conceal its power but the truth is the Federal Reserve Board has usurped the Government of the United States.

"Mr. Chairman, when the Federal Reserve Act was passed the people of the United States did not perceive that a world system was being set up here that the United States was to be lowered to the position of a coolie country ... and was to supply financial power to an international superstate -- a superstate controlled by international bankers and international industrialists acting together to enslave the world for their own pleasure."

So Federal Reserve Notes are almost purely asset currency possessing a government guaranty (or this was the case in 1932). Once again referring to Black's Law Dictionary:

ASSETS: The word, . . . has come to signify everything which can be made available for the payment of debts, . . . and we always use this word when we speak of the means which a party has, as compared with his liabilities or debts." (Was McFadden saying that everything was hypothecated to the F.R.)"

The Federal Reserve Act of 1913 contained 27 pages. It was an unclear collection of rules on credit. A flexible currency was to be obtained by discounting sound and eligible commercial bank paper.

Amended and amended and the amendments amended -- in total or in part -- reaffirmed and changed again, the 1966 edition of the Act, mixed with laws on banking, contained 651 pages of fine print. Many provisions used code numbers to refer to amendments or laws, not otherwise identified or explained, and not available to us. We sincerely doubt that any congressman can know what it means or know whether a new amendment, asked for, is necessary. The entire maze seems irrational unless it was created for the purpose of obscurity, secrecy and deception.

A new edition came out in 1971. The Federal Reserve had become the depository and manager of many government agencies. Laws governing the handling of these agencies have been placed in appendage. The Federal Reserve Act had been reduced to 60 pages by omitting most amendments and replacing them with their numbers.

On page 30, section 12,3, there are only a few words to the provision "PURCHASE AND SALE OF OBLIGATIONS OF UNITED STATES, COUNTIES, ETC." Its amendments were given by numbers only. There were twenty-three of these. If the 1966 edition was an enigma, this one is a vacuum. Most of the book dealt with organizations, duties, penalties and the like -- of both the Federal Reserve banks and their member banks. Here and there are sentences giving the Board of Governors wide latitude, such as the use of their own discretion in forming policies.

Much of the Act was obsolete for it dealt with the discounting of commercial bank paper. (In 1964 Mr. Wright Patman said that the discounting of bank paper hadn't been done in years, that U.S. bonds were used.) The Federal Reserve, published by the American Banking Association, Columbia Press, 1974, says that the U.S. government debt is sufficient to serve as the basis of our monetary system! (And yet, the stated purpose of the original Act was to rediscount commercial

paper. Nothing was said about government debts and bonds. Just how and why were these brought in?)

Evidently government bonds are used in these manipulations -- but how? One may read and reread the Act and still not have the slightest idea. It simply does not tell. Fortunately there was in Congress a very dedicated man who for some 45 years pled the people's cause against the bankers. He was the Honorable Wright Patman, former Chairman of the House Committee on Banking and Currency. Mr. Patman's notes, written over that long period of time, are published as: A Primer on Money, August 5, 1964, and its supplement, Money Facts, September 21, 1964. Both are from the Committee on Banking and Currency, 88th Congress, 2nd Session, of and printed by the U.S. Government Printing Office, Washington, D.C.

Yet, even from these fine notes, it is difficult for the uninitiated to get a compact, definite picture of the Federal Reserve System and its operation. The notes are, however, invaluable in a further study. They serve as a veritable Rosetta Stone in deciphering, not only the Federal Reserve Act, but the Federal Reserve System. The Act, The Federal Reserve of the bankers and all associated literature now begin to take on a meaning, and furnish the missing links. The gist and conclusions of the writer's study are as follows:

"The Federal Reserve is a complete money making machine." It may create, or, if it chooses, extinguish billions of dollars in a few seconds. It controls the amount of bank credit and money we use. It has gained control and management of government financing. Through its manipulations, "The government has been reduced to the position of a perpetual borrower at interest from a private monopoly."

When, in long-term government borrowing, there is call for "new money," the Treasury prepares interest bearing bonds (promises to pay) and sends them to the open market. From there they are sent to the Federal Reserve Bank. The Federal Reserve has no money to purchase these bonds and needs none. The Federal Reserve Bank puts the bonds in its vault and credits the government's account with the amount of the bonds. This is done by simply writing a notation of the transaction in its ledger and entering the credit upon its computer. The very act of entering the credit creates the money!

Such statements have been verified many times. When Mariner Eccles, the Chairman of the Federal Reserve Board, was testifying before the House Banking and Currency Committee, September 30, 1941, Congressman Patman asked:

"Mr. Eccles, how did you get the money to buy these two billions of government bonds?"

Mr. Eccles: "We created it."

Mr. Patman: "Out of what?"

Mr. Eccles: "Out of the right to create credit money."

In the Primer, on page 38, Mr. Patman tells that upon learning that the Federal Reserve Banks hold a large amount of cash, he went to two of its regional banks. He asked to see their bonds. He was led into vaults and shown great piles of government bonds upon which the people are taxed for interest. Mr. Patman then asked to see their cash. The bank officials seemed confused. When Mr. Patman repeated the request, they showed him some ledgers and blank checks. Mr. Patman warns us to remember that:

"The cash, in truth, does not exist and never has existed. What we call 'cash reserves' are simply bookkeeping credits entered upon the ledgers of the Federal Reserve Banks and then passed along through the banking system."

