

Trial by Jury by Kenn d'Oudney

All (or most) of us on this forum seek the return of the Constitutional Trial by Jury Justice System: the Trial in which indiscriminately chosen Jurors judge the justice of the law, the facts, the admissibility of evidence, the moral intent of the accused, mitigating circumstances if any and the fitness of the sentence. The procedures just described are definitive if the trial is to be called Trial by Jury. We all know that what takes place today under the baleful eye of the judge, and acquiesced to by seedy lawyers, is in most instances a far cry from any type of fair trial, nor is it Trial by Jury. The modern courtroom charade flagrantly breaches the constitutional requirement that (apart from impeachable offences) "the trial of all crimes shall be by Jury."

When I joined this forum not long ago, I came fully expecting to find a 'Speaker's Corner' for the meeting of minds expressing a common understanding of what we call The Illegality of the Status Quo. I anticipated with pleasure reading of the experiences of dedicated FIJA campaigners, their plans, news, encouragement of fellows, and hearing of their achievements in producing or influencing satisfactory outcomes of trials. Instead, I find the forum perniciously infiltrated by lawyers who know the Illegality of the Status Quo, but who, for pay, participate in its lawlessness, and, by posting misinformation, promote its continuation (inasmuch as they are able). This depraved activity of spreading misinformation is intended to undermine the potency of the inspired FIJA Mission and Message.

There is indeed so much more than a single post can contain, in order to dissect and reveal the canker within the illegal Status Quo which destroys democracy, inflicts despotism of the most virulent type, and denies the People liberty, the pursuit of happiness, and even of life itself. However, as good a place to start as any, is by obtaining the understanding which comes from knowledge of historical and social facts common to Americans, British, Australians, Canadians, New Zealanders, and other nations which adopted mankind's model constitution and Justice System: the Trial by Jury. The People's established Rights and Duties in Trial by Jury are learned from those common law articles (also referred to as 'chapters') inscribed into The Great Charter of 1215.

Having first grasped what the common law is, reveals also what the common law is not...

A nation state governs by its Justice System. Bear in mind the paramount aspect of that part of common law prescribing Trial by Jury, for upon it is founded nothing less than the foremost of all laws: The Constitution. The Constitutional Common Law Trial by Jury Justice System governs all and everything: it is the supreme law, above treaties with foreign powers, acts of congress or parliament, state constitutions, and state statutory law.

Where did this Trial by Jury come from and by what law is it defined and prescribed ?

The answer to that question is given below (necessarily briefly) by a collation of quotations from books of history, law and knowledge, and some early statutes which recognised the law of the land common law as constitutional. The answer will be no surprise to some of us.

To others though, the answer will indicate with some shock that what we have been asked or led to believe is the result of much ghastly untruth and massive malicious (unlawful) manipulations of law, facts and history. The evidence shows further that this premeditated work of traitors, enemies to the People, is a cornerstone of the hideous government edifice which comprises the Illegality of the Status Quo. It is here that the FCDAE-FIJA Educational Campaign Philosophy concentrates its attack with the intention of reinstating Trial by Jury to achieve legitimate government and engender profoundly beneficial corollary effects throughout society, and ultimately, by Universal Adoption, the World.
(Ref. the www.democracydefined.org website)

It is hoped that those who have an intuitive or intellectual antipathy to injustice and particularly object to mendacious government mind-control, will investigate this matter further by reading some or all of the materials referred to below.

To begin with, it is necessary to establish with certainty what common law is, and also what it is not.

Lex Terræ, Legem Terræ Is The Common Law of the Land :
The Law of the Land Is the Common Law (and vice versa).

Legem terræ was/is the common law which the monarch was sworn to maintain. The judgement of an accused by his or her equals, the Trial by Jury, was the central tenet of common law. This installed a real restriction upon his power, and thereby a guarantee was given to the people for them to be able to protect and maintain their liberties. Hence, Thomas Jefferson's 'anchor'...

The following authorities are cited to show what was once well-known to the common people and to the legal profession: legem terræ, "the law of the land" of Magna Carta, was the common, ancient, fundamental law of the land, derived from the common people's sense of fairness, natural law and justice, which the kings (and their functionaries) were bound by oath to observe; and it does not include any statutes or laws made by the king or the judiciary.

