Common Law

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What is Common Law

- Common Law is “the unwritten law” or the decisions of the courts
  - Not statutory law
Common Law Courts

- “The judicial power is the power to hear those matters which affect life, liberty or property of the Citizens of the State.” Sapulpa v Land, 101 Okla. 22, 223 Pac. 640, 35 A.L.R. 872
Common Law Courts

- "The very meaning of 'sovereignty' is that the decree of the sovereign makes law." American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.
Common Law Courts

 COURT. The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Black's Law Dictionary, 5th Edition, page 318.

 COURT. An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's Law Dictionary, 4th Edition, page 425.
"and because it brings into action, and enforces this great and glorious principle, that the people are the sovereign of this country, and consequently that fellow citizens and joint sovereigns cannot be degraded by appearing with each other in their own courts to have their controversies determined."

Chisolm v Georgia 2 Dall. 440
What is Common Law

- There is a Common Law of England
- There is a Common Law of Europe
- There is a Common Law of Germany
- There is a Common Law of Denmark
- There is an International Common Law
- There is a Common Law of Russia
What is Common Law

- The Law of Nature is natural law
- Common law is natural law
- Common Law is the law of the land
"Every citizen & freeman is endowed with certain rights & privileges to enjoy which no written law or statute is required. These are the fundamental or natural rights, recognized among all free people.\textcopyright{} U.S. v. Morris, 125 F 322, 325.
"...the individual may stand upon his constitutional rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life, liberty, and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under (a judicial power warrant) a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights." Hale v. Henkel, 201 U.S. 43
Common Law

“This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are are valid derive all their force, and all their authority, mediately or immediately, from this original.” Commentaries on the Laws of England (1765-1769) at number 41, Sir William Blackstone
Blackstone

- English jurist circa 1750’s
- Wrote Blackstone’s Commentaries on the Laws of England
“When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.”

US Declaration of Independence (1776)
“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it,…” US Declaration of Independence (1776)
“But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security…” US Declaration of Independence (1776)
Natural Rights

- "As general rule men have natural right to do anything which their inclinations may suggest, if it be not evil in itself, and in no way impairs the rights of others." In Re Newman (1858), 9 C. 502.
Natural Rights

- "All acts of legislature...contrary to natural right and justice are void." Robin v. Hardaway, 1 Jefferson 109(1772)
Natural Rights

- Compensation for labor is in the Pursuit of Happiness presentation
- Right to Travel is in the Right to Travel Presentation
- Marriage is in the Marriage Presentation
Common Law

- The common law of England consists of 800 years of jury trial decisions
  - Coke Reports
  - English Reports
  - Etc.
Common Law - Jury

- It is the common law juries that have made common law and defined the common law and if you want to know how a common law jury operates, go to my presentation on de jure Government the Ultimate Solution.
Common Law Jury

- The first recorded common law jury is found in Wales 1700 BC, which was brought there by a group of people who came there from the area of the Caucasus mountains.

- Wales has always a bastion of freedom and liberty.

- Thomas Paine was Welsh.

- The Magna Carta was brought about because of the Welsh Barons.
Common Law Jury

- "The common law right of the jury to determine the law as well as the facts remains unimpaired." State v. Croteau, 23 Vt 14, 54 AM DEC 90 (1849)
There are 4 law schools on the planet that teach law and they are found in the City of London, and Inns of Court is one of them

Inns of Court is discussed in the Attorneys Presentation

All other so-called law schools teach jurisprudence (procedure).
What is Common Law?

- The people in all Countries with the Common Law of England owe their Sovereignty to the Common Law.

In Canada, United States, Australia, New Zealand and all common law countries in the world THE PEOPLE ARE THE SOVEREIGNTY!
Common Law

- Was brought into England with the Magna Carta.
  - The Commentaries of the Laws of England by Sir Edward Coke

- Existed prior to the Magna Carta.
- Goes back to the decalogue (Law of Moses)
- Probably existed from the beginning of time.
Common Law

“

The law of England is divided into 3 parts;

- The common law, which is the most general and ancient law of the realm...
- Statutes or Acts of Parliament, and
- Particular Customs

The Common Law appeareth in the statute of Magna Carta and other ancient statutes (which for the most part are affirmations of the common law)…” Sir Edward Coke, 1552-1634, The First Part of the Institutes of the Laws of England
Court Citations

- The Canadian Handbook for Judges says on page 97;

- “Canada is part of what we call the Common Law world, and England provided the fountain from which the common law emerged. Thousands of English decisions are now, by adoption, embedded in our jurisprudence and the decisions of the House of Lords and other English Courts will continue, we think, to be cited in our courts and must be given the most careful and respectful consideration, as highly persuasive.”
Court Citations

- The Canadian Handbook for Judges says on page 98;
  - “The Judgments of Australian and New Zealand Courts may also have a highly persuasive effect and the similarity not just of the legal system, but of conditions in the United States is such that many American decisions may too have a strong persuasive effect.”
Who are Sovereigns?

- In a Common Law country the Sovereigns are the People.
Magna Carta

- The Magna Carta is called “the great charter of English liberty”
- The Canadian Handbook for Judges cites the Magna Carta on page 77;
  - “Magna Carta says; “We will not deny or defer to any man either justice or right””
Allegiance – The Queen/President

- The Queen/President has the Oath of Office
- “We the People” owe no allegiance to The Queen/President
- The Queen/President owes allegiance to “the people”
Why do “We the People” set up governments in the first place?