If, as you say, the U.S. Treasury lends the privately owned Federal Reserve District Banks Federal Reserve Notes, which are simply bills-of-credit -- and if this accurately summarizes the Federal Reserve operation:

a. Why did the Federal Reserve Board, in 1939, publish the statement

that its bank credit constitutes funds they get from no one in order to lend, but constitutes funds they are empowered to create?

b. How did the Federal Reserve Board usurp the government of the United States within 19 years after enactment of the Federal Reserve Act -- as testified to by Congressman McFadden?

c. How did the Federal Reserve become a "complete money making machine" and how was the government "reduced to the position of a perpetual borrower at interest from a private monopoly," as testified to by Congressman Patman?

d. What is the true nature of these mutually acknowledged obligations of the United States, and to whom are they owed?

e. What steps has Congress taken to resolve the plight of the American people, as described by Congressmen McFadden and Patman? Please give cites.

We remind you of the fact that there was no absence in this country of legal-tender gold and silver coinage from 1913 to 1932 -- the period in which, according to Congressman McFadden, the Federal Reserve usurped the government of the United States. We also remind you of the fact that there was no absence of legal-tender gold coin in Babylon.

The evil, in our opinion, is the usuary and its compelled acceptance by legal-tender acts that has destroyed societies throughout recorded history.

There is no point in discussing the evil effects of legalized wager policies on a national scale (quite distinct from lotteries and/or gambling at Las Vegas), or whether Admiralty/Maritime law has, in fact, been imposed on the counties of this country (as it was over 200 years ago) until the nature of these mutually acknowledged obligations of the United States is properly and adequately identified.

This is true because it is well settled that the subject matter and nature of the right being enforced is the sole determining factor of proper jurisdiction and governing law.

Our offer to share the details and results of our education and research program on this subject still stands.

Sincerely

  
Verl K. Speer

P.S. Yes, we will reprint your letter, and this response, in our "little newspaper." Would you use your influence to get them reprinted in the major newspapers? (verbatim, or course)

  
George E. Hill

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November 21, 1984

Messrs. George E. Hill  
Verl K. Speer  
Postal Box 1796  
Modesto, CA 95353

Dear Sirs:

In referce to your letter of November 5, 1984, I am pleased to see that you have dropped the irrelevant ranting and raving about maritime and admiralty law, as well as all of the hysterics about Public Law 95-147 (October 28, 1977), which repealed the unjust deprivation of rights of U.S. citizens enacted in 1933 in respect to the use of gold-clauses in private contracts. (Your readers may notice that your "doomsday" -- seven years after P.L. 95-147 -- has passed without anything happening as a result; the Federal Reserve still does not have the power to seize anyone's property.)

Let me answer the five questions you pose at the end of your letter:

a. The Federal Reserve creates its own bank credit the same way that anybody else creates credit on behalf of another: if your neighbor wanted to obtain a bag of chicken feed from the local feed & seed store, but had no cash, you might step forward and guarantee his good character to the storekeeper. In the process of his obtaining the chicken feed, you have created credit in the amount of the value of the chicken feed.

- \* If the storekeeper agreed to receive his payment from you, and delivered the feed to him explicitly on those terms, then you would pay the storekeeper and your friend would owe to you the value of the chicken feed.
- \* You would be the creditor and he would be the debtor. You simply have created the credit out of thin air -- just like the Federal Reserve monopoly does. The word "credit" is the Latin verb "he trusts," and that is all it is: the creditor trusts the debtor ("debit" is the Latin verb "he owes").

- 1 -

- \* You should not make the simple mistake that so many "economists" make of confusing "money" with "bank credit." When they talk about "the M-1 money supply," that is what they are doing -- making a sum of all the Federal Reserve Notes (money) and all the bank credit in checking accounts, which are not money but are debts owed to each depositor who is trusting the bank to make any payment he may direct ("pay to the order of" it says on your checks). The fact that some people identify this bank credit as "checkbook money" no more makes it money than calling oil "black gold" makes it a metal.

b. The Federal Reserve was able to usurp the monetary powers of Congress within 19 years by playing upon the theory of central banking, which had become an economic dogma in the years following the Bank Charter Act of 1844 in England. The story is told in two books, The Rationale of Central Banking by Vera C. Smith (1936) and Free Banking in Britain by Lawrence H. White (1984).

