
COURT OF RECORD

Memorandum of Law

The purpose of this Memorandum is to define 'Court of Record.' BAR lawyers are taught and believe that a court of record is one that keeps a record. They claim that the People are under Roman law which traces its roots to Babylonian law. They also claim that Common Law is the collection of federal district court decisions and statutes. Roman law (statutes) is an abomination to Common Law. Statutes are human law where legislators attempt to control the Peoples' behavior. Whereas, Common Law is Natural Law where God's will is exercised through His Law he wrote in the hearts of men via His bench (jury). Courts of equity are statutory courts. Courts of law are common law courts of Natural Law, a court for the People.¹ In equity courts decisions are made according to statutes where the will of the state presides. Whereas Law courts decisions are made according to Justice where the will of Nature's God presides.

JUSTICE:² The constant and perpetual disposition to render every man his due. Inst. B. 1, tit. 1. Toullier defines it to be the conformity of our actions and our will to the law. In the most extensive sense of the word, it differs little from virtue, for it includes within itself the whole circle of virtues. Yet the common distinction between them is that which considered positively and in itself is called virtue, when considered relatively and with respect to others, has the name of justice. But justice being in itself a part of virtue, is confined to things simply good or evil, and consists in a man's staking such a proportion of them as he ought. Luke 6:19 *"And the whole multitude sought to touch him: for there went virtue out of him, and healed them all."*

NATURAL LAW: *"For as many as have sinned without law shall also perish without law: and as many as have sinned in the law shall be judged by the law; (For not the hearers of the law are just before God, but the doers of the law shall be justified. For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which show the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another;)"*³ *"Ye are our epistle written in our hearts, known and read of all men: Forasmuch as ye are manifestly declared to be the epistle of Christ ministered by us, written not with ink, but with the Spirit of the living God; not in tables of stone, but in fleshly tables of the heart."*⁴

CIVIL LAW A/K/A POSITIVE LAW (Code): "Roman law is the legal system of ancient Rome and the legal developments spanning over a thousand years of jurisprudence, from the Law of

¹ CORAM IPSO REGE - BEFORE THE KING HIMSELF [tribunal aka jury] Blacks 4th

² Bouvier's Law, 1856 Edition

³ Rom 2:12-15

⁴ 2 Cor 3:2-3

12 Tables (c.449 BC), to the Corpus Juris Civilis ("Body of Civil Law", AD 529) ordered by Eastern Roman emperor Justinian I. It is also sometimes referred to as the Code of Justinian, although this name belongs more properly to the part titled Codex Justinianus. The historical importance of Roman law is reflected by the continued use of Latin legal terminology in legal systems influenced by it. After the dissolution of the Western Roman Empire, the Justinian Code remained in effect in the Eastern Empire, known in the modern era as the Byzantine Empire (331–1453). From the 7th century onward, the legal language in the East was Greek. A court of equity is a system of jurisprudence administered in courts of equity,"⁵ a/k/a "Courts of Chancery, which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, a/k/a statutes, codes, and regulations which follow the forms and procedures of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law."⁶

"COURTS OF RECORD -V- COURTS NOT OF RECORD: the former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded."⁷

"The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court are subject to collateral attack. In other words, in a superior court one may sue an inferior court directly, rather than resort to appeal to an appellate court. Decision of a court of record may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court (whether it be an appellate or Supreme Court) can second guess the judgment of a court of record. The judgment of a court of record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it."⁸ "A court of record is where a judicial tribunal [jury], having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, proceeding according to the course of common law."⁹

New York Constitution: We the People of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, Do Establish this Constitution. ... Article VI Section 1 §3(b)(2): As of right, from a judgment or order of a **court of record** of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the

⁵ Kenyon v. Kenyon, 3 Utah, 431, 24 P. 829.

⁶ Thomas v. Phillips, 4 Smedes & M., Miss., 423.

⁷ 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

⁸ Ex parte Watkins, 3 Pet., at 202-203. cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973).

⁹ Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court. Article VI. §1.b: The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the courts or court of civil and criminal jurisdiction of the city of New York, and such other courts as the legislature may determine shall be **courts of record**. Article VI §3 b (2): As of right, from a judgment or order of a **court of record** of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.

COURT OF RECORD: Proceeds according to the course of common law. To be a court of record, a court must have four characteristics, and may have a fifth, they are:¹⁰

- A) Judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it,
- B) Proceeding according to the course of common law,
- C) Its acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony,
- D) Has power to fine or imprison for contempt, and
- E) Generally possesses a seal.

A court of record is a superior court. A court not of record is an inferior court. "Inferior courts" are those whose jurisdiction is limited and special and whose proceedings are not according to the course of the common law. Criminal courts proceed according to statutory law. Jurisdiction and procedure is defined by statute. Likewise, civil courts and admiralty courts proceed according to statutory law. Any court proceeding according to statutory law is not a court of record (which only proceeds according to common law); it is an inferior court. "The only inherent difference ordinarily recognized between superior and inferior courts is that there is a presumption in favor of the validity of the judgments of the former, none in favor of those of the latter, and that a superior court may be shown not to have had power to render a particular judgment by reference to its record. Note, however, that a 'superior court' is the name of a particular court. But when a court acts by virtue of a special statute conferring jurisdiction in a certain class of cases, it is a court of inferior or limited jurisdiction for the time being, no matter what its ordinary status may be.

"If the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply. Those then who resist the principle that the constitution is to

¹⁰ Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689][Black's Law Dictionary, 4th Ed., 425, 426.; 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure. ... “It is in these words: ‘I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.’ Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him and cannot be inspected by him, if such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.”¹¹

IN CONCLUSION: Courts’ of Record proceed according to the course of Natural Law, where its judicial tribunal (petit jury) has attributes and exercises functions independently of the person of the magistrate (not a judge) designated generally to hold it. Any court proceeding under statutes or codes and presided over by a judge is not a court of record. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.¹² In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.¹³

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.¹⁴

Court of equity means statutory court; court of law means court of common law, a court for the People.¹⁵ Any court that is not a court of record has no authority over the People without their consent. “If a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers.”¹⁶

¹¹ MARBURY v. MADISON, 5 U.S. 137 (1803) 5 U.S. 137 (Cranch) 1803.

¹² Amendment V.

¹³ Amendment VI.

¹⁴ Amendment VII.

¹⁵ CORAM IPSO REGE - BEFORE THE KING HIMSELF [tribunal aka jury] Blacks 4th.

¹⁶ Basso v. UPL, 495 F. 2d 906; Brook v. Yawkey, 200 F. 2d 633; Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

18 U.S. Code § 1519 which applies to the elected, appointed or hired bureaucrat and not the People states: “Whoever knowingly ... conceals, covers up, ... with the intent to impede, obstruct, or influence the ... proper administration of any matter within the jurisdiction of any department or agency of the United States ... shall be fined under this title, imprisoned not more than 20 years, or both.”

Any court that conceals or denies the Peoples’ unalienable right to a court of record is guilty of High Treason. Today BAR Judges and Attorneys have concealed courts of record in virtually every state and federal court. Its time to hold them accountable!