- Protection against foreign enemies.
- Protection from each other.
- To administer disputes in a fair and impartial manner.
- The only legitimate function for government is to PROTECT THE RIGHTS OF THE PEOPLE!
Heirarchy

- God - King of Kings –
  - Created “we the people”
  - “We the people” –
    - created the government
  - Government –
    - created corporations – subordinate to “we the people”.

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Why is God in the Constitution?

- Our rights come from God.
- If our rights come from God, only God can take them away.
Magna Carta

- They have no right to do ANYTHING to us except by common law;

- Magna Carta Chapter 29

  “No freeman shall be taken and imprisoned, or disseized, or exiled, or in any way destroyed, nor will we go upon him, nor send upon him, except by the lawful judgment of his peers, or by the law of the land.”
Magna Carta

- The phrase “Law of the land” in Chapter 29 means common law

“...The words “by the law of the land” as here used do not mean a statute passed for the purpose of working the wrong... This Section was taken with some modifications from a part of the 29th Chapter of the Magna Carta, which provided that no freeman should be taken or imprisoned or be disseized of his freehold etc., but by the lawful judgment of his peers or by the law of the land. Ld. Coke in his commentary upon this statute says that these words “by the law of the land” mean “by the due course and process of law”; which he afterwards explains to be, “by indictment and presentment of good and lawful men where such deeds are done in due manner or by writ original of the common law” 2 Inst. 45,50” Tayler v Porter, 4 Hill 773 (1843) New York Supreme Court.
Magna Carta

- The phrase “Law of the land” in Chapter 29 means common law

“To be that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land.” (Jury) Hoke vs Henderson, 15, N.C. 15, 25 AN Dec 677.
The Magna Carta

“The Magna Carta is not a unilateral act, emanating solely from the spontaneous will of the King, as the Charters of the predecessors of John; neither is it a treaty; for we cannot say it was concluded between two legitimate and independent sovereignties; nor between two nations, nor is it a law. The Barons do not appear in it as subjects, for they are freed from their promise of fidelity, and the King, brought captive, placed before them, submitted to the conditions which the conquerors imposed upon him. Magna Carta is therefore a contract, but resembles a treaty concluded between two nations, in that one of the parties, in virtue of the law of war, can impose its will upon the other.” Perlman v Piche and Attorney General of Canada, Intervenant, Re Habeus Corpus, 4 D.L.R. 147
"History is clear that the first ten amendments to the Constitution were adopted to secure certain common law rights of the people, against invasion by the Federal Government." Bell v. Hood, 71 F.Supp., 813, 816 (1947) U.S.D.C. -- So. Dist. CA.
Jurisdiction

"The law of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

Caha v. United States, 152 U.S. 211 (1894)
Jurisdiction

"The exclusive jurisdiction which the United States have in forts and dock-yards ceded to them, is derived from the express assent of the states by whom the cessions are made. It could be derived in no other manner; because without it, the authority of the state would be supreme and exclusive therein,“ U.S. v. Bevans, 16 U.S.336, 3 Wheat, at 350, 351 (1818)
Due Process of Law

 They have no right to do ANYTHING to us except by common law;

 “No person shall be...deprived of life, liberty, or property without due process of law...” Article Five in Amendment, Constitution for the United States of America
Common Law

- "The principle that no person should be deprived of life, liberty, or property except by due process of law did not originate in the American system of constitutional law, but was contained in the Magna Charta (sometimes referred to as Chapter 29), confirmed on the 19th day of June, 1215, declared:

- "No freeman shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him, nor send upon him, but by lawful judgement of his peers or by the law of the land."

- It as even been said that the principle was known before Magna Charta and that it was originally designed to secure the subject against arbitrary action of the crown, and to place him under the protection of the law. It is settled beyond question that this principle came from England to America as part of the common law and has been a fundamental rule in common law. When first adopted in Magna Charta, the phrase, "law of the land," had reference to the common law and has been a fundamental rule in common law." 16 Am. Jur. 2d, Constitutional Law, Section 543.
"Law of the land" means "The Common Law" ---- Justice O'Neal in State v. Simmon, 2 Spears 761, 767 (1884); also Justice Bronson in Taylor v. Porter, 4 Hill 140, 146 (1843)
Due Process of Law

- “It is manifest it was not left to the legislative power to exact any process which might be devised. The [due process] article is a restraint on the legislative as well as on the executive and judicial powers of government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will.” Murray's Lessee v. Hoboken Imp. Co., 18 How. (59 U.S.) 272,276 (1855).
Due Process of Law

- What is due process of law may be ascertained by an examination of those settled usages and modes of proceedings existing in the common and statute law of England before the emigration of our ancestors. Twining v. New Jersey, 211 U.S. 78, 100 (1908).

