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The Language of Law

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Preface

The word "Law" evokes powerful responses.

Fear for some. Comfort to others.

And, too often, dangerous disagreements.

Law touches and controls every aspect of our lives, yet only a few judges, lawyers, and law professors know much about the peculiar mysteries of its language … a language that seems too confusing for most to even try to understand.

That's why my little book is offered.

The language of law is quite simple, really.

The key is to begin with basics, fundamental precepts, self-evident truths upon which all "legitimate law" is established.

That's what this book is about … the foundations of law found in its language.

In the following pages you'll learn "a new way of thinking" as you discover power in the simplicity and beauty of law's language.

In this troubled world agreement is what we need most, for in agreement we can find the force of unity required to stand against the threats of those who do not understand us. To prevail in this global battle of ideas, we need a clearer understanding of the language of our law, for it is this "legal language" and its principles that unite us as freedom-loving people resolved to stand as one, a nation dedicated to preserve those principles for all!

As you learn the language of law, you will discover just how much we all agree. You will begin communicating agreement with others. Standing together on principle prepares

us to prevail in the battle for peace. Threat of war vanishes where people find agreement through effective communication. Misunderstanding is the fuel of controversy.

In the language of our legal system, however, you'll find self-evident truths beyond debate, principles so clearly favorable to peace and prosperity for the human race that all reasonable persons must sooner or later agree (if those truths are communicated by you and others effectively).

Where are recent changes in our legal language taking us today?

What can we do together to make the journey safer for ourselves and our children?

How can we promote agreement and prevent the perilous quarrels it arouses?

My little book offers positive answers.

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Introduction

The word "law", itself, is an exciting adventure, as are the other terms and ideas we'll explore in these pages. We'll examine words like proof, estoppel, justice, evidence, and truth … important words flowing daily from powerful pens all over the world.

We'll examine words that control swords and command settlements.

Within the language of law we'll find power to promote peace on a planet so in need of legal understanding. We'll discover the potential for peace that resides in the language of law alone, concepts about which nearly all reasonable persons could agree … if only they knew more about them and how to communicate with them.

This is not another legal dictionary. What's offered here is a look at the language itself, the peculiarities of a way of thinking that (we hope) has for its goal a system of justice that can, indeed, promote liberty for all.

Law is, perhaps more than anything else we can say about it, a way of thinking. In this it's not unlike mathematics, biology, or computer science … all of which have their own language and "way of thinking".

On the morning of my first day of law school, my entering class was assembled in the school's mock courtroom to be addressed by our dean, Bruce Jacob. Like my fellow classmates, I expected a lecture about hard work, long hours of study, and the rewards of passing the bar examination someday and entering upon the profession for which most of us were there assembled.

Instead, Dean Jacob said this. "You are going to be changed."

What a peculiar thought! "You are going to learn a new way of thinking."

And, he was right. We did. We learned to think like lawyers.

We learned a new language and with it a new way of thinking.

It is this new way of thinking I wish to share with you, while sparing you three years of law school and long nights reading volumes of cases and statutes to cram for exams.

The language of law commands a new way of thinking.

Imagine a beginning physics student who is taught the calculus, a language of signs and numbers unlike grade school arithmetic that deals with static concepts like how many or how far. With his new language of calculus, the young physicist begins to calculate the process of changing values, rates of change, limits set by the concepts of infinity or nothingness. As he progresses with his studies, he may embark in the realm of quantum mechanics or astrophysics and learn to communicate about virtual particles, anti-matter, imaginary realities, and other advanced mathematical constructs invented by his language to explain and predict the behavior of our universe.

All such communications depends on shared understanding of a language, and with it the mechanism of a “new way of thinking”.

So, let’s examine this “new way of thinking” called law.

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A New Way of Thinking

When I was a very young lad growing up in a small Ohio town, we had a wonderful teacher in our school, a stickler for the power of precise communications. His name was Joe Webster (a fitting name for this man who taught us the power of words). He taught the meaning of "truth" and how to discern its enthusiastic counterfeits.

Joe Webster taught us how to think by teaching us how to communicate.

He taught us how to know if something said was as it seemed to be. He taught us to doubt with precision. He taught us how to prove our position effectively using words.

We didn't guess at anything. We were forbidden to do so.

We began with what we knew for certain, setting out points about which those who challenged us were required to agree, then building on that foundation … adding one thoroughly tested thought at-a-time until we convinced our challengers of truth by revealing the point in their thinking where assumption introduced error.

Sir Francis Bacon, in his book Novus Organum, recommended this same procedure to the leaders of his day. His was a call to establish greater public understanding of the societal needs of his age by setting aside political and priestly assumptions of the past, so "a new work" could be built on a trustworthy framework of thought rooted and grounded in definable "truth" about which no reasonable persons could disagree.

This is (as it should be) the goal of law in all its forms.

Legitimate law should provide a system of relationships in which reasonable people can agree–an environment of agreement where people can manage business and personal affairs with predictability in a pluralistic society. In today's world, cultures compete in

commerce across global borders separating tradition and spiritual values. Political and priestly assumptions introduce error that disrupts communications, and the confusion that follows brews war and its terrors.

Understanding is war's most powerful deterrent.

Understanding can be established within our language of law.

To understand, however, is to share thought that may, at first, seem foreign to us, yet the great promise of its benefits are inestimably worthy of our effort.

Fortunately, as you will soon see, the process of learning this language is *FUN* – just like Joe Webster's classes, where we laughed with joy in our discoveries, little knowing the power his teaching would impart to us in later life when communications would be so vital to life's great and small successes.

Joe taught us when to doubt the pompous proclamations of others, how to challenge empty assumptions and "someone told me so" predicates, and how to parry ignorance and superstition with clear communications that ultimately bring others to agree with "what is" as opposed to what they wished or what others told them.

Joe taught us never to assume anything.

He challenged us to speak as accurately as possible about everything.

We were taught to determine as precisely as we could what we could say for certain *before we spoke*. If he drew a 3-sided figure on the blackboard with the piece of chalk he relentlessly held in his hand and called to one of us, "Graves! Front and center! What's the story?" we were chided unmercifully in front of our peers if we answered that the figure he'd drawn was a triangle. The answer he demanded was to say the depiction was

a series of marks made on a black slate with a cylinder of calcium derivative apparently intended to depict the simple geometric figure commonly known as a triangle!

To say more was to be in error … and he was, in fact, quite right in all of this.

To some of my chums, however, this tedium with details seemed ridiculous. Parents complained. The school board was consulted. People whispered behind his back. Who was this long-haired conductor of our town's orchestra, this indefatigable billiard player, maker of rockets and strange-smelling experiments in the chemistry lab, measurer of the angles of planetary movements, this madman demanding fastidious attention to detail?

Indeed, at times it seemed he was completely insane.

Yet, we learned.

In my years of service to the community as an attorney, his instruction has repeatedly empowered me to overcome my clients' adversaries in the courtroom where truth is the goal for which no compromise nor counterfeit should be permitted to succeed.

When we examine in the following pages concepts like circumstantial evidence (by which too many have been executed or banished to a life of imprisonment upon no firmer stuff than someone's hunch or outright guesswork) you'll discern the sensitive nuances between known facts and mere fanciful conjecture.

Reality is not inference.

Truth is not mere theory nor statistical probability.

Justice requires us to resist and repeal wrongs by using law's language effectively, as Joe Webster taught us and as Sir Francis Bacon admonished the leaders of his day to do.

To use law's language effectively, therefore, we must learn this new way of thinking.

Opinions

Opinions, it's been said, are like noses. Everyone has one.

In the courtroom, however, they count for nothing – unless they are the opinions of an expert witness hired to offer his or her hypotheses as to the probability of this or that. It is a fact of law that expert witnesses *are not allowed* to offer their opinions to the jury as to the actual facts of a case. They are restricted to comment on hypotheses. The lawyer may ask, "Dr. So-and-so, in your professional opinion, if a .38 caliber pistol were fired at a human body from a distance of four and one-half miles, would the projectile reach the body with sufficient force to penetrate to a vital organ?" Never is the expert asked, "Do you think the defendant killed Mrs. Smith?" Opinions are always treated as opinions, and juries are instructed to treat them as such.

Yet, outside the courtroom, opinion has great sway over people and their attitudes toward law and those who earn their livelihood in the practice of law, both judges and lawyers. Lawyers aren't trusted. It is imagined by those who know little or nothing of the language of law that the strange-sounding words lawyers use were invented to confuse the populace, to keep the average citizen "in the dark" and, while this once was true when courts used many Latin terms to describe what were really simple matters any person of average intelligence could understand, that practice has been displaced by vocabulary as simple and scientific as the words people use today to talk about their computers.

Most legal terms in use today are actually quite simple to understand and operate to clarify complexity, rather than increase it. The opinion that lawyers use such terms to confuse others is without basis today, as the a few seemingly complex terms will show.

A Few Words

Estoppel

Here's a term not often heard outside the courtroom or the offices of lawyers. Sounds frighteningly complicated, doesn't it? Surely there must be an easier and clearer way to say whatever this word says.

In fact, what this word says is complicated but, as you'll see after I explain the term, this simple word does a good job of simplifying the explanation of what otherwise could require several paragraphs of explanation.

Suppose a man came into court complaining that his neighbor's tomato plants were creeping over onto his own property, yet he did nothing to stop the vines from growing across the property boundaries and had for weeks been enjoying ripe, red tomatoes on his salads every evening. Such a person is said to be estopped by his own contrary acts from complaining to the court, because he did nothing to prevent the alleged "damage" when it was within his power to do so and, in this example, even enjoyed a clear benefit.

This doctrine of law is called estoppel.

See? It's not so difficult, once you have a simple explanation.

Interrogatory

This high-sounding term is just another word for "question". You've heard the word interrogation in the movies and TV. Interrogatory and interrogation come from the same root meaning to ask. In a lawsuit, interrogatories are typically written questions served on the other side and requiring written answers in response, usually within a certain number of days after being served.

You see? This is just another word you may not have heard before, however it isn't a difficult term to understand, and it's certainly more effective for lawyers to use a specific term that in a single word defines "written questions the other party is required to answer within a specified number of days after being served". Why us 18 words to say what one word says quite well?

Deposition

Here's another dreadful sounding word (especially for the person receiving notice of being required to attend a depositions), however the word itself is quite simple and means to put a person "on the level" with all other persons, stripping him or her of any claimed protection of office, prestige, or community standing so that questions may be asked and answered under oath to get at the truth and put the truth on record by transcribing what's said in written form that can be filed with the clerk of court and, if necessary, read to the judge and jury. You may have heard someone speak of a dictator being "deposed", which is to say he has been "taken down" to the level of the rest of us, stripped of the protection of his office within which he might otherwise have hidden from those who sought to ask him questions. In our American justice system, every person (no matter how important) can be deposed to make the truth they know part of the court's written record.

Appeal

This word is not unfamiliar to us, but when we hear "appellant" or "appellee" we may think someone is trying to trick us with legalese when, in fact, the words are no more complicated than others we use everyday. We know what the "propellant" is in a can of paint; it's the compressed gas that causes the paint to come out. In the same way,

the party who causes an appeal is called the "appellant", and the one against whom he or she appeals is called the "appellee", just as one who receives the benefit from a donor is called a donee.

Dispositive

Tending to dispose of an issue. A dispositive fact is one which, if proved, will decide the case. Relevant, material, pertinent, having a substantial effect on the outcome.

Beyond the Words

Now, let's go beyond the words. There are plenty of legal dictionaries to teach you the meaning of legal terms. Many common legal terms are defined in the appendix of this book, and a more complete, hyperlinked legal dictionary is available at my website on the internet at www.jurisdictionary.com

Let's see how the language of law is built and how we can learn to think differently for the sake of our society and the world.

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The Beginning

In the beginning was the Law.

So begins John's Gospel. The word that Greek writer actually used was **ëï ãï ò** or, as we spell the Greek word with English letters, *logos*. What John was literally saying is, "In the beginning there was a Law that rules the universe, a Law that was with God, a Law that is God."

That is law with a capital "L".

This Law that is God was comprised by John in a single word … *logos*.

Many modern Bibles say, "In the beginning was the *word*," however the Greek term John actually used is *logos*, a special word with a meaning essential to understanding our language of law *at the beginning*.

The Greek word *logos* is perhaps the most significant of all legal terms, for it stands for Law that controls all things, what some call Providence, others call Mother Nature, and people of faith call God by many other names.

Like most peoples of the earth, the Greeks also had another word for "law", a word that describes law as when we speak of the law of nations, law that sets speed limits on highways, law that sends men to prison for stealing a loaf of bread. This word is íûìï ò (*nomos* in English letters). As we'll see in the next chapter, other nations have similar pairs of words we interpret as "law" (just as many different Greek words are interpreted in English as "love", e.g., *agape*, *philo*, and *eros*, which certainly are not the same though they are related in many ways to our single word "love" that tries to encompass them all).

By comparing *logos* to *nomos* we fix a firm foundation for our language of law, solid truth that cannot be moved by the wavering clamor of political propriety. In these words we establish what law is, what it is not, what it can be, and what it never will be.

Early Greek writers suggest *logos* is "the underlying, intelligible law of the universe, the common, unifying principle in all things".[1] It is said the concept of speech and reason are comprised in the "underlying law or rationality of the universe and its connection with the reason, understanding, and linguistic abilities of human beings".[2]

Logos is law set out by deity, not men. This is law that makes apples fall from trees, causes stars to shine, and moves mankind on a steady course determined by our collective self-interest guided (as we choose) by the wisdom of our past and tools of communication we may or may not learn to use effectively … including the language of law.

In contrast *nomos* is the law of the streets, the temporal attempt to control society by statutory systems we should be wise enough to conform to the ultimate dictates of *logos*.

More on this later.

A Thing Similar

Before proceeding, it's important for us to agree on our method of thought, to have a "common" understanding, if you will, and for that purpose I must introduce one of my favorite maxims of the common law.

"A thing similar is never exactly the same."

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[1] Evans, James; Survey of Western Philosophy; Webster University, 1996.

[2] Ibid.

This should be our touchstone as we come together to share ideas and promises with our language of law, for this is one self-evident truth that forms communication bedrock. If we can't agree on this, we can't agree on anything.

With such simple sentences as this, the maxims of common law create agreement in a world of competing ideas. (We'll get into the fascinating study of common law maxims in a later chapter.) This particular maxim gives us a language foundation to build upon.

Truth can be found.

Truth is not a matter of mere opinion … nor should courts ever permit it to be so.

Truth can be *created* within the world of words, as it is in this simple sentence.

"A thing similar is never exactly the same."

Just because two things are similar, we must not dare to assume they are "the same". Indeed, it is imperative to our understanding of the language of law to understand that not only are they not the same but that they are *never* the same. They are merely similar, and that's as far as we may venture and remain within the regulated realm of legal reasoning (another subject we'll have a look at later in my book).

The speed limit sign on the street where I live is a "law", to be sure. If I drive too fast, I'll get a ticket and be required to pay a fine. However, the law of that speed limit sign certainly is not the same as the law that makes apples fall from trees or keeps planets in their orbits 'round the sun.

The English word "law", you see, can mean many things. That's why we begin with the Greeks *logos*, the foundation of our study of law's language, the root of truth, primal cause, the *a priori* of legal reasoning, the point of beginning from which we approach our

study of the complex concepts of human liberty and justice … just as my teacher Joe Webster taught us to start with something we know for certain and build from there.

This is where we start our journey into understanding truth and communicating about law in a way that will promote agreement and, ultimately, progress against the forces of lawlessness, terrorism, and the persistent presence of crime.

The *logos* is what law *is* … eternal law that never changes, law our laws should seek, law determining the destinies of men and nations, nature's law, the plan of an unseen deity set loose in an immeasurable universe, unchanging, resolute.

This is what Mr. Webster instilled in us back in grade school, and it's essential to our understanding law's language and the power our understanding will give to overcome our opponents and make peace with our adversaries. Indeed, perhaps (as John suggests) this is where *all* wisdom begins, the golden key by which alone we can unlock the mysteries of law and unleash its potential for good in this world, for only when we agree as to the fundamental predicates of truth can we hope to establish justice in our courts or promote peace and prosperity by the deliberations of our legislatures (or, for that matter, manage our homes and businesses successfully).

There needs to be a starting point before we can begin.

By agreeing "a thing similar is never exactly the same" and comparing the ancient *logos* with our modern concepts of law, we can fine-tune our legal thinking.

Two Are Not One

Two words in many languages are translated in English as "law".

In Latin there are *lex* and *jus*.

In German we have *recht* and *gesecht*.

In France it's *droit* and *loi*.

All these words mean "law", however they are only *similar* and not at all the same.

Each is derived in a roundabout way from the Greek concept of *logos* as distinguished from *nomos*, the eternal and immutable law of deity versus the temporal, easily amended laws of men.

We'll take a closer look at these opposing concepts (i.e., law as it ought to be and law as it is) in a later chapter, however for now I want you to see that many words are translated in our English as law, while in the other countries there are subtle but critically important variations in meaning, differences that give us greater insight into the everyday workings of our legal system.

In Greece, of course, they do things differently.

The Greek concept of law expressed by this one peculiar word is unique.

As used in the opening sentence of John's Gospel (written more than 2000 years ago to record the cruel abuse of justice that resulted in the crucifixion of Jesus of Nazareth) *logos* means far more than "law" in the sense we use it today. *Logos*, for some, is another word for God (if by that term we mean the irresistible force and order in our universe that timelessly determine the outcome of our daily lives according to set principles that never vary). This is not your Sunday school God of the Bible nor the Allah of Mohammed's Koran but the *logos* that steadfastly works behind the scenes of our world to determine the destiny of men and nations according to fixed principles that never vary. It is law that guides stars and causes acorns to erupt into mighty oaks. The *logos* is a sublime mystery within which is shrouded the very meaning of life, for it is *logos* that gives and sustains

life, regulating molecules as it regulates the processes of human interaction, so certain behavior predictably has certain consequences – sooner or later.

