– 1 –

Some Facts About Law

What is Law?

Law is a concept that we are exposed to all of our lives, and which affects our lives and the things around us. Law is as essential to a well ordered universe as it is to a stable and just civil or jural society, or a properly kept family unit. That we might better understand how law relates to us we need to define what it is or should be. The following is a definition of law from *Black's Law Dictionary:*

1. That which is laid down, ordained, or established.
2. A system of principles and rules of human conduct.
3. A rule of civil conduct.
4. A law is a general rule of human action.
5. A law is a command which obliges a person or persons.[1]

Law is basically a rule that guides, directs or limits the conduct or action of something or someone, which is declared by some authority. The physical laws of nature guide, direct and limit the action of matter and energy. There thus are laws of thermodynamics, electricity, pressure, light, magnetism, gravity, chemistry and other physical laws. Our concern with law is its application to ourselves as a rule which guides and directs our action or conduct. A set of such laws establishes a jural system or order.

A law that regulates human conduct has attributes similar to physical laws. But laws regulating human conduct are distinguished from physical laws in that they are not self-executing, as are physical laws. Such laws usually need an outside force to assure they are executed. Also, a law which regulates human conduct is not always of effect or enforceable, as it is limited or controlled by other laws and conditions. Where a conflict of laws exists, the superior law prevails. Also, a law for human conduct cannot be enforced where the right of a person to act differently exists. When the proper law is enforced or upheld, it is regarded as justice or doing that which is right and just.

Law then must have a binding legal force, and an appropriate means for its enforcement or execution to be of any use or importance in human affairs. This is because the concept of law implies a command, not an opinion or suggestion. Certainly no law would exist, or need to exist, if there were not those who are required to follow or obey it.

A law regulating human conduct can be of two types. It can be *negative* by prohibiting an act or declaring that it shall not be done, or it can be *affirmative* by commanding or requiring an action to be done. Most law is of a negative nature. Law can also be written or positive, such as a statute or constitution, or it can be unwritten, such as common law, natural law, or international law. We will find that what we are subject today are not constitutions or even legislative statutes directly, but a type of unwritten law.

If one is obliged or required to obey a law, there must of necessity be an authority for the law to exist.

> Law in the sense in which courts speak of it today, does not exist without some definite authority behind it.[2]

---

1 *Black's Law Dictionary,* 2nd Edition, p. 700.

2 *Black & White Taxi Transfer Co. v. Brown & Yellow Taxi Transfer Co.,* 276 U.S. 518, 533 (1927).

The question we should be asking or looking into regarding all the oppressive and what appears to be unconstitutional law is, what is the authority behind this law? The answer to this primarily depends upon the source of the law and our relationship to that source.

The Source of a Law

We generally understand that all laws which regulate human conduct are either human or divine according to whether they have man or God for their author or source. Under Anglo-Saxon jurisprudence, the law of God has always stood in pre-eminence in relation to human law.

> Man's laws are strengthless before God's laws, consequently a human law, directly contrary to the law of God, would be an absolute nullity.[3]

While this proposition is quite true and important, it also acknowledges that man is a source of law. Actually, God has in many instances recognized that this ability or power for human law does exist, as with kings, patriarchs or heads of a house.

For something to be regarded as a law, it must come from a source which has authority to enact the law. If a person is required to follow a law of another person or entity, then that person must in some manner or degree be subject to the law making entity. Thus the authority for a law depends on the source of the law, and the relationship between that source and the one obligated to follow the law. Let us look at some examples of this concept.

The prime example of a law making authority is God. We readily acknowledge that God can enact laws which we are obligated to follow. But what is His authority to do so? Why are we required to follow laws of God? Is it because God is all powerful, or all knowing or because He is eternal? No it is not. God's authority to place law over us lies not in the fact that He is omnipotent or a Supreme Being, but rather in our relationship to God. That relationship lies in the fact that God is our Creator and provider. Sir William Blackstone expressed this relationship in his discussion on "the nature of laws," as follows:

> Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. A being, independent of any other, has no rule [law] to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct. . . . And consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will.[4]

God has the authority to make law we are subject to because we are His creatures and because of our dependence upon Him for necessities of life. These things establish a relationship between us and God, making us legally obligated to Him. Thus, because of these relationships God has authority to make laws we must follow.

Similar to this is the authority of a parent to make laws which a child must follow. A parent is a law making authority over a child not because the parent is stronger or bigger or even more intelligent than the child, but because of the relationship between parent and child. The child was produced by the parent and is dependent upon the parent, thus when laws come from that source, the child's parent, the child is bound to obey. The parent has authority over the child because of the relationship that exists between them. But that same parent does not have authority to prescribe rules of conduct for another child as no legal relationship exists between them. The superior strength and knowledge of that parent does not give him the right to make law for any child he thinks needs correction but his own

3 *Borden vs. State*, 11 Ark. 519, 526 (1851).

4 1 *Blackstone's Commentaries*, § 38, p. 39.

An employer and employee have a legal relationship between them that gives the employer an authority to prescribe certain rules of conduct or laws that the employee must follow. The employer has authority to make such rules not because it has more wealth and assets than the employee, but because the employee has entered into a legal agreement with that employer. The same is true with the legal relationship between a master and servant. The servant is legally bond to follow the commands of his master, but not those of another master.

A colonel in the military has the authority to make commands or laws that majors, lieutenants, and privates must obey and follow. There is a legal relationship between them since they each have placed themselves under a Military Code and the Articles of War which require them to obey all lawful orders of a superior officer. However, a private in the American army is not required to obey the orders of a colonel from the German army as there is no legal relationship between them. There thus is no authority for a German colonel to give him laws or orders to follow.

A King has the authority to give laws and commands which his subjects must follow because of their relationship to the king as subjects of his kingdom. The king has control over the land and also provides protection for the people of his kingdom, creating a legal relationship between him and the subject.

We thus see that there are many valid sources of a law, but the authority that is needed for one to obey a law or be subject to a law from a particular source depends upon one's relationship to that source. If there is no legal relationship, there can be no authority for a law. A king cannot make people of another land or kingdom subject to his laws. A general from England cannot give commands to a buck private in the American army because there is no common relationship between them. The president of General Motors has no authority to make rules for an employee of Joe's auto body shop. In each case there is no legal relationship between the two parties.

Also, according to this principle of authority and law, is the fact that true lawful authority is not derived from force or power or wealth, but from a legal relationship between the two parties involved. When laws exist because of force or power, it is despotism or tyranny, not authoritative law. Many despotic governments have existed throughout history because they were based upon the concept of "might makes right." Force and power are not a substitute for a lawful relationship. God could certainly play the despot and compel obedience by force, since He has the power to do so. But that is not the way God works. His authority comes from legal and spiritual relationships between Him and His people.

Legislative Authority

Today we have the situation of legislative bodies, such as the State Legislature or Congress, existing as a source for making laws. The question we face is what is the authority for these legislative bodies to make laws we are subject to? This can only be answered by determining the relationship we have with the legislative body in question.

The fundamental concept of American government is that all political power which exists resides in the people.

> **The Constitution of Virginia, 1776,** Sec. 2. That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them.

> **Constitution of Massachusetts — 1780.** All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.[5]

These declarations reveal the concept of delegation of powers. The people had political power or authority and delegated some of it to the legislature by declaring in their written Constitution—*"The legislative authority shall be vested in a General Assembly, which shall consist of a Senate, and House of Representatives."* This entity thus became a source of legislative authority. The people in effect said that this body of men can enact laws for specific purposes—i.e., the promotion of health, safety, morals and good order of the people or society. The U.S. Constitution enumerates specific topics that can be legislated upon—i.e., regulate foreign and interstate commerce, enact certain taxes, establish standards, etc. Thus the legislative bodies "derived" certain powers from the people.

The above declarations also reveal the nature of the legal relationship that exists between the people and those in government. Government employees are the "substitutes" or "agents" or "servants" of the people. Thus it is a contractual relationship which exists between the people and the Legislature. The people have in effect hired or commissioned certain individuals to occupy and to perform certain duties and functions within the offices and departments named in the Constitution. In performing these duties and functions they are to conform to fundamental law, rights and common law concepts, such as due process, and the things prescribed in the written Constitution.

We thus are bound to the valid laws of the legislative bodies named in a constitution or city charter. We are not bound to the legislature by its terms, but by our own terms, as Justice Wilson of the U.S. Supreme Court said:

> The only reason, I believe, why a freeman is bound by human laws, is that he binds himself.[6]

Thus the legislative bodies are given certain powers to enact certain laws within the confines of certain limitations which the people have agreed to be bound by. Whether we regard this as good or bad, wise or unwise, or that too much or too broad of powers were granted, is rather academic at this point. The fact remains that this is the way things are. The State Legislature or Congress can make laws that we the people are subject to, as there is a legal relationship between them.

Yet the evidence is clear today that our country has been invaded by a hostile, alien people who promote a law and religion that is contrary to the fundamental law and Christian foundations originally established in this land. They can be called socialists, communists, globalists, anti-Christs, and subversives, but their objectives are to enrich themselves by controlling your life, liberty and property. Their agenda and objectives cannot be implemented within the established frame of constitutional government. Thus they have laws enacted which are oppressive, contrary to individual rights, and which build up a socialistic type of government.

These subversive, anti-Christian people knew they could not gain control of the country by force or revolution as they did in Russia and France. They had to find a legal means to recreate or re-establish government, but done in such an indirect and clandestine manner so that no one would detect the change. The result of their actions is a government that is corrupt, arbitrary and oppressive but without being "unconstitutional." A necessary step in achieving this objective was their restructuring of the entire economic system of the country by the Federal Reserve Banking system, a system which they essentially own.

The established legislative bodies posed several obstacles and limitations on the plans

5 Thorpe, *The Federal and State Constitutions,* Washington, 1901, 7 vol.

6 *Chisholm v. Georgia,* 2 Dallas (2 U.S.) 419, 456 (1793).

of these subversives, and thus could not be directly used by them as a lawmaking source. This is because these legislative bodies were; 1) agents of the people and "answerable" to them; 2) subject to the limitations set forth in the constitution; 3) unable to violate the fundamental rights which the constitution was formed to protect; 4) forced to conform to due process as it existed under the Anglo-Saxon common law; and 5) only able to enact laws in the manner and process prescribed by the Constitution.

These legislative limitations posed some severe problems for the corrupt, power elite who wished to control the life, liberty and property of the people of this country. In order to get the oppressive, totalitarian type of laws enforced upon the people of America they needed to get laws passed by another source other that the State Legislature or Congress; but at the same time make it appear as though the laws were actually laws of the State Legislature and Congress.

Since they could not directly use the current legislative bodies to do things their way, they used them as an indirect means to create not only a new source of laws, but to create new executive and judicial functions as well. This was done by getting the current legislative bodies to create artificial legal entities —boards, commissions, bureaus, agencies, and trusts, which exist by statute instead of by the constitution or common law. The intent was to have these legal entities assume the role of governmental functions, or financial ones as was done with the Federal Reserve Board in 1913, or educational functions as was done with the NEA.

These subversive forces in our midst thus got the legislatures to recreate a new judicial system. We thus have courts that have been established or reorganized by legislative statute. They create new courts, and endow them with their judicial "powers." Sometimes these courts will be called by the same names as used in constitutions to mislead people into thinking they are constitutional courts which the people endowed with power. The court exists by "statute" or grant of the legislature just as a corporation exists by statute.

The legislatures have also created an executive body to enforce the corrupt and oppressive laws. We thus have police, highway patrol, Federal marshals, ATF agents, etc., which exist by a commission or agency and whose powers come from "statutes" not the constitution or common law. To make matters worse, somehow the subversive elements in our land have established a new source of law other than the State Legislature and Congress.

The cause or reason for how this all came about is actually a theological issue and not a legal issue. God certainly does allow or cause oppression to come upon a people for the purpose of testing them, or as just punishment. In doing so it becomes necessary that the people turn to God and rely on Him for deliverance from such oppression. The complexity and intricacies of the legal, political and economic problems we face today could not have been the sole work of human design and effort. The subverters could not possibly be behind every unlawful act and control all the things that have made up the current corrupt legal system. Such a feat could only come about by the providence of God.

A legal explanation can help to clarify the nature of things, and what has or has not happened to make things unlawful, but the cause is a spiritual question which is not within the scope of this material. This material shows the debauched and illegal nature of the laws used in criminal proceedings today. This was legally done by creating commissions to "revise," "codify" and rewrite the laws of the legislature, and pass them off as being laws of the State or Congress. We thus need to look into these "codes" and "revisions" of statutes to see their true nature in light of fundamental law and the Constitution.