- The expressions 'due process of law' and 'law of my land' have the same meaning. The 'law' intended by the constitution is the common law that had come down to us from our forefathers, as it existed and was understood and administered when that instrument was framed and adopted. State v. Doheny, 60 Maine 504. 509 (1872).
Due Process of Law

- At common law, as a general rule, an arrest could not be made without warrant for an offense less than felony, except for a breach of the peace. 3 Cyc. 880; State v. Sims. 16 S.C. 486, [emphasis added]

- At common law an arrest could not be made of a person charged with a misdemeanor except on warrant of a magistrate, unless it involved a breach of the peace, in which case the offender might be arrested by any person present at its commission. (1 Chitty, Criminal Law, 15; Carpenter v. Mills. 29 How. Pro R. 473).
Due Process of Law

- It must not be forgotten that there can be no arrest without due process of law. An arrest without warrant has never been lawful, except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer. *Ex parte Rhodes.* 202 Ala. 68, 79 So. 462,465; citing, *Sarah Way's Case,* 41 Mich. 304, 1 N.W. 1023 (1879), et al. Also cited and affirmed in *Pinkerton v. Verberg.* 78 Mich. 573, 44 N.W. 579, 583 (1889); *State v. Williams.* 45 Ore. 314, 77 Pac. 965, 969, (1904); *Adair v. Williams.* 24 Ariz. 422, 210 Pac. 853, 856 (1922).
Due Process of Law

If persons can be restrained of their liberty. and assaulted and imprisoned, under such circumstances. without complaint or warrant, then there is no limit to the power of a police officer. Any law which would place the keeping and safe conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our constitution guaranties. These are rights which existed long before our constitution, and we have taken just pride in their maintenance, making them a part of the fundamental law of the land. *Pinkerton v. Verberg*, 78 Mich. 573, 44 N.W. 579. 582-83 (1889); *Larson v. Feenry*, 196 Mich. 1, 162 N.W. 275, 276-77 (1917).
Due Process of Law

[T]he fundamental constitutional guaranties of personal liberty protect private individuals in the right of enjoyment of personal freedom without unlawful restraint, and it is universally recognized that no one may be arrested except by due process of law. (2 R.C.L. 463. § 21).
Due Process of Law

- In *Stittgen v. Rundle* (1898), 99 Wis. 78, 80, 74 N.W. 536, this court established the principle that “An arrest without warrant has never been lawful except in those cases where the public security requires it; and this has only been recognized in felony, and in breaches of the peace committed in the presence of the officer.” This rule was reaffirmed in *Gunderson v Stuebing* (1905), 125 Wis. 173, 104 N. W. 149; 1 American Law Reports. Annotated, 585, [emphasis added]
Due Process of Law

It has always been the general rule of the common law that ordinarily an arrest should not be made without warrant and that, subject to well-defined exceptions, an arrest without warrant is deemed unlawful. 4 BI. Comm. 289 et seq.; 6 C.J.S., Arrest, § 5. p. 579. This foundation principle of the common law, designed and intended to protect the people against the abuses of arbitrary arrests, is of ancient origin. It derives from assurances of Magna Carta and harmonizes with the spirit of our constitutional precepts that the people should be secure in their persons. Nevertheless, to this general rule that no man should be taken into custody of the law without the sanction of a warrant or other judicial authority, the processes of the early English common law, in deference to the requirements of public security, worked out a number of exceptions. These exceptions related in the main to cases involving felonies and suspected felonies and to breaches of the peace (authorities cited). State v Mobley, 240 N.C. 476, 83 S.E.2d 100, 102 (1954).
Due Process of Law

- In England, under the common law, sheriffs, justices of the peace, coroners, constables, and watchmen were entrusted with special powers as conservators of the peace, with authority to arrest felons and persons reasonably suspected of being felons. * * * Conservators of the peace also had the authority to make arrests without warrants in case of a misdemeanor which involved a breach of the peace committed in the presence of the officer making the arrest.

2 Ruling Case Law, p. 446; Orick v. State. 105 So. 465, 469 (Miss., 1925); Grahm v. State, 143 Ga. 440, 85 S.E. 328, 330 (1915); Kennedy v. Siore, 139 Miss. 579, 104 So. 449, 450 (1925); Wilson v. Town of Mooresville, 222 N.C. 283, 22 S.W.2d 907, 911 (1942); People v. McGurn, 341 Ill. 632, 173 N.E. 754, 756 (1930).
Due Process of Law

- It has already been decided that no arrest can be lawfully made without warrant, except in the cases existing at common law before our constitution was adopted. *People v. Swift*, 59 Mich. 529, 26 N.W. 694, 698 (1886). [emphasis added]
Due Process of Law

"The limits to the power of arrest by a constable, without process, was well defined at common law .... To prevent the escape of a felon, he had authority to arrest anyone whom he reasonably suspected to have been engaged in the perpetration of a felony. To prevent breaches of the peace, he had the right to arrest any person who was engaged in, or in his presence threatened to engage in, an affray or other breach of the peace. Beyond this, the law did not allow him to exercise the function of determining whether there was a sufficient case of the violation of a law to justify an arrest." Reed, J., in Newark v. Murphy (1878) 40 N.J.L. 145.
Due Process of Law

33. What constitutes a lawful arrest. - As a general proposition, no one can make a lawful arrest for a crime, except an officer who has a warrant issued by a court or magistrate having the competent authority.

33a. Arrests without a warrant.- Although it is the general rule of law that there can be no arrest without a warrant of the nature just described, yet there are cases in which the requirement of a warrant would so obstruct the effectual enforcement of the laws, that the ends of justice would be defeated. For public reasons, therefore, in a few cases the personal security of the citizen is subjected to the further liability of being arrested by a police officer or private individual without warrant. But the right thus to arrest without a warrant must be confined to the cases of strict public necessity. The cases are few in number, and may be stated as follows: Tiedeman's "Treatise on the Limitations of Police Power" (1886) § 33
Due Process of Law

1. When a felony is being committed, an arrest may be made without warrant to prevent any further violation of the law.

2. When the felony has been committed, and the officer or private individual is justified, by the facts within his knowledge, in believing that the person arrested has committed the crime.