Sir Mathew Hale: "The common law is sometimes called, by way of eminence, lex terræ, as in the statute of Magna Carta, chapter [i.e. article] 29, where certainly the common law is principally intended by those words, 'aut per legem terræ'." 1 Hale's History of the Common Law, p. 128.

Blackstone: "King Edward projected and began what his grandson, King Edward the Confessor, afterwards completed, viz., one uniform digest or body of laws to be observed throughout the whole kingdom, being probably no more than a revival of King Alfred's code, with some improvements suggested

by necessity and experience, particularly the incorporating of some of the British or rather, Mercian customs, and also such of the Danish (customs) as were reasonable and approved, into the West Saxon Lage, which was still the ground-work of the whole. And this appears to be the best supported and most plausible conjecture (for certainty is not to be expected) of the rise and original [origin] of that admirable system of maxims and unwritten customs which is now known by the name of the common law, as extending its authority universally over all the realm, and which is doubtless of Saxon parentage." — Book 4; Blackstone's Analysis of the Laws of England, p. 412.

Q. When Is a Judge Not a Judge ? Ans. When "the Judge" Is Not a Member of the Jury.

Until the word 'juror' was generally adopted, jurors were actually called the judges, in recognition of their common law rôle.

"...the judges, for so the jury were called." p. 55 of Crabbe's History of the English Law.

The various presiding convenors of courts, such as justices (judges, reputedly corrupt representatives of the king's interests), and stewards, sheriffs and bailiffs, under the common law, were, and (following the written Constitutional Statute Law Magna Carta), are, absolutely prohibited from interfering in matters of judgement and justice in civil, criminal and fiscal causes. Justice then and now is the exclusive preserve of jurors, the (twelve) indiscriminately chosen equals of the accused...

Crabbe: "It is admitted, on all hands, that it (Magna Carta) contains nothing but what was confirmatory of the common law, and the ancient usages of the realm, and is, properly speaking, only an enlargement of the charter of Henry I, and his successors." — Crabbe's History of the English Law, p. 127.

Crabbe: "It cannot be denied that the practice of submitting causes to the decision of twelve men was universal among all the northern tribes (of Europe) from the very remotest antiquity." Crabbe's History of the English Law, p. 32.

Blackstone: "It is agreed by all our historians that the Great Charter of King John was, for the most part, compiled from the ancient customs of the realm, or the laws of Edward the Confessor; by which they mean the old common law which was established under our Saxon princes." — Blackstone's Introduction to the (Great) Charters; Blackstone's Law Tracts, p. 289.

Coke: "The common law is the most general and ancient law of the realm. The common law appeareth in the statute of Magna Carta, and other ancient statutes (which for the most part are affirmations of the common law) in the original writs, in judicial records, and in our books of terms and years." — 1 Coke's Institutes, p. 115.

Coke: "It (Magna Carta) was for the most part declaratory of the principal grounds of the fundamental laws of England. They (Magna Carta and Carta de Foresta) were, for the most part, but declarations of the ancient common laws of England, to the observation and keeping whereof the king was bound and sworn." — Preface to 2 Coke's Institutes, p. 3.

It is seen that the monarch, who embodied all executive, legislative and judicial government authority, was bound by the ordinary People's common law, the ancient fundamental customs, and the rulings and justice prescribed by commoners in the Trial by Jury. The common people held sway over the government and the execution of a judgement or sentence could only be undertaken at the behest of a jury; although, by Magna Carta, government had the power to pardon, or reduce the sentence. Re-trials and appeals were likewise authorised by the Great Charter.

Nota Bene: The civil conflict, indeed war, otherwise inevitable, was averted by the head of state and all agents of the government agreeing to recognise and submit to the common law inscribed in Magna Carta, and by permanently, "for ever," devolving justice exclusively to the decisions of Juries of the common People.

Hume: "Thus these famous charters (the Great Charter and the Charter of the Forest) were brought nearly to the shape in which they have ever since stood; and they were, during many generations, the peculiar favourites of the English nation, and esteemed the most sacred rampart to national liberty and independence. As they secured the rights of all orders of men, they were anxiously defended by all, and became the basis, in a manner, of the English monarchy, and a kind of original contract, which both limited the authority of the king and ensured the conditional allegiance of his subjects. Though often violated, they were still claimed by the nobility and people; and, as no precedents were supposed valid that infringed them, they rather acquired than lost authority, from the frequent attempts made against them in several ages, by regal and arbitrary power." — Hume on the Charters confirmed by Henry III in 1217, Ch. 12, Hume's History of England.