An old Chinese proverb says, "He who sows wild oats brings in a bad harvest." This is the *logos* at work, not the *nomos* of men and nations.

This *logos* is the karma of Taoists, Buddhists, and other Oriental religions.

It is the unwritten law of our universe that ordains foreseeable consequence to every action we take … individually and corporately as nations.

None is exempt from the control of *logos*.

Certain consequences follow certain actions, as surely as night follows day.

We may avoid its penalty by amending our behavior, seeking forgiveness, or making amends, however these, too, determine consequences the *logos* predictably supplies.

This is the inescapable, immutable, eternal law of nature.

Foreseeability

The importance of *logos* in our study of law's language is that here is a predicate on which we can establish the doctrine of foreseeability, an essential concept in our courts. The *logos* can be relied upon to bring predictable results from present circumstances. It is foreseeability that gives courts authority to exercise power to impose penalties for certain behavior, because a reasonable person could anticipate predictable results of behavior and adjust his circumstance to prevent injury to others. Refusal to appreciate the foreseeable injury to others is a wrong that results from denying the truth of *logos*. (The concept of "reasonable person" will also be explored in detail later on, since one of the fundamental

precepts of our system of jurisprudence is that law should hold people accountable for the consequence of their unreasonable acts.)

If one drives about town with a pick-up truck loaded with dynamite, for example, it is foreseeable sooner or later some catastrophe will result (whether the driver intended it or not). So, our statutory law holds such persons liable for consequent injuries to others, because the result was foreseeable … determined by the eternal *logos* that never changes.

Foreseeability is provided by *logos* only for those wise enough to notice.

The *logos* that prevents water from flowing uphill remains inviolate, no matter what we may legislate to the contrary.

Logos is the bedrock of reality, the law that truly was "in the beginning".

Understanding law in this sense gives meaning to what courts do and justifies their judgments and commands insofar as they, themselves, are submitted to its decree.

It could be said man's laws and the rules we agree upon to control the making and execution of our laws should be designed to coalesce and agree with the *logos* for, in the long run, history has taught it is foolish to attempt an end run on reality.

Laws that impose unworkable controls on the marketplace, for example, are destined to result in greater misery than they can ever ameliorate, because *logos* will not give way to man's demands nor surrender to all this worlds most powerful armies. Better by far to amend our laws to comport with the predictable and, thereby, adjust human behavior so *logos* will reward us rather than impose the hard lessons we might otherwise avoid.

Law in this sense is not what a policeman commands in the streets of New York nor the regulations contained within vast libraries of statute books fashioned by legislatures.

The law of *logos* is beyond the reach of man. If he is wise he will seek to modify human behavior to obtain the greatest good for all by recognizing the imperative edicts of *logos*.

Predicting the consequence of human acts requires our collective understanding. It is a noble call that urges us to work together to fashion governments by the people, of the people, and for the people. This is the treasure of our heritage of history, willingness to work together in a common cause for the sake of all mankind, considering the *logos* in all our deliberations … as did all the founding fathers of this nation of states.

Working together effectively, of course, requires a shared language of law.

We must communicate effectively to create a better world through law. Sharing this language of law begins, as John writes in his Gospel, with our shared recognition of *logos* that never changes, *logos* that causes wars to erupt from disharmony and confusion, even as it brings great joy and peace to those who comport their thinking and behavior to its inevitable and foreseeable judgments.

To see how we can do this, let's turn to a discussion of what's called "natural law" as we examine the pairs of words mentioned earlier, *lex* and *jus*, the law of man's making and the goodness of equity to which every noble heart aspires.

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God and Reason

The motto of our nation is, "In God we trust."

If we'll agree the God we trust is eternal truth, i.e., the *logos*, creating foreseeability in response to all our actions (and leave divisive debates over doctrine to theologians) we can build our language of law on a rock-solid foundation.

We can continue to hold to our individual "religious" views of God and even agree to disagree. However, we cannot afford to debate the existence of reality nor the fact that reality establishes foreseeability without which our system of justice cannot operate.

If we say the God we trust is truth, the hidden hand of reality that rewards goodwill and honesty, the foreseeable pattern of our universe that determines the destiny of men and nations, then our motto is one against which no *reasonable* person can disagree.

Reality is real.

Truth is true.

And, foreseeability is established by a *logos* General Washington called Providence.

It doesn't matter that others call God by different names. The God of our motto is not the product or possession of religious orders. It is the "law of nature" only fools deny.

The God we trust is the unavoidable reality in which we move and have our being.

The God we trust will give us victory over the enemies of peace and justice.

In this God we must continue to trust, for without this fundamental truth there can be no justice … and, without justice there can be no liberty for anyone.

The beginning of reason is our trust in God.

God is all that truly is or was or ever shall be. Many founding fathers referred to God as Providence, that force (or Law or *logos*) in the universe that determines supernaturally that good acts ultimately bring good results, while bad acts bring bad results.

This is the God in whom our nation trusts, a Law that cannot be refuted, truth that overcomes falsehood (sooner or later), the source and sustainer of life. God permeates all things created, is in them and around them, everywhere at all times and forever.

The God in whom we trust rewards those who do good and ultimately denies life's benefits to those who do evil, proving truth and revealing falsehood.

God is love itself, eternal, unchanging, and trustworthy in the extreme.

God is not the absence of God, however. Men may deny God, ignore God, live as if there were no God. In this ignorant denial of God evil breeds, for here it is men believe they can "get away" with evil, not knowing God is Law that's never violated, Truth that will forever be established, revealing falsehood for what it is.

Falsehood is the absence of God.

The motto of our nation is not the proclamation of a state "religion" but the common-sense wisdom of a people who believe truth ultimately prevails over falsehood, that good is its own reward, and that love is better than selfishness and hate.

In this, too, we are united.

The oath required of witnesses at trial and officers of government embarking on their careers is a restatement of our nation's faith in God (not the proclamation of a religious doctrine). Our prosperity as a people depends on our allegiance to truth and our continued confidence that love will always prevail because God ordains it to be so.

Reason

Reason is the engine of justice.

Without the guide of reason to direct our judges, courts would be an arena of wizards and prestidigitators waving magical wands and pronouncing superstitious incantations to determine which party, which argument, which evidence deserves the court's approval.

Justice is determined in our courts by seeking truth through the exercise of human reason—not by mere hypothesis or speculation but by fixed rules of evidence establishing truth and protecting innocence against the injustice threatened by falsehood.

Reason guides our courts … reason that trusts in God to establish truth on the record.

You have a right to demand that reason guide and control your courts so truth can be put on the public record! Let no authority steal this from you. If someone says or does something unreasonable in your lawsuit, you have every right to object and be sustained by the court. If the opposing party takes some action that seems unreasonable, object. If an attorney for the other side does something you feel is unreasonable, object. If your own attorney threatens some action you believe is unreasonable, object (and, if necessary, fire him). If the judge acts unreasonably, demand to be heard objecting on the record.

Rely on reason.

Let common sense direct you.

Truth is reasonable, and nothing but truth has any place in our courts.

Be informed, however. Don't rush into battle with your mind frozen on one idea. Don't ignore weak spots in your armor. Take time to doubt yourself. Try to poke holes in your ideas. Put your theories to the acid test. Prod every assumption. Ask others. Before

you take any action in court, ask your very best friend what she thinks. Listen to her! If she thinks your arguments are nonsense, listen to her! If she thinks the other side is wrong and you are right, you have gained common sense, and reason is on your side. Listen to others.

Reason believes there is but *one* truth. Though both sides may be lying, there is only one truth to be discovered, and the responsibility of our courts is to find it. Anything else is un-reasonable.

Reason rules American courts. This is the highest law of the land.

That which is unreasonable has no place in courts of justice.

That which is unreasonable opposes natural law and the common law of man.

That which is unreasonable denies common sense.

To support the unreasonable is unethical.

No court should permit unreasonable verdicts.

Unreasonable rule is tyranny that undermines the security of civilized life for which purpose alone courts are justly established by lawful governments.

Reasonable men and women should always prevail over unreasonable people.

The Reasonable Man

Though militant feminists might proclaim this an oxymoron, “the reasonable man" is a concept critically essential to the framework of our judicial system. The reasonable man is a fictitious person often spoken of in our courts.

In real life, of course, there are few if any persons male *or* female who could be said to be reasonable at all times and in every regard. Our civil law *invented* the reasonable

man to serve as a standard for us all, because our language of law *requires* the concept of a reasonable man to measure what is reasonable. Either we live up to the standard set by "the reasonable man", or our courts court may adjudge us to be unreasonable.

By comparing individuals to the fictitious reasonable man our courts can determine which of the parties to a lawsuit is reasonable, and which parties are not.

That act is reasonable that a reasonable man would do.

That thought is reasonable that a reasonable man would think.

Anything a reasonable man would *not* do is patently unreasonable.

Negligence

In tort law, for example, negligence may be defined as the failure to act reasonably, i.e., as a reasonable man would act. The reasonable man exercises care not to injure others. To the reasonable man some truths are self-evident. The reasonable man knows the difference between direct facts and imagined conjectures. The reasonable man cares for his neighbor's welfare. He does not steal. He does not lie. He acts responsibly to others and to himself. He follows the Golden Rule. He is not required to throw his life away attempting to rescue the widow's parakeet from a marauding cat. He is allowed to exercise self-interest. He is not required to give his money to the poor. He is required, however, to act in a way that will not adversely affect the welfare of others or the welfare of society as a whole. The reasonable man exercises due diligence[3] to ensure that his acts

[3] Due diligence is a term of art seldom understood but frequently seen in the papers of civil lawsuits. In its plain meaning due diligence is the diligence due to a particular matter (hence the term), the diligence a reasonable man would deem to be due considering the circumstances. Due diligence is a duty imputed to us

(including his words both spoken and written) do not injure others. The reasonable man sets the stage for civilized governments to establish a system of justice and fair play.

Whatever is good for the reasonable man is good for us all.

Negligence may also be established in our courts when one party breaches his duty to another. Duty is the obligation that gives courts the right to order that one person pay for the damages he causes to another. (Similarly, it gives courts power to enforce contracts, where one party breaches the duty created by promise.)

Duty gives rise to all causes of action[4], for every lawsuit arises from the breach of a duty of one form or another. In our society, everyone owes a duty not to cause injury to others, either negligently or with intent. If one breaches his duty to another, he *may* be liable in either a civil court or, if the duty is serious enough, in criminal court. Not all duties, however, give rise to a cause of action. For example, if Billy promises Sue they will marry on June 4th and gets cold feet at the last moment, our courts will not enforce

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all, a duty our courts have power to enforce. For example, if Green hires White to supervise Black, and White takes naps in the afternoon while Black leans on the broom handle, White failed to exercise due diligence. If a guardian undertakes the care of his ward then permits the ward to die of malnutrition at the nursing home, the guardian filed to exercise due diligence, since the guardian acted unreasonably.

[4] At least one cause of action is essential to every civil lawsuit. It is the basis for complaint. Usually the plaintiff asserts separate counts in his complaint, one for each cause of action. To adequately allege a cause of action he must state all facts required to win on each cause of action. These are called elements of the cause of action. If the plaintiff alleges a cause of action for breach of contract, for example, and proves each of the essential elements of that cause of action (i.e., if he can prove there was a contract, the contract was breached, and he suffered damages as a result) he wins. It's that simple.

the obligation he took upon himself by making the promise, for such are "contracts in contemplation of marriage" and no longer enforceable under the laws of any state in the nation. If Billy promised Sue he'd take her to the movies if she baked him a cake, however, and she bakes the cake but he backs out, she would have a cause of action to at least recover the price of her ticket (though, of course, it would cost more to bring her lawsuit than the ticket would be worth). The point is that duty gives rise to obligation, and enforcement of obligation is what courts are all about.

For a court to enforce a duty, therefore, the duty must be reasonable.

Responsibility is the consequence of duty. Each of us, in exchange for the benefits of living in community with others, owes a duty to all. That duty creates a responsibility in us and gives our courts power to require us to answer for the damages people say we caused them by breaching our duty.

They must prove breach of duty, and they must prove injury, however if they prove both we can be made to meet our responsibility by paying them for their damages.

We are all responsible to each other.

It is the purpose of government to enforce our responsibilities to each other.

Negligence, then, is the lack of care or concern for responsibility. No intent to injure is required. Since everyone has a duty to care for others and protect them from injury by using common sense and caution, careless acts that damage others (even when no injury was intended) may give rise to a cause of action. A lawsuit may arise from intentional acts (e.g., when one slanders another) or negligent acts (as when one rear-ends another on the highway).

Both acts are breaches of duty and both give rise to causes of action.

Appeals

In every jurisdiction judges are given a certain latitude in making their decisions. This "wiggle room" is called judicial discretion, however it has limits. A judge may not decide however he wishes. He must exercise reasonable discretion, or his decisions will be overturned on appeal.

Appeals may also be granted where a judge abuses his power, i.e., by exceeding his or her jurisdictional authority, since no government official (judge, legislator, executive officer, or local bureau employee) has discretion to act outside his or her authority. When an officer of government acts outside his or her authority, the law provides a remedy in the writ of mandamus[5] or, if a judge exceeds his authority, there is the remedy of appeal, since no judge has discretion to exceed his jurisdictional authority.

All successful appeals, therefore, arise from failure of the judge to properly apply the law, failure of the judge to follow the law, or failure of the judge to act reasonably.

One does not automatically have the right to appeal.

If a party is merely disappointed with a trial judge's ruling, he may appeal only under certain circumstances where he can show the judge abused the court's discretion. Many

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[5] A writ (court order) directing a government official (regardless of branch or level) to answer by what authority he is acting in a particular situation or requiring him to act in accordance with lawful authority. If a mayor refuses to convene city council, an aggrieved citizen can petition the court to issue a mandamus requiring the mayor to do his job. Or, if the mayor takes it upon himself to act as judge and jury, directing the police chief to put people in jail at his command, the court can order the mayor to explain the authority he claims to have people jailed without due process of law and, if he has no such authority, can command him to cease doing so under penalty of being jailed himself.

people are confused about this process, believing one may appeal to the next higher court for any reason, e.g., he didn't like the ruling.

In fact, appeals are decided exclusively on fixed principles of law. The appellant's[6] view of right and wrong almost never has an effect on the appellate court.

One of the most common abuses of power and discretion that results in favorable appeals is violation of the rules of evidence, e.g., where someone was allowed to present hearsay (an out of court statement made by someone who is not in court to be examined) that prejudiced the jury. Appellate reversal is proper whenever an appellant is denied due process by the trial court's refusal to allow him to present relevant testimony or where the other party was permitted to present evidence that exceeds what is permitted the rules.

The power to appeal is the lynchpin of our legal system.

By power to appeal parties are protected from misplaced zeal or outright corruption of trial judges.

In order to appeal effectively, however, one *must* make an effective record in the lower court proceedings, or there's no way to prove the abuse of discretion or power. The court reporter is your best protection against losing at the hands of a biased judge. If you fail to make your record at the trial level, your appeal will be flatly denied.

Moreover, you must object to the lower court's abuses *at the time they happen*, or the appellate court may treat your objections as waived. When something happens during the trial court proceedings contrary to the rules or reason, you must object immediately in

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[6] The one who files the appeal, requesting the higher court's review. The other party is called the appellee.

such a way that the court record shows you objected and why you objected. Otherwise your appeal will have no effect whatever.

Demand due process. Notice and an opportunity to be heard is always protected, so if you do not notice the court and object on the record at the time your opponent exceeded the rules at trial, you cannot sit back thinking you can slam-dunk him on appeal.

You either object and make your record in the trial court proceedings (thus giving your opponent and the court an opportunity to cure the error, if the error is one that can be cured) or you lose your right to appeal. This is the fundamental basis for appeal.

Judges are permitted to exercise their own judgment as to what is right or reasonable based on law and facts presented on the court's record, not private whim or prejudice. This rule is called the reasonableness test, the yardstick by which appeals are measured.

When a judge exercises judicial discretion, the law imposes a responsibility to do so within reasonable bounds (and *always* the judge is required to act within lawful bounds). When an aggrieved party believes there's been an abuse of judicial discretion, an appeal may be taken to the next higher court to challenge the judge's ruling. The higher court is required to examine the lower court's record and the ruling of the trial judge to determine if reasonable persons would disagree with the ruling. If the appellate court finds the lower court's ruling complies with the reasonableness test, it will affirm. If the appellate court finds the lower court's ruling does not pass the reasonableness test, i.e., that reasonable persons acquainted with the law and facts would have reached a different opinion, the appellate court will either reverse the ruling or remand the case back to the lower court for further proceedings consistent with the appellate court's findings.

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Evidence and Proof

Our study of evidence and proof begins with the word “evident”, a term to describe things we clearly see, things that are apparent and obvious to reasonable persons.

True evidence, therefore, is comprised of things that are clearly seen, apparent and obvious to reasonable persons.

At the other end of the spectrum are things our language of law deems impossible. An example is water that flows uphill. The rules of evidence prevent such testimony from being introduced in court proceedings. Though it may be said, “Nothing is impossible,” a court of law may not consider things reasonable persons believe are beyond the realm of credibility.

Just this side of impossible are things that are merely preposterous. Such things are not impossible. They are only so improbable as to be beyond any reasonable probability. Yet, even the most preposterous testimony has been found to be true in actual cases, even though no reasonable person could be made to believe them without proof.

It is proof that makes the difference.

It is proof that makes evidence of allegations.

It is proof that makes things apparent and obvious to reasonable persons.