3. All breaches of the peace, in assaults and batteries, affrays, rims, etc., for the purpose of restoring order immediately. Tiedeman's "Treatise on the Limitations of Police Power" (1886) § 33
Due Process of Law

- At the common law an officer had no authority to make an arrest for a misdemeanor though committed in his presence unless it involved a breach of the peace. * * * The right of personal liberty is a very high prerogative right, and to deprive one of that right, without due process of law, we must find specific authority for doing so. It cannot be left to inference or some strained construction of statute or ordinance. *State v. Lutz*, 85 W.Va. 330; 101 S.E. 434, 43 (1919).
Due Process of Law

- That law permitted an officer to arrest without a warrant on reasonable suspicion based on his knowledge that a felony had been committed.

- In all other cases, except in the case of a misdemeanor amounting to a breach of the peace committed in his presence, an officer had no authority, at common law, to arrest without a warrant (authorities cited) *Kominsky v. Durand*. 64 R.I. 387, 12 Atl.2d 652, 654 (1940).
Due Process of Law

- At common law, a peace officer cannot arrest without warrant for a misdemeanor, although committed in his presence, unless a breach of peace is involved.

- At common law, the right to arrest for a misdemeanor committed in the presence of the officer is limited to those offenses which amount to a breach of the peace. The basis for the rule is that arrest without warrant is permitted, in cases less than felony, not for the apprehension of the offender, but only for the immediate preservation of the public peace; and, accordingly, when the public peace is not menaced, a warrant is necessary. (authorities cited, see also section 22). American Jurisprudence, 2d., Vol. 5, under the subject of "Arrest," sections 26 and 28, pp. 716, 718.
Due Process of Law

- At common law, however, it has always been the rule that, except in cases where the public security has demanded it, arrest without a warrant is deemed to be unlawful. *Corpus Juris Secundum, Vol. 6A*, under the subject of " Arrest," and under the heading of "Arrest or Detention Without Warrant" § 10, p. 17
"The constable hath great original and inherent authority with regard to arrests. He may, without warrant, arrest anyone for a breach of the peace committed in his view, and carry him before a justice of the peace; and in case of felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may, upon probable suspicion, arrest the felon, and, for that purpose, is authorized (as upon a justice's warrant) to break open doors, and even to kill the felon, if he can not otherwise be taken." 4 BI. Comm. 292.
Due Process of Law

- In many of these cases it seems to have been held that the authority of an officer to arrest for misdemeanor, without warrant, is limited to breaches of the peace or affrays, committed in his presence. *Palmer v. Maine Cent. R. Co.*, 42 Atl. 800, 803, 92 Me. 399 (1899).
Due Process of Law

- **At common law** arrests for misdemeanors were not permissible without a warrant except for acts committed in the presence of the officer causing a breach of the peace. *Allen v. State*, 183 Wis. 323, 197 N.W. 808, 810, 811 (1924).
Due Process of Law

- Under our system we have repeatedly decided, in accordance with constitutional principles as construed everywhere, that no arrest can be made without warrant except in cases of felony, or in cases of breaches of the peace committed in the presence of the arresting officer. This exception, in cases of breaches of the peace, has only been allowed by reason of the immediate danger to the safety of the community against crimes of violence. *Yerkes v. Smith*, 157 Mich. 557. 122 N.W. 223, 224 (1909), citing *Robison v. Miner*. 68 Mich. 549.557-58. 37 N.W. 21. 25 (1888).
Due Process of Law

- [T]he common law relating to arrest is the law on that subject in Virginia. At common law a peace officer may arrest without a warrant for a breach of the peace committed in his presence, but for no other misdemeanor. *Galliher v. Commonwealth*, 161 Va. 1014. 170 S.E. 734. 736 (1933).
Due Process of Law

- The legal principle underlying this case and the one to be applied to the facts is firmly embodied in the roots of the common law, which has been handed down to us from early times unimpaired, in its full vigor, for the protection of personal liberty, against illegal arrests. The liberty of the person is too important a matter to the state to be interfered with without the safeguards with which the law guards such invasions. This court has said: The limits to the power of arrest by a constable, without process, was well defined at common law. The regard for liberty of the person was so great that the common law did not confer upon a mere conservator of the peace the power to touch the person of the subject, of his own volition, except in those cases when the interests of the public absolutely demanded it. 