- \* The Federal Reserve consolidated its power in 1933, after it first caused the stock market and banking collapse of 1929-32. It was hailed as the savior because it relaxed its torture, just as prisoners of war who are subject to brainwashing will come to praise their torturers.
- \* The House Joint Resolution 192 of June 5, 1933 (partially repealed by your nemesis, P.L. 95-147) made Federal Reserve Notes legal tender for the first time, as well as prohibiting any payments in gold or the measurement of values in weights of gold [48 Stat. 112].

c. If you want to understand the evolution of the Federal Reserve in the years since its creation, the book to read is America's Money Machine by Elgin Groseclose (1980). It was the Banking Act of 1935 that made the most sweeping grant of power to the Federal Reserve and its new administrators appointed by F.D.R.

d. The "true nature" of obligations of the United States is that the government must pay whatever it owes [Perry v. United States, 294 U.S. 330 (1935)], but it can choose how to pay. Federal Reserve Notes are bills-of-credit that earn interest for the U.S. Treasury but do not ever "mature" the way Treasury Bills, Notes, and Bonds do, which earn interest for the holders, paid by the Treasury.

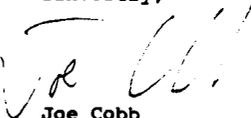
- \* All Federal Reserve Notes are obligations owed to the "holder in due course" by the U.S. Treasury. Exactly what the government promises to pay, now that there are no more Constitutional dollars of 371.25 grains fine silver in circulation, is a good question.

Mssrs. Hill and Speer  
November 21, 1984

- \* Because bills-of-credit pay no interest to the holders, they are a classic form of rip-off. This is one reason the Founding Fathers tried to prohibit them by striking the words "to emit bills of credit" out of the Powers of Congress as given in the Articles of Confederation when they drafted Article I, Section 8, of the Constitution (which is just a revision of the Articles of Confederation).
  - \* In the case of Quilliard v. Greenman, 110 U.S. 421 (1884), the Supreme Court simply ignored the arguments against bills-of-credit and dredged up an old English case, The Case of Mixed Monies (Sir John Davies Rep. 18, 80 Eng. Rep. 507, (Eng. tr. 1762) 48, 2 State Tr. 113 (1605)], to rationalize this unconstitutional action!
- e. Congress has done nothing in the past 70 years to resolve the plight of the American people, as described by Congressmen McFadden, Patman, and Ron Paul.
- \* The Supreme Court has done even less, most recently by refusing to hear the case of Solyom v. Maryland, docket number 82-2016, dismissed October 3, 1982. The arguments by Solyom prove that the Federal Reserve is unconstitutional, that the money of account of the United States is a silver dollar of 371.25 grains fine, and that paper money is prohibited.
  - \* You should read the legal arguments in this court case, which have been published in the book by Edwin Vieira, Jr., Pieces of Eight: the monetary powers and disabilities of the United States Constitution, a study in Constitutional law (Greenwich: Devin-Adair, 1983), \$19.95, which I mentioned in my previous letter.

Thank you for your kind offer to sell me your book, or papers, about the monetary laws, but since you seem not to have studied the work by Vieira, I will have to pass. Anyone who is seriously interested in the law of the United States as it affects money or contracts calling for the payment of money needs to read this study by Vieira -- or else I doubt they know what they are talking about.

Sincerely,



Joe Cobb  
Banking Committee

JMC/hs

Verl K. Speer  
George E. Hill  
Modesto, CA 95353

January 12, 1985

Honorable Ron Paul  
Congress of the United States  
House of Representatives  
Room 1234, Longworth House Office Bldg.  
Washington, D.C. 20515

RE: Your letter of November 21, 1984, to George E. Hill and Verl K. Speer.

Messrs. Ron Paul  
Joe Cobb

Dear Sirs:

This series of correspondence began with the mutually asked question, "Which side are you on?" We believe it is time to review the record to see if we can make a determination in that regard or, if not, to at least determine where you appear to be coming from.

We will attempt to do this while addressing specific statements and comments in your letter of November 21, 1984.

1. You say you were pleased to see that we have dropped the "irrelevant ranting and raving" about maritime and admiralty law, as well as the "hysterics" about Public Law 95-147.

First, let us assure you that we have not dropped our research and analysis of these subjects. If you had read our letter of November 5, 1984, and applied a modicum of understanding of the English language--you most likely would have perceived the truth of the matter regarding our reason for not pursuing these subjects in more detail, at that particular time. To put it bluntly, it was because we detected a touch of cognitive dissonance and/or paranoia in your prior response relating to these subjects. Such being the case, we felt that we should fall back to simple basics and see if there is common ground for communication.

As far as "ranting", "raving", "hysterics" and just plain being "silly"; these terms are highly charged with emotionalism, the use of which is very non-professional and unbecoming of the House Banking Committee or its representatives--particularly in view of the seriousness of the subject matter involved.

We leave it to our readers to determine, from the record, which correspondents have ranted and raved, bordering on hysterics at times.

2. In paragraph (a), your simple analogy of credit creation and the contractual relationships it may create between various parties is well taken--as far as it goes. Some additional observations:

a. If I step forward and "guarantee his (my neighbor's) good character", I become an insurance underwriter against the possibility of default on the part of my neighbor.

In the real world of business and banking, I could demand security (i.e., a pledge of assets commensurate to the value of my risk) and premiums from my neighbor in consideration of the guarantee (standard business custom and practice).

b. If the storekeeper agreed to receive his payment from me, I become the creditor to my friend, the debtor, and could demand security and interest from my friend in consideration of the credit advanced and received (standard business custom and practice).