–2–

Codes & Revised Statutes

During the 19th century, the concept of "codes" was introduced as a means to classify and organize a group of laws related in subject matter into one published volume. These codes included such things as a code of civil procedure, a code of criminal procedure, a penal code, a code of probate courts, a building code, a private corporations code, etc. Each of these codes covered one specific subject or subject area.

As these codes became more widely used, there resulted considerable debate over their validity and usefulness. A summation of the arguments for and against these codes is listed in *West's Annotated Californian Codes,* vol. 1, in which it discusses the "Development of the Law in California." It mentions the objects of modern codification as laid down by David Dudley Field, who was the pioneer advocate of codification. His views on codification, as expressed in 20 *Amer. Law. Rev.* 1, 1886, were that codes would make it easier to find the law and would keep judges from making laws ("bench law"). But the writers of this annotation did not see these objectives being fulfilled in modern times:

> The history of lawmaking in California demonstrates, that the hopes expressed by David Dudley Field have not been fully attained even in our comprehensive program of codification; judges still engage in the making of law; the ordinary citizen is still lost and often bewildered among the myriad of laws; and finding the law is yet often a laborious process for even the experienced practitioner.

Many debates also existed regarding the legality or constitutionality of such codes. An Alabama court stated that the criminal code enacted in its state was "not within the letter or spirit of the mandate of the constitution, * * * nor can it be supposed that it was within the contemplation of the framers of the constitution."[1] The Court also said that the code was done for the sake of "convenience."

Whatever has been said or could be said of these specific-subject codes in a negative sense, much more could be said of the modern-day comprehensive codes or revisions. These works are a revision of all the statutes of the state or nation, and thus embrace every subject in a multi-volume publication.

To understand the nature and validity of today's modern codes and revisions, we need to understand the established or constitutional method of enacting and publishing laws. When laws are passed by both houses of a legislative body, the bill is sent to the governor or president to sign. If it is signed the enacted bill goes to the office of the Secretary of State, who is the keeper of all official government documents and records. The Secretary of State is the official who possesses the state seal (or national seal), and affixes that seal to the true and valid documents and records that come to his office. Most State Constitutions prescribe these facts. Thus the laws passed by the legislature which are generally recognized as such are those that are issued or published by the Secretary of State:

> We consider that the Secretary of State has an indisputable legal duty to publish validly enacted laws; a duty imposed upon him by Article IV, Section 4(b) of the Florida

1 *Ex parte Thomas,* 21 So. 369, 370 (Ala. 1897).

> Constitution, requiring him to "keep the records of the official acts of the legislative and executive departments."[2]

As to whether a bill has become a law or not, the fact that the publication was verified by the Secretary of State is proof that it has:

> The publication of an act in the volume of session laws of the year in which it purports to have been approved and verified by the secretary of state, creates a presumption that it became a law pursuant to the requirements of the constitution.[3]

As more laws became enacted, the usual or traditional mode of recording and publishing them gradually underwent a change:

> The acts passed by each legislative session of Congress or of a state legislature are compiled at the end of the session in what is known as the "Statutes at Large" in the national government, or as "Session Laws" in the states. After a few years it becomes very difficult for judges, attorneys and the general public to know what the law is. Amendments have been made, many sections have been repealed, and even the legislators are often at a loss. At such time a compilation may be made. This is simply a gathering together, usually into a single volume, of all the laws in effect in a given jurisdiction. Changes in punctuation and spelling may be made, and repealed and unconstitutional laws eliminated, but little more. If a more constructive result is desired, a revision or codification may be ordered.[4]

So the laws of the state have traditionally been published by the Secretary of State in a book titled "Session Laws" (or in some cases "Acts" or Resolves" of the State), while the acts of Congress were always published in the "Statutes at Large." But the law-making factories of the State Legislatures and Congress had created a problem with the mass of laws they enacted. It became difficult to keep track of all these laws, so it was decided that a new method of simplifying the way they were published needed to be devised. Thus sometimes the laws were reorganized and recompiled into other books to get rid of the repealed and unconstitutional laws. These compilations were usually done by the Secretary of State since all the records were in his office.

The Statutes at Large and Session laws are themselves a compilation of laws. But a "revision" or "codification" is very different from a mere compilation. They are different because they are written or drafted by a commission or committee or some non-legislative source. Further, the laws are not just compiled together, they are altered and modified along with additions or deletions made to the contents. They then are passed off as the laws of the Legislature.

In a case in Kentucky we have an example of this change in the publication of laws. In 1894 the "first compilation" of the laws was conducted by "private editors." This was just a reorganization of the existing laws. This type of compilation continued up to 1935. In 1936 the legislature "directed and empowered the Governor to appoint a committee, selected from a list submitted by the Board of Commissioners of the Kentucky Bar." This committee of lawyers then "revised, codified, annotated and published" their work, calling it "the Statute law of Kentucky." But this work was not much more than a compilation since the act authorizing it provided that the Committee "should not alter the language or sense of any act of the General Assembly." In 1943, this provision was removed and the Legislature called for a "definite plan for revision and publication of the statutes."

> Thus, the Legislature was getting away from the idea of a mere compilation. It

---

2 *Florida Optometric Ass'n v. Firestone,* 465 So.2d 1319, 1321 (1985).

3 *Bound v. The Wisconsin Cent Ry. Co.,* 45 Wis. 543 (1878).

4 Harvey Walker, *Law Making in the United States,* N.Y., 1934, p. 268.

> empowered the Committee to prepare and submit a complete revision, broader in its scope and more comprehensive in its purpose.[5]

The Legislature was giving more power and authority to this committee it had commissioned to "revise" the laws of the state. This change was noted by state Supreme Court:

> The Kentucky Revised Statutes were, therefore, enacted as the law of the Commonwealth and not adopted as a compilation. The distinction is important. A compilation is merely an arrangement and classification of the legislation of a state in the exact form in which it was enacted, with no change in language. It is merely a bringing together in a convenient form of the various acts of legislation enacted over a period of time. It does not purport to restate the law or to be a substitute for prior laws. It does not require any legislative action in order to have the effect it is intended to have. * * * A revision, on the other hand, contemplates a redrafting and simplification of the entire body of statute law. * * * A revision is a complete restatement of the law. It requires enactment by the legislature in order to be effective and upon enactment it becomes the law itself, replacing all former statutes.[6]

We thus have a committee of lawyers re-creating the laws of the state. Such committees have become the new source of law in the nation. While the legislature will "enact the revision into law," this is no different than when the legislature approves the by-laws of a corporation. The laws of the corporation do not become laws of the legislature because of this. Rather, they are laws of the artificial legal entity (or corporation) which the legislature created, just as the "Revised Statutes of Kentucky" are laws of the artificial legal entity or commission that the legislature created.

This process is also no different than when the Legislature authorizes the laws of a city, or approves a city charter. The laws and charter are not regarded as those of the Legislature, or as laws of the State. While the laws which the "committee" drafts are based upon original statutes of the Legislature, they are a complete restatement of them. New material is added, items are removed, provisions are modified. The results are, in legal parlance, laws that are of this artificial legal entity known as "The Commission on Revising Statutes" or "Reviser of Statutes." This legal entity is no different than a corporation or any other legal entity which the legislature created or commissioned.

The laws which this entity writes cannot be deemed the lawful statutes of the State. This is especially so since the various Constitutions of the land specify how each law is to come into being. It was never the intent that such a comprehensive mass of legislation containing every law of the State, and passed in one act, would be the mode for making laws. There are inherent problems associated with this method, as explained by one legal writer:

> The usual practice is to introduce the revision [of statutes] as a single bill, sending it through the same process as any other bill. Obviously, however, the members of the legislature cannot give such a comprehensive measure adequate consideration. It is almost as difficult for a committee to do so.[7]

When the mass of laws from the committee is complete, the legislature is to approve it as a single statute, but because it is so massive not one single legislator will read the new body of law. There are no discussions in the legislature on any of the hundreds of new or revised laws of the committee. Further, it is required by fundamental law and constitutional mandates that a bill be read on three separate days in the legislature. This is impossible with the comprehensive codes that have been adopted in modern times. There thus is no real

5 *Fidelity & Columbia Trust Co. v. Meek,* 171 S.W.2d 41, 43, 44 (1943).

6 Ibid., p. 44.

7 Walker, *Law Making in the United States,* p. 272.

opportunity for citizens to raise questions or objections in the legislature to the numerous laws they will be subject to. No one knows what is contained in the revision of laws. The unknown contents are revealed by the textual errors discovered afterwards; as Walker states:

> Many revised statute bills are voted through only for the members to find later numerous 'jokers' and unwise provisions which must then be repealed or amended—and the process of change goes on.

Again we have to ask, is this the mode and process intended by the framers of the Constitution for laws to come into existence? That this is a highly questionable process is revealed by the fact that several states have passed amendments to the State constitutions which allow for a "codification of laws." This indicates that neither this procedure nor the basic concept are not in line with traditional constitutional methods for enacting laws.

According to the Constitution, enacting and changing laws for a state falls upon the legislative branch of government, and that branch cannot delegate the power to any other. The "Code Commissioners" or "Revising Committee" may be composed of some members of the Legislature, but it is also composed of lawyers, judges and private persons. It thus has been noted that "revisers have no legislative authority, and are therefore powerless to lessen or expand the letter or meaning of the law."[8]

Therefore the work of these committees cannot be regarded as law pursuant to the Constitution. The law they produce is another manner of law coming from a source other than the Constitutionally authorized source. These comprehensive revisions or codifications are like a private law approved by the legislature.

Governments, like individuals, tend to do things because they are convenient and easy, such as with codes. But whenever governments do things for convenience sake, they usually transcend constitutional limitations or trespass on individual rights. The desire to have easy arrests without the need of a warrant is one area in which government has done things which are more convenient, but are unlawful.

The completely comprehensive revisions which embrace every law of the state first appeared in the 1940's. Walker states that at the time of his writing (1934), "No American state has a complete code."[9] That is, no state had yet adopted a comprehensive revision of all statutes. We saw that Kentucky adopted its comprehensive revised statutes in 1943. Minnesota adopted a revision in 1945, Illinois and Missouri in 1939, and Virginia in 1950.

The mass of laws written by revisers and codifiers is not the law of the legislature, even when approved by it. They were not enacted in the mode intended by the terms of the Constitution. Also, since we have no legal relationship to the commission or committee that drafted the code or revised statutes, it would seem the laws they write have no authority over us. This is made clear by the fact that these comprehensive codes and revisions have no sign of authority which all law is required to have.

When we look at the specific-subject codes, or the ancient codes of the past, such as the Code of Justinian, the Roman Twelve Tables, or the Napoleonic Civil Code, we find in their contents or on their face the authority by which they existed or were promulgated. The specific-subject codes had what is called an "enacting clause" which is an official declaration of authority and authenticity. The modern day codes have no such declaration of authority on their face or contents. We *thus* need to look further into this key issue of authority by way of an enacting clause.

---

8 *State v. Maurer,* 164 S.W. 551, 552, 255 Mo. 152 (1914).

9 Walker, *Law Making in the United States,* p. 272.

– 3 –

The Enacting Clause

Constitutional Requirements of Laws

All written constitutions prescribe the mode and process of making laws. This includes the reading of the bill on three different days in each house, that if passed it is to be signed by the speaker of the house and by the president of the senate, the recording of the votes upon the journal, being signed by the governor or president, and other such procedures.

But the constitutions also regulate the *form* and *style* in which laws are to be enacted to make them laws of the State. The form and style are regarded as essential parts of the law and thus must be included at all times with the law to make it a valid law. Laws or statutes traditionally have had three main parts:

> The three essential parts of every bill or law are: (1) the title, (2) the enacting clause, and (3) the body.[1]

The title and enacting clause of a law are two aspects of its *form* and *style* which are necessitated by both fundamental law and constitutional mandate. Titles and enacting clauses have been used in the process of making laws long before America was a country. But when the comprehensive "Revised Statutes" started to be used, the titles and enacting clauses disappeared from the records and publications of the laws. A look at any modern Revised or Codified State Statute book or the United States Code will reveal that the laws within them have neither titles nor enacting clauses. What does this mean? We have to look at these areas specifically to see the ramifications they have on the authority of law as found in these codes and revisions. We will first examine the enacting clause as this is the main item that directly relates to authority of law.

An enacting clause, sometimes called an enacting style or enacting authority, is that part of a law which usually comes after the title and before the body of the law. The following shows the manner in which this provision is prescribed in some of our state constitutions:

> **CONSTITUTION OF CALIFORNIA—1879**
>
> SECTION 1. The enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

> **CONSTITUTION OF INDIANA—1851**
>
> SECTION 1. The style of every law shall be, "Be it enacted by the General Assembly of the State of Indiana."