Due Process of Law

It is the undoubted right of every person in this community not to be deprived of liberty without due process of law, and if the defendant has been arrested without due process of law, the indictment against her cannot be sustained. * * * It has long been recognized that arrests without warrant are justified in cases of treason, felony or breach of the peace, in which actual or threatened violence is an essential element: I Hale's P.C. 589; 2 Hawkin's P.C., ch. 13, sec. 8; 1 Burns, 1., 287; 4 Blackstone, 292; 9 Bacon, Abrid., 468; 1 Chitty Cr. Law. 15; Clark's Criminal Procedure, 39; Russell, Crimes, vol. 3, page 83; 4 Amer. and Eng. Ency. of Law, 902. Commonwealth v. Krubeck, 8 Penn. Dist. Rep. 521, 522 (1899).
Due Process of Law

- As a general principle, no person can be arrested or taken into custody without warrant. But if a felony, or a breach of the peace, has, in fact, been committed by the person arrested, the arrest may be justified. *Burns v. Erben*, 40 N. Y. 463, 466 (1869); see also *Cunningham v. Baker*, 104 Ala. 160, 16 So. 68, 70 (1894).
“No person shall be deprived of life, liberty, or property without due process of law." And, under like restrictions in the constitution, it has been held in some states that arrests shall not be made without warrant, except for felonies, and for breaches of the peace committed in the presence of the officer arresting. *North v. People*, 139 Ill. 81, 28 N.E. 966, 972 (1891).
Due Process of Law

- The constitution has also provided that no one shall be deprived of liberty without due process of law, and has provided that no warrant shall issue except upon oath or affirmation establishing probable cause. It has been settled for centuries, and the doctrine has been recognized here, that except in cases of reasonable belief of treason or felony, or breach of the peace committed in presence of an officer, there is no due process of law without a warrant issued by a court or magistrate upon a proper showing or finding. Allor v. Wayne Co., 43 Mich. 76, 97, 4 N. W. 492, 495-96 (1880)
What is due process of law is usually a traditional or historical question. Was it due process of law under the common law, and did it remain such up to the time of adopting the constitution. *CN. Nelson Lumber Co. v. M'Kinnon*, 61 Minn. 219. 222.
Due Process of Law

- “The stopping of an automobile by a highway patrol officer for inspection of a driver’s license, or for any other purpose where it is accomplished by the authority of the officers, is an “arrest.” Robinson v. State, 198 S.W.2d 633, 635, 184 Tenn. 277
Due Process of Law

Due Process of Law

“An illegal arrest is an assault and battery. The person so attempted to be restrained of his liberty has the same right to use force in defending himself as he would in repelling any other assault and battery.” State v. Robinson, 145 ME. 77, 72 ATL. 260.

“Each person has the right to resist an unlawful arrest. In such a case, the person attempting the arrest stands in the position of a wrongdoer and may be resisted by the use of force, as in self-defense.” State v. Mobley, 240 N.C. 476, 83 S.E. 2d 100.
Due Process of Law

“One may come to the aid of another being unlawfully arrested, just as he may where one is being assaulted, molested, raped or kidnapped. Thus it is not an offense to liberate one from the unlawful custody of an officer, even though he may have submitted to such custody, without resistance.” Adams v. State, 121 Ga. 16, 48 S.E. 910.
Due Process of Law

- “Similarly, a person cannot be convicted of resisting a peace officer in the execution of his duty unless the officer was acting strictly within the limits of his powers and duty. If the officer makes an unlawful arrest, then there is a common law right to resist that arrest.” Police Manual of Arrest, Seizure and Interrogation, 8th Edition, by The Honorable Roger E. Salhany, page 96,
“At the outset I must express my shocked amazement at the contention of counsel for the minister that the claim of a resident of Alberta to a drivers license – and consequently to drive upon the highways of Alberta – is a privilege and not a right. Since time immemorial the Queen’s subjects have been free to move along the Queen’s highway provided only they kept the Queen’s peace.” J Egbert in Regina ex rel Christofferson v Minister of Highways, 28 Western Weekly Reports 38
Due Process of Law

- “...the reason for the initial detention, speeding & running a red light are not a breach of the peace.” Perkins v Texas, 812 S.W. 2d 326
Breach of the Peace

“A breach of the peace takes place when either an assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult is not enough: thus at common law a householder could not give a man into custody for violently and persistently ringing his door-bell. It is the particular duty of a magistrate or police officer to preserve the peace unbroken; hence if he has reasonable cause to believe that a breach of the peace is imminent he may be justified in committing an assault or effecting an arrest.”

Breach of the Peace

Breach of the Peace

“Breach of the Peace. A violation of public order; the offence of disturbing the public peace. One guilty of this offence may be held to bail for his good behavior. An act of public indecorum is also a breach of the peace. The remedy for this offence is by indictment. Persons who go out on a "strike" and then linger about the place of their former employment, hooting at others taking their places, may be bound over to keep the peace; 11 Pa. Co. C. R. 481. One may disturb the peace while on his own premises by the use of violent language to a person lawfully there; 58 Ho. App. 126” Bouvier’s Law Dictionary, 1897 Edition, Volume 1, page 262
Breach of the Peace

- Unless there is a breach of the peace, or a common law felony (breach of the peace) committed in front of a peace officer, they have nothing to say to you.
Citizenship vs Nationality

- You can be a national without being a citizen.
- Citizenship is part of a political community.
Citizenship vs Nationality

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since performed any of the acts listed under “Acts or Conditions” on the reverse side of this application (unless explanatory statement is made); 2) application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support submitted with this application is a genuine, current, photograph of me; and 5) I have read and understood the warning on page two.

Applicant’s Signature - age 16 and older

Father’s/Legal Guardian’s Signature (if identifying minor)

Mother’s/Legal Guardian’s Signature (if identifying minor)
Citizenship vs Nationality

PRIVACY ACT STATEMENT

AUTHORITIES: Collection of the information solicited on this form is authorized by Titles 8, 22, and 26 of the U.S. Code, or not codified, including specifically 22 U.S.C. 211a et seq.; 26 U.S.C. 6039E, Section 236 of the Admiral James Callaghan Act, Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; Executive Order 11295 (August 5, 1966); and any other relevant laws.