It is common knowledge that standard banking policy is to require assets to be pledged as security for credit advanced to its debtors. Is it your position that the Federal Reserve, a private banking corporation, does not follow standard banking policy and practice in this regard? If so, you are in disagreement with Congressmen McFadden and Patman, both recognized as authorities on the Federal Reserve.

Also worth noting is the fact that a voluntary recipient of private bank credit places himself in the position of an hypothecator of goods and a stipulator in Admiralty (Bank of Columbia V. Okley, 4 Fed 559), thereby waiving his rights to due process of law and subjecting himself to the coercion of the contract; and that, as to contracts, the jurisdiction and governing law is determined by the subject matter and nature of the cause (DeLovio V. Boit, 2 Gall. 398).

3. We agree that the Federal Reserve usurped the monetary powers of Congress (and, thereby, the Government of the U.S., as McFadden stated) by playing upon the theory of central banking to gain its monopoly.

Our questions are: What are the rules for playing? What are its claims against the United States, and how were they acquired? Clearly, the practice of the theory was implemented in accordance with some system of law--and under some recognized jurisdiction at law--In what system of law is this theory practiced? In what jurisdiction are the claims settled and the contracts enforced? How do private individuals become subject to this jurisdiction?

A complete understanding of the evolution of the Federal Reserve and its modus operandi is not required to answer the above questions, and attempts to divert those interested in finding the answers to such irrelevant trivia as the mechanics of its operation makes one wonder just where you are coming from.

It is noted that you have consistently felt compelled to remind us Federal Reserve Notes earn interest for the U.S. Government (as if that answers our questions concerning the nature of the obligations involved, and their effects on our system of jurisprudence--specifically going to the jurisdictional questions). In your interview--with "The Spotlight", December 3, 1984, you make the statement "After they (Federal Reserve Notes)

are printed, the government lends them to the Federal Reserve. Federal Reserve Notes actually earn interest for the U.S. Government. The Federal Reserve paid the Treasury about \$15 billion in interest in 1983 on the Federal Reserve Notes it borrowed into circulation."

If this were true, Mr. Cobb, it doesn't pass the "so what" test. Clearly, loans by the U.S. government are not "obligations" of the U.S. government (the creditor). However this statement is not true, as pointed out by Dr. Martin A. Larsen, (a recognized authority and expert on the Federal Reserve) in his response to your Spotlight interview. We concur with Dr. Larsen's statement on this subject: "When he (Mr. Cobb) says that the Federal Reserve notes 'actually earn interest for the U.S. Government,' he simply does not know what he is talking about. The \$15 billion he mentions pertains to the interest collected by the Fed from the U.S. Government as interest on securities which it holds. These totaled about \$152 billion as of December 31, 1983. The Open Market Committee has the power to buy unlimited quantities of bonds, bills, and notes in the open market. It pays for them either by checks drawn against the treasury or by printing Federal Reserve notes.... In fiscal 1983, the Fed collected \$15,150,174,988 as interest on these securities from the federal government; and then, after paying all its expenses, mostly from this source of income, it returned to the treasury its surplus of \$14,420,631,234. It is time Mr. Cobb learned a few of the elementary facts concerning the operation of the Fed." Mr. Cobb, why have you gone to such lengths to spread these falsehoods--which can only serve to lead away from the "real issues"?

4. We would add to Dr. Larsen's suggestion that it is also time our legislators, and their assistants, learned a few of the elementary facts concerning the operation and effects of laws and resolutions enacted by Congress.

The fact, as you say, that "the government must pay whatever it owes" neither establishes, nor defines, the "true nature" of obligations of the United States. This statement reminds us of your in depth analysis of the distinction (or claimed lack thereof) between "allodial title" and "Fee simple absolute title".

By the way, now that we have assisted you in the proper use of Black's Law Dictionary to distinguish between these two elementary, and fundamental terms of law; Would it be asking too much for an intelligent and knowledgable answer to our question relating to allodial titles and the "real issues" you espoused? Ignorance is no longer a viable excuse for non-response, wouldn't you agree.

Why is it so difficult to understand elementary facts and principles?

You go on to acknowledge that Treasury Bills, notes, and bonds earn interest for the holders, paid by the treasury; but state that Federal Reserve notes are "bills-of-credit" which pay no interest to the holders and, because of this, "they are a classic form of rip off".

Why do you fail to point out that the Fed buys bonds, bills, and notes in the open market from its right to create credit, granted in the Federal Reserve Act, and does so in unlimited quantities at no risk to the Federal Reserve? Why do you fail to point out that the Federal Reserve banks have huge vaults filled with these bonds, bills and notes--as our mutually acknowledged expert, Congressman Wright Patman, described? Why do you fail to point out that the paper in those Fed vaults constitute obligations of the United States upon which interest is paid to the Federal Reserve by the U.S. "Taxpayers"?