If truth is the goal we seek in our courts, then the fact that testimony is preposterous should not eclipse the possibility of its truth. Preposterous stories may have a statistically improbable chance of being true, yet preposterous stories abound, and many are found to be true! Where the language of law is carelessly used, innocent people get hurt.

Therefore, our language of law provides precise definitions that guide justice to the truth, and this is especially true in the sometimes complicated realm of evidence.

Truth, Facts, and What Can Be Known

In our language of law, a statement is either true or it is false. It cannot be both.

Nor is the truth of a statement subject to the opinion of him who makes it!

For a statement to be true, it must contains only allegations of truth. If the statement contains even a single allegation that is not true, the entire statement is deemed false. In other words, a true statement contains no falsehood whatsoever.

What then is truth?

This famous question may never be settled in the realm of philosophy, politics, or science—yet in the language of law there is a clear answer upon which reasonable persons agree. Truth is that which is.

Truth includes what was and what is yet to be.

Truth is the sum of all facts.

Truth is not subject to interpretation or opinion though, certainly, there is no shortage of human views of what is truth and what truth is not.

In spite of all opinion, however, truth (as our language of law sees truth) is not the stepchild of human views of truth. Truth exists even where no human ever ventured.

Truth was in the beginning and will endure beyond the end.

No truth is ever false.

A falsehood, however, is never true, and that which is false should never be admitted as evidence in our courts. A false statement intentionally made by a witness under oath

constitutes perjury, a felony crime in most jurisdictions, punishable by imprisonment or, in courts martial during time of war, by death. Finding falseness in your opponent's case and putting it on the record as admissible evidence is one of the master keys to winning lawsuits. Justice has so ordered the universe that falsehood often creates its own defeat, i.e., the party whose case is mere fabrication is usually found out.

Falsehoods in statements are like weak links in an otherwise strong chain. It matters not how strong the other links may be, if one link is a lie the chain is worthless and a wise court will reject the whole. Just as a chain can be no stronger than its weakest link, a statement can be no more true than the lie that lurks within it, nor a man more trustworthy than his own word.

Truth is the most powerful tool we have in court battles.

Demand it from adversaries. Strive for it. Permit no deviation.

Justice is decided solely on the merits of the law and proven facts.

No lie has any place in the deliberations of our courts.

Facts are the bedrock of American justice. Facts and facts alone.

A fact is an established truth, something that is evident, clearly seen, indisputable, beyond doubt. Like many other words in our language of law, this term is widely misused by lawyers today (perhaps because some lawyers are more intent on winning their cases than sticking closely to the truth).

Facts are facts ... not guesses, hunches, beliefs, opinions, inferences, or suppositions.

It may be a fact that someone has an opinion, for example, but the opinion itself is only an opinion, not a fact ... regardless of the education or stature of the person who holds the opinion.

Facts are not fanciful suggestions portrayed by outrageous performances of lawyers who seek to lead juries to believe hypotheses based solely on opinions, circumstances, or unsupported legal rhetoric and courtroom drama.

Facts are truth.

A thing is said to be "known" when it has been established as a fact.

The court may take judicial notice[7] of the fact, if it is widely accepted to be true and there is no reasonable room for doubt, or the court (or jury) may rule that the thing is a fact after hearing testimony and examining tangible evidence and documents.

A thing "known" is not "believed" to be true but is, in our courts, an established fact on which the parties may rely.

There are three forms of knowing:

1. what a man knows he knows
2. what a man thinks he knows but does not know for certain
3. what a man knows he does not know

In court a thing is “known” only if the court “knows” it, too!

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[7] The court's declaration of fact and/or law that controls the outcome of a controversy. The court may take judicial notice of a fact or law on its own, or it may do so on the motion of any party at any time. The court may take judicial notice of any commonly known fact, e.g., that Monday regularly follows Sunday or that the moon was full at least once during the past 30 days. The court may also take judicial notice of any law that controls the outcome of your case, whether the law is statute, constitutional, or case law. Judicial notice is an excellent way to establish a fact or law you need to establish to win your case.

The Requisites of Evidence

In order to be admitted in a true court of justice, evidence must be:

- Clearly Seen
- Competent
- Credible
- Relevant

In the first place, things that cannot be clearly seen should not be considered by the court as evidence. True evidence is fact, as opposed to fanciful conjecture or insidious innuendo. Every lawsuit should be a search for truth. The outcome should not be decided on mere possibilities or suspicions but on solid evidence, i.e., evident facts, upon which no reasonable persons could disagree.

The Kinds of Evidence

There are two kinds of evidence:

- Direct Fact Evidence
- Circumstantial Evidence

Direct fact evidence is evidence of facts that tend directly to prove or disprove a disputed issue.

Circumstantial evidence is evidence of facts that do not in themselves tend to prove or disprove a disputed issue except by the drawing of an inference.

Direct Fact Evidence

Direct fact evidence is evidence based on direct facts as opposed to circumstantial evidence that's based on inferences surmised from direct facts (or, God save us, from other inferences surmised from yet other inferences or one person's intuition based on the opinion of yet another person).

Direct evidence is evidence that is believed by reasonable people without having to jump to any conclusions. It is obvious and apparent.

Direct fact evidence cannot be disputed by reasonable persons. Direct evidence does not require any stretch of imagination.

A direct fact is not inferred nor surmised from other facts. Examples include that the murder victim is dead, the accused person has been blind in both eyes since birth, and the victim was shot in the back from a distance of 300 yards with a .30 caliber rifle.

Such direct fact evidence can be verified and is, therefore, reliable.

Direct fact evidence is clearly evident.

Circumstantial Evidence

Circumstantial evidence is based on inferences taken from direct facts.

Circumstantial evidence is an invention that reaches beyond the boundaries of known truth into the realm of conjecture, imagination, and hunches.

To be admissible in court, circumstantial evidence must be derived from direct fact evidence. It must be derived directly from facts … incontrovertible facts.

It cannot be derived from other inferences. Inferences on inferences are not allowed.

Nor are courts allowed to enter judgments on mere opinions or hunches founded on intuition. Inferential circumstantial evidence must be reasonable, or it is excluded for lack of credibility.

The quality of the inference determines the admissibility of circumstantial evidence.

For example, if a locked house is robbed without any visible signs of forced entry, a jury may be persuaded to believe the robber had a key. At the same time, however, one could infer the robber knew how to pick locks. Since such circumstantial evidence is susceptible of two separate inferences, it is not as reliable as direct fact evidence. In most jurisdictions, circumstantial evidence drawn from an inference susceptible of a contrary reasonable inference is not allowed to determine the outcome.

As a further protection of innocence, most jurisdictions forbid piling one inference upon another, e.g., inferring a fact from a preceding fact. Using the preceding example, these jurisdictions would forbid the jury from concluding the homeowner must have robbed his own house because he was the only one who had a key, because there is a contrary reasonable inference that the robber picked the lock! In this example, the direct fact evidence is the absence of any signs of forced entry. The first inference is that the robber had a key. The second inference, built upon the first, is that the owner must be the robber because he is the only one with a key. Such pyramiding of inferences is wisely forbidden to prevent the obvious jumping to conclusions without the necessary direct facts that make the thing evident.

An example of direct fact evidence in the preceding example is that there were no visible signs of forced entry, a matter that needs no inference or conjecture but stands on its own, because it is evident, clearly seen, apparent and obvious to reasonable persons.

Hearsay

Here's a term misunderstood by even lawyers and judges, yet its explanation is really simple if you apply common sense and obey the rules of the language of law.

You may remember the children's story about Chicken Licken, who said that Henny Penny said that Turkey Lurkey said, "The sky is falling."

This is classic hearsay.

The prohibition of hearsay rules is not that one cannot under any circumstance say what another person said, but that such testimony is not as credible as that of the other person who appears in the courtroom to testify on his own behalf as to what was said.

If Chicken Licken said Henny Penny said Turkey Lurkey said, "The sky is falling," the hearsay rules forbid judges or juries from inferring that the sky, indeed, is falling or, even, that Turkey Lurkey or Henny Penny said it was—unless those other persons appear in court to testify on their own.

After all, Chicken Licken isn't reporting what he, himself, knows. He is merely repeating an out-of-court statement made by a person who is not *in* court and therefore is not subject to being cross-examined on the truth of what the out-of-court declarant (in this case Turkey Lurkey) *allegedly* said. We cannot be certain what Turkey Lurkey may have said about the sky or even if he said anything at all about it, since Turkey Lurkey isn't in court to speak in person and be cross-examined to determine the truth of what he may or may not have said about the sky.

Such statements are hearsay and are generally inadmissible.

They are only generally inadmissible, however, because in all American jurisdictions there are exceptions to the hearsay rules. These exceptions go beyond the scope of this little book but can be found in the local rules of evidence for your jurisdiction. The rules apply to statements made by dying people, admissions made out of court by persons who are defending themselves in court, and other situations all of which are common sense to anyone who studies the exceptions. All are created to prevent falsehood from prevailing, while allowing the investigative process of evidence discovery to continue with certain controls set out specifically by the rules.

Just remember that in general Chicken Licken *cannot* testify in court or in documents filed with the court about the sky condition unless he says so of his own knowledge.

The attempt to establish a fact on the basis of what someone else said when that someone else is not in court and cannot be cross-examined is generally disallowed by the hearsay rule (subject to limited exceptions).

Proof

Proof is the heart of everything we hope for as justice at the hands of men.

This is where the rubber of our justice system hits the road.

Proof is the purpose of courts. If a court is convened for any purpose other than to find and establish truth on the public record, that court is convened contrary to the will of man and acts in open contempt for all that human life aspires to.

The purpose of courts is to prove the allegations of one party against another, and this they should do according to the language of law and its precise "way of thinking".

Proof is the duty of courts … proof and nothing short of it.

Proof is that singular outcome resulting from logical analysis of facts in evidence.

A proper proof does not admit any other "proof", for a true proof is the only outcome that can result from a logical and just analysis of the facts in evidence.

Nor can any proper proof be established on any foundation other than fact.

If facts in evidence do not support a particular proof, the proof must fail.

If facts in evidence support a particular proof and no other reasonable conclusion can be reached from a logical and just analysis of those facts, then and only then is the proof properly established.

This is what proofs are.

A proof is most easily established on direct fact evidence, i.e., facts in evidence that support the proof directly without resort to making inferences as required to reach a proof established on circumstantial evidence.

Only if no competent direct fact evidence exists to support a proof may the proof be established by inferences drawn from the circumstances (i.e., circumstantial evidence can never outweigh the credibility of direct fact evidence). Moreover, a proof established on circumstantial evidence alone must be quite completely as certain as a proof based on direct facts. Only a single reasonable inference can be considered. If multiple contrary inferences can be reasonably drawn from the circumstances, the proof must fail. The inference offered must lead directly to the sought after proof, and no direct fact evidence can exist that is contrary to the inference in any way.

Unless absolute certainty of proof can be established, no verdict should be entered.

Any verdict entered without certain proof properly derived from a logical and just analysis of the direct facts in evidence is unjust by definition.

When courts miss this distinction because of unnecessary confusion in our language of law, untold misery results. Innocent people are caught in the web of misinformation and intentional abuse of legal process by parties more intent on getting their way than seeing justice done.

The only repair for this problem is a more general, widespread knowledge about the language of law and the process of justice it defines. Every courtroom should be a theatre in which the search for truth is held to the highest possible standard.

Any proof that is not certain is no proof at all. Just as in geometry, where proofs must stand solely on underlying facts susceptible of no alternative logical interpretation, so in a court of law every proof should stand on facts alone and be susceptible of no reasonable alternative proof.

A proper proof stands as the only reasonable conclusion that can be reached from the evidence and should never be derived from mere conjecture based on supposition.

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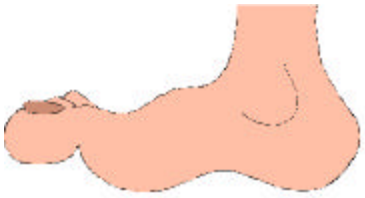
Natural Law



What is “natural law”?

To unravel this mystery let’s continue to explore the two concepts of “law” introduced earlier … law as men make it and Law that persistently controls the universe and all that’s in it. We do this by examining a word once commonly used in our courts and legislatures, a word that once stood for “the wisdom of law”, a single word that in its purest sense defines both what law is and what it ought to be.

This word is *jurisprudence*.

When used today, this seldom heard terms is usually misapplied (as will be shown), yet by examining the roots and history of jurisprudence, we can learn much about the language of law and lay a foundation for the “new way of thinking” we’ll explore in later chapters.

Jurisprudence is derived from two Roman words – *juris* and *prudens*.

Juris is Latin for justice.

Prudens is Latin for wisdom.

Let’s examine *juris* first.

Juris

For you Latin scholars, *juris* is genitive (possessive) case singular of the Latin noun *jus*, meaning "right".

This is not the word we use when we say a person has rights, and it certainly doesn't mean right as opposed to left. *Jus* means right in the sense of good, productive, healthful, uplifting, empowering, nurturing, peaceful, joyful, and liberating for both individuals and nations.

Jus is "right" as when we say a person did what's right, good, loving, and fair.

The Sanskrit equivalent of *jus* is *yoh*, meaning "health".

Another equivalent is the Hebrew *yod*, or "source of light".

In Zoroaster's Persian writings the counterpart is *yaozdadaiti*, "that which purifies".

Other words comparable to *jus* relate to stretching a thing till it's perfectly straight or bending it carefully to make a perfect square corner like the intersection of a cross.

Note that *jus* in Latin is not just another word for "law". The words "right" and "law" are distinct ideas in Latin (just as *logos* and *nomos* are distinguishable in Greek).

> *Lex* is the mechanism of state power, law by human force, compulsion, the written law (right or wrong), codified precepts and rules by which governments control people.

The Latin name for "law" is *lex*, not *jus*.

Jus is something altogether different. *Jus* refers to that which is proper and fair in fact. *Jus* is what's right, whether man's *lex* makes it legal or illegal. *Jus* is a reality revealed in our contemplation of the *logos*. It is eternal truth, transcending the edicts of human courts and legislatures.

Jus is the first root of Jurisprudence … not *lex*.

Other languages make a distinction between eternal "right" and man's written "law".

To the French what's "right" is *droit*, while their written "law" is *loi*.

The German says what's "right" is *recht*, while his code of rules is *gesetz*.

Jus is the rule of *logos* that dictates human consequences to all our acts and failures to act. *Jus* is the hidden law of nature, i.e., natural law, the unavoidable reality that works behind the scenes to dictate the consequence of our collective behavior and decisions.

Jus is the unseen Hand of God, if you will, a power that rewards good and punishes evil, no matter what our law may say is right or wrong, no matter what public opinion demands, no matter what's politically correct or how angrily we rebel against its supreme authority.

Jus is the nature of *logos*, supernally rewarding good and denying evil its goals.

Jus is heedless of our human statutes, ignoring courts and legislatures.

Jus is *jus* … no matter what our *lex* may say.

Jurisprudence is the search for this natural law, transcending statutes and decrees.

Lex

Lex, on the other hand, is "law" in fact—written law, codes, and ordinances.

Lex is rule by force, the power of the state, the gavel of our courts, the steel chains and iron doors of our prisons.

Wise *lex* seeks *jus*.

When our created *lex* ignores *jus*, *logos* teaches us our folly by imposing unpleasant consequences that reveal our error as surely the brightest evening star disappears with the morning sun.

George Washington called this natural law of *logos* "Providence", a force beyond the reach of reason that, like an unseen hand, unavoidably moves in our individual lives and in the lives of nations to decide the outcome of human efforts. If we are loving and kind

and fair to all, the unseen hand rewards us, sometimes with mysterious benefits we never could predict. If we are selfish and cruel, *logos* sooner or later brings suffering, heedless of our most eloquent demands. Only foolishness ignores it.

To say, “What goes around comes around" is just another way of seeing natural law.

The natural law of *jus* is eternal. Goodness is ultimately rewarded and selfishness is required to pay for its crimes.

Lex is whatever we decide to make it, however. We can make good *lex* or bad *lex*.

Those who decry, “There is no truth,” confuse deliberations of law in our courts and legislatures. This is partly because religionists like William Blackstone wrote books in the Nineteenth Century confusing natural law with biblical or canonical law. One insists truth is relative. The other insists truth is discerned by studying scripture. Both fall short of the mark. Though scripture proposes mandates to inculcate morality, Bibles merely record what God already established according to the *logos*. Natural law existed before Moses, before Abraham, before Adam, even before formation of stars and space itself!

This is the secret fools despise and wise men cherish.

This is the foundation of our hope.

Truth is revealed only by Truth itself.

Wisdom comes slowly to us all … one day at a time, line upon line, precept upon precept, here a little, there a little … there is no other way to find it.

Jurisprudence is the wisdom of law seeking to establish *jus* through *lex*.

Sir John Salmond wrote soon after the first World War, "Our purpose is to consider in respect of their origins and relations the various names and titles which have been borne by law in different languages in the hope that juridical terms may be found to

throw some light upon the ideas of which they are manifestations."[8] Salmond makes distinction between these same two ideas of law, clarifying the meaning of Jurisprudence. "If we inquire after the cause of this duplication of terms we find it in the double aspect of the juridical concept of law. Law arises from a union of justice and force, of right and might. It is justice recognized and established by authority. It is right realized through power. Since it has two sides and aspects, it may be looked at from two different points of view, and we find it has two different names. *Jus* is law from the point of view of right and justice; *lex* is law from the point of view of authority and force."

Thomas Cowan wrote in 1956, *jus* is "the law as it *ought to be* rather than as it is." He said the "abiding concern" of jurisprudence is the nature of *jus*-tice.[9]

Consider the scales of justice, the symbol of our legal system and its courts. In one pan of the balance is *lex* (written law, i.e., law as it is). In the other pan is *jus* (law as it ought to be). The goal of jurisprudence is to balance the two, amending *lex* to conform with *jus*, because natural law is unassailable reality, not an accommodating illusion.