PURPOSE: The primary purpose for soliciting the information is to establish citizenship, identity, and eligibility for a passport.

ROUTINE USES: The information solicited on this form may be made available to other departments and agencies of the U.S. Government in adjudicating passport applications and requests for related services, and for investigative purposes. The information may be made available to foreign government agencies to fulfill passport examination and other service requirements. The information may also be provided to international organizations and, in appropriate cases, organizations to investigate, prosecute, or otherwise address potential violations of law or to further the protection of U.S. citizens and non-citizen nationals abroad. The information may be made available to U.S. embassies and consulates. For a more detailed listing of the routine uses to which this form may be put, see the Prefatory Statement of Routine Uses and the listing of routine users set forth in the system description of Passport Records (State–05) and Passport Records (State–26) published in the Federal Register.

CONSEQUENCES OF FAILURE TO PROVIDE INFORMATION: With the exception of your Social Security number (statement on Instruction Page 3), you are not legally required to provide the information requested on this form. Failure to provide information may result in Passport Services' refusal to accept your application or result in the denial of a U.S. passport.
Nationality is common law

“"It is however, true that in all common-law countries it has always and consistently been held that the wife and minor children take the nationality of the husband and father. That is common-law doctrine.” In Re Page 12 F (2d) 135.
“The common law does not require a citizen of identify himself or carry identification of any sort. Therefore while it may be the mark of a good citizen to identify himself when asked to do so, a police officer must not use force to compel someone to identify himself when he refuses; otherwise he will be guilty of criminal assault, and liable to civil damages.” Police Manual of Arrest, Seizure and Interrogation, 8th Edition, by The Honorable Roger E. Salhany, page 94
“Similarly, a person cannot be convicted of resisting a peace officer in the execution of his duty unless the officer was acting strictly within the limits of his powers and duty. If the officer makes an unlawful arrest, then there is a common law right to resist that arrest.” Police Manual of Arrest, Seizure and Interrogation, 8th Edition, by The Honorable Roger E. Salhany, page 96
“We the People” make the law

“STARE DECISIS, n.[Latin “to stand by things decided”] The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation. “The rule of adherence to judicial precedents finds its expression in the doctrine of stare decisis. This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination....” William M. Lile et al., Brief Making and the Use of Law Books 321 (3d ed. 1914).” Black’s Law Dictionary 8th Edition pg 4403-4404
“We the People” make the law

- res judicata. [Latin “a thing adjudicated”] 1. An issue that has been definitively settled by judicial decision.
“We the People” make the law

- All courts go by precedent, except for a common law jury of “the people”
- A common law jury of “the people” can do anything they want
- In 1802 the US Supreme Court convened a common law jury to tell them what the law was in a certain matter
- More on this subject will be covered in the presentation entitled “de jure Government the Ultimate Solution”
“It is a rule at common law (the reason applies in equity and other civil law cases) that if a party can plead a fact, material to his defence, and omits to do it at the proper time, he can never avail himself of it afterwards.” Penhallow v Doane’s Administrators, 3 U.S. 54 (1795) at p 93
Jurisdiction

“Jurisdiction must be raised before making any plea to the merits, if at all, when it arises from formal defects in the process, or when the want of jurisdiction over the person.” Smith v. Curtis, 7 Cal 584; Bohn v. Devlllin, 28 Mo. 319; Brown v. Weber, 6 Cush. (Mass) 650; Whyte v. Gibbes, 20 How 541.
Jurisdiction

- “A court of general jurisdiction is presumed to be acting within its jurisdiction till the contrary is shown.”
  Brown, Jur Section 202; Wright v. Douglas, 10 Barb. (N.Y.) 97; Town of Huntington v. Town of Charlotte, 15 Vt. 46.
Judicial Immunity

"In this, as in other respects, it (a constitutional provision) must be interpreted in the light of the common law, the principles of history of which were familiarly known to the framers of the Constitution. Minor v. Happersett, 12 Wall. 162. . . . The language of the Constitution, as had been well said, could not be understood without reference to the common law. 1 Kent Comm. 336. . . . " Kepner v. United States, 195 U. S. 100, 126.
Ignorance of the Law

- "It is one of the fundamental maxims of the common law that ignorance of the law excuses no one." Daniels v. Dean (1905), 2 C.A. 421, 84 P. 332.
“We the People” make the law

- "A Sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal Right as against the authority that makes the law on which the Right depends." -- *Kawananakoa v. Polyblank*, 205 U.S. 349, 353, 27 S. Ct. 526, 527, 51 L. Ed. 834 (1907).
“We the People” make the law

- “Courts of England will take judicial notice of the status of a foreign sovereign and will not take jurisdiction over him, unless he voluntarily submits to it” [1894] 1 Q. B. 149.

- “A foreign sovereign brought suit to restrain the defendants from using a fund in a certain way, and the defendants set up a claim for damages; it was held that the court had no jurisdiction over such claim” [1898] 1 Ch. 190.
“We the People” make the law

- "When a foreign sovereign comes into court for the purpose of obtaining a remedy, then, by way of defence to that proceeding (by counter-claim, if necessary), to the extent of defeating the claim, that person sued may file a cross claim . . . for the purpose of enabling complete justice to be done between them." 29 W. R. 125, per James, L. J.