Nota Bene: To judge of law, i.e. its legal interpretation, decisions and rulings, precedent and application, the Jurors are the sole legal judges prescribed by constitution and common law. See the following:

Gilbert: "This position" (that the matter of law was decided by the king's justices, but the matter of fact by the pares [peers]) "is wholly incompatible with the common law, for the Jurata [jury] were the sole judges both of the law and the fact." — Gilbert's History of the Common Pleas, note, p. 70.

Gilbert: "Ad questionem juris non respondent Juratores." (i.e. To the question of law the jurors do not answer.) "The Annotist says, that this is indeed a maxim in the Civil-Law Jurisprudence, but it does not bind an English jury, for by the common law of the land the jury are judges as well as the matter of law, as of the fact, with this difference only, that the judge on the bench is to give them no assistance in determining the matter of fact, but if they have any

doubt among themselves relating to matter of law, they may then request him to explain it to them, which when he hath done, and they are thus become well informed, they, and they only, become competent judges of the matter of law. And this is the province of the judge on the bench, namely, to show, or teach the law, but not to take upon him the trial of the delinquent, either in matter of fact or in matter of law." — Gilbert's History of the Common Pleas, p. 57.

Palgrave: "Taxation was controlled in the same manner by the voice of those who were most liable to oppression. A jury was impanelled to adjudge the proportion due to the sovereign; and this course was not essentially varied, even after the right of granting aids to the crown was fully acknowledged to be vested in the parliament of the realm. The people taxed themselves and the collection of the grants was checked and controlled, and, perhaps, in many instances evaded, by these virtual representatives of the community." — 1 Palgrave's Rise and Progress of the English Commonwealth, p. 274.

Palgrave: "The principle of the jury was, therefore, not confined to its mere application as a mode of trying contested facts, whether in civil or criminal cases; and, both in its form and in its consequences, it had a very material influence upon the general constitution of the realm. The main-spring of the machinery of remedial justice existed in the franchise of the lower and lowest orders of the political hierarchy. Without the suffrage of the yeoman, the burgess and the churl, the sovereign could not exercise the most important and most essential function of royalty; from them he received the power of life and death; he could not wield the sword of justice until the humblest of his subjects placed the weapon in his hand." — 1 Palgrave's Rise and Progress of the English Commonwealth, p. 277.

As shown by the above (and in further voluminous proofs detailed by the books quoted and others), the words nisi per legem terræ — that is, by due process of the common law of the land — establish exactly what the common law is, to the absolute exclusion of the modern false interpretation put upon this term. The Fifth Amendment to The Constitution of the United States is framed upon the same concept, providing that "no person shall be deprived of life, liberty, or property, without due process of law;" and we all know what this process referred to is... Common Law Trial by Jury.

It was from these above quoted immutable facts that I drew people's attention in my last post, to the following:

"Nota Bene: Common law which existed at the time of Magna Carta's first enactment in 1215 A.D., must be differentiated from that which modern government usurpation has corrupted by legislation, which is "common law" in name only. The People's common law is emphatically neither "government-made" nor "judge-made." Quite the contrary: it is exclusively product of the common people. It does not consist of case precedents (for common law juries decide the law, which includes the sentence, in each individual case), nor of judicial rulings, decisions or interpretations of statutes. When it is asserted or incorrectly "defined" (book, dictionary; encyclopaedia, etc.) to be

such, this exemplifies government usurpation and tyranny at work in miseducation of the population."

With the exception of FIJA Activists, the people today generally are passive spectators to the despots' flouting of the Constitution. Denial by politicians and judges of the People's judgement on the laws and the manner of their enforcement in Trial by Jury enables the enforcement of every unjust government measure and the prejudices and caprice of government judges.

Viz. the disastrous consequences:

venally motivated legislation of the crime-producing inherently illegal prohibitions engendering criminality and generating over 75% of all crime in the Western world (official statistics);

asocial criminals free and committing crime at the highest levels; yet, prisons crammed at the highest per capita rates of incarcerations in history, with literally millions of Westerners innocent of any crime (no mens rea).