Jus is *jus*.

Right is right—and that will never change!

Lex is *lex*.

Codified law is law that *must* be changed until it establishes *jus*-tice for all!

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8 Jurisprudence, Sir John Salmond, Sweet and Maxwell, London, 1920.

9 The American Jurisprudence Reader, Thomas A. Cowan, Oceana Publications, New York, 1956.

Comparing Terms

A thing similar is never exactly the same.

Each word represents a different idea, and from this truth we can learn to make law better and our future more secure.

We can no more change the meaning of *jus* than we can change the path of Jupiter!

It doesn't matter what politicians "think" should happen if we do a certain thing. *Logos* decrees the consequences.

This is how we learn the "hard knocks" lessons of life.

This truth may not be apparent to younger people. Older folks know that, as Newton said in his laws of physics, every action has a reaction. It doesn't make a bit of difference if we "think" *logos* is fair or unfair. Man's laws cannot change it!

Reality is unswayed by emotion, imagination, or political debate.

Private interpretation has nothing to do with it. What one chooses to believe has no effect on reality, modern teachings to the contrary notwithstanding. Natural law forever determines the destiny of men and nations, just as it determines the outcome of private decisions. Natural law controls individuals and nations. It cannot be avoided by wishful thinking or volumes of free-thinking legislation.

Governments are justified only as they operate in accordance with The Rule of Law (covered later) to establish *lex* with the consequence of *jus* in mind … for the good of all.

This alone legitimizes their exercise of power. All else is tyranny.

If our leaders proclaim our *lex* is *jus* simply because it's the *lex* they have created for us (as an evil father says to his child, "There's a right way, a wrong way, and *my* way!"), they are tyrants.

Jus is the eternal law of right, not man's law of might.

Lex cannot make *jus* … not in a million lifetimes.

Montesquieu admonished us 200 years ago to see that natural law is real. "They who assert that a blind fatality produced the various effects we behold in this world talk very absurdly, for can any thing be more unreasonable than to pretend a blind fatality could be productive of intelligent beings?"[10] He based his thinking on the existence of "a prime reason" and said that "laws are relations subsisting between the prime reason and man." He said, "Particular intelligent beings may have laws of their own making, but they have some likewise which they never made. Before there were intelligent beings and written laws, there were relations of justice. To say there is nothing just or unjust but what is commanded or forbidden by positive laws is the same as saying that before one draws a circle all the radii are not equal."

Prudens

Now, let's examine the second root of Jurisprudence.

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10 The Spirit of The Laws, Baron de Montesquieu, edited by Thomas Nugent, Hafner Publishing Company, New York, 1949.

Prudens is "practical understanding or sagacity",[11] wisdom, foresight, common-sense.

Prudens is the adjective form of *prudentia*, a contraction of *providens*, comprised of *pro* and *videns*, "forward" and "seeing". Thus Prudence is "the power of seeing in advance, the faculty of looking ahead, anticipating the future, prescience."[12]

Prudence recognizes that all our acts have consequences dictated by a law not of man's making. Prudence seeks to avoid foreseeable adverse consequences and maximize the probability of success by looking ahead to the unavoidable effect of natural law.

Prudence is the highest form of wisdom.

Prudence cautions us, "Think before you act."

Carl Claudy said Prudence is one of the four cardinal virtues recognized by ancient civilizations. The others are Justice, Fortitude, and Temperance. "Consider Prudence as the wisdom of both heart and mind, and it becomes something high and holy, much more than mere precaution, the modern meaning of the word."[13]

Yet, if we say jurisprudence is a high and holy wisdom of heart and mind, a prescience to find eternal right and establish justice by making *lex* comply with *jus*, someone may denounce us as religious fanatics instead of wise citizens seeking a better world for our children. Scholars, judges, legislators, and law professors this past century tried to build a world where there would be no recognition of natural law. They ridiculed

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11 Oxford Latin Dictionary, Oxford Press, Oxford, 1982.

12 Ibid

13 A Treasury of Thought, edited by Carl Glick, Thomas Y. Crowell Company, New York, 1953.

those who think *lex* should seek *jus* by the high and holy wisdom of jurisprudence, blind to the undesirable consequences of ignoring the self-evident truth of *logos* and its rule.

Solomon, the wisest jurist of all, said, "Prudence is the principle thing; therefore get Prudence, and with all thy getting get understanding."[14]

Understanding is impossible for all who refuse to "stand under" the truth. One cannot under-stand what one will not stand under. That is what understanding means. Those who seek to amend reality to comport with their own private interpretations, refusing to see that truth remains unchanged by our concepts and theories, however eloquently expressed those concepts and theories may be, are in error.

If we ask how Prudence is obtained, Solomon says, "Revere the Truth!"[15]

Changes in Usage

Jurisprudence is used today as just another word for law.

We have medical jurisprudence, for example, a body of law dealing with the field of medicine. Commercial jurisprudence deals with business. Criminal jurisprudence deals with penal codes and powers by which courts protect society from lawbreakers.

In none of these applications, however, is the word used in its true sense.

In the 60 years from 1925 to 1985, the Supreme Court used the word Jurisprudence in no less than 576 cases. Each time it was just another word for "law". Not once in that period did any Justice undertake to define this forgotten but critically important word.

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14 Proverbs 4:7.

15 Proverbs 9:10.

History

Note how abuse of our language of law, e.g., failure to discriminate between *jus* and *lex*, resulted in the unwillingness of 20th Century leaders to foresee the struggles we face in this new millennium. A little leaven leavens the whole lump. Errors should be opposed quickly lest they spread like weeds.

Only Truth is true. Nothing else is.

History is a record of errors only courage and wisdom can correct.

Wonderful, the power of words. It is our language that makes us human, not prehensile thumbs or ability to stand erect on hind legs. With words we build reality out of dreams. With words we prepare for our future. With words we preserve the wisdom of our past … or toss it foolishly aside.

With words we can hide from truth by editing reality to suit our private purposes.

The choice of seeking to adjust society's laws to the *logos'* imperatives of natural law or following after man's amusement is before us, as it has presented itself to every age. We may work to establish a wise jurisprudence on the principle that reality foreseeably dictates consequences both to individuals and nations—or we may turn from truth to seek instead the protection of might. This is the timeless choice that every age is called to act upon one way or another. Failure to choose is nonetheless a choice and, either way, we cannot escape the consequence of our decision or our refusal to decide.

The potential for jurisprudence to discern the inescapable dictates of natural law that ultimately control our destinies lies in sharing its wisdom with a language of law we can understand as one, empowering the populace to wisely counsel lawmakers and judges.

Jurisprudence will offer its promise till the end of time, in spite of eloquent debates, heedless of scholarly writing and political ear-scratching rhetoric. Jurisprudence cannot be kept imprisoned in books nor trapped within the frailty of a single human mind.

Rudolph von Ihering wrote, "The end of the law is peace. The means to that end is war. So long as the law is compelled to hold itself in readiness to resist the attacks of wrong (and this it will be compelled to do until the end of time) it cannot dispense with war. The life of the law is a struggle, a struggle of nations, of state power, of classes, and of individuals."16

Without wise jurisprudence established by a language of truth that recognizes reality, all man-made law is tyranny.

Jurisprudence sets limits for law and justifies its means by being mindful of its ends.

The Roman jurist Ulpian wrote, "*Juris prudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia*." Jurisprudence is knowledge human and divine, to understand what is just and what is unjust. Cicero penned the same words in 43 B.C.

Blackstone quoted Aristotle, "Jurisprudence is the principal and most perfect branch of ethics,"[17] adding, "Man is entirely a dependent being, subject to the laws of his Creator, to whose will he must conform." Blackstone did not mean we have no free will of our own but that the path to prosperity, happiness, and peace is to live in harmony with natural law. Truth decides happiness. Joy flows from our behavior, the Golden Rule, and knowledge that our every word and deed have predictable results fixed forever by eternal

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16 The Struggle of Law, Rudolph von Ihering, Callaghan and Company, Chicago, 1879.

17 Study of Law, Blackstone, 1809.

truth whose edicts never vary. Blackstone's "Classical Jurisprudence" took eternal truth and natural law for granted.

Natural law is self-evident to men and women of good conscience.

When Jefferson wrote that all are endowed by their Creator with inalienable rights, this truth was deemed self-evident by every rational thinker of that age. Reasonable men and women agreed that this world comes complete with rules decreed by natural law that dictates foreseeable consequences to human behavior, unwritten principles a wise nation will seek to follow for the sake of their own safety and their children's future.

A mighty beam suspends the pans of justice on the fulcrum of a razor's edge, but the burden of its judgments are sustained only by a foundation of truth that transcends every form of public opinion and political bias.

Jurisprudence is the wisdom of law we need today as never before, the torch held high by Lady Liberty in New York's harbor lighting our search for truth and justice. It is more than just another word for law, more than a mere body of laws or science of laws. It is a wisdom high and holy, looking to the future for the sake of today, prudence searching to discern the mighty mandates of a *logos* that will never change.

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Common Law

From earliest times there has been law of one form or another—law of fittest, law of the strong, law of the cruel and powerful.

Some always believed themselves superior. After all, were they not stronger, taller, faster? Could they not deceive their neighbors better with lies and get what they want by threat of violence? Why should they not believe themselves superior? Why should they not rule the rest of us by force … as they did for thousands of years?

Always there were the infirm, slow-witted poor and weak to serve the powerful rich, souls afflicted with the infirmities of disease and lack of opportunity, unable to outsmart their superiors who robbed them of property and forced them to labor and war!

Yet, in the heart of the lowly there was a wisdom planted by *logos*. They knew, some of them, that the stronger and more dever among them were not superior at all. It was a matter of heart, a wisdom that saw truth … even if it could not change the status quo.

In every age a silent battle was fought, more often with words than with swords, for in the hearts of the humble was a hope more powerful than any force of arms.

Faith had a purpose.

The oppressed would rise vindicated.

The weak would find strength to overcome.

Yet the warfare was a struggle in the language of law, a fight to overcome error with words of truth, patiently, generation after generation.

Common law was born in the hearts of the lowly long, long ago.

Truth told us one baby is no “better” than another at birth.

Truth told us one should never be preferred above another because of heritage alone.

The spirit of American justice was germinating in humanity's dreams long before the Revolution, long before the Pilgrims settled at Plymouth Rock, long before Columbus or the pyramids. The spirit of our nation's view of liberty was alive in the frightened eyes of a small child being beaten by stone-age barbarians, because we know the day must come when right overpowers error through sheer force of truth and truth alone.

Yet, this was not the way of the world. Cities and nations were built by titans, giants of power who demanded obedience on pain of death. Armies commanded the world, not lofty ideals. How could such a planet implement this plan for justice with equality?

What would have to change, and how could such change be brought about?

Indeed, how much change is still required to achieve mankind's dream?

The Need

Public understanding of the language of law and self-evident truths has never been more needed. Threat of physical violence from beyond our borders has been countered by a threat of philosophical violence within our borders, a movement to replace our heritage of jurisprudence with an expedience by which due process and The Rule of Law will be displaced. Some say the need to prosecute criminals and those unfortunate enough to be perceived as a threat to our national security justifies overturning our legal landmarks. Certainly the threat of repeated terrorist violence deserves our closest attention to protect us and our way of life, yet if some have their way we'll be protected so strictly that our way of life could be destroyed in the process.

This is not a book to criticize decisions of those burdened with duty to decide such things but, rather, a book to fix our focus on the goal … lest we lose sight of the shared vision of our heritage. The edicts of ever-changing exigence always threaten to displace principles of peace and always for the sake of peace. Always the interests of a few are offered as excuses to restrain the many and rob them of liberty … and always for the sake of liberty. Only by sharing a language of law can these dangerous tendencies be curtailed.

We are a pluralistic society, in whose pluralism lie both fertile seeds of greatness and the ever-constant threat of self-destruction, for the strength of nations, tribes, and families is in their unity far more than their diversity … unity of hopes, ideas, and purposes.

Surely diversity spawns creativity that sparks production for the good of all, yet also in diversity is found the debilitating effect of differences in matters of policy, justice, and public philosophy that should galvanize our shared strength so we can act as one in times of common disaster, to stand united against every force that rises up against us.

To do this we need agreement, a new way of thinking, a shared language of law and wider public understanding of those shared principles of justice that define us as a people.

We have for this purpose, after all, a common law … principles of self-evident truth in which we do agree … maxims that can unify us if we will acknowledge them as true.

The choice to return to our legal heritage once more is before us as we see principles eroded by competing world views. Corrupt corporations and constantly bickering factions of religion, race, and economic theory threaten to tear our world apart with a war of ideas that seems to have for its goal not the increase of liberty and human joy but imposition of power over one class of people for the good of another—as in the beginning when brute power ruled instead of reason.

Money threatens to become the ruler of this modern world, a numerical yardstick by which souls are judged and empires erected that defy common law, deceiving the masses with snake-oil promises of ease by the blessings of material wealth.

Meanwhile, the landmarks of self-evident truth and common law are being hidden by political expedients propped up by people who believe power alone can bring prosperity.

Have we learned so little?

Are we so enthralled and enticed by the eternal promises of our secular religions that we've lost sight of the fixed guides that directed the paths of our forefathers and call us still to work for peace in the here-and-now?

As certainly as some enjoy great fortune in America and Western Europe, so also millions suffer the cruelties of slavery, impoverishment, and pestilent disease. Even in our own cities the underclass is relegated to a subservient life, denied access to law's protections by their inability to "pay the piper". Legal aid societies do what they can, while at the root is a rottenness of spirit that decays the hope of mankind, displacing self-evident truth with new theories, programs, and quick fixes … denigrating the soul of the common man by hiding the hard-won maxims of his common law.

An ancient writer said, "When a man feels himself slipping backward, as if attempting to ascend an icy slope, it is time for the greatest exertion."

So it should be with us today as we see our heritage of common law gobbled up by the demands of societal and material expedience.

Nothing can destroy truth.

The truth, however, can be hidden.

Thus at this hour, the truth is being hidden. The demands of cultural change so-called proclaim with impiety, the scale must be tipped in *our* favor … instead of holding fast to the principle that all are created equal and water cannot run uphill of its own accord.

There is, however, a great opportunity for us to reverse this trend and return to truth.

If we do nothing, of course, the liberties our forebears died for will be lost.

But, what should we do?

The answer, I believe, is to turn our attention as quickly as possible to those maxims of the common law that not only can unite us once again as a people but can guide us into an uncertain future with security against the philosophical warfares we face today.

> "The boat is sinking, grandfather! It is useless to bail with such a tiny bucket!"
>
> "Perhaps you are right," the old man admits, scooping quickly, "however this

We can answer the call of our fathers and do what we can to preserve their teachings by upholding common law, re-establishing maxims of justice, teaching our children self-evident truths, and demanding that our courts hold equity before the law and re-establish justice for all instead of the moneyed few.

Let us choose to work with what we have, this language of law and its truths, a few of which follow in the next chapter about maxims.

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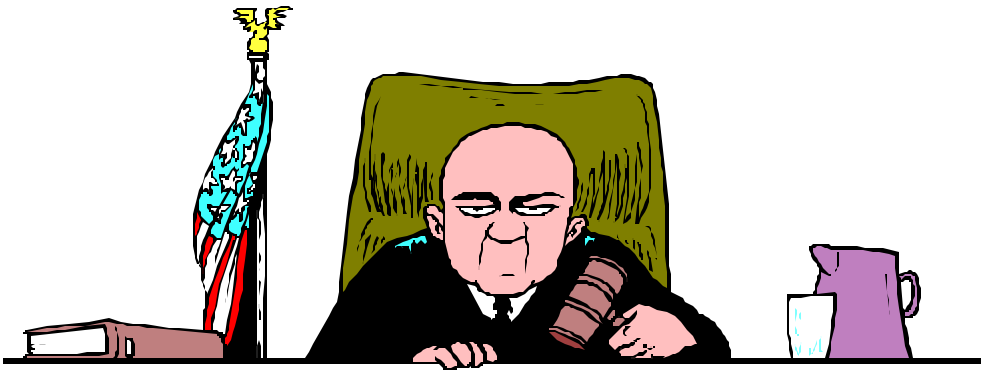
Maxims of Common Law



Maxims are brief statements of self-evident truth.

Maxims explain what's and "right" and, therefore, "just".

Maxims are self-evident truth that control our courts, our legislatures, and every consideration of mankind that seeks what's fair and best for all. Courts that do not honor or consider these maxims are not just. Indeed, whether and to what extent these common law maxims are honored by public leaders is how we test the way they administer the law to govern us. We the people are protected by the fundamental principles of justice and fair dealing set forth in these simple statements that every schoolchild should be taught to practice for the sake of peace.

Common law is built on these truths that promote the spirit and practice of fair-dealing and the unbiased administration of justice. Without the legal enforcement of these truths, there can be no justice or right dealing between us … of hope of getting our courts to do what's right by enforcing our contracts or making those who injure us pay damages. Our courts are established *primarily* to enforce these principles of common law.

It is the common law that's common to us all.

This is the law that never changes and never should be changed by legislation or the arbitrary rule of tyrants motivated by what's good for the interests of a favored few. This is the law that's all for one and one for all, the American way.

The common law expressed by these maxims is for the common good.

It is, after all, the common good that is the heartbeat of our American heritage.

The simple sayings of common law maxims evolved over many centuries as men and women of good will struggled against the hateful tyranny of monarchies and pirates to establish governments dedicated to protect them from the abuses of those who would use the law to their own, private ends. With the advent of printing presses, people were better able to communicate across political boundaries, and there began to develop an increasing general awareness that governments had duties to the governed. Interests of individuals needed to be protected. Partiality toward persons with power needed to be removed. Law to protect the common welfare needed to be established, not only in the form of philosophies but in the very offices of government where the force of military might was seated.