> **CONSTITUTION OF TEXAS—1876**
>
> SEC. 29. The enacting clause of all laws shall be, *"Be it enacted by the legislature of the State of Texas."*

> **CONSTITUTION OF NORTH CAROLINA—1876**
>
> SEC. 21. The style of the acts shall be: "The General Assembly of North Carolina do enact."

The Constitution for the United States does not prescribe an enacting clause, but Congress has from the beginning used such a clause on all congressional laws. The style which has preceded all laws of Congress is, *"Be it enacted by the Senate and House of Representatives of the United States of America."* The Supreme Court of Georgia in 1967, said that "the constitutions of 46 states specify the form of

1 H. Walker, *Law Making in the United States*, p. 316. Some laws also have an optional "preamble" after the title.

the enacting clause. Only the constitutions of Delaware, Georgia, Pennsylvania and Virginia, as well as the Constitution of the United States, are silent on the point." The Court also stated the function and purpose of such a provisions:

> The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity. * * * The purpose of an enacting clause is to establish the act; to give it permanence, uniformity and certainty; to afford evidence of its legislative, statutory nature, and thus prevent inadvertence, possible mistake, and fraud."[2]

The enacting clause gives a statute its "constitutional authenticity," which makes its use essential since the constitution is the source of the legislature's authority for enacting laws. A law cannot be regarded as coming from a constitutionally authorized source if it does not have an enacting clause. The enacting clause provides evidence that the law which follows is of the proper legislative source or jurisdiction. This function and purpose of such a constitutional provision has often been expressly stated:

> What is the object of the style of a bill or enacting clause anyway? To show the authority by which the bill is enacted into law; to show that the act comes from a place pointed out by the Constitution as the source of legislation.[3]

> The enacting clause is a short formal statement, appearing after the title, indicating that all which follows is to become law, and giving the authority by which the law is made. There is no excuse for not using it.[4]

> The enacting clause is the section of a bill or statute which establishes the whole document as a law.[5]

> The enacting part of a statute is that which declares its enactment and identifies it as an act of legislation.[6]

Since the Legislature, and not any other body or agency, is given certain law making authority, an enacting clause is necessary to show that the law in question comes from that duly assembled Legislature. If any law is to have authority behind it, it must have an enacting clause preceding it, as is required by the constitution and fundamental law.

Historical Usage of An Enacting Clause

An enacting clause of some sort has long been used to preface a law, order or command, so as to declare or make known to all concerned the source of the law, and thereby the authority for that law or order to exist. It is in effect a statement of the name of the authority that enacted the law affixed to the law, or on its face, to make it clear that all which follows is to be law from that authority so named.

> The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. The purpose of an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act.[7]

The use of an enacting clause is one of the oldest concepts used in the process of issuing or enacting laws, edicts and commands, to identify the source and authority for the law. It was perhaps first used by God Himself when He issued a command, directive or law. Thus when God gave Israel the Ten Commandments it was made known to Israel the source and authority of these laws:

---

2 *Joiner v. State,* 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

3 *Ferrill v. Keel,* 151 S.W. 269, 272, 105 Ark. 380 (1912).

4 Harvey Walker, *The Legislative Process,* N.Y., Ronald Press Co. (1948), p. 346.

5 *Pearce v. Vittum,* 61 N.E. 1116, 1117, 193 Ill. 192 (1901).

6 *State v. Reilly,* 95 Atl. 1005, 1006, 88 N.J. Law 104 (1915).

7 73 *American Jurisprudence* 2d, "Statutes," § 93.

> *I am the LORD thy God, which brought you out of the land of Egypt, from the house of bondage.*
>
> Thou shalt have no other gods before me.
>
> Thou shalt not make for yourself any graven image.
>
> Thou shalt not take the name of the LORD thy God in vain
>
> Keep the Sabbath day to sanctify it. . . [8]

That which is italicized is essentially the enacting clause for the Ten Commandments. It states or identifies the source of the laws that follow. They came not from just any god, but from the God which brought Israel out of Egypt. That which follows the statement of authority is the body of the law. When additional laws were given by Moses, he made a statement of the authority for the laws:

> Now these are the commandments, the statutes, and the judgments, which the LORD your God commanded to teach you, that you might do them in the land where you go to possess it.[9]
>
> And Moses gathered all the congregation of the children of Israel together, and said to them, These are the words which the LORD has commanded, that you should do them.[10]
>
> And Moses said to the Congregation, This is the thing which the LORD commanded to be done.[11]

These were all enacting clauses for the commandments and laws which followed. Through these statements Israel knew the authority behind the laws. They were not just something Moses made up. They did not come from Pharaoh or the king of Mesopotamia. They were not laws of the Baal god. They came from Jehovah God.

Sometimes such statements also appeared after the laws of God were read or stated, as with the food laws which concluded, "For I am the LORD your God" (Lev. 11:44; see also the laws in Lev. 19). But in any case, Israel always knew by what authority the laws they were to follow were enacted. Even before this time, when God dealt with the patriarchs, we see God making a formal declaration of His identity, and thus authority:

> And when Abram was ninety-nine years old, the LORD appeared to Abram, and said to him, I am the Almighty God; walk before me, and be thou perfect.[12]

At the outset of his communication with Abraham, God makes a statement of His identity. Thus it was known to Abraham and to all of us who read Scripture that the terms of the covenant that followed were by the authority of "Almighty God," and not of any man or king or government.

This concept of an enacting authority was used by every king and ruler when issuing their laws, decrees or proclamations. We thus see that when Cyrus, king of Persia, issued his written proclamation for the return of the Israelites back to Jerusalem and the rebuilding of the Temple, he prefaced the proclamation with these words: "Thus says Cyrus king of Persia."[13]

We again see a type of enacting clause in the letter of king Artaxerxes to Ezra authorizing him to bring the people of Israel to Jerusalem, and directing what should be done and observed. The letter starts as follows:

> "Artaxerxes, king of kings, To Ezra the priest, . . . I issue a decree that all those of the people of Israel. . ." (Ezra 7:12,13).

---

8 Exodus 20:2-8; Deuteronomy 5:6-12.

9 Deuteronomy 6:1

10 Exodus 35:1

11 Leviticus 8:5.

12 Genesis 17:1

13 Ezra 1:2; 2 Chronicles 36:23

The Caesars and Emperors of the Roman Empire had always prefaced their edicts and commands with a statement containing their name to show the source and authority for the law. Thus when Constantine issued his edict to suppress soothsayers, it started by stating:

> The Emperor Constantine Augustus to Maximus. No soothsayer may approach his neighbor's threshold, even for any other purpose.[14]

In the early middle ages in Europe (476-1000 A.D.), the Merovingian and the Carolongian kings would often form councils to help regulate civil or ecclesiastical matters. The decrees would often name the king and council, and state, "We do ordain . . ."

A statement of enacting authority was always used in the royal decrees and commands of the kings of England. Thus *Magna Carta* (1215), begins with the name of the authority which adopted and issued it:

> "JOHN, by the grace of God, king of England, lord of Ireland, duke of Normandy. . ."

The *Statutes of Westminster,* which were issued in 1275 by king Edward I, begins: "These be the acts of king Edward, son to king Henry, made at Westminster. . ." In the *Ordinance of the Staples* (1353) by Edward III, the decree begins:

> EDWARD by the grace of God, king of England and of France, and lord of Ireland, to all sheriffs, mayors, bailiffs, ministers, and other our faithful people to whom these present letters shall come, Greeting: Whereas, . . .[15]

In the *Letters of Patent to John Cabot* (1496), granting the use and specifying the conditions for certain lands discovered in America, it states:

> HENRY, by the grace of God, king of England and France, and lord of Ireland, To all to whom these presents shall come, Greeting.[16]

When one would read these documents it was immediately known from what source the orders or laws came from, and thus what was the authority behind them. When Parliament developed into a true law-making body around 1440, their use of an enacting clause became a regular part of English statutes to this day. A typical act of Parliament from the reign of King George III, about 1792, reads as follows:

> Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, there shall be no Drawback or allowance paid on the Exportation. . . "[17]

This enacting clause made it known to all by what authority the law before them was enacted. The American colonists were, of course, well familiar with Parliamentary forms and procedure in passing laws. When self-representative bodies started to appear in America, an enacting style was also used by them. The first Assembly of Virginia was convened July 30, 1619 by Governor Yeardley, under the authority of the Virginia Company, and marks the beginning of representative government in America. The Assembly framed the *Ordinance For Virginia,* July 24, 1621, which starts with these words:

> An ordinance and Constitution of the Treasurer, Council, and Company in England, for a Council of State and General Assembly. . . To all people, to whom these Presents shall come, be seen, or heard. . .[18]

The document thus starts off by declaring the authority for the law which follows. In

14 Henry Bettenson, *Documents of the Christian Church,* 2nd edition, Oxford University Press, 1963, p. 25.

15 *Select Documents of English Constitutional History,* edited by G. Adams & H. Stephens, Macmillan Co., London, 1926, pp. 68, 124.

16 Thorpe, *Federal and State Constitutions,* Washington, 1909, vol. I, p. 46.

17 32 George III. c. 60.

another famous document of self-government, the *Mayflower Compact,* begins as follows:

> IN The Name of God, Amen. We, whose names are underwritten, . . .Do by these Presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, . . .

The compact sets forth some general principles that are to constitute a government in the colony, which those of that colony are to be under and follow. As to the authority by which this is established, it states, "we whose names are underwritten."

In 1692, the Massachusetts Bay province enacted a law for the punishing of various capital laws, which included idolatry, witchcraft, blasphemy, high treason, murder, poisoning, sodomy, bestiality, rape, arson, and piracy. The act, as found in the original statute book, reads as follows:

CHAPTER 19.

AN ACT FOR THE PUNISHING OF CAPITAL OFFENDERS.

> *Be it ordained and enacted by the Governor, Council and Representatives in General Court assembled, and by the authority of the same,*
>
> That all and every of the crimes and offenses in this present act hereafter mentioned be and hereby are declared to be felony; and every person or persons committing any of the said crimes or offenses, being thereof legally convicted, shall be adjudged to suffer the pains of death.[19]

The enacting clause appeared right after the title, but before the body of the law. All laws from the Assembly were prefaced with such an enacting clause. Thus every person reading them knew from what source the laws came and by what authority they existed. Likewise, an act regulating marriages in the colony of Carolina in 1715, had this enacting style:

> *Be it Enacted by the Plantation & Lords Proprietors of Carolina, by & with the consent of this present Grand Assembly and the authority thereof,* that any two persons desirous to be joined together in the Holy Estate of Matrimony, . . .[20]

In the *Pennsylvania Charter of Privileges* (1701), the document starts out by declaring the source and authority for the provisions of the charter: "William Penn, Proprietary and Governor of the Province of Pennsylvania and Territories."[21] Nearly all the various colonial assemblies, proprietors, governors, and councils which established laws, charters and governments declared their authority in their decrees.

At the time of the American Revolution the colonists, regarding themselves as free and independent, formed governments for themselves. So, just like the *Mayflower Compact,* we also find some statement of authority for the people to ordain a government in a type of enacting clause, as used in the U.S. Constitution: "We the people of the United States." The same concept is found in every state constitution: "We, therefore, the representatives of the people, . . . do ordain and declare," (Const. of Georgia, 1777); or, "We, the people of the State of Alabama, in order to establish justice. . ." (Const. of Alabama, 1901).

All state constitutions now start with an enacting statement that identifies the authority for their existence. Consequently, the framers of these constitutions required that the laws of the legislature also be prefaced with an enacting clause, to show the authority for its laws, as has been done throughout history:

---

18 *Documents of American History,* edited by Henry S. Commager, Appleton, New York, 1949, p. 13.

19 *The Acts and Resolves of the Province of the Massachusetts Bay,* Wright & Potter, Boston, 1869, vol. I, p. 555.

20 *The State Records of North Carolina,* edited by Walter Clark, Nash Brothers, Goldsboro, 1904, vol. XXIII, p. 1.

21 Commager, op. cit., p. 40.

> By an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it were, upon each enactment for the sake of identity, and to assume and show responsibility. While the Constitution makes this a necessity, it did not originate it. The custom is in use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, which Holy Writ records, were not the first to be prefaced with a statement of authority. The law was delivered to Moses in the name of the Great I Am, and the prologue to the Great Commandments is no less majestic and impelling. But, whether these edicts and commands be promulgated by the Supreme Ruler or by petty kings, or by the sovereign people themselves, they have always begun with some such form as an evidence of power and authority.[22]

Much of what is often regarded as law, or common law, depends upon what has proven to be legally soundly and commonly used in history. Thus many legal authorities have recognized the historical legacy of using an enacting clause, thus indicating it is a concept of fundamental law.