Why is a request to discuss the nature of these obligations, (and others) as it applies to, and is determinate of, the jurisdiction at law within which individuals are compelled to perform on the contracts--"silly" and "irrevelant"? Why does the mention of documented fact and law proving the relevancy to admiralty law constitute "ranting" and "raving"? Why do you refuse to acknowledge the fact (or even the possibility) that the obligations under discussion here are maritime in nature--flowing from maritime contracts and consummated by alleged benefits received?

5. You say "The arguments of Salyom prove that the Federal Reserve is unconstitutional", and castigate the Supreme Court for refusing to hear the case.

We suggest the possibility that in refusing to hear the case, the Supreme Court displayed a knowledge and understanding of the governing law involved that Solyom, and you, have failed to comprehend. That, in point of law, the Federal Reserve is not unconstitutional (as much as we would like to believe otherwise) for the simple reason that the Federal Reserve is operating on private contract law within the framework of the "federal" constitution--as contradistinguished to the "National" constitution.

You are aware, of course, that the authors of the Constitution established two systems of government within that document--very specifically identifying them as "federal" and "national", and distinguishing their natures and purposes? Without an understanding of these elementary facts, we venture to say that no one is knowledgable enough of the Constitution to intelligently determine what is constitutional, and what is not.

By the way, for your information, the word "federal" has its roots in, and is synonymous with, the word "feudal" --meaning, of course, an overlord/serf relationship between the parties involved in the contract(s).

We would be happy to send you copies of the "rantings and ravings" of the authors of the Constitution regarding this subject upon request.

6. Once again, your problem with reading comprehension becomes apparent in your "Thank you for your kind offer to sell me your book, or papers, ...."

We will leave it to our readers to see if they can discover any suggestion of an offer to sell you anything in the correspondence record. The kind offer "to share", however, still stands.

7. In response to your rather gleeful reference to the fact that our "doomsday" -- seven years after P.L. 95-147 -- has passed without anything happening as a result; the Federal Reserve still does not have the power to seize anyone's property."

a. The fact that nothing has happened proves nothing about whether the Fed has the power to seize anyone's property. If they do have this power, it would be illogical to expect them to exercise it as long as there are other avenues more effective, and advantageous, to accomplishing the objectives of establishing a world-wide, mercantile, superstate--governed by international bankers and industrialists, as Congressman McFadden described.

b. You ignore, for reasons unknown to us, the fact that, in our response to your letter of August 30, 1984, that speculation and guesswork was involved on our part--due to the esoteric nature of the subject matter.

c. While continually attempting to make an issue out of admitted speculation and guesswork on one possible aspect of P.L. 95-147, you have totally ignored our in depth analysis of this Public Law--which was neither speculation nor guesswork. This analysis systematically showed, from other Public Laws brought into play by P.L. 95-147, that, among other things:

i) The capital stock of the Federal Reserve Bank Corporation was transferred to the "International Monetary Fund".

ii) Powers were conferred upon the Board of Governors of the IMF which allows the said Board to monopolize the Faculty for Exchange of Debt Obligations in the U.S., and to control at will the exchange of moneys that ebbs and flows in the U.S.

iii) The agreements implemented by P.L. 95-147 constitute a combination to do an Act injurious to trade and commerce, to which the Federal Reserve is a party.

iv) The agreement constitutes a Wager Policy in favor of the Federal Reserve Bank Corporation and the International Monetary Fund.

The conclusions from this analysis are in keeping with the objectives of the international merchants--as McFadden described.

Mr. Cobb, why did you fail to comment on this analysis and our conclusions therefrom, but, instead persist in "kicking a dead horse", so to speak? In point of law, your silence can be construed as assent; and, unless, and until, we hear to the contrary that assent is presumed.

With a world-wide monetary power now in control via the IMF, some questions come to mind about the "real issues" you espouse:

1) Who needs the Federal Reserve any longer? Certainly not the international bankers and industrialists. It has served

its purpose in the implementation of the worldwide, mercantile, superstate--its functions now being consolidated in the IMF.

2) Who needs legal tender laws any longer? Certainly not the international bankers and industrialists who are in control of all money and currency.

3) Who needs to maintain the monopoly of the Federal Reserve any longer? Certainly not the international bankers and industrialists who are in control of the IMF monopoly.

Mr. Cobb, our forefathers rebelled against an "unwarrantable jurisdiction" being imposed within the bodies of their counties--its effects being a subversion of their individual rights. They specifically identified this jurisdiction as the "Jurisdiction of Admiralty".

Would you say that their documentaries of this admiralty jurisdiction constituted "hysterical rantings and ravings"?

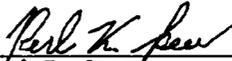
In summary, we have provided documentation as space allowed to support our statements of fact and law and our conclusions therefrom. You have made many statements, such as "No, this be not so!" With no support whatsoever. You have refused to address any issue of key significance raised by us, and have resorted to emotionalism and attempts at ridicule in the alternative. You have made false and misleading statements, even on the subjects you purportedly specialize in.

You have recommended several books for us to read, however, if they are the source of your misinformation--we will have to pass.

Whether wittingly, unwittingly, or half-wittedly, you have demonstrated a lack of interest in searching out the truth, and a propensity for subverting the truth by erecting barriers to its access.