Gradually, over a period of many centuries and at the expense of many lives and private fortunes, government power was required to submit to the common law of the people … i.e., the people's law. Simple law. Self-evident law.

Maxims are principles of equity[18] we all should embrace and teach to our children.

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[18] Equity is the soul of justice. It is its heart. It is the goodness that justice works for, the goal for which all good persons strive. It is the sum and substance of due process and gives wisdom to the Rule of Law.

For example, my favorite states: "A thing similar is never exactly the same."

Who could disagree?

That a thing similar is never exactly the same is self-evident... as are all maxims.

In these self-evident truths lies a potential for agreement and the progress that only a unified people can achieve.

Another maxim says, "Water does not run uphill of its own accord, nor should courts believe otherwise."

Again, who could disagree?

Only the most belligerent, self-interested person would challenge such maxims.

These simple statements set essential limits on truth and are essential to the fair and efficient administration of justice according to the common law of mankind.

No right-thinking person can disagree with a maxim.

Black's Law Dictionary (2nd Edition, 1910) puts it best. "Equity is the spirit and habit of fairness, justness, and right-dealing which should regulate the interactions of men and women, the rule of doing unto others as we desire them to do to us. As expressed by Justinian, equity is 'to live honestly, to harm nobody, and to render to everyone what's due.' It is therefore the synonym of natural right or justice. It is grounded in precepts of the conscience, not in any sanction of written law."

Equity derives from the same root word as "equal" and thus is the guide that points our legal systems toward that path whereon all stand before the law and its courts without preference. Each of us is entitled to our day in court, entitled to be heard, entitled to receive every protection the state affords to others. This is what equity demands.

Equity appears where love and wisdom dispense justice together. May all of us purpose in our hearts to communicate our language of law, working tirelessly together for that day when equity is more perfectly obeyed in all courts -- and justice is truly secured for the benefit of all.

Every court is bound by rules of equity established by these never-changing maxims.

Maxims are among the self-evident truths Thomas Jefferson mentioned in our Declaration of Independence.

Maxims are the light of liberty's lamp.

Maxims test those who judge and put an absolute limit on those who rule.

If everyone knew the maxims of common law, our world would be a far better place. Maxims are our common law heritage. Their truths bind us together as a people.

Here the hope of happiness for future generations will survive, for here are bedrock truths upon which we can all agree and by which we can secure for ourselves and our posterity the blessings of "liberty and justice for all".

Use these maxims to get your way in court and to command your legislators and other officers of government to do *what's right!*

Maxims are truth on which justice must forever stand to lift her precious lamp.

Let their light shine.

The Light of Liberty's Lamp

Liberty to all but preference to none.

This maxim explains that liberty belongs to each of us equally. As stated in our Declaration of Independence we each have God-given rights to enjoy life, liberty, and the pursuit of happiness. But, none has more of these rights than any other. God gives to each by the same measure. There is no preference to any.

This being so, our courts are obligated to protect our liberties accordingly.

Each of us is entitled to equal treatment under law.

None is entitled to any privilege denied to others … absolutely *none*!

This maxim is the soul of our American legal heritage, for it was in America the concept was first given its fullest recognition. None has a greater claim to live free. No king, no priest, no celebrity, no judge, not any person has any greater right to walk free than any lowly carpenter, plumber, or law-abiding street minstrel.

We are all equals in the sight of our law.

Of course, if we violate the obligations and responsibilities that arise from the privileges our laws provide, then we may lose our liberties. If we murder, lie, or steal we are in violation of law, and the law has a remedy. Our courts can take our liberty away. If we refuse to love our neighbors as ourselves, the law can limit our liberties or even to take our life if the crime is sufficiently outrageous.

But, so long as we obey the law we are at liberty to love, to live, to laugh, and to enjoy all the benefits life has to offer any other human soul, regardless of our heritage, financial circumstance, or political advantage.

The right to liberty does not grant a right to take what others have. The right to liberty does not grant a right to demand material wealth. The right to liberty is a power to do with our own lives whatever we may choose to do, using whatever we have at hand to accomplish our goals, but it does not give us the right to take from others. It does not give us the right to lie about others. It does not give us the right to limit the liberties of others just because we don't like their opinions or the way they dress or the things they say. The right to liberty is the right to obey laws and while obeying laws to live free from interference by the state or others.

Liberty is a great privilege, so the obligations and responsibilities that go with liberty are also great.

We in this nation risk losing our liberties because we too often are unwilling to fight for the liberties of others and too quick to grant special privileges.

We share an obligation and responsibility to protect our neighbors from the exercise of unlawful power. Justice for all. Privilege for none.

The safety of the people is the supreme law.

One problem societies face is not knowing how to judge their laws.

What is the principal principle?

How do we recognize good laws as good, and bad laws as bad?

The maxims give us answers. Man's laws must submit to higher laws. The supreme law is that all laws must promote the people's safety. Any law that fails to promote the safety and well-being of the people is a bad law.

For example, suppose your state passed a law that authorized a particular company to transport dangerous substances in flimsy containers, and as a result people were injured. Such a law does not promote the people's safety. According to this maxim, such a law would be illegal pursuant to the *supreme* law.

Since good laws promote the people's safety, any law that fails to promote the people's safety is an illegitimate exercise of state power.

The people's safety comes first.

The prosperity of any particular industry, individual, or minority subculture within society is never more important than the safety of all peoples, and any law that promotes

the prosperity of a single industry, individual, or subgroup within society to the detriment of the people themselves is illegal because it violates the supreme law that the people's safety comes first!

Too many private interest groups, political action committees, and lobbyists succeed in getting legislatures to enact laws that favor a few but are bad for people in general. The proponents of these laws argue that their private interests deserve a break or that the selected few are somehow more important than the many. These arguments violate the maxim. Laws these people seek to enact are illegal, because the people's safety is the supreme law.

All laws that violate this maxim are bad laws and should be repealed.

The safety of the people can be judged only by the safety of individuals.

This maxim teaches us where individual rights come from. Since the safety of the people is the supreme law, this maxim tells us how to judge the safety of the people. It's not just the safety of the majority that counts. It is the safety of every single one of us … individually.

If a law is bad for any innocent individual it is bad for all.

Suppose your state passed a law making it a crime to have blue eyes. Brown-eyed people are in the majority (about 3:1), so the majority could conceivably pass a law making it unlawful to have blue eyes. Some scientific evidence might prove that blue-eyed people are more likely to commit crime, so brown-eyed folks could condemn blue-eyed people to death. After all, majority rules … or does it?

In civilized societies where maxims are upheld, the majority is prevented by the principles of maxims from wounding the minority.

Maxims teach us that every individual must be safe or society itself is not safe. This principle protects minorities from the majority.

These truths need to be taught to every generation. They protect us all from the abuse of law that always results where such truths are hidden from the people.

The maxims teach that only by evaluating the safety of every individual can we gauge the safety of society itself. It's good to support legislation to protect minority groups and individuals from being invidiously discriminated against by society's laws, but until we use our maxim power we are merely fighting political battles.

Politics alone cannot make the world safe for individuals.

The needs of individuals and minorities must be protected not only for the sake of individuals and minorities but for the sake of society in general.

This is self-evident truth, and it is expressed by this maxim. The safety of society cannot be judged but by the safety of every individual. If anyone, however insignificant he or she may seem, is being unfairly wounded by our laws, then those laws are wrong and should be repealed at once.

The power of maxims outweighs the imperatives of the majority. If any law unfairly wounds just one innocent person, that law violates this maxim … and the law should be changed.

Legitimacy of Government

Unjust is State power where the law is either uncertain or unknown.

It has been said the power of the state arises from the consent of those whom the state governs, however the truth is that all state power derives from laws alone.

Laws create the state and justify state action.

In a very real sense, laws *are* the state.

To the extent people know the laws of a state and consent to their enactment and enforcement, the state is just because it is truly consensual. If laws are either uncertain or unknown, however, the state is unjust and should be altered.

For this reason, Public Legal Education is a moral imperative, for only by Public Legal Education can laws be known and their exercise by the state be just. Unless people know the laws that give the state power to control their lives, the consent that would validate the state's power is not informed consent.

Consent by force or ignorance is not consent at all; it is coercion.

Government rule by laws that are uncertain or unknown is not consensual.

Therefore, unless the state teaches its people the fundamental laws upon which it predicates its exercise of power over them, the state's power is unjust.

Many today seek to reform the world based solely on an unstructured vision of future happiness. They don't realize the path to that future depends on abiding by principles. Since they are unacquainted with the maxims of law, they often act without regard to the self-evident truths set forth for us by maxims such as this, and the result is repeated failure. In their well-intentioned search for peace and prosperity, they fail to see the

consequence of acting outside the self-evident truth that ultimately determines every outcome. They believe they can enforce their new world vision by enacting laws without regard to maxims. Being goal oriented, they miss the method needed to achieve their goal. They are too focused on the outcome and too willing to accept whatever means are offered as expedients. Rather than resorting to the wisdom of the past to chart their course into the future, they forge ahead with novel experiments that ignore the self-evident truth that always controls outcome. Visions of future happiness and peace cannot replace tested truths taught by the maxims of law.

We need to revisit the maxims, so we can effectively change our governments … and make life better for everyone.

This maxim teaches that state power can only be justified where the people understand the laws by which that power is exercised.

The corollary of this maxim is that state power can only be just where the state makes a reasonable effort to educate its people in the things of law.

The State should be subject to the law, for the law creates the State.

Without law no state could exist. No nation. No county government. No international force. No state of any kind can exist without laws, for it is by laws that states are created.

This maxim teaches us that, just as the state is created by laws, so the state must be subject to law.

And, of course, every state should be subject to these principles of law … for only by the principles of law can we judge the state as just or unjust, wise or foolish, strong or weak.

The old saying, "What's good for the goose is good for the gander," comes to mind. Only the government willing to submit to law is justified to require others to submit to its power … for its power derives solely from law.

A government that proclaims itself entitled to do completely as it pleases, while requiring its people to rigidly obey every precept of its legislation, violates this maxim of law. Such governments are unjust, and their leadership should be changed immediately for the sake of the people whom they are charged by these maxims of law to protect.

How can the exercise of power be justified in the hands of a government that is, itself, lawless? It cannot. The exercise of state power is only legitimate to the extent that the state itself submits to legal principles, of which the maxims of law are supreme. No state has a lawful right to act outside its own laws – nor does any state have the right to create laws that violate the maxims of law. This should be obvious.

The legal maxims are self-evident to everyone but those who for selfish reasons refuse to submit their private interests to the good of all.

It is self-evident that states should be subject to the law, yet news reports today are too frequently peppered with stories about government action that is contrary to the most fundamental laws of the land … and clearly contrary to these maxims!

Though his decision be just, he who hears only one side is himself unjust.

This is the first principle of due process.

This is the bedrock of justice and fair play.

Everyone should be heard. Fully. Completely. Under oath.

If a party has witnesses, those witnesses should be heard. If a party has evidence to present, the evidence should be examined. If the witnesses are not trustworthy or the evidence is inadmissible according to law, the party should nonetheless have a chance to offer the testimony and evidence until they are shown to be improper. Under no circumstance should a party be denied the opportunity to at least offer witness testimony and evidence.

And, certainly, under no circumstance should the cause of any person be judged until that person has been heard by the court explaining his or her side of the story.

Many people today are so anxious to see "justice done" they are unwilling to acknowledge what justice really is. Some believe it is so important to punish evil that it doesn't matter how the punishment comes about, so long as evil doers are required to pay for their crimes. The maxims teach us that punishment of an evil doer without affording due process of law (e.g., without allowing the person to be heard and present witnesses and evidence in his behalf) is itself an evil deed … a wrong performed by the court itself.

Even where the court is convinced of a party's guilt, if the judge does not give that person an opportunity to be heard and to present witness testimony and other evidence in his or her behalf, the judge is not just – and an order of the court entered in such circumstances violates the rule of law. Indeed, no matter what the party's guilt may be, the unjust act of a court of law is an even more guilty crime.

Only when the people understand these fundamental principles of law – once revered and generally upheld and honored by civilized people throughout the world – can we hope to reestablish justice and liberty for all.

Courts are for the common people to command the power of the State.

Our courts belong to everyone. They belong to you. They belong to your family and loved ones. Our courts exist for one purpose only – so the people have a place where they can command the state to keep its promises to the people. Our courts belong to the people not the state. They are ours. They offer hope for the oppressed, relief for victims, justice for those who are wounded. They serve no other purpose.

Our courts exist solely to give people a voice whereby we can command the power of the state directly.

The polling booth is only one of our powers over government.

Our courts are another … and, in many ways, our courts are far more powerful than the popular vote. The power of people is nowhere stronger than in our courts where the people themselves command the state to obey law by granting remedies justice demands for those who come to court with grievances.

Our courts are operated by the state. Our courts are run by state employees (judges, bailiffs, clerks, and judicial assistants) but the courts belong to us! They are there to protect our interests, not to advance the causes of the state nor to favor the cause of special interest groups or powerful political action committees.

You have power over your courts. That's right. You have power to command your courts to obey the law. That power is contained in the rules of court, rules of evidence, rules of procedure, rules of judicial administration, and the maxims – laws that control every judge, lawyer, officer of the law, and every party who comes before its bar. The courts are subject to the law, and your knowledge of the law commands your power over the courts.

Too many complain about injustice, refusing to see that injustice is merely the natural consequence of not knowing how to enforce the law. Since courts are subject to their own rules, the power to control the courts is in our knowledge of those rules. Surprisingly, the rules of court are fairly easy to learn. In many states the fundamental rules of court are quite simple and concise. For example, the official rules of evidence in Florida comprise less than 30 pages! These are rules your courts must obey.

When more people know the rules, fewer will complain that justice was denied by their courts.

The courts give people power to control the state.

The Burden

The burden of proof is on him who asserts a fact, not on him who denies it.

This is the law in every court of our land.

It is also a key to winning in a court of law, for decisions courts are called upon to make are always subject to this maxim. The burden of proof is a critical issue in every dispute.

The burden is always on the person who seeks to prove his point.

The other party does not have a burden to disprove his opponent's point.

It is remarkable how few people are aware of this simple truth, yet every victory in court depends on it. If the other side says you did something wrong, you don't have to prove you didn't do it. The other side has to prove you did.

Put the burden where it ought to be.

The burden may shift from one party to the other in a dispute. For example, the first party may complain that the second party failed to pay a bill. At this point the first party has the burden to prove his point. The second party may then say he did pay the bill. At this point the second party now has the burden to prove the bill was paid. The burden may shift back and forth at various times, depending on who is claiming what, but always the burden is on the party who must prove his point.

The burden never shifts to require a party to prove the other party is wrong.

Maxims such as this protect the innocent. They are an important part of our American legal heritage. They deserve public attention and should be taught in all our schools, for by the wisdom of these maxims and the self-evident truths they teach our people are protected from adversity, and justice is preserved for all.

Testimony and Evidence

No one should be believed in court except upon his oath.

This maxim must never be ignored nor overruled, for justice is found in truth and truth alone. Every person who seeks assistance from our courts should promise the people whose assistance he seeks (the courts belong to the people in America) that he will tell the truth or be subject to criminal penalties for perjury. It's really that simple.

A party who will not promise to speak truth is not worthy of the court's help. A witness who will not promise to speak truth should not be believed.

We require everyone who speaks in court to promise to tell the truth and to give this promise on their oath solemnized by reference to God.

God is the Truth. The God of the courtroom oath is not defined by any religious denomination. The God of the oath is nothing but the Truth … truth that is, truth that was, truth that will always be. The God of the oath is not subject to man's interpretations. The oath does not require a witness to subscribe to any religion. The oath is a solemn promise to honor the Truth at all times while speaking before the court.

The promise is made not to God but to us who are the government in America. We the People have a right to require those who come to us for relief to honor Truth, and we have a right to punish those who dishonor Truth with lies, subterfuge, and legal chicanery at our expense. It really is this simple!

Life, liberty, and pursuit of happiness may be inalienable rights belonging to every human soul, however the right to demand assistance from our courts carries with it a responsibility to honor the rest of us who make the courts possible by presenting only truth. Legal relief for alleged injuries is not a God-given right. It is a privilege provided by the People acting through governments, and accordingly this privilege (like all privileges) has obligations and responsibilities. The privilege to complain of injuries and seek help in our courts by judgments and enforcement of law rests on the requirement that one promise to bring no lie before the court or be subject to the penalties of perjury if the oath is violated.

This maxim, like all maxims, is a statement of self-evident truth intended to protect you and your loved ones from falsehood and deceit.

Liberty is impossible without justice, and justice is impossible without truth.

Protect and promote this maxim as the soul of justice it must forever remain.

Courts should not believe water runs uphill or that impossibilities exist.

One of the great stories of American justice is a case in which Abe Lincoln (as a young lawyer before he was elected president) was defending a man named Armstrong accused of killing a man in a nighttime brawl. State witnesses claimed to recognize the accused from a great distance in the darkness. Lincoln convinced the jury to acquit his client by referring to an almanac for the year of the crime. It turned out the moon was new on that particular night, so it would be impossible to recognize the murderer from such a great distance on a dark moonless night.

Impossibility having been established, Lincoln's client went free.

Too often people tend to think of court proceedings somewhat like a family squabble where "anything goes". Too often the party who shouts loudest or brings the most impressive exhibits or parades the best-dressed attorney before the jury is the party who wins, and too often truth is obscured by wishful thinking or merely by unwillingness to demand clear proof.

Water does not run upward of its own accord.