> Written laws, in all times and all countries, whether the edicts of absolute monarchs, decrees of King and Council, or the enactments of representative bodies, have almost invariably, in some form, expressed upon their face the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority.[23]

> The propriety of an enacting clause in conformity to this ancient usage was recognized by the several states of the Union after the American Revolution, when they came to adopt Constitutions for their government, and without exception, so far as we can ascertain, express provision was made for the form to be used by the legislative department of the state in enacting laws.[24]

Laws, whether by God or man, have at all times in history used an enacting statement to show the source and authority of the law enacted.

Mandatory Requirement of an Enacting Clause

The question has often been raised as to whether constitutional provisions that call for a particular form and style of laws, or procedure for their enactment, are to be regarded as directory or mandatory. The question is critical since its use will have an affect on the *validity* of a statute or law. If such provisions are directory, then they are treated as legal advice which those in government can decide whether or not to follow. But if mandatory such provisions must be strictly followed or else the resulting act or law is unconstitutional and invalid.

While a few courts at an early period held that such provisions were merely directory, the great weight of authority has deemed them to be mandatory. In speaking on the mandatory character of enacting clause provisions one legal textbook states:

> [T]he view that this provision is merely directory seems to conflict with the fundamental principle of constitutional construction that whatever is prohibited by the constitution, if in fact done, is ineffectual. And the vast preponderance of authority holds such provisions to be mandatory and that a failure to comply with them renders a statute void.[25]

---

22 *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171 175, 160 Ky. 745 (1914).

23 *Sjoberg v. Security Savings & Loan Assn,* 73 Minn. 203, 212, 213 (1898); *State v. Kozer,* 239 Pac. 805, 807, (Ore. 1925); *Joiner v. State,* 155 S.E.2d 8, 9, 223 Ga. 367 (1967); 25 *Ruling Case Law,* "Statutes," § 22, p. 775, 776; *City of Carlyle v. Nicolay,* 165 N.E. 211, 216, 217 (Ill. 1929); *Joiner v. State,* 155 S.E.2d 8, 9, 223 Ga. 367 (1967).

24 *State v. Burrow,* 104 S.W. 526, 529, 119 Tenn. 376 (1907).

25 *Ruling Case Law,* vol. 25, "Statutes," § 84, p. 836.

When something is "directory" its usage is only an advisable guide, and can be ignored. But the requirement of an enacting clause is based upon its ancient usage in legislative acts.

> A declaration of the enacting authority in laws is a usage and custom of great antiquity, * * * and a compulsory observance of it is founded in sound reason.[26]

The Supreme Court of Illinois had under consideration an ordinance with no enacting clause. The Court expounded upon why the lack of the clause invalidated the law:

> Upon looking into the constitution, it will be observed that "The style of the laws of this State shall be: '*Be it enacted by the People of the State of Illinois, represented in the General Assembly.*'" (Art. 4 § 11). * * * The forgoing sections of articles 3, 4, and 5, of the Constitution, are the only ones in that instrument proscribing the mode in which the will of the people, acting through the legislative and executive departments of the government, can become law. * * * That these provisions, giving the form and mode by which, * * * valid and binding laws are enacted, are, in the highest sense mandatory, cannot be doubted. * * * Then it follows that this resolution cannot be held to be a law. It is not the will of the people, constitutionally expressed, in the only mode and manner by which that will can acquire the force and validity, under the constitution, of law, for this legislative act is without a title, has no enacting clause, * * * and is sufficient to deprive this expression of the legislative will of the force and effect of law; and the same did not become, therefore, and is not, legally binding and obligatory upon the respondents.[27]

The Court concluded that the constitutional provisions regulating the form and mode of laws, such as the enacting clause and title, are "essential and indispensable parts" of the process of making laws.

The Supreme Court of Arkansas, on several occasions, ruled on the necessity of an enacting clause:

> As long ago as 1871, this court, in Vinsant v. Knox, 27 Ark. 266, held that the constitutional provision that the style of all bills should be, "Be it enacted by the General Assembly of the state of Arkansas," was mandatory, and that a bill without this style was void, although otherwise regularly passed and approved.[28]

In a case in Nevada a law passed the legislature without a proper enacting clause, raising the question of whether the constitutional enacting clause was a requisite to a valid law. The Court said it was because the provision was mandatory:

> [T]he said section of the Constitution is imperative and mandatory, and a law contravening its provisions is null and void. If one or more of the positive provisions of the Constitution may be disregarded as being directory, why not all? And if all, it certainly requires no argument to show what the result would be. The Constitution, which is the paramount law, would soon be looked upon and treated by the legislature as devoid of all moral obligations; without any binding force or effect; a mere "rope of sand," to be held together or pulled to pieces at its will and pleasure. We think the provisions under consideration must be treated as mandatory.
>
> Every person at all familiar with the practice of legislative bodies is aware that one of the most common methods adopted to kill a bill and prevent its becoming a law, is for a member to move to strike out the enacting clause. If such a motion is carried, the bill is lost. Can it be seriously contended that such a bill, with its head cut off, could thereafter by any legislative action become a law? Certainly not.[29]

This case was cited and approved by the Supreme Court of Michigan, which also stated:

26 *Caine v. Robbins,* 131 P.2d 516, 518 61 Nev. 416 (1942).

27 *City of Carlyle v. Nicolay,* 165 N.E. 211, 215, 216 (Ill. 1929); affirmed, *Liberty Nat. Bank of Chicago v. Metrick,* 102 N.E.2d 308, 310, 410 Ill. 429 (1951).

28 *Ferrill v. Keel,* 151 S.W. 269, 273, 105 Ark. 380 (1912).

29 *Nevada v. Rogers,* 10 Nev. 250, 255, 256 (1875); approved in *Caine v. Robbins,* 131 P.2d 516, 518, 61 Nev. 416 (1942).

> It will be an unfortunate day for constitutional rights when courts begin the insidious process of undermining constitutions by holding unambiguous provisions and limitations to be directory merely, to be disregarded at pleasure.[30]

In Montana a case arose that involved a statute with a "defective enacting clause." The Supreme Court of Montana, after quoting the constitutional section relating to the enacting clause, held that:

> These provisions are to be construed as mandatory and prohibitory, because there is no exception to their requirements expressed anywhere in the Constitution. * * * We think the provisions of the Constitution are so plainly and clearly expressed and are so entirely free from ambiguity that there can be no substantial ground for any other conclusion than that Chapter 199 was not enacted in accordance with the mandatory provisions of that instrument, and that the Act must be declared invalid.[31]

In affirming this decision in a later case, the same Court said that "the enacting clause of a bill goes to the substance of that bill; it is not merely procedural."[32] The Court also said that a resolution could not be regarded as a law because, "It had no *enacting clause* without which it never could become a law."[33]

The Court of Appeals of Kentucky held a statute void for not having an enacting clause, holding that all constitutional provisions are mandatory:

> Certainly there is no longer room for doubt as to the effect of all provisions of the Constitution of this state. By common consent they are deemed mandatory. * * * No creature of the Constitution has power to question its authority or to hold inoperative any section or provision of it. * * * The bill in question is not complete, it does not meet the plain constitutional demand. Without an enacting clause it is void.[34]

The mandatory character of laws was examined by the Supreme Court of Tennessee, which reviewed many other cases and concluded the following:

> The provision we are here called upon to construe is in plain and unambiguous words. The meaning of it is clear and indisputable, and no ground for construction can be found. The language is: "The style of the laws of this state shall be," etc. The word "shall," as used here, is equivalent to "must." We know of no case in which a provision of the Constitution thus expressed has been held to be directory. We think this one clearly mandatory, and must be complied with by the Legislature in all legislation, important or unimportant, enacted by it; otherwise it will be invalid.[35]

This case was quoted by the New Jersey Superior Court which cited the following from the case:

> The provisions of these solemn instruments (constitutions) are not advisory, or mere suggestions of what would be fit and proper, but commands which must be obeyed.[36]

The Supreme Court of Minnesota, in one of the landmark cases on this subject, held the following regarding the enacting clause provision in its Constitution:

> Upon both principle and authority, we hold that article 4, § 13, of our constitution, which provides that "the style of all laws of this state shall be, 'Be it enacted by the legislature of the state of Minnesota,' " is mandatory,

---

30 *People v. Dettenthaler,* 77 N.W. 450, 453, 118 Mich. 595 (1898).

31 *Vaughn & Ragsdale Co. v. State Bd. of Equalization,* 96 P.2d 420, 423, 424, 109 Mont. 52 (1939).

32 *Morgan v. Murray,* 328 P.2d 644, 654 (Mont. 1958).

33 *State v. Highway Patrol Board,* 372 P.2d 930, 944 (Mont. 1962).

34 *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171, 175, 160 Ky. 745 (1914); *Louisville Trust Co. v. Morgan,* 203 S.W. 555, 180 Ky. 609 (1918)..

35 *State v. Burrow,* 104 S.W. 526, 529, 119 Tenn. 376 (1907); *Biggs v. Beeler,* 173 S.W.2d 144, 146 (Tenn. 1943).

36 *Village of Ridgefield Park v. Bergen Co. Bd. of Tax.,* 162 A.2d 132, 134, 62 N.J. Super. 133 (1960).

> and that a statute without any enacting clause is void. Strict conformity with the constitution ought to be an axiom in the science of government.[37]

Section 45 of the Constitution of Alabama prescribes that, "the style of laws of this state shall be, *'Be it enacted by the Legislature of Alabama.'*" In determining the nature and purpose of this section the Federal Circuit Court of Alabama stated:

> Complainant correctly urges that this section is mandatory, and not directory; that no equivalent words will suffice; and that any departure from the mode prescribed is fatal to the enactment, since, if one departure in style, however slight, is permitted, another must be, and the constitutional policy embodied in the section would soon become without any force whatever.[38]

The Supreme Court of Georgia said the use of an enacting clause is "essential," and that without it the Act they had under consideration was "a nullity and of no force and effect as law."[39] This decision was based upon the traditional use of an enacting clause by Georgia's Generally Assembly. In an earlier decision the Court held that a measure containing no enacting clause had no effect as intended in a legal sense.[40]

The Supreme Court of North Carolina held that an act prohibiting the sale of spirituous liquors is inoperative and void for want of an enacting clause as prescribed by the Constitution:

> The very great importance of the constitution, as the organic law of the state and people, cannot be overstated. * * * It is not to be disregarded, ignored, suspended, or broken, in whole or in part. * * * When it prescribes that a particular act or thing shall be done in a way and manner specified, such direction must be treated as a command, and an observance of it essential to the effectiveness of the act or thing to be done. Such act cannot be complete, such thing is not effectual, until done in the way and manner so prescribed.[41]

This case was later approved by the Court holding that an enacting clause is "mandatory," and thus the act under consideration which had no enacting clause "must be regarded as inoperative and void." It further said:

> To be valid and effective the Acts of the General Assembly must be enacted in conformity with the Constitution.[42]

The Supreme Court of Missouri held that constitutional requirements, such as that for an enacting clause, "are mandatory and not directory." The case involved an initiative measure by the people which was without an enacting clause as required by the constitution. The Court said that, "under such a requirement the omission of an enacting clause in a proposed initiative measure renders it void."[43] Earlier the Court held that where a law fails to conform to such provisions "there is no other alternative but to pronounce it invalid."[44]

In a similar case in Arkansas, a legislative initiative under the state constitution required to have a specific enacting clause, but the initiative involved had no such clause. The Court held:

---

37 *Sjoberg v. Security Savings & Loan Assn*, 75 N.W. 1116, 73 Minn. 203, 212 (1898); affirmed in *Freeman v. Goff*, 287 N.W. 238, 241 (Minn. 1939); *State v. Naftalin*, 74 N.W.2d 249, 262 (Minn. 1956); *State v. Zimmerman*, 204 N.W. 803, 812 (Wis. 1925).

38 *Montgomery Amusement Co. v. Montgomery Traction Co.*, 139 Fed. 353, 358 (1905), affirmed, 140 Fed. 988.

39 *Joiner v. State*, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

40 *Walden v. Town of Whigham*, 48 S.E. 159, 120 Ga. 646 (1904).

41 *State v. Patterson*, 4 S.E. 350, 351, 98 N.C. 660 (1887).

42 *Advisory Opinion In Re House Bill No. 65*, 43 DE.2d 73, 76, 77 (N.C. 1947).

43 *State ex rel Scott v. Kirkpatrick*, 484 S.W.2d 161, 163 (Mo. 1972).

44 *The State of Missouri v. Miller*, 45 Mo. 495, 498 (Mo. 1870).