As long as you persist along such lines you are most definitely, not on our side! We are still undecided about Ron Paul. Clearly, he is responsible for statements made on his letterhead stationary and signed by his assistant.

Sincerely,

  
Verly R. Speer  
  
George F. Hill

c.c. Dr. Martin Larson  
Spotlight Publication

Populist Party

Justice Times

Enclosure(s) 2

Post Script

-6-

P.S. The lateness of this letter was necessitated by our desire to furnish you the name and correspondence of at least one Treasury Official who may have fooled us. It is obvious that this individual has no understanding of what he is talking about when he makes such ludicrous statements as because they (federal reserve notes) are legal tender "federal reserve notes are 'backed' by all the goods and services in the economy." (See enclosure number 2, page 2, paragraph 1).

Perhaps, Mr. Cobb, you owe a Christian duty to this poor deluded individual, to inform him of the "real issues" and to caution him against spreading this dangerous and untrue dogma lest he be branded as an uninformed, dangerous miscreant. We are in the process of obtaining other documentation on this issue which we will from time to time copy and send to you.

We are not deliberately trying to embarrass you by exposing you to the truth, in re: waging policies, Tontine insurance; law of nations and nature and natures GOD; admiralty/maritime jurisdiction; etc..

It is very unlikely that the Federal Reserve System of the IMF would or could foreclose on all of the land of all of the people simultaneously. The class "A" stock holders are not lacking in common sense, even though a legal if not lawful right exists for doing so.

It is important in a powerful nation of slaves, to make the slaves or semi-slave citizens believe that they are the freest of all the people on the face of the whole earth.

Dept. of the Treasury  
Office of the General Counsel  
Washington, D.C. 20220

David C. Chovanak  
2120 Carrigan  
Turlock, Calif. 95380

March 10, 1984

Dear Sirs/Madam,

I am interested in the history of our U.S. money system. I understand there is a law that authorizes the treasury to print U.S. Notes up to a limit of 3 - 400 Million dollars.

My question is (1) What is the law, (2) When there is an issue are these notes ordered by the president of that term and (3) is the note correctly known by the President's name? i.e. - I understand there were notes issued in 1963, so would these be called "Kennedy Notes." (4) If notes were issued in 1963 could you please tell me what denominated amounts were issued (ones, fives tens?) and the total value of the issue if any. (5) As our money is usually termed Federal Reserve Note, what Law usually puts forth an issue of United States Notes? Is this a decision of the President or a regulation decision within [the] Secretary of the treasury discretion. Thank you for answering.

Sincerely Yours,

David C. Chovanak

EXHIBIT 7,  
ENCLOSURE 1



DEPARTMENT OF THE TREASURY  
OFFICE OF THE GENERAL COUNSEL  
WASHINGTON, D.C. 20220

MAR 21 1984

Dear Mr. Chovanak:

This is in response to your letter of March 10 in which you raised several questions about the money of the United States.

Federal Reserve notes are legal tender currency (31 U.S.C. 5102). They are issued by the twelve Federal Reserve Banks pursuant to Section 16 of the Federal Reserve Act of 1913 (12 U.S.C. 411). A commercial bank which belongs to the Federal Reserve System can obtain Federal Reserve notes from the Federal Reserve Bank in its district whenever it wishes, but it must pay for them in full, dollar for dollar, by drawing down its account with its district Federal Reserve Bank.

The Federal Reserve Bank in turn obtains the notes from the Bureau of Engraving and Printing in the United States Treasury Department. It pays to the Bureau the cost of producing the notes. The Federal Reserve notes then become liabilities of the twelve Federal Reserve Banks. Because the notes are Federal Reserve liabilities, the issuing Bank records both a liability and an asset when it receives the notes from the Bureau of Engraving and Printing, and therefore does not show any earnings as a result of the transaction.

In addition to being liabilities of the Federal Reserve Banks, Federal Reserve notes are obligations of the United States Government (12 U.S.C. 411). Congress has specified that a Federal Reserve Bank must hold collateral (chiefly gold certificates and United States securities) equal in value to the Federal Reserve notes which that Bank receives (12 U.S.C. 412). The purpose of this section, initially enacted in 1913, was to provide backing for the note issue. The idea was that if the Federal Reserve System were ever dissolved, the United States would take over the notes (liabilities) thus meeting the requirements of Section 411, but would also take over the assets, which would be of equal value. The notes are a first lien on all the assets of the Federal Reserve Banks, as well as on the collateral specifically held against them (12 U.S.C. 412).

Federal Reserve notes are not redeemable in gold or silver or in any other commodity. They have not been redeemable since 1933. Thus, after 1933, a Federal Reserve note did not represent a promise to pay gold or anything else, even though the term "note" was retained as part of the name of the currency. In the sense that they are not redeemable, Federal Reserve notes have not been backed by anything since 1933.

EXHIBIT 7, PAGE 1 OF ENCLOSURE 2

They are valued not for themselves, but for what they will buy. In another sense, because they are a legal tender, Federal Reserve notes are "backed" by all the goods and services in the economy.