Things that are impossible do not exist outside fables and movie theatres.

To judge a case by believing in the impossible is to deny justice.

On occasion miracles do take place. However, maxims were given to us so we would not permit the unusual or bizarre from outweighing common sense in our courts. If a miracle actually takes place, then let the party asserting the miracle meet his burden to *prove* the miracle took place.

Never is it just for a court to believe impossibilities exists. Never!

To allow such divergence from our legal maxims is to undermine our entire legal system and open the door to all sorts of travesties and crimes against justice.

It is better to set one guilty man free than to destroy the very fabric of our legal system by permitting courts to believe in things that cannot be proven true ... better to release 100 hardened criminals than to punish one innocent soul without sufficient lawful evidence.

Truth is the essence of justice. Without truth justice cannot exist.

Hold fast, America. Let the self-evident truth of our legal maxims guide you in your quest for justice. Ignore the parades of charlatans and cheats who seek to turn your heads with fables and dark mysteries … especially in your courts where Truth must forever be sought above all else.

The certainty of a thing arises only from making the thing certain.

Of all requirements of justice none is more sacred than proof. Upon proof and proof alone decisions are justified. Where there is no proof there is no justice.

Proof depends on establishing certainty. A thing made certain is proved.

Too many are willing to consider a thing made certain based solely on the reputation of a witness or the appearance of a party's lawyer or the way an accused man fidgets with his hands. There is no certainty in such things.

To prove a thing it must be made certain, not merely probable or possible.

The credibility of a witness may certainly be relied upon in giving weight to what a witness says, but unless the point is proven by being made certain beyond doubt then

proof has not been established, and justice has no place to stand. Justice stands solely on Truth.

Truth, on the other hand, is certain … or it is counterfeit truth that is not true at all.

The maxims of law put wise limits on the power of our courts. These limits are good things, for they protect innocence far more often than they fail. Too many good people suffer injury in our courts because a proof was not made certain at all but depended on an intentional accumulation of innuendo, unfounded accusation, or an emotional outpouring of rhetoric that goes beyond proof courts should require. Far too often passionate expressions of hatred or contempt for an accused person result in convictions while no certainty was ever established. Upon such unfounded judgments rest the greatest crimes of mankind against mankind.

Only where a proof is made certain can it truly be called a proof, and only by proof can justice be established.

No citizen should be deprived of the benefits of this maxim, however low his station in life may be, however heinous his past deeds may seem, however ugly or distorted by life's trials the countenance of such person may appear to us who are called to judge that person for a crime or injury to others. Regardless of our personal feelings, if a thing must be shown to be certain before just judgment can be rendered, then the certainty of the thing should only be considered when it is, indeed, made certain (testable, provable, true) for there is no other way to make a thing certain.

To enter judgment on an uncertainty is to subvert and deny justice.

Civic Duty of Citizens

Each should use his powers and property so not to unjustly injure others.

Each of us possesses an inalienable right given by God our creator to enjoy the benefits of life, liberty, and the pursuit of happiness. Powers afforded by law, such as the right to own property with law's protections, however, are privileges with obligations and responsibilities that attach to all such privileges.

The first obligation attached to power and ownership of property is that no person has the right to use his power and property to cause injury to others without cause.

If an innocent passer-by walking down a county road outside the fence of your farmland is kicked by a mule that escaped from your farm because you did not keep your fence in good repair, then you are responsible for his injuries. On the other hand, if the passer-by takes a shortcut through your fields and is chased by a bull, injury to that person is not unjust. The passer-by is a trespasser. His injury is not your responsibility.

In a great majority of cases before our courts, the question to be decided is to what extent an injury to one party was justly or unjustly caused by the other.

This maxim teaches us that no one has a right to use his powers or property to cause harm to an innocent person under any circumstance whatsoever. There are no exceptions.

This maxim is part of our legal heritage in America.

He who causes injury to an innocent person through exercise of his powers or use of his property is subject to the judgment of our courts to remedy the injury. It doesn't matter if the injury results from negligence or not knowing. If the use of one's power or

property injures another who is without guilt, our courts owe a duty to provide the injured person with a judgment for his injury, even if the injury was only accidental.

If you intend injury to another, you may be found guilty of a crime (perhaps a felony that results in your being sent to prison or put to death).

Our courts take very seriously the responsibilities of privilege. Each of us is obligated to all others.

When more people know our maxims of law, there will be fewer injuries.

The power of our courts should act quickly and decisively to preserve justice and grant remedies to those who without any fault of their own suffer injuries.

Private Property

There is nothing more sacred or inviolate than the house of every citizen.

Fortunately in most jurisdictions this maxim is still enforced by codified law. Search warrants are usually required before officers of the state can enter a man's home.

Of course, if officers have a reasonable good faith belief a crime threatening bodily harm or death is being committed in a crime, they need no warrant. If a man or woman is peaceably abiding in his or her home, however, this maxim secures the right to enjoy life secure from unreasonable search and seizure.

Due process is nowhere more critical than when it requires officers of the state to have good cause before entering a home. It doesn't matter if you live in a mansion or a two-room flat up three flights of stairs, if it's your home the maxims offer you protection from others.

Before entering a home, therefore, officers of the state should have warrants signed by a judge of competent jurisdiction, and the warrants should be supported by affidavit, i.e., facts alleged in writing under oath setting forth why the warrant is needed, what crime is believed to be taking place in the home, giving a reasonable description of the known facts giving rise to this belief. No warrant should issue except upon sworn written testimony.

A man's house is his castle, thus within his home he should be respected by his neighbors and by officers of the government in the same way a king's palace would be respected, equal in right to the highest power of the land (unless he is abusing this right by causing harm to others within his home).

Maxims such as this protect us from unreasonable exercises of state power.

The home is a castle; officers cannot enter without court authority.

This maxim is basic to our American concept of liberty, for although the streets and thoroughfares belong to others who have a right to protect themselves from what you do in public, your home is protected by this maxim from invasion of force for any reason not specifically authorized by legal process. It doesn't matter if your home is a mansion on the bay or a rented one-room apartment. It is your home and, without proper authority given by law, no officer of the state has any right to enter.

The teaching of this maxim has never been more needed in America, for in recent years legislatures have made it easier for government officials to enter your home at any hour of the day or night for purposes that would have been illegal in past generations. Proponents of this modern thinking claim they are protecting the public's welfare, but the

welfare of the public can only be judged by the welfare of each individual. Where one has no sanctuary from abuse of power, the welfare of every one of us is at stake.

Hold fast to this maxim, for it protects you and your family from abuse.

If a person is making dynamite in his basement or holding innocent children hostage at gunpoint, the right to be secure in his home is outweighed by the rights of those who are threatened by his activities. In such circumstances, officers of the state not only have a legal authority to enter but the moral duty to do so. No person should be permitted to use privilege to injure others, therefore no person should be permitted to harbor harm in his home without being subject to the arm of the law.

Officers of the state should never be permitted to enter a home without due process of law, a warrant founded on an oath supporting probable cause to believe a crime is being committed or is about to be committed in the home.

Without such due process and requisite oath, the invasion of our homes is a violation of our right to liberty … a right not given by government but by God.

The enumeration of our God-given rights is the purpose for legal maxims.

By publishing the maxims of law we learn to agree what our fundamental rights truly are and can work together to preserve them for future generations.

Title is the right to enjoy possession of that which is our own.

One of the principles of liberty upheld by our American heritage of law is the right to hold title to private property.

Property can be land or things, money or securities, promises or judgments. All these are forms of property in which we are given the right by government to hold title.

But what does title mean? This maxim tells us title is the right to enjoy. Title is the right to possess. Title is the right to say such and such a thing belongs to us and to no other. If we hold title to a particular property, whether it's a home or a collection of rare heirlooms, we have the right (protected by our courts) to enjoy the exclusive possession of that property. If we hold title we can call the property our own.

If another takes possession of our property without title, we can appeal to the court for a remedy. If we can prove our title, the court is required to restore to us our possession and enjoyment of the property. In some cases the person who took possession of our property may be required to pay money to compensate us for our loss of possession and enjoyment. Without title, however, we cannot prove our right to enjoy possession.

Title is a form of proof. Title to land, for example, is usually proven by a deed. Title to such things as cars or furniture may be proven by bills of sale. In some cases title may be proven by a simple cash register receipt or a scribbled note signed by the previous title holder. In every case of ownership, however, there must be some form of title – even if only word of mouth. Proving title, of course, is easier where proof is in documentary form, writing that meets requirements of law. For example, in Florida, most forms of title to real property require a document signed by the person conveying the property and also by at least two witnesses.

Failure of provable title divests the court of authority to establish the right of ownership, possession, and enjoyment.

This maxim teaches that the right to enjoy possession of property we claim to be our own must be proven by some form of title, and that enforcement of our right and title

depends upon that proof. This protects the rightful owners from the claims of those who have no right or title.

Civil Rights

No one is required to betray himself nor made to testify against himself.

This maxim is the foundation for our Fifth Amendment, that none of us be required to give testimony against ourselves. It derives in part from the maxim that requires a party asserting truth to be required to prove the truth asserted, thus the state in charging a citizen with crime bears the burden to prove the crime without getting any help from the accused. The burden should be entirely on the accuser.

Where this maxim is upheld, an accused person may remain silent before his accusers without guilt being imputed to him in any way. It is an American point of law worthy of our continued support. Other nations do not agree with us about it.

This maxim protects our liberty. Before the state can lawfully deny liberty to any citizen, it must meet its burden to prove that person broke the law. The citizen does not need to prove his innocence. The state must prove his guilt. The state cannot lawfully require an accused person to confess his guilt nor present any argument in defense of the charges against him. The burden is entirely on the state to prove its case.

Many people believe this principle lets guilty people "get off". Too many of these otherwise reasonable folks favor abandoning this maxim. They would require a person accused of crime to submit to examinations that might tend to incriminate him. It should be understood by all of us, however, that breaching this maxim will in the long run do more damage to society than allowing one or two guilty persons to go free, for by

breaking the maxim we open the door to abuse of state power by divesting innocent people of the right to remain silent. This we should never do.

By preserving the maxims we preserve our American legal heritage.

Always in society there is a struggle between those who wish justice at any cost and those who realize state power can be misused, a force that must be kept under control by principles. Maxims such as this keep us from veering off course.

This maxim is so important our nation's founders wrote its self-evident truth into our Fifth Amendment so all states would be required to keep its teachings. Like all maxims, it should be scrupulously enforced.

Everyone is innocent until proven guilty beyond reasonable doubt.

Tension exists between promoting a safe society by punishing wrongdoers and preserving a just society by requiring courts to obey maxims such as this. In every age there are those who believe it doesn't matter if a few innocent people are punished now and then so long as evil doers are locked up or executed. These people have good intentions but fail to see that it is more important for our courts to protect innocent people from injustice.

To insure justice for the innocent (at the expense of failing to punish every evil doer) this maxim requires our courts to prove guilt beyond a reasonable doubt or acquit the accused. Better to release a few wrongdoers than to allow a system of laws that is itself unjust, capricious, and cruel.

This maxim teaches us that it is more important to have a just system of laws that occasionally fails to punish than to have an evil system of laws that is permitted to punish the innocent.

Many today wish to destroy the principles of due process and ignore the rule of law fought for by our forefathers so the state can punish every soul they believe worthy of punishment. Yet this maxim wisely values mercy more than judgment and forgiveness more than condemnation.

America was born as a reaction to the abusive practices of European courts where the innocent were routinely punished without the protections our maxims provide. All power was given to the king, in whose courts people were routinely condemned to death without benefit of counsel or even an opportunity to be heard or present witnesses in defense. America was born out of the abuses of justice that were commonplace in Europe when our Declaration of Independence was signed in 1776. In its birth principles were set forth by legal maxims. On these principles our laws and constitutions have been erected.

To preserve our American republic we must preserve the maxims on which our legal system is built.

The state must bear a burden to prove its citizens in error, and this burden must never be discounted nor set aside. In this maxim is protection for the innocent, and by this maxim the greater cause of justice is preserved.

No one should be twice harassed for the same offense.

This maxim is similar to others that put a burden on the state to prove crimes with certainty or set the accused person free.

The state is required by principles of justice to meet its burden of proof. It can present evidence in the form of witnesses and exhibits, but it must permit the accused to present evidence that discounts state evidence. Each side presents its case in accordance with strict rules, the state going first and the accused person following with his defense. If the state fails to carry its burden to prove the crime beyond a reasonable doubt, the accused goes free. Once an accused person is set free, the state cannot again try that person for the same crime. The state had its chance and failed to carry its burden.

To give the state another "bite at the apple" would be to deny the accused his right to justice, for justice requires the state to carry its burden or acquit.

Both sides have one chance and one chance only to make their story clear. If the state fails to carry its burden of proof in the first attempt, the accused person goes free and cannot again be tried for the same offense.

The point of this maxim is common sense when viewed in light of the other maxims, for only if the state is required to carry its burden in the initial proceeding can justice be secured. Otherwise an accused person could be dragged back into court repeatedly until the state finally found a jury willing to convict. That is contrary to the principles of justice that require the accusing party to bear its burden of proof.

This maxim is embodied in the Fifth Amendment to our Constitution.

Only by adhering to maxims of law and understanding the self-evident truths on which they are based can we preserve liberty and justice for future generations, because the very nature of liberty and justice are found in maxims that are the very expressions of those virtues.

Without liberty there can be no justice.

Without justice there can be no liberty.

Without maxims we have no way of knowing which is which.

Administration of Justice

He who slices the pie should be last to take a piece.

Here's a maxim that should be observed more often. Too often those who divide property or hand out favors are first in line to receive the benefits.

Clearly, if the person who is allowed to cut the pie is also allowed to take the first piece, in some cases there won't be much left for others! This maxim points out the error in such thinking and protects those who might be abused by selfish people.

Fairness is secured by principles like this. The maxims teach us what fairness is and how it can be enforced for the good of all.

In our courts, this maxim is used to determine who goes first (i.e., which party gets to address the court before the other) and who goes last (i.e., which party gets to have the final word). The first is last. The last is first. Normally, the complaining party (plaintiff in civil cases, state in criminal cases) goes first, putting on witnesses, offering exhibits, doing the best it can to prove the facts it needs to win. The complaining party has only this one chance to demonstrate its entitlement to a judgment. It gets one bite at the apple, and then it must sit down, i.e., it must state its case, then it must rest. The defending party is then permitted its turn after the complaining party has done its best. The defendant may move the court right then for judgment based on the complaining party's failure to meet its burden of proof. If the defense cannot prove the other side failed to meet its burden of proof, it presents counterbalancing evidence in an effort to outweigh the merits of the

complaining party's case. The complaining party gets to cut the pie, the defending party gets to take the last piece. If there are opening and closing arguments, this same rule applies so the complaining party opens first and defending party closes last. The complaining party gets to make the first impression, but the defending party gets to have the last word.

The goal is always the same: to make the process as fair as can be. Whether cutting pies or making case arguments before the court, this maxim promotes fairness. It wouldn't be fair to let a complaining party go first on opening statement and also have the last word at closing.

Judicial Reasoning

Words are heard as commonly understood, not as others construe.

Suzie doesn't have quite enough money to buy a piece of candy. She needs only three pennies more. Johnny has six pennies. Suzie asks, "Do you have three pennies, Johnny?"

"No, Suzie," Johnny answers, construing his words to his own purpose.

He has six pennies. As Johnny sees it, Suzie didn't ask her question precisely enough. He thinks to himself, "It's not a lie. I do not have three pennies. I have six." Though Johnny chooses to construe these words to his own selfish purpose, this maxim makes clear that he is wrong, and our courts should not give in to such deceitful tactics.

Secretly using words while holding to a private interpretation is lying. Anytime we use words to deceive others we are lying … whether or not the words have a secret meaning only explained by a private interpretation or not.

The goal of maxims is to bring light to the darkness, to hold up truth as the standard of fairness and thereby insure justice for everyone. Without the maxims we have no guides, no standards to promote peaceful understanding.

Purposely using words with a hidden meaning, hoping others will depend on the common meaning reasonable people would expect the words to mean, thereby gaining an advantage over others, is dishonest. It is fraudulent. In extreme cases it is a crime. Using words in a particular way to take advantage of others who can be expected to believe the words mean something else, is wrong.

Therefore, when our courts interpret a contract or witness testimony or other words that affect the outcome of some dispute between parties, they are reminded by this maxim to give words common meanings and not to allow one party to insist that any word means something special. Courts routinely uphold this maxim.

When making agreements with others, therefore, we should use words in an ordinary sense, the way most reasonable people would be expected to understand the words, and not in any special way that might be misunderstood by others, for if the matter goes to court, this maxim will be upheld in order to establish justice.

Maxims such as this help us discern between right and wrong.

Maxims help us communicate about principles of justice.

Words are interpreted most strongly against the one who uses them.

This maxim controls the outcome of many contract cases. One party usually prepares the written contract between parties. The other party usually assents to the wording by signing the contract (sometimes unwisely without even reading it). In the event of any

dispute over what the contract means, however, this maxim tells us how to apply justice to resolve the dispute. When there is an ambiguity, i.e., a term or phrase that could mean more than one thing, the courts will interpret the contract against the party who wrote it. This is what the maxim demands.

The same principle applies, of course, to witness testimony or anywhere that one party makes a representation with words intending that another rely on them. If there is a question what words mean or how they affect the outcome of a case, this maxim requires that the words be interpreted against the person using the words.

It is very common for this maxim to be applied by courts, often without reference to the maxim itself, as if the principle were too obvious to argue.

Every principle of justice should be written out plainly so we can all agree. That is the purpose of maxims, so we can agree what justice is and what it is not. Only in agreement can we maintain our form of government and pass it on to our children.