(See PROHIBITION: THE PROGENITOR OF CRIME; Part Six of THE REPORT. Cannabis: The Facts, Human Rights and the Law ISBN 1902848160.)

The following statutes, enacted in the century after Magna Carta, corroborate that our cherished American and English heritage, the Common Law Trial by Jury Constitutional Justice System, is that of the *legem terrae*, the law of the land, the common law:

"That no man, from henceforth, shall be attached by any accusation, nor forejudged of life or limb, nor his land, tenements, goods, nor chattels, seized into the king's hands, against the form of the Great Charter, and the law of the land." — Ruffhead's Statutes, 5, Edward III, Ch. 9. (1331)

"Whereas it is contained in the Great Charter of the franchises of England, that none shall be imprisoned, nor put out of his freehold, nor of his franchises, nor free customs, unless it be by the law of the land; it is accorded, assented, and established, that from henceforth none shall be taken by petition, or suggestion made to our lord the king, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done in due manner, or by process made by writ original at the common law; nor that none be put out of his franchises, nor of his freehold, unless he be duly brought in to answer, and forejudged of the same by the course of the law; and if anything be done against the same, it shall be redressed and holden for none." — Ruffhead's Statutes, 25, Edward III, Ch. 4. (1350)

"That no man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law." — Ruffhead's Statutes, 28, Edward III, Ch. 3. (1354)

"That no man, be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land. And if anything from henceforth be done to the contrary, it shall be void

in law, and holden for error." — Ruffhead's Statutes, 42, Edward III, Ch. 3. (1368)

Note that jurors must be instructed, Fully Informed, to judge laws by their own standards, not those dictated by government; for, there are no injustices which governments may not institute as law, which are then enforced with alacrity by their abject servants, the judges: for example, Slave Laws; Nürnberg Race Laws; money-motivated crime-producing, intrinsically illegal drug laws; severing of limbs for petty theft; lapidation (stoning-to-death) or decapitation for female pre-marital sex or marital adultery, etc.

To recapitulate: To judge of law, the Jurors are the sole legal judges as prescribed by constitutionally installed common law. In the Trial by Jury, Jurors alone can decide outcomes of trials and judge the law by which precedent can be established, though precedent can be overruled by other juries deciding its application may be unjust in any given lawsuit.

The government activity of framing and enactment of legislation is not curtailed by common law; but the Constitutional Trial by Jury intentionally takes a person out of the government's hands (i.e. from judges, prosecutors, police and prison service) and places the accused under the protection of his or her equals and the Common Law alone: Trial by Jury allows no man or woman to be punished unless the indiscriminately chosen equals of the accused (i.e. the jurors) freely consent to it.

On the Injustices of Justices; and, Why the Judiciary Must Always Be Disbarred from Conclusively 'Deciding' the Law (Common or Otherwise).

The self-proclaimed Western bastions of 'democracy' are illusory. That which militaristic tyranny and the Twentieth Century's Great Wars of Aggression failed to ruin, is destroyed inimically from within by parasitic individuals of insidious government. Whenever and wherever Trial by Jury is not in place, or it is allowed by the insouciance of the population to be interfered with by government and its representatives, there tyranny and crime inevitably prevail.

The (Western) tradition of Judaeo-Christian morality and the universal natural common laws of equity and justice teach that Democracy, *id est* the control by ordinary people of every aspect of government, is to be favoured over and when necessary fought for in resistance to the foible of humans established in authority always to suppress the Freedom of others.

Nowadays, Trial by Jury is precluded by judges' illegal intervention to forbid jurors from judging on equity issues, on the justice of the law and its enforcement. The courts' current unlawful *modus operandi* is to facilitate the tyranny manifest in the judiciary's antidemocratic enforcement of inequitable statutes and regulations, which otherwise citizen-jurors en masse would emphatically annul.

The motive behind, and explanation for, judges' boundless treachery are the same today as they have always been, and they confirm that the indispensability of Trial by Jury is eternal: the judiciary is responsible, not to the People, but to the government; judges are dependent for careers, salaries and by impeachment, on the legislature: to remain judges, they must reliably enforce unjust legislation.