There is no seigniorage on Federal Reserve notes. The commercial banks which receive them from the Federal Reserve Banks pay for the notes, dollar for dollar, by drawing down their reserve accounts with the Federal Reserve Bank in their region.

The Federal Reserve Banks pay the Bureau of Engraving and Printing for the cost of printing the notes. When the Federal Reserve Banks receive the notes from the Bureau, they record both an asset and a liability, because the notes are liabilities of the Federal Reserve System (12 U.S.C. 412). The Federal Reserve Banks do not derive any profit from the transaction.

Although the notes are recorded as an asset, the Federal Reserve Banks do not have the power to spend them. The Federal Reserve Banks can use the notes only by providing them to commercial banks which are members of the Federal Reserve System in exchange for a reduction of the member banks' accounts with the System. On the other hand, the liability must be provided for. As noted above, the Federal Reserve Banks are required to hold collateral equal in value to the Federal Reserve notes which the Banks receive (12 U.S.C. 412).

It cost the Bureau of Engraving and Printing a little more than 2 cents to make a Federal Reserve note, whether the note is for \$1, \$5 or \$10.

Both United States notes and Federal Reserve notes are part of our national currency and are legal tender; they circulate as money in the same way. However, the authority under which they are issued derives from different statutes. United States notes were authorized by the Legal Tender Act of 1862, while Federal Reserve Notes were authorized by the Federal Reserve Act of 1913. United States notes are issued directly by the United States Treasury and are obligations of the United States. Federal Reserve notes are issued by the Federal Reserve System and are obligations of both the Federal Reserve System and the United States Government.

United States notes were originally issued during the Civil War. The total amount which may be issued is limited to three hundred million dollars (31 U.S.C. 5115(b)). While this was a significant figure in Civil War days, it is now a very small fraction of total currency in circulation in the United States. As of March 31, 1982, total U.S. currency in circulation was \$128,853 million, of which \$305 million were United States notes. The United States note is issued only in the \$100

*billion*

denomination, although it was issued in smaller denominations in the past.

There has been no increase in the amount of United States notes outstanding for many years. Worn out United States notes are simply replaced by new ones. There can be no seignorage as a result of such a transaction.

When the United States notes were first issued in the 1860's, no seignorage was recorded. The notes were recorded both as assets and as liabilities, because they were obligations of the United States government. As a practical matter, however, the asset could be spent and the liability was not collectible. (The notes did become redeemable in gold in 1879 and cease being redeemable in gold in 1933, but in any case they were not retired during those years or subsequently.) In short, as an accounting matter there was no seignorage on United States notes, but as a practical matter there was a gain by the United States Government. This gain was used to finance the Civil War.

I know of no currency of the United States that is designated by the name of the President of the United States in office at the time that particular currency is issued.

I hope that this information is useful to you.

Sincerely,



Russell L. Munk  
Assistant General Counsel  
(International Affairs)

Mr. David C. Chovanak  
2120 Carrigan  
Turlock, CA 95380



Post Office Box 1776, Lake Jackson, Texas 77566

February 12, 1985

Verl K. Speer/ George E. Hill  
P.O. Box 1796  
Modesto, California 95353

Dear Mr. Speer and Mr. Hill:

I got your letter of January 12th after it was forwarded to me here in Lake Jackson. As you know I am now out of the U.S. Congress and do not have the staff to answer in detail your very well thought out letter.

I happen to believe that the disagreements that seem to be present certainly are minor compared to the differences between individuals like ourselves and those who are promoting the Federal Reserve System and Keynesian Economics.

Thanks for your interest in my activities.

Sincerely yours,

A handwritten signature in cursive script that reads "Ron".

Ron Paul, M.D.  
Former Member,  
U.S. House of Representatives

RP:p

Publisher of Ron Paul's **Freedom Report**

# PROGRAM OUTLINE, "THE COMMON LAW," UNIVERSAL LIFE UNIVERSITY SCHOOL OF LAW

## PHILOSOPHY AND HISTORY OF THE COMMON LAW

### Law 101 History of the Common Law

A recent history of the Common Law; its rediscovery by the Anglo-Saxon culture; the development of equity.

### Law 102 Fundamental Concepts

Types of governments; historical development of the rise and fall of centralized governments; the revolution of reason.

### Law 103 Law and Modern Society

An analysis of political realities and the law, relying heavily on French economist Frederick Bastiat and his ideas on how the law is perverted to become an instrument of plunder.

### Law 104 The Common-Law Jury System

An examination of the Common Law jury system.

### Law 105 Rights, Persons and Property

The nature of property and possession; the jural postulate that an individual must control what he has acquired under the existing economic order.

### Law 106 Sources and Form of Law

A review of the sources of law; moral precepts, Common Law, Bill of Rights, local custom and constitutions.

### Law 107 The Road Back to Justice

The role of equity, civil law and law merchant in circumventing Common Law as it is documented in the Bill of Rights.

## PRACTICE AND APPLICATION OF COMMON LAW

### Law 201 The Common Law in America

An analysis of the distinction between public and private law, civil and criminal law, administrative and constitutional law; what is law and what is not.