Suppose you sign a contract prepared for you by a man who is selling you a house. You find that the house was not as he represented it in his contract, and he attempts to hide behind ambiguities in his contract (terms that could be mean more than one thing). If you sue, the court will construe the ambiguities in a light most favorable to you and against the seller who drafted his own contract.

Maxims promote fairness without which justice is impossible. Indeed, maxims define the limits courts must put on judgments so justice is served. Courts are not free to rule any way the judge pleases. Judges must obey the law and stay within the boundaries established by maxims such as this.

Crime and Punishment

He who acts in pure defense of his own life or limb is justified.

This is the old self-defense defense, but please take note of the word "pure" and realize that if the action of self-defense was necessitated by a bad act, such as robbing a bank, and the self-defense was shooting back at policemen, the maxim does not apply.

Only those acting purely in self-defense are excused for their actions.

If you are attacked by a knife-wielding fiend who is attempting to take your life, you are justified in killing him with a pistol … but you must truly be in fear of your life. If a man pulls a knife to show you its pearl handle, for example, and you shoot the poor fellow dead, you are not acting in self-defense.

Similarly, if you set a trap by which you arrange for a 12-gauge shotgun to go off if anyone jiggles your doorknob late at night, you are not acting in pure self-defense, and if someone is injured you will be held responsible.

Only if you are in present danger of mortal injury or serious physical harm are you permitted by this maxim to repel your attacker with force.

Please also note that the force you use must be reasonable in light of the force being threatened against you. For example, if someone attacks you with a feather pillow you may be justified in snapping him on the legs with a wet towel to make him stop, but you cannot throw acid in his face nor stab him through the heart with a dagger. That would not be using reasonable force in light of the threat.

On the other hand, if you are threatened with severe bodily harm or death at the hands of someone who has the present means to inflict such injury on you, e.g., a man at

close range with a loaded pistol aimed at your chest, you are justified to use any force at your disposal to defend yourself from the threatened harm.

But the threat must be reasonable, and if you are required to explain to the court why you did what you did the burden will be on you to prove your acts were reasonable under the circumstances, i.e., that the force you used in self-defense was reasonable in light of the threat.

Being permitted to act in self-defense is one of the blessings of liberty that is secured for us by laws that abide by maxims like this. Just remember the maxim is quite clear that your acts of self-defense must be "pure", motivated only by a desire to avoid injury to yourself and not by any hateful or retaliatory motive.

So long as you act in pure self-defense you will be justified by the law.

Crimes are more surely prevented by certainty than severity of punishment.

This ancient truth should be more widely published in the world today, for it is as true today as it was hundreds of years ago when it was recognized by jurists of old. Anyone with children knows this to be true.

When a child knows he will be punished for stealing from the cookie jar, he is much more likely to count the cost than if he thinks he can get away with it.

Whether the punishment is being grounded for a month or merely losing the right to enjoy dessert with the rest of the family, if the child believes there's a good chance he can steal a cookie without being caught, he will be much more likely to commit the "crime".

It's not the severity of punishment that dissuades criminals so much as the probability of paying the price. So long as there's a chance of escaping punishment

altogether, most people who consider committing crimes are more likely to risk the possibility. If circumstances are such that it is highly likely that one will be caught red-handed in the act, however, most people will not take the chance.

Severity of punishment is a factor, of course. If stealing a cookie means only that one must go without dessert at supper, the value of the cookie might be worth the risk. A child might think, "I'd rather have a cookie now and go without apple pie later." The possibility exists, of course, that the child can have the cookie now and still have pie later … if he doesn't get caught.

On the other hand, if stealing a cookie means amputation of a hand, as might be the case in certain mid-Eastern nations where thievery is taken seriously, most of us would consider a mere cookie not worth the risk.

Of the two factors – severity and certainty of punishment – the wisdom of our maxims teaches it is certainty that tends most to discourage crime. A moment of reflection will reveal that this is self-evidently true.

Perjurers should be punished for the wrongs they falsely accuse.

This ancient maxim is nowhere codified in American law, however wisdom might be better served if it were, for one of the worst abuses of our legal system is perjury.

Unless we enforce the truth in our public proceedings, we cannot possibly expect to secure justice for those who are entitled to our courts' protections.

Truth and justice are inseparable.

Justice cannot exist where false testimony is permitted.

He who perjures himself to injure another commits a very grave crime, and it is fitting that he should pay for his perjury by serving the sentence he hoped to impose on someone else by his lies. One of the Ten Commandments instructs us not to bear false witness against our neighbor.

Perjuries injure people all too often in our courts. Therefore, when liars are detected in our courts they should be severely punished to dissuade others from lying under oath, and especially where by doing so another person is put in jeopardy of paying for a crime he did not commit.

Perhaps a compromise is to create sentencing guidelines for perjury, just as there are sentencing guidelines for other crimes, and adjust the punishment to fit the injury to others intended by the perjurer. A man who lies about his neighbor to extract a small sum of money in small claims court might receive a mild sentence, while one who intentionally misrepresents facts to cause another to pay for a crime of great consequence should be required to pay a greater debt to society.

Keep in mind that perjury is a crime against the People who provide courts to dispense justice. Where perjury threatens the welfare of another, it is clearly a crime against that other person, but first it is a crime against all of us, because it is the highest form of disrespect for those who sacrifice to provide courts of justice where the truth should be honored. We who try to uphold justice should not allow others to disregard the sacred oath with impunity, for our security and the security of our children depends on our continuing to work together to provide courts to redress the people's grievances by enforcing the truth according to law.

Oppose perjury.

Self-Evident Truths

There are such things as self-evident truths.

Contrary to popular philosophies of the day, truth does exist.

Some truths are self-evident.

Truth exists outside you and me or our private perceptions of the universe around us. Truths are true whether we wish to admit them as true or not. Truth doesn't depend on our opinions or the opinions of any multitude of authorities. That's what real truth is.

That's the kind of truth this nation was built upon … for the good of all mankind.

Truth is not imaginary substance. Only irrational persons believe otherwise.

The self-evident truths expressed by the maxims of common law are true today. They were true yesterday. They were true at the beginning of time and will undoubtedly be true tomorrow and forevermore. They are self-evidently true and accepted as such by all reasonable persons.

The maxims of common law have been published in old law books for centuries, yet they're no longer taught today. Law schools ignore them. Religious organizations are more interested in spiritual teachings about life after death and angels. Our public schools *should* be teaching the maxims, but they aren't. So, we live in an age of legal ignorance that could so easily be uplifted by the simple truths contained within these memorable sayings that guided our forefathers to build a nation predicated on their common-sense principles of fairness and justice for one and all alike.

Our Declaration of Independence is dedicated to the "truths we hold self-evident", and our Constitution would never have been born and could not have long survived

without their guiding wisdom that continues to promise this nation will remain the greatest ever to appear on our tiny planet.

Self-evident truths are an essential part of our jurisprudential heritage. They are the heart of equity, the hope of future generations.

Secure liberty and justice for yourselves and your posterity by discovering and sharing these self-evident truths of the common law on which legitimate governments are built and by which corrupt governments will eternally be judged.

The trust of keeping justice alive is in your hands and the hands of those to whom you entrust it. Promote public awareness of these self-evident truths by telling others that the maxims of common law should be upheld by all our leaders.

This is the best way to promote truth and equity in our courts and in the world.

Thanks for passing the word.

Only the truth is true.

Nothing else is.

The Price of Ink

Throughout the history of mankind men have written their thoughts about justice, liberty, the supernatural, life after death.

Most have written what the world wanted to read, appeasing their readers with palliatives to promote their popularity. Yet, few great writers did so. Few whose thoughts have remained over the years in treasured writings spent their energies stating merely what was welcome news.

The thinkers who led humanity to a clearer view of the problems of human suffering and its amelioration dared to challenge mankind to take a stand for the benefit of future generations … men like Luther, Paine, and Thomas More who cared less for applause than for the hoped-for gain of influencing a few to go beyond their comfort zone and publish truth for posterity's sake.

Certainly the publication of palliatives has its place. Many in this world suffer in great pain of body and soul, people who need a kind word, an encouraging thought that makes no demands. This book seeks not to denigrate the efforts of those who dutifully provide peaceful thoughts to each succeeding generation, soothing the wounded, uplifting the fallen.

Yet in this hour there is the need for action that will not be brought about by palliatives nor stimulated by an "all is well" attitude. All is not well, and those who proclaim otherwise are either bemused or acting out of a hidden motive for self-advancement. We are losing our way.

This is no uncommon pronouncement. On every hand we here pundits, priests, and pulpiteers decrying the state of this war-worn world, complaining we have lost our way, insisting we must turn to them for guidance.

How will they guide us? Would they have us follow them, make them our leaders, lift them to positions of prominence in our governments, and permit them to proclaim what is right and wrong for all? By what principles would they be guided, if we were so foolish? Good intentions pave the way to destruction.

Guidance is what we need to avoid destruction.

Will we find that guidance in the guise of men-pleasers whose honeyed tongues spout blessings for all who submit to their private doctrines?

Or should we return to the self-evident truths set out for us in the maxims and the language of common law to build on what we know is true … not only in our personal lives but in our corporate lives as well … erecting our governments on the common law principles that stem from nothing less than truths about which we can be certain, truths about which we can all agree.

The boat is sinking.

Will we bail with what we have or throw our hands in the air to proclaim, "It's too late?"

Fortunately for all of us today, others did not abandon ship. They put their heart and soul into doing all they could to make peace possible. They wrote. They fought. They struggled in unseen heroisms that never will be heralded by others. And, from their labors and sacrifice, we today enjoy the privilege of walking openly on public streets, purchasing the most amazing wares for the value of a few hours or our labor, and too often ignoring the self-evident principles of common law that make such a life as ours today possible.

The price of ink is blood.

The Struggle

Rudolph von Ihring wrote, "The end of law is peace. The means to that end is war."

No one in his right mind wants war. War is waste and ruin, yet from the busom of conflict comes great progress at times … and we are reminded that not all war is with weapons of destruction and death.

The greatest wars are those of spirit … battles of ideas that compete for the minds of men in every age.

What ideas are winning the spirit wars in our world today?

Where is the certainty that can unite us as a people and empower us as a nation built on principles of peace?

Finding certainty is central to the task of law. We wouldn't think it good for judges to flip coins in court to determine guilt or innocence, therefore it's essential to be precise with our use of law's language.

Saying what we mean and meaning what we say is only half of it. We also need to say what we mean in a way that communicates to others so reasonable people may know what we meant and thus avoid the all-too-frequent legal conflicts that arise from nothing more complicated than simple disagreements about words. Otherwise we only thought we said what we meant, and others can be injured. Unless others understand what we meant, we mis-communicate … or we don't communicate at all.

Law is entirely about communication … precise, predictable communication.

That's why one of my favorite legal maxims is, "A thing similar is never exactly the same," because it requires courts to scrutinize what a witness says and require testimony that speaks to truth, instead of leaving interpretation to imagination or conjecture.

Only truth is true.

Upon this simple principle is built the system known as common law, doctrines that control judges by imposing on the court a requirement not to deviate from what most of us agree is self-evident truth.

"We hold these truths to be self-evident," Thomas Jefferson wrote in our Declaration of Independence.

"All men are created equal," is a principal maxim of our common law. All are not born with equal abilities, but all are born with equal rights to enjoy life, liberty, and the pursuit of happiness. Government has not conferred these rights and therefore has no legitimate power to take them away without due process of law.

Common law is predicated on such self-evident truths, about which no right-thinking persons disagree. Mankind in general agrees (though we may not yet share the language of law required to express our agreement effectively).

"What's good for the goose is good for the gander," expresses our common view that one gender should not possess rights or powers to the exclusion of another—at least not in the eyes of the law.

"Though a just judgment be made without hearing both sides, the judge who makes such a judgment is unjust." Who could disagree but an unreasonable person motivated by self-interest?

The maxims of common law are simple statements held by reasonable persons to be self-evidently true.

"Some truths are self-evident," is yet another maxim.

Maxims are used in courts of justice and the chambers of lawmakers to constrain the foolish to remember that, "No truth exists in falsehood." (Another maxim.)

Some things should never be the subject of debate.

Justice needs certainty.

Maxims draw the line where certainty begins.

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NOTE: These are but a few of the many maxims of law. Another Jurisdictionary® book soon to be offered by this publisher presents many more of the self-evident truths of common law, explaining how maxims can be used to increase our awareness of America's legal heritage. In

Liberty v. Freedom

Nathan Hale did not say in those tumultuous years of our nation's birth, "Give me freedom or give me death."

He said, "Give me liberty."

Freedom and liberty are not the same, and we need to understand the difference if we are to share a common language of law.

Unregulated freedom is anarchy.

Liberty is freedom restricted by a set of rules … the law.

The difference should be more clearly understood by all.

Freedom doesn't give us the right to break the laws of the land. Freedom doesn't give us the right to pursue our own interests by destroying the interests of others.

Give freedom the reins, let out all the stops, deny nothing, and the freedoms we do enjoy will all too quickly disappear!

Unbridled freedom can be dangerous.

Liberty, however, is different. The difference isn't as simple as children wish it to be.

Freedom is the dream.

Liberty is the practical reality.

It is recognized by history that liberty promotes freedom. Freedom can be found in liberty, but freedom is not liberty.

We may fight for freedom, but liberty is all we dare to win.

Freedom is a child's toy.

Liberty is the object of mature ambition.

Liberty is the product of labor and sacrifice.

Liberty is a shared treasure that requires our diligent protection.

Freedom is free for the taking … right or wrong.

Freedom is open-ended.

Liberty has restraints.

Freedom says, "Do your own thing!"

Liberty says, "Do anything you want, within The Rule of Law."

We need to be cautious with our use of words. To some, the law is just what's written down, rules and ordinances sheriffs and police enforce. For many law is black and white. The best of these people will ask if laws proscribe their planned behavior then, if no law speaks against them, they go ahead and "Do it!"

They say, "It's my right!"

However, that is living by license … not living by liberty.

Liberty extends beyond written law.

Liberty looks to the law that isn't written in men's books.

Liberty permits us freedom within that law … the *logos*.

In law school we study the reasonable man. He knows, we are told, the unwritten law of fairness and love. If a highway is filled with children in band uniforms or waving from parade floats, the reasonable man won't zoom along at 55 -- notwithstanding speed limit signs proclaiming it's his right to do so. The fictitious reasonable man we studied in law school looks out for the other fellow … law or no law.

Freedom would permit us to go charging on at our own rate of speed, using our license to the limit.

Liberty would not.

Sailing masters once pressed vessels to their limit in a mad haste to speed passengers and cargo from New York to California. The average California clipper kept a sailmaker, carpenter, and at least one carpenter's mate constantly busy, day and night, fixing broken masts, repairing shattered booms and gaffs and yards, stitching shredded sails and sprung boltropes. A master wasn't thought a true sailor if his ship failed to suffer some degree of damage from the gale-force winds he encountered rounding Cape Horn.

His standing orders were, "Crack on more sail!"

And so they did. They pressed their ships to the limit ... and often broke them and were lost at sea, all hands, young boys, old men. They didn't stop before they crossed the boundary of prudent management. They refused to restrain themselves when they reached the point of pushing too hard. They knew no law except the lust to exercise their will no matter what.

Prudent skippers also made that passage. Some made it over and over again.

Hasty, foolish, greedy, skippers died—crew and passengers drowning with them.

Perhaps in our search for freedom, in our well-intentioned ambition to relieve the needs of our poor, in our anger to overthrow evil empires, and our fear that terrorism may strike too close to our homes, we should remember that we need the restraints of law to keep our freedoms safely within the protected boundaries of liberty.

Be cautious whom you follow. We wary of those who want to throw away the past in their hasty rush into the brave new future.

They may be carrying too much sail.

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Authority

The Source of Lawful Authority

The word "authority" comes from the same root as "author", implying origination, as the words in this book originated in the mind of its author, who took his authority from the ideas set out in words by many other authors.

What, then, is the source of *lawful* authority in matters pertaining to justice.

As this chapter explains, the origination of *lawful* authority is found in the words of our language of law and the new way of thinking our language of law facilitates for us.

This chapter explores the sources from which authority may originate and measures by which we can determine whether it is lawful or not.

Lawful authority must originate lawfully … else it is not lawful.

One cannot *lawfully* claim authority unless the authority claimed is rooted in some original right. In other words, one cannot merely jump up at a meeting and declare he will serve as chairman thereafter. Lawful authority to act as chairman must originate in source that is lawful in itself. Then it can be conferred on whomever is willing and able to carry out the authority in accordance with law that created it. That's what *lawful* authority is.

Let me explain it this way. Imagine you are living at the dawn of time. Your family is digging roots and grubs for food. There's no such thing as fire, for fire has not yet been discovered. There are no wheels, no gunpowder. You have only a tiny cave to protect you from the elements and a nearby stream to provide fresh water and nourish the few edible plants you find near your cave.

Suppose some larger, stronger, fiercer man comes over the hill swinging a giant club menacingly in your face and commanding you and your family to bring him food and let him use your cave for shelter while you sleep out in the rain.

You might think of remonstrances such as, "See here! I'll have none of this! You have no right to order me about!"

Or, you might think better of it!

In this hypothetical case authority is claimed by threat of force and is, in terms of our nation's legal heritage, *un-lawful*, because it originated in lawlessness.

Yet in the year 4003 BC at the edge of a forest where your tiny stream meanders past the pleasant cave you once called home, it doesn't much matter if the claimed authority is lawful or not. There are no laws and nothing you can do to resist the threatened force that claims its imperious authority over you and your family.

Now imagine it's a year in the future from now. You've been walking the street near your lovely split-level home in suburbia. It's early evening. Occasionally a neighbor says hello from his porch as you pass. You draw in a deep breath of air and are just beginning to give thanks for the liberties you enjoy when suddenly a police car screeches to a halt beside you and a loud voice commands, "You! Hands on your head! Step nearer the car!"