> This constitutional requirement, that the measure sought to be initiated shall have an enacting clause, is mandatory. There is absolutely no enacting clause in the measure here involved; and therefore, the petition is not legally sufficient. The absence of the enacting clause is a fatal defect.[45]

The dangers of not treating such provisions as mandatory have been noted:

> It seems to us that the rule which gives to the courts and other departments of the government a discretionary power to treat a constitutional provision as directory, and to obey it or not, at their pleasure, is fraught with great danger to the government. We can conceive of no greater danger to constitutional government, and to the rights and liberties of the people, than the doctrine which permits a loose, latitudinous, discretionary construction of the organic law.[46]

That an enacting clause provision is mandatory and not directory, and that its absence renders a law invalid, was also held by the Supreme Court of South Carolina,[47] and the Supreme Court of Indiana.[48] These provisions relating to the mode of enacting laws "have been repeatedly held to be mandatory, and that any legislation in disregard thereof is unconstitutional and void."[49]

Thus laws which fail to adhere to the fundamental concept of containing an enacting clause lose their authority as law. It thus would seem quite clear that the lack of enacting clauses on the laws used in Revised Statutes or the U.S. Code have no sign of authority and are void as laws. It was not a choice of Congress or the Legislature to approve of laws which have no enacting style. The use of such form and style for all laws is mandatory, and any failure to comply with it for any reason, such as for convenience, renders the measure void.

The Absence of an Enacting Clause Provision in a Constitution

While the U.S. Constitution and a few State constitutions do not specifically prescribe that all laws use an enacting style, its use is nonetheless required by our unwritten constitution. The use of an enacting clause and even a title exists by fundamental law; they are common law concepts.

Like many other old and well established concepts of law and procedure, the framers of the U.S. Constitution did not feel it necessary to write into it the requirement of an enacting clause or titles on all laws. There are so many of these fundamental concepts that it would be impractical to list them all in a constitution. But that does not mean they don't exist, just like the rights enumerated in the Bill of Rights were not originally written into the Constitution because they were recognized to be so fun-da mental it would be superfluous to list them.

That the use of an enacting clause is necessary or required despite its failure to be prescribed in a constitution has been often recognized. Several legal authorities have cited with approval Mr. Cushing, in his *Law & Practice of Legislative Assemblies* (1819) § 2102, where he states:

> (1) Where enacting words are prescribed, nothing can be a law which is not introduced by those very words, even though others which are equivalent are at the same time used.
>
> (2) Where the enacting words are not prescribed by a constitutional provision, the enacting authority must notwithstanding be stated, and any words which do this to a common understanding are doubtless sufficient, or the words may be prescribed

45 *Hailey v. Carter*, 251 S.W.2d 826, 828 (Ark. 1952).

46 *Hunt v. State*, 3 S.W. 233, 235, 22 Tex. App. 396 (1886).

47 *Smith v. Jennings*, 45 S.E. 821, 67 S.C. 324 (1903).

48 *May v. Rice*, 91 Ind. 546 (1883).

49 *State v. Burlington & M. R.R. Co.*, 84 N.W. 254, 255, 60 Neb. 741 (1900).

> by rule. In this respect much must depend upon usage.[50]

The usage of an enacting clause is thousands of years old, and every state and the United States have followed this custom from the beginning. Thus for something to be regarded as a true and valid law it is logical that one would expect to see an enacting clause on its face.

One of the leading cases on this issue was from the Supreme Court for the Territory of Washington. The validity of an act of the Territorial Legislature that would move the seat of the government was in question. The act had no enacting clause, and the territory had no constitution of its own requiring one, as it was generally governed by the U.S. Constitution. The Court held the law invalid stating:

> Strip this act of its outside appendages, leave it "solitary and alone," is it possible for any human being to tell by what authority the seat of government of Washington Territory was to be removed from Olympia to Vancouver?
>
> The staring fact that the constitutions of so many states, made and perfected by the wisdom of their greatest legal lights, contain a statement of an enacting clause, in which the power of the enacting authority is incorporated, is to our minds a strong, and powerful argument of its necessity. It is fortified and strengthened by the further fact that Congress, and the other states, to say nothing of the English Parliament, have, by almost unbroken custom and usage, prefaced all their laws with some set form of words, in which is contained the *enacting authority*. Guided by the authority of such eminent jurists as Blackstone, Kent, and Cushing, and the precedents of national and state legislation, the Court arrives with satisfaction and consciousness of right in declaring, that where an act like the one now under consideration, is wanting in the essential formalities and solemnities which have been mentioned, it is inoperative and void, and of no binding force or effect.[51]

The Court here judged the validity of the law based upon fundamental law, rather than any specific constitutional provision. This case has been cited quite frequently by various legal texts and courts and always in a favorable or approving manner.

Various law textbooks in the discussion of statutes have clearly stated the need for an enacting clause despite the lack of a constitutional provision for one:

> Although there is no constitutional provision requiring an enacting clause, such a clause has been held to be requisite to the validity of a legislative enactment.[52]

> In recognition of this custom [of using an enacting clause], it has sometimes been been declared that an enacting clause is necessary to the validity of a statute, although there is no provision in the fundamental law requiring such a clause.[53]

In 1967, the Supreme Court of Georgia held that a law without an enacting clause was null and void, even though their State constitution had no provision requiring one. They based their decision on the long standing custom of its usage.[54]

The requirement that all laws contain an enacting style or clause is deeply rooted in precedent and the common law. There thus need not be any constitutional provision for an enacting clause to make its usage mandatory. If it is not used the law in question is not valid and carries no obligation to be followed.

---

50 *Smith v. Jennings,* 45 S.E. 821, 824, 825, 67 S.C. 324 (1903); *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171, 173, 160 Ky. 745 (1914); State of *Nevada v. Rogers,* 10 Nev. 250, 256, 257 (1875); *Sjoberg v. Security Savings & Loan Assn,* 73 Minn. 203, 211, 75 N.W. 1116 (1898).

51 *In re Seat of Government,* 1 Wash. Ter. 115, 123 (1861).

52 82 *Corpus Juris Secundum,* "Statutes," § 65, p. 104.

53 *Ruling Case Law,* vol. 25, "Statutes," § 22, p. 776.

54 *Joiner v. State,* 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

–4–

Enacting Clauses in the Publication of Statute Books

While it has been well decided that the passage of a bill in the legislature without an enacting clause on the bill renders it void as a law, we need to consider the result of not using an enacting clause after it leaves the legislature. This is the important question today in light of the fact that the state "Codes" and "Revised Statutes" and the "U.S. Code" are publications which purport to be law, but which use no enacting clauses. Is a publication of a law without an enacting clause a valid and lawful law?

If laws are only required to have an enacting clause while in the legislative system, only to be thereafter removed, then what is their value and purpose to the public? If they are to serve as evidence of a law's legislative nature, and as identification of its source and authority as a law, what good does that function do only for the legislators? The vast majority of the public never sees the bill under consideration until it passes and is printed in public records or statute books. They generally only see the finished "law."

When we read the provisions which require an enacting clause, they say that "all laws shall . . .", or "the laws of this State shall . . ." They do not say "all bills shall . . ." The terms "bill" and "law" are clearly distinguished from one another in most constitutions in prescribing the procedure of the legislative process, such as:

> "No *law* shall be passed except by *bill*"
>
> "No *bill* shall become a *law* except by a vote of a majority."
>
> "Every *bill* which shall pass both houses shall be presented to the governor of the State; and every *bill* he approves shall become a *law*."

A bill is a form or draft of a law presented to a legislature. "A bill does not become a law until the constitutional prerequisites have been met."[1] Thus a bill is something that becomes a law. Laws do not exist in the legislature, rather only bills do. Laws exist only when the legislative process is followed and completed as prescribed in the constitution.

> Clearly, the legislature cannot enact a law. It merely has the power to pass bills which may become laws when signed by the presiding officer of each house and are approved and signed by the Governor. [2]

Since all constitutional provisions place the requirement of an enacting clause on "laws" it includes the statute as it exists outside the legislative process, that is, as it is published in statute books. We have to also regard the fundamental maxim which states: "A law is not obligatory unless it be promulgated."[3] An act is not even regarded as a law, or enforceable as a law, unless it be made publicly known. This is usually done through a publication by the proper public authority such as the Secretary of State. But a law is not properly

1 *State v. Naftalin*, 74 N.W.2d 249, 261, 246 Minn. 181 (1956).

2 *Vaughn & Ragsdale Co. v. State Bd. of Eq.*, 96 P.2d 420, 423 (1939).

3 *Black's Law Dictionary*, 2d edition, p. 826.

or lawfully promulgated without an enacting clause or title published with the law.

Since the constitution requires "all laws" to have an enacting clause, it makes it a requirement on published laws as well as on bills in the legislature. If the constitution said "all bills" shall have an enacting clause, then their use in publications would not be required.

That published laws are to have an enacting clause is made clear by the statement commonly used by legal authorities that an enacting clause of a law is to be "**on its face.**" To be on its face means to be in the same plain of view.

> Face has been defined as the surface of anything; especially the front, upper, or outer part or surface; that which particularly offers itself to the view of a spectator.[4]

> The face of an instrument is that which is shown by the language employed without any explanation, modification or addition from extrinsic facts or evidence.[5]

For the enacting clause to be of any use it must appear with a law, that is, on its face, so that all who look at the law know that it came from the legislative authority designated by the Constitution. The enacting clause would not serve its intended purpose if not printed in the statute book on the face of the law.

> The purpose of an enacting clause in legislation is to express on the face of the legislation itself the authority behind the act and identify it as an act of legislation.[6]

> The purpose of provisions of this character [enacting clauses] is that all statutes may bear upon their faces a declaration of the sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in the enforcement of laws.[7]

> It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law.[8]

> The enacting clause, sometimes referred to as the commencement or style of the act, is used to indicate the authority from which the statute emanates. Indeed, it is a custom of long standing to cause legislative enactments to express on their face the authority by which they were enacted or promulgated.[9]

A law is "promulgated" by its being printed and published and made available or accessible by a public document such as an official statute book. When this promulgation occurs, the enacting clause is to appear "on the face" of that law, thus being printed in that statute book along with the law.

Enacting clauses traditionally appear right after the title and before the body of the law, and when so printed, whether on a bill or in a statute book, it is then regarded as being on the face of the law. It cannot be in some other record or book, as stated by the Supreme Court of Minnesota:

> If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted, so that the people who are to obey them need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a

4 *Cunningham v. Great Southern Life Ins. Co.*, 66 S.W.2d 765, 773 (Tex. Civ. App.).

5 *In re Stoneman*, 146 N.Y.S. 172, 174.

6 *Preckel v. Byrne*, 243 N.W. 823, 826, 62 N.D. 356 (1932).

7 *State v. Burrow*, 104 S.W. 526, 529, 119 Tenn. 376 (1907).

8 *People v. Dettenthaler*, 77 N.W. 450, 451, 118 Mich. 595 (1898); citing *Swan v. Buck*, 40 Miss. 268 (1866).

9 Earl T. Crawford, *The Construction of Statutes*, St. Louis, 1940, § 89, p. 125.

> constitution, or unworthy of such an instrument, to prescribe a uniform style for such enacting clause.[10]

This case dealt with "the validity of Laws 1897, c. 250," and it was held that "Law 1897, c. 250, is void." While the court mainly decided this because the law had no enacting clause when signed by the governor, it clearly expressed that if laws are to be regarded as valid laws of the state, they "must express upon their face the authority by which they were promulgated or enacted." The law was published in the statute book without an enacting clause (see Fig. 1). The law was thus challenged as being "unconstitutional" because it "contains no enacting clause whatever."

The enacting clause must be readily visible on the face of the statute so that citizens don't have to search through the legislative journals or other records or books to see if one exists. Thus a statute book without the enacting clause is not a valid publication of laws. In regards to the validity of a law that was found in their statute books without an enacting clause, the Supreme Court of Nevada held:

> Our constitution expressly provided that the enacting clause *of every law* shall be, "The people of the state of Nevada, represented in senate and assembly, do enact as follows." This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the authority by which they were enacted; and, since this act comes to us without such authority appearing upon its face, it *is not a law.*"[11]

The manner in which the law came to the court was by the way it was found in the statute book, cited by the Court as "Stat. 1875, 66," and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a law." It is only by inspecting the publicly printed statute book that the people can determine the source, authority & authenticity of the law they are expected to follow.

The Supreme Court of Arkansas, in construing what are the essentials of law making, and what constitutes a valid law, stated the following:

> [A] legislative act, when made, should be a written expression of the legislative will, in evidence, not only of the passage, but of the authority of the law-making power, is nearly or quite a self-evident proposition. Likewise, we regard it as necessary that every act, thus expressed, should show on its face the authority by which it was enacted and promulgated, in order that it should clearly appear, upon simple inspection of the written law, that it was intended by the legislative power which enacted it, that it should take effect as law. These relate to the legislative authority as evidence of the authenticity of the legislative will. These are features by which courts of justice and the public are to judge of its authenticity and validity. These, then, are essentials of the weightiest importance, and the requirements of their observance, in the enacting and promulgation of laws, are absolutely imperative. Not the least important of these essentials is the style or enacting clause.[12]

The common mode by which a law is "promulgated" is by it being printed and published in some authorized public statute book. Thus that mode of promulgation must show the enacting clause of each law therein on its face, that is, on the face of the law as it is printed in the statute book. This is the only way that the "courts of justice and the public are to judge of its authenticity and validity."