- “It is a general rule that the sovereign cannot be sued in his own court without his consent; and hence no direct judgement can be rendered against him therein for costs, except in the manner and on the condition he has prescribed; 40 La. Ann. 856.” Bouvier's Law Dictionary, Vol. 1, 1897
"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." Yick Wo v Hopkins, 118 US 356, at pg 370
Common Law

- “No action can be taken against a sovereign in the non-constitutional courts of either the United States or the state courts & any such action is considered the crime of Barratry. Barratry is an offense at common law.” State vs. Batson, 17 S.E. 2d 511, 512, 513
"If the common law can try the cause, and give full redress, that alone takes away the admiralty jurisdiction." Ramsey v. Allegrie, 12 Wall 611, p. 411.

"In Kreble's Reports, p. 500, quoted by Brown, it is expressly said, that without a stipulation, the admiralty has no jurisdiction at all over the person." Ramsey v. Allegrie, 12 Wall 611, p. 410.

"The common law is the standard by which to ascertain what are proper cases for a prohibition to a court of admiralty, and not the civil law:"
"Let the cases be searched from the remotest period down to the time of Menetone v. Gibbons, 3 T. R. 267, and the ground of prohibition, and of recovery, under the 2d of Henry IV. will uniformly be found to be competency of the common law to enforce the contract. This is the principle by which even their jurisdiction in rem is controlled, and it hence follows, that in no cases in which they are prohibited from proceeding in rem, can they have the action in personam." Ramsey v. Allegrie, 12 Wall 611, p. 417. [emphasis added]
Common Law

“A refusal on the part of an individual lawfully called upon to assist the officer in putting down a riot is indictable. 1 Carr. & Marsh. 314.” Bouvier’s Law Dictionary 1856 Edition
“[T]he term "citizen," in the United States, is analogous to the term "subject" in the common law.” State vs Manual 20 NC 122, 14 C.J.S. 4, p 430
Because the government is bankrupt and under martial Law rule, there is no common law, therefore they have had to enact statutes to codify common law crimes, like:

- Misprison of Felony 18 USC § 4
- Rights violations under the color of law 18 USC § 241, § 242
- Extortion under color of law 18 USC § 872

Many common law crimes are not covered by statutes

- Barratry
"Where there is no jurisdiction there is no judge; the proceeding is as nothing. Such has been the law from the days of the Marshalsea, 10 Coke 68; also Bradley v. Fisher, 13 Wall 335,351." Manning v. Ketcham, 58 F.2d 948.
Common Law Rights

- “There can be no sanction or penalty imposed upon one because of his exercise of constitutional [common law] rights.” Sherar v. Cullen, 481 F. 946
Common Law Rights

- "No State shall convert a liberty into a privilege, license it, and charge a fee therefore." Murdock v. Pennsylvania, 319 US 105
"If the State converts a right (liberty) into a privilege, the citizen can ignore the license and fee and engage in the right (liberty) with impunity."

Shuttlesworth v. City of Birmingham Alabama, 373 US 262
“…Generally speaking, an account stated is based on the common law concept that an implied contract arises when the debtor (the Service) submits to the creditor (the taxpayer) a statement of the final balance due on an account and the creditor agrees to accept the proposed balance to close the account. See Bonwit Teller & Co. v. United States, 283 U.S. 258 (1931). …”
Quasi Contracts

- "All persons in the United States are chargeable with knowledge of the Statutes-at-Large. It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority" – Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 9th Cir., (1981)
Quasi Contracts

- "Persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers, such as the filing of claims for refunds.‘‘ Economy Plumbing and Heating v. U.S., 470 F.2d 585 (Ct. Cl. 1972)

- "The revenue laws are a code or a system in regulation of tax assessment and collection. They relate to taxpayers, and not to non-taxpayers. The latter are without their scope. No procedures are prescribed for non-taxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither the subject nor the object of the revenue laws.‘‘ Long v. Rasmussen, 281 F. 236, at 238
“The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State…” Article IV of the Articles of Confederation
Paupers

- At common law a pauper does not have any rights.
- If all you have in your wallet is Bank of Canada Notes, or Federal Reserve Notes, or other IOU’s, then you have no money and are a vagrant.
Jails

- There are no jails at common law
- All jails are private
- In England, the arch bishop of Canterbury owns all of the prisons
- Jail is a benefit, because common law penalties are very severe
- There are people who “waive the benefit”
Former US Supreme Court Chief Justice Renquist said that not one person was in jail that had not agreed to it.
“Posse comitatus. Latin. The power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases, as to aid him in keeping the peace, in pursuing and arresting felons, etc. Williams v. State, 253 Ark. 973, 490 S.W.2d 117, 121.” Black's Law Dictionary 6th Ed. 1990
"There is no common law of United States as contradistinguished from individual states; and courts of the United States, instead of administering common law or any particular system, conform to law of states where they are situated." People v. Folsom (1855), 5 C. 373.
Petition the Government

❖ “To no one will we sell, to no one will we refuse or delay, right or justice.” Chapter 40, Magna Carta
Petition the Government

"Congress shall make no law .... abridging ..... the right of the people.... to petition the government for a redress of grievances." Article One in Amendment, Constitution for the United States
"History is clear that the first ten amendments to the Constitution were adopted to secure certain common law rights of the people, against invasion by the Federal Government." Bell v. Hood, 71 F.Supp., 813, 816 (1947) U.S.D.C. -- So. Dist. CA.
Petition the Government

“RULE OF DECISION. The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution or the laws of this state, the constitution of this state, and the laws of this state.” Section 5.001 Texas Civil and Practice Code
Petition the Government

- “Petitioner - One who presents a petition to a court, officer, or legislative body.”