Stunned, you do as you're told and notice the giant painted badge emblazoned on the door of the car and the shiny metal badge pinned prominently on the chest of the officer within. You think to yourself, "What could I have done? They must be looking for some escaped convict. This will be over in a moment when the officer sees my identification and realizes I live just around the block from here."

Instead the officer jumps out of the car, claps handcuffs on your wrists, and shoves you roughly into the back seat of his police car with an oath, "You lousy citizens. You're all the same! I'll teach you to walk about in this neighborhood with a smile on your face."

"See here!" you might complain from the back seat. "I demand to see my lawyer!"

At this the badged master of your situation points a loaded revolver at your head and commands you to, "Shut up! Or I'll blow your #%&*@ head off!"

Where's the authority?

What limits such authority?

What are the principles of liberty and justice that protect us from such authority?

Where is the Rule of Law that didn't exist in prehistoric times and (according to all prominent writers of the age when our nation was born) can be so easily lost at any time when fear or self-interest tempt us to allow erosion of its principles and protections?

In the first instance we see ourselves helpless to ignore the threat of being clubbed to death for disobedience, and so we honor the un-lawful authority … or perish.

In the second instance (as improbable as most will take it on first impression) we are confident there is someone we can appeal to, a higher authority with power to prevent the police officer from overstepping his bounds both today and in the future.

Yet, our new way of thinking causes us to pause and consider *what is the difference?*

Why was the first example not only possible but clearly probable in a prehistoric age when The Rule of Law was unknown, and the second example an intolerable interference with what most of us would loudly complain are "our rights"?

The barbarian had a club for his authority.

The angry police officer had handcuffs, a pistol, and a badge.

What makes them different?

What is it that gives us assurance in this land of liberty that the second hypothetical is improbable or that we can count on a higher authority to right the perceived wrong?

Who has that authority? Where does it come from? What does it demand of us?

The Benefit of Obeying Authority

To answer the foregoing question, imagine a grade school classroom.

> The teacher in this room is responsible to a higher authority that requires her to be in this room when the bell rings, to work hard preparing for her lessons, to be polite to everyone (including students, other faculty members, and staff), and to do her best to see that you get the best education possible. Therefore all students in this room are

Behind the teacher's desk, high above the blackboard, is a brightly painted sign.

Imagine a teacher who condescended to be an "equal" with her students. Of course it wouldn't work if there were no higher authority to command obedience. The teacher who seeks to be "equal" with her students without first establishing authority will soon find it impossible to teach the class. The teacher who agrees to be "equal" to students under an authority that rules the behavior of all, however, gains respect and student cooperation.

It is the same in business and sports. A boss or coach who "pitches in", instead of sitting back demanding performance (like the military leader who truly "leads" by getting out in front of his troops to show the way) always gains respect and obtains far greater results from others.

This is because all persons desire acceptance. It's been said we all seek to be loved, yet it's difficult to imagine being loved by someone who cannot accept that we're equals. Those who believe they're "more perfect" make bad neighbors and even poorer lovers.

The same is true of those who believe they're entitled to live outside the law, people who refuse to submit to authority and the corollary that was once a motto for America: "All for one and one for all."

In a pluralistic society like ours, the common ground we share as a people is law. It is the authority of law that makes possible the dream of "all for one and one for all".

When we enforce bad laws (i.e., laws that favor certain minorities, business interests, or religious orders) against others who innately know that such laws are contrary to the highest authority, we alienate them. The consequence is crime, immorality, indolence, and societal decay … just as the authoritarian teacher who insists on being a law unto herself soon loses control of her class and is ultimately ineffective.

Submission to authority is the price of liberty.

Equality and authority go hand-in-hand.

Liberty without authority is anarchy.

It is, therefore, by establishing *and submitting to* authority that we make the process of justice possible.

In the competitive world of today, a counter-culture mentality constantly strives to be free of the constraints of authority. They want the advantages (streets, water supply, food that's safe to eat, public schools, police protection) yet rebel at our authority system that makes such advantages possible. Some demand that our authority system treat them with special advantages not granted to others. They insist on being treated differently for one

or more reasons. They want the benefits of an ordered society and, indeed, complain to the authority system when they don't get what they demand, yet they lack any sense of responsibility to preserve or improve the authority system that provides for their needs. In the worst of these there is crime, drug trafficking, and murder … all by a counter-culture that insists on being permitted to enjoy benefits of authority without any responsibility to submit to the authority or share in the process of strengthening it.

Perhaps some of this is drummed into us by grade school teachers or parents who threatened us with a wave of their paddles or knuckle-rapping rulers, "I am the authority here. You will do as I say!"

Perhaps it's because in years past (and to some unfortunate degree in recent times) a few bad police officers acted outside authority and had their misdeeds publicized in our media, while the responsible service of ten-thousand good officers was ignored. One bad cop becomes an excuse for twenty hardened criminals to live outside authority, just as abusive parents and hateful schoolteachers breed in children's hearts a sense of rebellion against authority.

Parents and teachers who demonstrate to children and students that they are under authority and accept responsibility for their own improper actions, instill respect in youth, just as honest law enforcement personnel inspire a sense of duty in us all.

Imagine the classroom where teacher is submitted to authority and invites students to share the responsibility of helping other students learn. Everyone pitches in to help. Each has a sense of importance, equal to all (even the teacher), and the result is perfected in an atmosphere of peace … which should be the goal of us all.

There is no "boss" but the law we all share and (unless by our ignorance we lose our magnificent system to the power of private interests) we can change the laws we don't like. We can cooperate peacefully to make our laws better by writing, speaking, voting, and taking our grievances to court.

The changes we seek, however, must take place *under* authority with a reverence for the rights of everyone, instead of just ourselves or a particular few.

We *are* the authority in America, so long as we submit to each other *under* authority.

This is the dream of ages, government of the people, by the people, for the people.

With our language of law and new way of thinking, we can construct better systems of law with the principles of authority that guided our forefathers, citizens committed to establishing, maintaining, and improving a legal system that belongs to *us* … not the teacher or the boss or some corporation. So long as we work together *under* law we abide together *by* law and promote prosperity and peace for future generations *with* law.

The Rule of Law

The Nuremberg trials that followed World War II to prosecute Nazi war criminals emphasized a principle that needs to be better understood by all of us.

The Rule of Law.

Never has it been more important for the world to understand this fundamental concept that gives life to liberty and hope to the world's citizens.

We need to understand what the Rule of Law is and how to preserve it for the good of our children and the future of all humanity ... for upon the Rule of Law hang all our hopes for equal access to justice and preservation of human liberty.

U.S. Supreme Court Justice Antonin Scalia said at a conference in Florida a few years ago that our Constitution and the Rule of Law it was designed to secure mean nothing without the Rules of Court by which alone the principles of justice and liberty for all can be enforced!

Think about that fact for just a moment.

Without Courts to enforce the Rule of Law, the U.S. Constitution is a meaningless document having no power of its own whatsoever!

The Rules of Court *alone* enforce the Rule of Law.

There is no other way to look at it!

Nothing is more important to understanding the Rule of Law than knowing the Rules of Court ... the principles of due process without which the Rule of Law is an empty promise ... the Rules of Court by which alone we can preserve and enforce the Rule of Law for future generations!

You hear the Rule of Law mentioned in editorials or in the commentary of newscasters, but who explains what it is?

You may have heard it said of America, "Ours is a nation of laws. We are ruled by laws, not men," but what does this mean?

What is the Rule of Law?

Before America was born, men and women were ruled by kings who claimed a divine right to rule, kings who changed laws to suit their own personal whim. This was

considered intolerable by our founding fathers who dreamed of a nation established on the rule of duly enacted laws ... not the conceited edicts of arrogant tyrants.

Humanity lived under the iron rule of one form of king or another for thousands of years until that fateful day in Philadelphia, when wise, courageous leaders gathered on the Fourth of July 1776 to institute a new form of government whereby the people would rule themselves *under law* ... according to the principles of due process embodied in our Rules of Court that protect *every* person who knows the Rules. The dream of America was that we would live in a land of liberty and justice for all (based on the Rule of Law). The promise was that no longer would kings and tyrants rule us. We would rule ourselves, according to the Rule of Law and the principles of due process ... government of the People, by the People, and for the People! (However, only those who know how to use the Rules of Court to obtain due process at the hands of government are truly protected by the Rule of Law. The ignorant remain enslaved to those who know how to use the Rules. That's why this site is here.)

The Rule of Law and due process were married when America was born. This is our legal heritage.

Not without many problems was America born. Not without mistakes. Not without errors of the most horrible kind ... because people do not know the Rules of Court or the principles of due process, and our government has not yet seen the need to teach us in our public schools while we are still children. That's why we should work together to teach the language of law, so people *everywhere* can be truly free ... enforcing the Rule of Law by using the Rules of Court to secure due process for one and all. By understanding the rules by which we are governed, we can avoid the horrible problems that plagued us these

past two centuries. By applying the principles of due process we can stop the seething discontent that continues to afflict us with so many social problems today.

America was born with seeds of success in her dedication to the Rule of Law and principles of due process. In 1776 there appeared on the face of this war-worn planet a new hope.

Hope for peace.

Hope for justice.

Hope for a day when right will always conquer might.

Hope for a day when truth will always overcome deceit.

Hope for a day when love will truly be the highest law of our land.

The Rule of Law lives in the hearts of free people everywhere. We all know deep inside that each of us is entitled to be treated equally by government, that no men or set of men should be given special favors or powers to rule us outside the written law ... yet only a few know the Rules of Court so they can be protected from the law of force by the law that's written ... and nothing is said about it in our public schools!

Why, then, is there so much talk about the Rule of Law and so little effort to teach people the rules of court and the language of law?

The Rule of Law asserts that men should not be trusted to govern others unless their rule is just, tempered by fixed laws to prevent tyranny, laws that stop individuals from accumulating wealth by force, laws that keep those in high office from exercising power over the populace without restraint, laws that deny the majority power to act without due regard for the rights and well-being of individuals who are a minority, laws that prevent the powerful from plundering the weak.

The Rule of Law decrees that *Law* shall govern us according to the will of the People and not by the will of ambitious men and women in high places.

The Rule of Law is what our heroes died for in past wars for liberty.

The Rule of Law is worthy of our highest aspirations and dedicated efforts as a united people.

Yet, without more widespread understanding of the Rules of Court and due process by which alone we can enforce the Rule of Law, these high-sounding ideals are meaningless. The Rule of Law is threatened today by seemingly innocent schemes of powerful people who seek to undermine the principles of due process for the sake of a global economy and its all-powerful government that will decree what law is and enforce its edicts with unbridled force. By learning the Rules of Court and using that knowledge to enforce the Rule of Law, you are making the world safer for future generations.

Remember: you cannot have one without the other.

This principle that laws should govern instead of men -- laws of our own making and not the cruel edicts of tyrant dictators or divine right decrees of kings -- is the bedrock of human justice, the philosophical cornerstone of these United States, and the foundation of hope for all mankind.

Due Process

Whenever you speak to the judge or jury, you are required to give prior notice to the other side to prevent "trial by ambush". Failure to do so is forbidden by the rules. Any such communication behind the other side's back is called ex parte, from the Latin

"without the party". In some probate matters, such as proceedings to establish a decedent's will, ex parte proceedings may be allowed. In most civil cases they are not.

The sad fact is that some lawyers talk to judges behind everyone's back – rule or no rule. They meet in the hall, at the club, or in the courthouse parking lot. They talk about actual cases. They talk about evidence. They talk about how much the lawyer likes to vote for the judge at polling time or how the judge's brother owes the lawyer money … that sort of thing. It happens. If you know of such practices you should notify your state bar association at once. Demand a written report on the progress of its investigation and the ultimate outcome, i.e., whether the offending attorney will or will not be disciplined and why. Don't tolerate it in any case that involves you.

Due process is the engine of human liberty.

Due process is essential to victory.

Due process is where justice and fair-dealing begin.

Everyone in a civil lawsuit is supposed to be on an even footing. What's good for the goose is good for the gander. That is the sum and substance of due process.

Due process is the law that applies the state's force evenhandedly to both parties – rich and poor, landed or homeless, red or blue, old or only three days new. Due process means fair practices, no star chamber, no groundless edicts by conceited magistrates. Due process means you get your day in court. You get to call hearings and require the other side to attend, whether or not the other side is represented by an attorney. You have the right to cross-examine those who do you harm, and you have the

right to examine every single witness that knows anything about it whatsoever. You get to make your record. If the other side gets four hours to argue its points, then you get four hours to argue yours.

This is one of those places where the rubber hits the road. To demand your due process rights you may have to stand up against the judge and insist on having your say. If you won't stand up for yourself, you cannot be surprised when the other side wins.

By following the rules and demanding that the other side and the court itself also follow the rules, you guarantee yourself victory ... if your cause is just and you speak and write effectively in the language of law.

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Conclusion

Language is a peculiar thing. It controls and predicts our actions and our thoughts.

French and Spanish, of course, are languages, as are German, Italian, and Swahili.

However, the language of law is a different kind of language, more like mathematics that both communicates and controls the processes of geometry and calculus. Computers are controlled by languages called software that tell hardware what to do in very specific ways. Throughout science and the world of finance we find unique control languages the mastery of which determines success or failure of experiments scientific and financial.

If knowledge is power (as some proclaim) then certainly the knowledge of languages gives greater power, perhaps, than any other, for without language we're lost in a world with no communication, no control, no understanding. Languages give us the ability to cooperate and achieve far greater things than we could ever do without them. Financiers control unimaginable wealth almost completely by the communication of ideas unique to the businesses of banking, insurance, and monetary trading. The airplane pilot, surgeon, and pastry chef are able to control the outcome of their efforts by unique languages so that, without the special words they use each day, simple tasks we take for granted would be utterly impossible to perform!

So it is with lawyers, judges, legislators, presidents, and foreign diplomats, people whose command of law's language affects us all in such extraordinarily different ways. Decisions are made that influence the lives of entire populations … all according to the rules of this peculiar language we call law … and the way of thinking it controls.

It is to understand this language my little book is offered, and I hope you've learned something of the extraordinary power of the simple principles I've tried to set out for you in an easily understood format.

Indeed, it is my hope you are amazed at what you've learned.

Law is not a sterile, dread device governments use to control nations and individuals. It is a living thing. It touches all we do (in one way or another). It motivates and controls us. It empowers society by broadening the limits of our liberties, even while it restricts us by setting boundaries for individual behavior. It seems shapelessly amorphous at times, as when our lawmakers cannot decide an issue that divides us, yet out of the confusion of debate it emerges strong and particular, deadly strict and inflexible, yet able to be molded by our collective will to make life more agreeable for all (if we understand its rules and learn to communicate its profound precepts more effectively).

To do use it wisely, of course, we need to see more clearly the apparatus of law's language and use that language to share our understanding of its limits and potentialities.

In the preceding pages we've examined the source of legal authority, the factors that legitimize its power in the hands of public officers, and how it benefits society.

I hope my book has helped to you appreciate its beauty and perfection in the midst of an imperfect world, and that you see more clearly that it is our friend … *if we make it so*.

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Epilogue

The language of law is about justice, the metaphysical as well as political concept.

Philosophers agree there is a divine justice that rules everything and everyone, while the political machinery of human institutions can only regulate behavior of individuals in the name of the state.

The two forms of justice are clearly not the same.

Divine justice is the rule of an Unseen Hand by which goodness and truth eventually are given victory over evil and deception. Justice in this sense is an eternal mechanism reaching beyond the grasp of human reason, determining the destiny of men and nations.

Human justice can never be more than an approximation of the divine.

Sometimes the rule of government is good and sometimes wholly corrupt, serving self-interest instead of justice. Men unconstrained by the public's sense of justice defined by our language of law mete out human justice in accordance with laws penned by mortals motivated too-often by greed and mendacity.

Where the language of law is understood and used to communicate truth, however, such abuses are less often seen. Where the language of law is unknown or misunderstood, unbridled tyranny rules without remorse.

Only light can repel darkness.

It's an age-old struggle requiring cooperation only common language can coordinate. We will prosper as we use our common language of law to protect innocence and pave the way to a brighter future for our children.

Justice is our goal. Mercy holds the scale. Wisdom tips the balance for truth.

When man takes law into his own hands (either individually or through the power of the collective and its court systems) to achieve what he (or the collective) wishes to achieve (outside law) it is then that war begins. Whether man's justice will be constrained by the Rule of Law and the principles of due process is a question facing each of us.

Justice thinks upon these things.

Will we?

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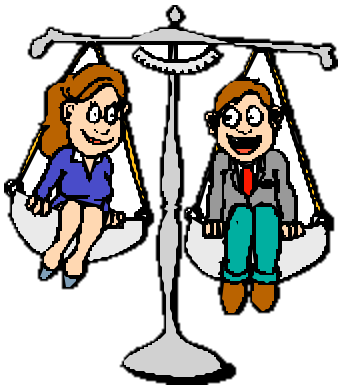

This little book will teach you how the law "thinks".

You'll learn about the mechanism of legal reasoning and discover how the peculiar language of American justice can unite us in these troubled times, a language of principles essential to the process of peace, a basis for achieving harmony and productivity with others at home, in the workplace, and around the globe.

This book isn't written for lawyers. It's for everyone wanting to know what America is really all about, our fundamentals, our purposes, our soul.

Here are explained the language of our legal system—not a mere dictionary of legal terms, but an exploration of self-evident truth few of us were taught—truth with power to literally move mountains!

This book won't make you a lawyer, but it *will* help you understand what American justice is all about … and that could help you avoid the need for a lawyer!

Here is language we can use to communicate our common vision as Americans.

Learn it well.

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