---

10 *Sjoberg v. Security Savings & Loan Assn,* 73 Minn. 203, 213, 75 N.W. 1116 (1898).

11 *State of Nevada v. Rogers,* 10 Nev. 120, 261 (1875); cited with approval in: *People v. Dettenthaler,* 77 N.W. 450, 452, 118 Mich. 595 (1898); *Kefauver v. Spurling,* 290 S.W. 14, 15, 154 Tenn. 613 (1926).

12 *Vinsant, Adm'x v. Knox,* 27 Ark. 266, 284, 285 (1871).

street, road, sidewalk, park, public ground, ferry boat, or public works of any kind in said city, village or borough, or by reason of any alleged negligence of any officer, agent, servant or employe of said city, village or borough, the person so alleged to be injured, or some one in his behalf, shall give to the city or village council, or trustees or other governing body of such city, village or borough, within thirty days after the alleged injury, notice thereof; and shall present his or their claim to compensation to such council or governing body in writing, stating the time when, the place where and the circumstances under which such alleged loss or injury occurred and the amount of compensation or the nature of the relief demanded from the city, village or borough, and such body shall have ten days' time within which to decide upon the course it will pursue with relation to such claim; and no action shall be maintained until the expiration of such time on account of such claim nor unless the same shall be commenced within one year after the happening of such alleged injury or loss.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

CHAPTER 249.

An act to amend section two thousand eight hundred and six (2806) of the general statutes of one thousand eight hundred and ninety-four (1894), relating to the capital stock of manufacturing corporations.

Be it enacted by the Legislature of the state of Minnesota:

SECTION 1. That section two thousand eight hundred and six of the general statutes of one thousand eight hundred and ninety-four be amended so as to read as follows:

Sec. 2806. The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association and shall be divided into shares of not less than ten and not more

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

CHAPTER 250.

An act to amend section twenty (20) of chapter one hundred and thirty-one (131) of general laws of Minnesota for one thousand eight hundred and ninety-one (1891), relating to building, loan and savings associations doing a general business.

SECTION 1. That section twenty (20) of chapter one hundred and thirty-one (131) of the general laws of one thousand eight hundred and ninety-one (1891) is hereby amended to read as follows:

Sec. 20. If it shall appear to said public examiner from any examination made by him, or from any report of any examination made by him, or from any annual or semi-annual report aforesaid, that any corporation governed by this act is violating its charter, or the law, or that it is conducting business in an unsafe, unauthorized, or dishonest manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct conformity with the requirements of its charter and of the law; and whenever such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply, with such order aforesaid within thirty days from the date thereof, or if it has become apparent that there is such a deficiency in its assets that the purpose for which the association was organized cannot be carried out, the public examiner may, if such corporation be organized under the laws of the state of Minnesota, forthwith take possession of the books, records and the assets of every description of such corporation and shall at once proceed to make a careful and detailed examination of the condition of the affairs of such corporation; and the books, records and assets of such corporation so held by him shall not be subject to levy or attachment or garnishment at any time while under his control. If at the close of such examination it shall appear to the public examiner that such corporation is able to complete

Fig. 1 — An excerpt from, *General Laws of the State of Minnesota, 1897.* Chapter 250 appears in this statute book without an enacting clause, which resulted in it being declared "void" in *Sjoberg v. Security Savings & Loan Assn.*, 73 Minn. 203. Note that the law on the adjacent page (Chapter 249) has the required enacting clause.

The decision in the *Vinsant* case was later approved by the Court in a case where a man was convicted of failing to follow an animal health law—"The Tick Eradication Law." He appealed by demurrer on the basis that the law claimed violated in the indictment did not have an enacting clause as found in the statute book. The Court said:

> The appellant demurred to the indictment on the ground that the facts stated do not charge a public offense. The appellant contends that Act 200 of the Acts of 1915, p. 804, providing a method for putting in operation the tick eradication law in Pike county, was void because it has no enacting clause. Appellant is correct in this contention. The act contains no enacting clause, and, under the decisions of this court, such defect renders it a nullity. Article 5, § 19, and article 29, amend. 10, Const. 1874; Vinsant, Adm'x v. Knox, 27 Ark. 266.[13]

The section of the state Constitution cited by the Court (Art. 5, § 19) states: "The style of the laws of the State of Arkansas shall be: '*Be it enacted by the general assembly of the State of Arkansas*'." The laws of the State are to bear this enacting style, otherwise they are not valid laws. The law in this case was missing this constitutional prerequisite of an enacting clause as printed in the statute book (see Fig. 2). As such it carried no force and effect as a law. Thus laws, as they are taken or cited from statute books, which have no enacting clause cannot be used to charge someone with a public offense because they are not valid laws.

In a case in Kansas, a man was indicted for violating a law making it unlawful to print and circulate scandals, assignations, and immoral conduct of persons. He was arrested upon an indictment and applied for his discharge upon *hapeas corpus* alleging that the act of the legislature was not properly published. The act had been published several weeks before the indictment, "which publication omitted an essential part of said act, to-wit, the enacting clause." The Court held that the act was not properly and legally published at the time the indictment was found, thus the act was not in force at the time the indictment was brought against the petitioner. The Court also held:

> The publication of an act of the legislature, omitting the enacting clause or any other essential part thereof, is no publication in law. The law not being in force when the indictment was found against the petitioner, nor when the acts complained of therein were done, the petitioner could not have been guilty of any crime under its provisions, and is therefore, so far as this indictment is concerned, entitled to his discharge.[14]

There was no question involved here of whether an enacting clause was used on the bill in the legislature. The fact that the law was published without one was sufficient to render it void or invalid. Thus a publication of an act omitting the enacting clause is not a valid publication of the act. If the required statement of authority is not *on the face* of the law, it is not a law that has any force and effect. Such a published law cannot be used on indictments or complaints to charge persons with a crime for its violation. This decision was upheld and affirmed by the Court in 1981, when it said:

> In [the case of] *In re Swartz, Petitioner,* 47 Kan. 157, 27 P. 839 (1891), this court found the act in question was invalid because it had been mistakenly published without an enacting clause. We again adhere to the dictates of that opinion.[15]

Thus whatever is published without an enacting clause is void, as it lacks the required evidence or statement of authority. Such a law lacks proof that it came from the authorized source spelled out in the constitution, and thus is not a valid publication to which the public is obligated to give any credence.

13 *Palmer v. State,* 208 S.W. 436, 137 Ark. 160 (1919).

14 *In re Swartz,* 27 Pac. 839, 840, 47 Kan. 157 (1891).

15 *State v. Kearns,* 623 P.2d 507, 509, 229 Kan. 207 (1981).

804 ACTS OF ARKANSAS. [ACT 200

ACT 200.

AN ACT for a tick eradication law in the counties of Howard, Pike, Little River, Clark, Miller and La-Fayette counties.

SECTION 1. At the general election held in the State of Arkansas in the year 1916, at which the members of the Forty-first General Assembly of the State of Arkansas are to be voted for and every two years thereafter in each separate county until the tick eradication is adopted in that county, when the tick eradication law is adopted by a majority of the votes of any

ACT 277] ACTS OF ARKANSAS. 1031

ACT 277.

AN ACT making appropriation for the expenses of the executive and judicial departments of the State Government.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That the following named sums of money be, and the same are hereby appropriated for the object hereinafter expressed, for the fiscal years

Fig. 2 — Excerpt from, *Public and Private Acts of the State of Arkansas, 1915.* Act 200 (above) was published without an enacting style, and was thus declared to be a "nullity" in *Palmer v. State,* 137 Ark. 160. Act 277 (below) from the same statute book displays an enacting style.

176 ACTS OF THE GENERAL ASSEMBLY

CHAPTER 68.

AN ACT to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating or controlling railroads within the boundaries of this State in part or in whole.

§ 1. That it shall hereafter be unlawful for any common carrier earning as much or more than $4,000.00 per year per mile gross, from all sources on its said road, and engaged in the carriage of

COMMONWEALTH OF KENTUCKY. 169

CHAPTER 65.

AN ACT to further regulate tobacco warehouse companies in the State of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ That on and after the first day of August, 1914, every individual, firm, company or corporation conducting a warehouse business in Kentucky where tobacco is sold at public auction, either prized in hogsheads or sold in the hands loose, shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his house daily. On or before the 5th day of each succeeding month the proprietor of the said warehouse shall make a statement under oath of all of the tobacco so sold

Fig. 3 — Excerpt from, *Acts of the General Assembly of the Commonwealth of Kentucky, 1914.* Chapter 68 (above) has no enacting clause and thus was pronounced "void" in *Commonwealth v. Illinois Cent. R. Co.,* 160 Ky. 745. Chapter 65 (below) has an enacting clause.

In the law text, *Ruling Case Law,* is a section that deals with the requirements of statutes, and under the subheading, "Publication of Statutes," it says:

> The publication of a statute without the enacting clause is no publication.[16]

A publication of a statute book without the title and enacting clause on the laws therein is an incomplete or invalid publication, just like a publication of a book or magazine article is incomplete without the title and author's name, it is just a nameless body of words.

When a law in Kentucky was claimed to be void because it was found to have no enacting clause, the Court of Appeals of Kentucky read the entire law (Chapter 68) from the statute book and then said:

> It will be noticed that the act does not contain an enacting clause. * * * The alleged act or law in question is unnamed; it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for it.[17]

The law was thus declared "void" because of the fact that the act appeared in the statute book without an enacting clause (see Fig. 3). Likewise, the alleged laws in the U.S. Code or the state Revised Statutes are "unnamed," they show "no sign of authority" on their face, there is no evidence that they came from Congress or a State Legislature. The enacting clause has been deliberately removed from these "laws" and they thus are only nameless decrees without authority. The Supreme Court of South Carolina said that in order for bills to "have the force of *law*," they "must have an enacting clause showing the authority by which they are *promulgated*."[18] Thus the publication of a law must display its enacting authority.

The Kentucky case above was cited later by the same Court when it was found that an enacting clause was missing from "chapter 129, p. 540, of the Session Acts" for 1934. Regarding this omission the Court said:

> By oversight and mistake the constitutionally required enacting clause was omitted from the act, thereby rendering it illegal and invalid.[19]

The law in question, which was to "consolidate the county offices of sheriff and jailer," was deemed to be "ineffectual" in accomplishing its objective because it was published without an enacting clause for some unknown reason (see Fig. 4).

In a case in Montana, the validity of a statute in its statute book (Chapter 199, Laws of 1937) was being questioned because it had a faulty or insufficient enacting clause. The State Supreme Court held the law invalid stating:

> The measure comes before this court in the condition we find it in the duly authorized volume of the Session Laws of 1937, and in determining whether Chapter 199 is invalid or not we are confronted with a factual situation. It is entirely immaterial how the defective enacting clause happens to be a part of the measure.[20]

Here again the invalidity of the law, due to its "defective" enacting clause, was judged by its condition as it was published in the statutes books of the State (see Fig. 5). The law had the enacting clause, "Be it enacted by the people of Montana." But this style was only to be used for measures initiated by the people. Laws passed by the Legislature were to have a different enacting clause—"Be it enacted by the Legislative Assembly of the State of Montana." As this was a legislative enactment, it was void for having the wrong enacting clause.

---

16 *Ruling Case Law,* vol. 25, "Statutes," § 133, p. 884 ; citing L.R.A.1915B, p. 1065.

17 *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171, 175, 160 Ky. 745 (1914).

18 *Smith v. Jennings,* 67 S.C. 324, 45 S.E. 821, 824 (1903).

19 *Stickler v. Higgins,* 106 S.W.2d 1008, 1009, 269 Ky. 260 (1937).

20 *Vaughn & Ragsdale Co. v. State Board of Equalization,* 96 P.2d 420, 422 (Mont. 1939).

CHAPTER 129.

AN ACT providing for the consolidation of the office of jailer with that of sheriff in each county of the State.

§ 1. The office of jailer is hereby consolidated with that of sheriff, in each county of the state, under the provisions of Section 105 of the Constitution. There are hereby transferred to and vested in the sheriff, all the powers and duties heretofore authorized by law to be exercised or performed by the jailer. Wherever in any law of the State, reference is made to the jailer, such reference shall be deemed to apply to the sheriff, except where the context requires otherwise.