### Law 202 Court Organization

The dangers of "blended" and chancery courts; court requirements for filing actions at Common Law and avoiding dismissals.

### Law 203 Jurisdictional Issues

Jurisdictional dollar requirements in State and Federal courts; types of damages; functions and duties of judges; detecting unlawful judicial actions and what to do about them.

### Law 204 Due Process of Law

Due process in procedural and substantive rights; trial

by jury, when and how to demand it; how to avoid being charged with contempt.

### Law 205 Actions, Moving Papers and Evidence at Common Law

How to enter evidence at Common Law.

### Law 206 Court Rules and procedures

Various types of Common Law actions; class action suits; habeas corpus; ex rel suits and quo warranto writs.

### Law 207 Proceedings in Criminal and Civil Actions

Sequence of Events in a court proceeding: Summons, arraignment and trial, statute of limitations, jury trial, procedural safeguards. In Common Law actions, the filing of the complaint, service, trial date and court procedures.

## FORMS, PLEADINGS AND RESEARCH

### Law 301 Legal Research

How to locate a new library; how to use *Black's Law Dictionary*; how to find a case citation; how to identify Head Notes and Key Notes; using dissent opinions.

### Law 302 Parties to an Action

Forms, pleadings, and legal research; how to file a professional-looking legal document. The reason for the action, who may be the parties, when to sue, where to file.

### Law 303 Legal Papers and Service

How to do legal documents: headings, captions and styles; the proper designation of exhibits; pleading and answering.

### Law 304 Summons and Complaint

The summons and the complaint: how to file with the Court Clerk; service of the summons.

### Law 305 Answer and Pleading Practice

The pleading and the answer at Common Law; the disclaimer and special appearance; Common Law writs; special judicial notices.

### Law 306 Court Procedure I

Adjective law in constitutional courts, pretrial and during trial.

### Law 307 Court Procedure II

Adjective law in constitutional courts, post trial.

## TRIAL PREPARATION AND CONDUCT

### Law 401 Courtroom Strategy I

The capacity of organized thinking, verbal skills and logic.

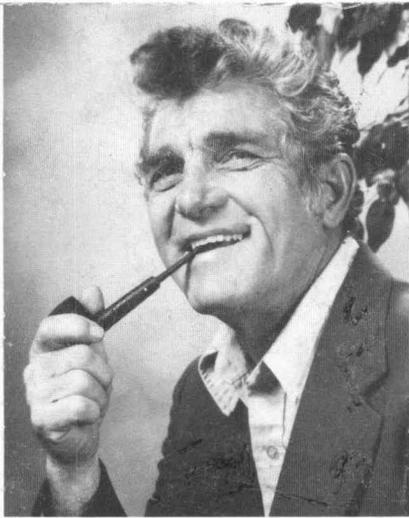
### Law 402 Courtroom Strategy II

Non verbal communication, strategy as a conscious

discipline, Admiralty Law in America, Law Merchant.

### Law 403 Courtroom Strategy III

Thinking as a conscious skill, the nature of sovereignty, Jurisdiction, Admiralty and Law of Nations, the sovereign Common Law, the Declaration of Sovereignty.



## *About The Author*

**Verl K. Speer** was raised on a Kansas farm and had first hand experience with the beginning of the destruction of the true independence of the JEFFERSONIAN farmer:

the beginning of the myth that farm subsidies would free the farmer from controls and manipulations of mercantile interests in the cities and result in long term economic stability; the beginning of an everlasting tune with "benefits" as its theme that has, in fact, piped all recipients of these so-called "benefits" directly on board the City/Ship Babylon and placed these beneficiaries under the absolute control and jurisdiction of the Merchants of the earth - the Beast of Babylon.

In 1961, he received his Bachelor's degree in physics from the University of Wichita and in 1968 received his Master's degree in Systems Management, the science that put men on the moon, from the University of Southern California. From 1968 through 1979 he was employed by TRW on contract with the United States Air Force as a Systems Engineer and Technical Director in the test and development of various Minuteman III missile subsystems.

This education and training in the analysis and understanding of interacting components and subsystems caused him to use this approach in probing into a system of legality and its various subsystems, which affect every aspect of our lives. Much of this "legal" system, he has discovered, is not based on law but is, in fact, operating in direct violation of law. The author has deeply involved himself in research and writing on various topics of law for the past eight years and has co-authored a correspondence program for the Universal Life University School of Law entitled "THE COMMON LAW." He received his Doctor of Common Law degree from the University in 1984.

"Pied Pipers of Babylon" is a systems approach to an understanding of the present day plight of the Natural Born Individual and his recourse at Law to regain and maintain the Birthright to be his own governor.

Keeping in mind the maxim that THE IMPORTANCE IS THE MESSAGE AND NOT THE MESSENGER - It is the deep and sincere hope of the author that the message will serve as a catalyst for "spiritual" revival of knowledge, understanding and practice for the Law. He means by SPIRITUAL that we start with the spirit of man and work through the laws of God and Nature - the first systems approach to harmonizing our lives, thoughts and actions with an orderly Universe.