Judges regard themselves as, and are, bound to enforce the laws, even when doing so is an act of extreme injustice. Once a law has been passed and interpreted for enforcement by the courts, then, unlike jurors, in the routine of court cases judges are not permitted to dispute or judge the justice of law and its enforcement. To allow these compromised humans to dictate the law, utterly surrenders all the liberties, rights, property and money of the People, to the arbitrary will of apostate politicians. Any person who would propose or support such a system of enslavement and subjection of the People, suffers from lack of education and knowledge of human behaviour and political history, or from acute antidemocratic mens rea (criminal intent).

Compounding their violation of common law and suffocation of Justice, nowadays, arrant 'judges' do not even permit defence lawyers to tell juries that it is a definitive and integral part of the Juror's function to judge the justice of law enforcement. Thus is Trial by Jury by judges dismembered.

The convenors of trials, be they sheriffs, stewards, bailiffs and especially the justices, are not simply not authorised but are categorically excluded by common law and constitution from construing the law, from its interpretation, from ruling upon law, that is in any way binding upon Juries.

As monarchs accumulated power, their paid representatives, 'justices', came to insinuate themselves into the courts and administer a rule, not of law, but of force and intimidation over jurors. Jurors were selectively excluded for their likelihood of nullifying enforcement of injustices and included for their propensity to deliver verdicts desired by the prosecution or judge.

Measures (such as attain) were introduced for the punishment of jurors whose verdicts displeased the justices. With good Jurors suffering the torturer's hot irons and stretched upon the rack, from time to time Jury Trials became the farce that they are again today. Justice was obliterated to serve corrupt government. Tyranny ebbs and flows, comes and goes, fluctuating in its intensity and cruelty, reflecting the degrees of insouciance, ignorance and complacency of the common people.

In the Middle Ages monarchs, and subsequently parliaments, hired 'justices' to promote government interests, consolidating power increasingly into government hands. Their word and that of their justices became 'law'; their fallible and tyrannically biased 'decisions' became despots' unlawful legislation. More and more the Trial by Jury was eclipsed by judges' courts which came to deal variously with disputes in shipping, mercantile matters, equity, and common pleas, with judges misappropriating an authority which should always have been the distinction of jurors.

When a court sometimes corruptly, frequently fallibly and always arbitrarily came to decide and report its decision concerning a particular case, that case became part of a body of lawless government 'law': actually judge-made, 'law'. (The judiciary is an arm of government.) That law could be applied in subsequent cases regarding similar matters. This use of 'precedents' is known as stare decisis (Latin for "let the decision stand").

In view of the above cited authorities, it constitutes as plain an infraction of Constitution and Common Law as it is possible to conceive, to assert that justices may rule on law; interpret law; set precedents of case law, or enforce measures laid down by the legislature — without and unless in every case of enforcement, the common law Jury have specifically judged on the justice, morality, and validity of the law and the judgement (or decision) by their own consciences and standards in Trial by Jury. Modern processes deny this fundamental precept of Justice and Trial by Jury, thereby rendering all trials mistrials; and all sentences or rulings pertaining thereto Miscarriages of Justice.

Common law does not ever or in any way come from government judges; indeed, as shown, common law is the antithesis of judge-made law, and it is supposed to free the People from the shackles of government and their employees. It is the basis of democracy, sine qua non.

Having established what common law is, one must note the extent to which the term common law has been abused. It is an opprobrium to misinform people that "common law" is a product of judges, stare decisis, and government courts. Worse though: it is utterly wrong to allow government to rob the people of their true common law and its power of emancipation. It is unconstitutional to amend in effect the constitution's installation of common law and Jury Trials by co-opting the common law by legislation into a body of law legislated by congress or parliament, or made by judges. For this has been the means of burying common law, to enable government to deny the People's ability (peacefully) to protect their liberties for themselves.

Hello, Tom. The above was constructed in reply to your post, as follows:
"The people's common law, at least in a large part, comes from Stare Decisis, which comes from higher courts. Where a particular jury (criminal mostly) may find a particular case not relevant to the law, that particular case will not change Stare Decisis." Tom Saunders

If a juror accepts as the law that which the judge states, then that juror has accepted the exercise of absolute authority of a government employee and has surrendered a power and right that was once the citizen's safeguard of liberty.