- “Plaintiff – a person who brings an action…” Black’s Law Dictionary 5th Edition p 1035 [Emphasis added],
How can you lose Sovereignty?

- In order for a member of the Sovereignty to become subject to regulation in any way, they MUST agree to it.
  - As with any contract, it must be knowing, willing, and intentional.
"The state citizen is immune from any and all government attacks and procedure, absent contract." see, Dred Scott vs. Sanford, 60 U.S. (19 How.) 393 or as the Supreme Court has stated clearly, “…every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent.” Cruden vs. Neale, 2 N.C. 338 2 S.E. 70
Belligerent Claimant

- "To acquire protection of common law you must assert that right. You must be a belligerent claimant in person to assert your rights, or you have none."
- "The privilege against self-incrimination is neither accorded to the passive resistant, nor to the person who is ignorant of his rights, nor to one indifferent thereto. It is a FIGHTING clause. It's benefits can be retained only by sustained COMBAT. It cannot be claimed by attorney or solicitor. It is valid only when insisted upon by a BELLIGERENT claimant in person."

State Citizens

““The rights of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government.” City of Dallas v Mitchell, 245 S.W. 944
Arizona State Senate
Phoenix, Arizona

December 10, 1985

Ralph Milstead
Director
Department of Public Safety
State of Arizona
2310 North 20th Avenue
P.O. Box 6638
Phoenix, Arizona 85005

Dear Director Milstead:

It has come to my attention that numerous individuals in our state have rescinded all of their contracts with the United States federal government, the State of Arizona, and each of its political subdivisions, establishing themselves as freemen under the organic national Constitution of the Republic of the United States of America. Consequently, they may be driving without auto registration, driver's license, or any other evidence of contract.

Because many law enforcement personnel may be unaware of the contractual nature of auto registration and driver's licenses, it is conceivable that this situation may lead to confrontation between these individuals and law enforcement personnel.

I urge you to inform yourself and your personnel about this matter as soon as possible. If you would like to be briefed by someone knowledgeable on this subject, please contact me.

In the meantime, inasmuch as this procedure is entirely appropriate when properly carried out, I would like to be personally notified of every such instance of confrontation in order that the persons involved and the public officials involved may be apprised of the correct procedure and the appropriateness of their actions on the part of each concerned.

My office phone is 255-5261 and I am requesting to be notified of the names and incidents along with addresses and phone numbers of participants of any such confrontations arising from the exercise of a person's freeman status in order to evaluate the outcome of properly rescinded contracts.

Sincerely,

Wayne Stump
State Senator

Signed in my presence this 10th day of January, 1985.
December 10, 1985

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Sincerely,
Citizenship

"State Citizenship is a vested substantial property right, and the State has no power to divest or impair these rights." Favor v. Kingsbury, (1929) 98 Cal. App. 284, 276 P. 1083.
How can you lose Sovereignty?

- Ignorance of the law is no excuse
- Any time you get anything from the government, it is an implied contract and brings you into their jurisdiction.
How can you lose Sovereignty?

- All statutes are written very carefully, and most do not apply to members of the Sovereignty.
- 99% of the time the government is technically correct.
How can you lose Sovereignty?

- It is not up to the government to tell you that you are a member of the Sovereignty.
- The government lawyers make up a statute that properly applies to those entities that they have jurisdiction over.
- The burden is on us to assert our Sovereignty.
How can you lose Sovereignty?

- The burden is on the Sovereigns to know and understand the law and to assert their sovereignty.
How can you regain Sovereignty?

- In order to regain your sovereignty, you must ASSERT your SOVEREIGNTY.
- The Presentation on Asserting Sovereignty covers a procedure that I have developed.
In order to be a true Sovereign, you MUST:

- be self reliant, you must not only talk the talk, you MUST walk the walk!
- be knowledgeable about the law and how it works.
- be prepared to take the initiative in Court if necessary.
- Make it known in no uncertain terms that you are all of the above.
Summary

- It is all about slavery
- It is NOT about race
- A “US citizen” or a “citizen of Canada” or a “citizen of Australia” is a subject/slave.
- Either you are the King, or you are a subject/slave, and there is nothing in between.
- If you participate in their “color of law” statutes, then you have agreed to be their slave.
- It is ONLY involuntary servitude (slavery) that is not lawful.
Summary

- At common law all births, marriages, deaths, etc., are recorded in the family bible.
- I would then compile an affidavit with the family bible pages recording the birth, (marriage, death, etc.,) and then record that with the county recorder.
- The ONLY way our children will be truly sovereign, is if they are (1) their births are not registered, (2) they are taught about the importance of being sovereign, and (3) they are taught how to operate as a “sovereign”
Summary

"If a nation expects to be ignorant & free in a state of civilization, it expects what never was & never will be”
Thomas Jefferson
Summary

- Nobody said it would be easy, but it IS POSSIBLE.
Summary

- What’s the alternative?