CHAPTER 144.

AN ACT to regulate, control and fix standard weights of wheat flour and the size of packages containing same; and to provide penalties for the violation of this Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Each package shall have the net weight printed or plainly marked on it.

Fig. 4 — Excerpt from, *Acts of the General Assembly of the Commonwealth of Kentucky, 1934.* Chapter 129 (above) was published with no enacting clause and was thus declared "invalid" in *Stickler v. Higgins,* 269 Ky. 260. Chapter 144 (below), from the same statute book, shows the constitutionally required enacting clause.

CHAPTER 199

An Act Requiring Licenses for the Operation, Maintenance, Opening or Establishment of Stores in This State, the Classifying of Such Stores, Prescribing the License and Filing Fees to Be Paid Therefor and the Disposition Thereof, and the Powers and Duties of the State Board of Equalization in Connection Therewith; and Prescribing Penalties for the Violation Thereof and Repealing Sections 2420.1, 2420.2, 2420.3, 2420.4, 2420.5, 2420.6, 2420.7, 2420.8, 2420.9, 2420.10, 2420.11, Revised Codes of Montana, 1935.

Be It Enacted by the People of the State of Montana:

Section 1. That from and after the first day of January A. D. 1938, it shall be unlawful for any person, firm, corporation, association or co-partnership, either foreign or domestic, to open, establish, operate or maintain any

CHAPTER 202

An Act Providing the Method for Computing Certain Deductions Allowable on Mine Taxes in the Production of Petroleum and Natural Gas in Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state board of equalization in computing the deductions allowable for expenditures under Section 2090 of the Revised Codes of the State of Montana on petroleum and natural gas production, shall compute and allow deductions for any such expenditures

Fig. 5 — Excerpt from, *Laws, Resolutions and Memorials of the State of Montana, 1937.* Chapter 199 was published with the wrong type of enacting clause and thus was held "invalid" by the State Supreme Court in the *Vaughn* case, 109 Mont. 52. Chapter 202 (below) shows the proper style of an enacting clause for a law of the State.

In North Carolina a legislative enactment for the incorporation of a town and the regulation of spirituous liquors therein was challenged because it had no enacting clause. The law was cited from the statute book as "Priv. Acts 1887, c. 113, § 8" (see Fig. 6). A man was indicted with the offense of selling spirituous liquors in the town and there was a verdict of guilty. On appeal the State Supreme Court said there was "error" in the judgment because the law charged against the man was void, stating:

> In the case before us, what purports to be the statute in question has no enacting clause, and nothing appears as a substitute for it. * * * The constitution, in article 2, in prescribing how statutes shall be enacted, provides as follows:
>
> "Sec. 23. The style of the acts shall be: '*The General Assembly of North Carolina do enact.*"
>
> It thus appears that its framers, and the people who ratified it, deemed such provisions wise and important; the purpose being to require every legislative act of the legislature to purport and import upon its face to have been enacted by the general assembly.
>
> We are therefore of the opinion that the supposed statute in question has not been perfected, and is not such in contemplation of the constitution; that it is wholly inoperative and void.[21]

This alleged law could not be called a law pursuant to the constitution, because it existed in the statute books without an enacting clause on its face.

In a case in Louisiana, a law was claimed to be unconstitutional based on the fact that it had no enacting clause as it existed in statute book (see Fig. 7). The main evidence that the court used in holding the act unconstitutional was its status as found within the printed statute book.

> The contention that the statute of 1944 is unconstitutional is based upon the fact that it contains no enacting clause. The State Constitution of 1921, in section 7 of Article 3, provides that:
>
> "The style of the laws of this State shall be: 'Be it enacted by the Legislature of Louisiana.'"
>
> A mere glance at an official volume of the acts of 1944, discloses that the statute in question, Act 303 of 1944, contains no such enacting clause nor any part thereof. * * * And from the fact that it does not appear in the printed volume of acts, we conclude that the act was originally and finally defective.[22]

It could not be deduced exactly how the law came to be with no enacting clause. An examination of the original journal of the proceedings of each house could not disclose whether the enacting clause was present when the act was passed. The Court thus relied upon the status of the law in the printed statute book as proof of the overall status of the law. Thus the law was said to be "originally" defective because it was deduced that there was no enacting clause when the act was passed, and it was "finally" defective because it was printed in the volume of the acts without an enacting clause.

In a later case, this same court upheld this decision in declaring that a law was void because it too was recorded or printed in the statute books without an enacting clause:

> [T]he state statute on which both plaintiff and defendant rely cannot be given effect. What is reported in La.Acts 1968, Ex. Sess., as Act No. 24 is not law because it does not contain the enacting clause which La.Const. art. 3, § 7 requires to distinguish legislative action as law rather than mere resolution or some other act. Complete absence of the enacting clause renders the statute invalid.[23]

Again the invalidity of the law was deduced by the manner in which it was published (see

21 *State v. Patterson*, 4 S.E. 350, 352, 98 N.C. 660 (1887).

22 *O'Rourke v. O'Rourke*, 69 So.2d 567, 572, 575 (La. App. 1954).

23 *First Nat. Bank of Commerce, New Orleans v. Eaves*, 282 So.2d 741, 743, 744 (La.App. 1973).

CHAPTER 112.

An act supplemental to an act to incorporate the town of Charleston in Swain County.

The General Assembly of North Carolina do enact:

SECTION 1. That after the authorities of the town of Charleston shall have prepared suitable and convenient places for hitching horses, that hitching horses to gates and fences belonging to individuals in said town shall be construed a nuisance, and the authorities of said town are authorizd to abate such nuisance, and are authorized to impose such fines and penalties as will abate them. Hogs running at large shall also be construed a nuisance.

SEC. 2. This act shall be in force from and after its ratification.

In the general assembly read three times, and ratified this the 7th day of March, A. D. 1887.

CHAPTER 113.

An act to incorporate the town of Forest Hill.

SECTION 1. That the town of Forest Hill, in Cabarrus county, be and the same is hereby incorporated, by the name and style of the town of Forest Hill, and it shall enjoy all the rights and privileges of incorporated towns and be subject to all the provisions of law now existing in reference to incorporated towns.

SEC. 2. That the corporate limits of said town shall be as follows: beginning opposite the old cotton mill on the line of Concord corporate line, and running north with said line fifty-three and one half degrees east one half mile to a stone, thence north forty-eight and one-half degrees west one half mile to a stake, thence south fifty-three and one-half degrees west one mile to a stone, thence south fifty-three and one half degrees east one half mile to a stone, thence north fifty-three and one-half degrees east to the beginning.

SEC. 3. That the officers of said town shall consist of a mayor, four commissioners and a constable, and the commissioners shall have power to elect a secretary and treasurer, and to elect the constable.

Fig. 6 — Excerpt from, *Laws and Resolutions of the State of North Carolina, 1887.* Chapter 113 (below) was published with no enacting clause, and thus was "void," *State v. Patterson,* 98 N.C. 660. The preceding law, Chapter 112, was published with an enacting clause.

ACT No. 303.

House Bill No. 872. By Mr. Fernandez, Chairman of Committee on Public Health and Quarantine (Substitute for House Bill No. 405 by Messrs. Fernandez and Landry).

AN ACT

To provide for the discovery and treatment of mental disorders; to define and interpret certain terms used herein; to designate institutions and places for mental patients; to provide for the examination, admission, commitment and detention of mental patients and their transfer, discharge, leave of absence, boarding out, return of escaped patients and interstate rendition and deportation; to provide for the assessment, imposition and collection of costs, fees and expenses incidental to carrying out the provisions of this Act; to grant certain rights to patients committed under this Act.

ARTICLE I.

Short Title, Interpretations and Definitions.

Section 1. Short Title: This Act shall be known as the Mental Health Act of 1944.

ACT No. 284.

House Bill No. 670. By Messrs. Martinez and Picciola.

AN ACT

To amend and re-enact the Title and Sections 1, 2 and 3 of Act 309 of 1938, entitled: "To create and establish a trades school for the education of white people of the State of Louisiana, in Thibodaux, Lafourche Parish, Louisiana, under the supervision of the State Board of Education, and to provide for the building, equipping and maintenance of said institution."

Section 1. Be it enacted by the Legislature of Louisiana, That the title of Act 309 of 1938 is hereby amended and re-enacted so as to read as follows:

Fig. 7 — Excerpt from, *Acts passed by the Legislature of the State of Louisiana, 1944.* Act 303 (above) was held "defective" as it had no enacting clause. *O'Rourke v. O'Rourke,* 69 So.2d 567. Act 284 (below) has an enacting clause in Section 1 where the body of the law starts.

Fig. 8). This decision raises another reason why the enacting clause must be printed in the public law book. It is so that citizens can identify it as a public law as opposed to a resolution, proclamation, executive order, or administrative rule. The enacting clause distinguishes a true public law from these other type of acts.

An enacting style of a law generally reads, "Be it enacted," while the style of a resolution usually reads, *"Be it resolved,"* or *"Resolved, that."* Most state constitutions make a distinction between a law and a resolution. The Constitution for the United States distinguishes a "resolution" and "order" from a "bill" which can "become a law" (Art. 1, Sec. 7). They each go through the same basic formalities with respect to vote and procedure in Congress, but they are not the same thing.

When we look at the "laws" in the "United States Code," how do we know that they are public laws passed by Congres? For all we know they could be "mere resolutions," which carry no force and effect as laws. When we are charged with a violation of a law from the "Oregon Revised Statutes," how do we know that this is a law from the legislature of Oregon, as authorized by the Constitution of Oregon? There is no enacting clause on the face of the law to indicate whether it is a law, a resolution, an order, or an administrative rule. What then is a resolution?

> **RESOLUTION.** The term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute; such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc.[24]

> A resolution or order is not a law, but merely the form in which the legislative body expresses an opinion. [25]

> The general rule is that a joint or concurrent resolution adopted by the legislature is not a statute, does not have the force or effect of law, and cannot be used for any purpose for which an exercise of legislative power is necessary.[26]

In Indiana, a joint resolution was passed for the appropriation of money, which used the enacting style: *"Be it Resolved by the General Assembly of the State of Indiana."* The State Constitution allows for the appropriation of funds to be made only by law. The State Supreme Court said "the resolution is not law," as laws for the appropriation of money "cannot be enacted by joint resolution."[27]

That which is printed in the Revised Statute books and the U.S. Code could just as well be resolutions, which carry no force of law. If these statutes had enacting clauses, all would know what they were, the authority for their existence, and how they affect their rights and obligations. But they have no enacting clauses, and thus these publications are not legitimate publications in law which can be used to charge citizens with a crime. No enacting clause has been published with these "laws." They are only words of some committee, and thus are not constitutionally authorized laws which citizens are obligated to follow or obey.

So we must confront those in government who try to accuse us of violating a law published in some code, and ask them what is the authority for this law to exist? Where is its enacting authority on its face that identifies it as a law of the legislature? A law exists not only in the manner in which it was enacted, but also in the manner in which it is promulgated or published. A law cannot validly exist in printed form without the constitutionally required enacting clause.

---

24 *Black's Law Dictionary,* 2nd edition, p. 1027.

25 *Chicago & N.P.R. Co. v. City of Chicago,* 51 N.E. 596, 598 (Ill. 1898); *Village of Altamont v. Baltimore & O.S.W. Ry. Co.,* 56 N.E. 340, 341, 184 Ill. 47; *Van Hovenberg v. Holeman,* 144 S.W.2d 718, 721, 261 Ark. 370 (1940).

26 73 *American Jurisprudence,* 2nd, "Statutes," § 3, p. 270; cases cited.

27 *May v. Rice,* 91 Ind. Rep. 546 (1883).

ACT No. 21

Senate Bill No. 20. By: Mr. Mouton.

AN ACT

To amend and reenact Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session, to provide with respect to teaching French and the culture of Louisiana in the public elementary and high schools in the state.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session is hereby amended and reenacted to read as follows:

§ 272. French language and culture; teaching in public schools

A. The French language and the culture and history of French populations in Louisiana and elsewhere in the Americas shall be taught for a sequence of years in the public elementary and high school systems of the state, in accordance with the following general provisions:

(1) As expeditiously as possible but not later than the beginning of the 1972-1973 school year, all public elementary schools shall offer at least five years of French instruction starting with oral French in the first grade; except that any parish or city school board, upon request to the State Board of Education, shall be excluded from this requirement, and such request shall not be denied. Requests already received from school boards for exclusion from the provisions of Act 408 of 1968 shall also be valid for exclusion from the provisions of this Act unless individual school boards deem otherwise. School boards which have not already requested exclusion may do so at any time between July 1, 1971, and the beginning of the 1972-1973 school year. The fact that any board is excluded, as here provided, from participation in the program established by this section shall in no case be construed to prohibit such school board from offering and conducting French courses in the curriculum of the schools it administers. In any school where the program provided for herein has been adopted the parent or other person legally

---

ACT No. 24

Senate Bill No. 27. By: Messrs. Mouton and O'Keefe.

AN ACT

To regulate loans and advances of credit by banks under revolving loan plans and to provide for interest and other charges thereunder; to provide for penalties; and to repeal all conflicting laws.

TITLE I - REVOLVING LOAN PLANS

Section 1. Definitions:

(a) The term "revolving loan" means an arrangement, including by means of a credit card, between a lender and a debtor pursuant to which it is contemplated or provided that the lender may from time to time make loans or advances to or for the account of the debtor (1) through the means of checks, drafts, items, invoices for the purchase of goods, orders for the payment of money, evidence of debt or similar written instruments or requests whether or not negotiable, endorsed or signed by the debtor or by any person authorized or permitted to do so on behalf of the debtor or (2) through the means of any other direction to pay by the debtor for loans or advances or charges to an account in respect of which account the lender is to render bills or statements to the debtor at regular intervals (hereinafter sometimes referred to as the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or at the debtor's option may be payable by the debtor in installments.

(b) Credit cards - The term "credit card" as used herein means an identification card, credit number, credit device or other credit document issued to a person, firm or corporation by a lender which permits such persons, firm or corporation to purchase or obtain money, goods, property. or services on the credit of the issuer.

(c) "Lender" means a bank chartered or licensed by state or federal authorities and authorized to do business and doing business in this state.

Section 2. Revolving Loan Interest Charge, Separate Charge Statement

Fig. 8 — An excerpt from, *Louisiana Acts* 1968, Extra Session, 1968 (bound in "*Acts of the Legislature*" Regular Session, 1969). Act 24 (right) was declared to be "null" and without effect because of the manner in which it was printed or reported in the statute book without an enacting clause, *First Nat. Bank of Commerce, New Orleans v. Eaves*, 282 So.2d 741. A preceding law, Act 21 (left), shows proper use of the enacting clause on the face of the law.

– 5 –

Federal Laws and Crimes

The issues of authority and law are especially critical in understanding the trend that has developed in the Federal arena, with its communistic income tax, oppressive laws, and activities that invade the domain of the states. While many of the basic concepts dealing with the states on this subject are applicable to the Federal government, there also are some aspects unique to the Federal issues. Many of the problems today may not truly be usurpation or unconstitutional acts, but are due to a different source of law and thus a different jurisdiction than what the Constitution for the United States established. First we need to understand some basic facts about the manner of government and jurisdiction that originally existed.

Federal Criminal Jurisdiction

Jurisdiction, in a governmental sense, is the authority to apply law over certain objects and certain acts of persons. Jurisdiction gives a government the right to use force in applying this law to bring about its objective. Under the American system that objective is generally to exact justice through certain courts pursuant to constitutional authority, the law of God, and our common law concepts of right and wrong.

The Constitution for the United States created a government which has jurisdiction over certain enumerated subject matter. It is only in these areas that Congress can enact laws, and when they do, the Federal Courts are to enforce the law. But when laws do not come from an enumerated power, the Federal Courts are to prevent the U.S. Government or Congress from applying them.

The U.S. Constitution prescribes what the "jurisdiction" of the Federal government is by the enumerated powers. That government can regulate foreign and interstate commerce, fix the standards of weights and measurements, establish rules of naturalization, establish uniform laws on bankruptcies, coin money and provide for the punishment of counterfeiting of the coins and securities of the United States, protect the arts and sciences by copyrights and patents, punish for piracies and felonies committed on the high seas, raise and support an army and navy, and lay and collect direct taxes by apportionment, and indirect taxes by excises, duties, or imposts.

This is about the extent of the jurisdiction of the United States government. It is only in these areas that a "crime (or offense) against the United States" can exist, and this is so only when Congress actually passes a law in one of these areas.

> But an act committed within a State, whether for good or a bad purpose, or whether with honest or a criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States.[1]

> [T]he courts of the United States, merely by virtue of this grant of judicial power, and in the absence of legislation by Congress, have no criminal jurisdiction whatever. The criminal jurisdiction of the courts of the United States is wholly derived from the statutes of the United States.[2]

1 *United States v. Fox*, 95 U.S. 670, 672 (1877).

2 *Manchester v. Massachusetts*, 139 U.S. 240, 262 (1890); *United States v. Flores*, 289 U.S. 137, 151 (1932). .

> Acts of Congress, as well as the constitution, must generally unite to give jurisdiction to a particular court.[3]

The Federal Courts only have jurisdiction in matters involving an "offense against the United States," and nothing can be an offense against the United States unless it is made so by Congressional act pursuant to the U.S. Constitution. There is no other source from which Congress can get authority to make law, including the Common Law. Thus it has been said that, "There is no Federal Common Law." But the better way of stating this is to say, "There are no common law offenses (or crimes) against the United States,"[4] In other words, the common law is not a source for criminal jurisdiction as it is in the states.

> There is no federal common law. There are no offenses against the United States, save those declared to be such by Congress. * * * Only those offenses are to be proceeded against by information or are indictable in the federal courts which are specifically made so by acts of Congress, since the common law crime of itself has no existence in the federal jurisdiction.[5]

By "jurisdiction" is meant the authority of the Federal courts to hear and decide a matter. Thus it is even more correct to say that, "The federal courts have no jurisdiction of common law offenses, and there is no abstract pervading principle of the common law of the Union under which we (the Federal courts) can take jurisdiction."[6] Thus where one was charged for libel on the President and Congress of the United States, it was held that the Federal Circuit Court had no common law jurisdiction in the case and the act was not a crime.[7]

If Congress tries to make a common law offense a crime (such as libel, theft, burglary, murder, kidnapping, arson, rape, sodomy, abortion, assault, fraud, etc.), having no relation to an enumerated power, it would simply be an "unconstitutional" act. Congress can declare nothing to be a crime except where it is based upon a delegated power. Thus the only thing that can be a crime against the United States (a Federal crime) is that which comes from the U.S. Constitution. These concepts were early stated by the U.S. Supreme Court:

> In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. Art. s. 8. * * * But there is no reference to a common law authority: Every power is [a] matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law.[8]

The United States courts are governed in the administration of the criminal law by the rules of the common law.[9] Thus the common law is not a source of power, but is the means or instrument through which it is exercised. In civil matters where general common law rights of an individual are concerned, the federal courts are to apply the common law in the state in which the controversy originated.[10]

---

3 *U.S. v. Bedford,* 27 Fed. Cas., page 91, 103, Case No. 15,867 (1847).

4 *United States v. Britton,* 108 U.S. 199, 206 (1882); *United States v. Eaton,* 144 U.S. 677, 687 (1891); *United States v. Gradwell,* 243 U.S. 476, 485 (1916); *Donnelley v. United States,* 276 U.S. 5\05, 511 (1927); *Jerome v. United States,* 318 U.S. 101, 104 (1942); *Norton v. United States,* 92 Fed.2d 753756 (1937).

5 *United States v. Grossman,* 1 Fed.2d 941, 950, 951 (1924).

6 *State of Pennsylvania v. The Wheeling &c. Bridge Co.,* 13 Howard (54 U.S.) 518, 563 (1851).

7 *United States v. Hudson,* 7 Cranch (11 U.S.) 32 (1812).

8 *The United States versus Worrall,* 2 Dallas (2 U.S.) 384, 391 (1798).

9 *Howard v. U.S.,* 75 Fed. 986 (1896).

10 *Wheaton v. Peters,* 8 Peters (33 U.S.) 591, 658 (1834); *Erie R. Co. v. Tompkins,* 304 U.S. 64, 78 (1937).

While these concepts of jurisdiction are basic, and ones which were generally followed for about 140 years, it is apparent that since the 1930s, there has been a gradual departure from them. As a result, the jurisdiction of the Federal Government seems almost without bounds today, as it legislates and judicates on every subject under the sun, many of which are blatantly and obviously not from an enumerated power under the U.S. Constitution.

In light of such Federal action the question of authority comes again to the forefront. What was it that changed our system of Federal jurisprudence? Was something new or different introduced into the judicial process that could explain the change? One thing that was introduced into the system was the use of the United States Code.

The Change from Statute to Code

The laws of the United States as passed by Congress were from the very beginning published in a series of books called "United States Statutes at Large." The first Congress under the U.S. Constitution convened in New York City from March 4, 1789, to September 29, 1789, during which time Congress passed 27 separate acts. These Acts are recorded in volume one of the Statutes at Large. This publication was issued by the Secretary of State and the Government Printing Office. These books were regarded as the official source for all public and private laws, resolutions, treaties, and proclamations.

Through the course of time many volumes of the Statutes at Large were published, which contained not only new laws but repeals of old laws. It became more difficult to ascertain what the law was on a given matter. As early as 1866 Congress authorized a consolidation of all laws arranged by subject matter. The first edition of a "Revised Statutes" was produced in 1872, but was not favored by Congress so it was revised in 1875, but that edition contained many "errors." Another edition of the Revised Statutes was published in 1878. These works were rarely cited as most courts and lawyers continued to use the Statutes at Large.

In 1924, a bill to revise all the laws of the United States that were enacted up to that time passed the House but was defeated in the Senate. The Senate then appointed a committee to inspect the bill (which contained over two million words) and this group recommended that a commission be appointed to do the work over. The commission was formed and the revision of laws, called "The United States Code" was finally approved by an act of Congress on June 30, 1926 (44 Stat. Part 1).

The Code was divided into 50 Titles or subject headings, under which the revised laws were listed. The U.S. Code has, since 1926, been periodically compiled by a standing committee appointed to revise the laws.

The Code is assembled and revised under the supervision of "the Committee on the Judiciary of the House of Representatives." The main work of revision is done by a subcommittee or office of this committee called "the Office of the Law Revision Counsel of the House of Representatives." It consists of an appointed supervisor, some members of Congress, some volunteer lawyers, and persons from West Publishing of St. Paul, Minnesota.

At first the Code was generally ignored, as everyone was used to using the Statutes at Large. In most cases where laws, including "New Deal" laws, were held to be unconstitutional, the indictments and court records had generally used the Statutes at Large citation. For instance, in the case of *Carter v. Carter Coal Co,* 298 U.S. 238 (1936), involving the Bituminous Coal Conservation Act, it was cited as "C. 824, 49 Stat. 991." Only a few cases used the U.S. Code citation and then only along with the Statutes at Law citation.

One case in which the U.S. Code was used is *Steward Machine Co. v. Davis,* 301 U.S. 548 (1937), which involved the Social Security Act.

While the Statute at Large was cited, the U.S. Code was also included – "42 U.S.C., c. 7 (Supp.)." This case was the turning point of our judicial system, at least in regards to criminal matters. The decision was perhaps by the narrowest margin ever. The Chief Justice Charles E. Hughes had been against the New Deal legislation of Roosevelt and his socialists friends. But when Roosevelt came out with his outlandish antics to "pack the court" with his cronies, the act became an embarrassment to the court and to Hughes. Even though Hughes let it be known he was against the Social Security Act, he withheld making a definite vote. The vote was 4 to 4 on the matter. But the Jewish justice, Cardozo, took hold of the case and claimed the Act was constitutional. Chief Justice Hughes apparently did not say anything, probably to avoid further embarrassment.

Technically, the Social Security Act was held by the majority of the Supreme Court to be unconstitutional, or at most was a 4 to 4 tie. But nonetheless this decision paved the way for more socialistic legislation, and on all indictments charging a violation of these laws appeared the U.S. Code, not the Statutes at Large. By the 1940s, the Code effectively replaced the Statutes at Large in all criminal proceedings and indictments.

The Nature and Status of the U.S. Code

With the U.S. Code, the laws of the Statutes at Large were not only "revised" in content, but in form and style. When incorporated into the U.S. Code all titles and enacting clauses were removed, making the nature of the laws and their source of authority unknown.

Laws within the Statutes at Large were identified as being either public or private laws. Acts which were laws, resolutions, or proclamations were so designated by their identifying enacting clauses and titles. But no one can tell the nature of the "laws" in the U.S. Code.

When the U.S. Code was first published, it never was stated to be the official laws of the United States. Rather, it was stated that the Code was a "restatement" of law; or was only "prima facie evidence of the laws of the United States."[11] On this matter one Court stated:

> The United States Code was not enacted as a statute, nor can it be construed as such. It is only a prima facie statement of the statute law. * * * If construction is necessary, recourse must be had to the original statutes themselves.[12]

This tells us that the United States Code, as originally established, was not on an equal plain with the "original statutes" or the Statutes at Large. The evidence of a thing is not the thing itself. Thus the Code was not true law.

With the start of regular use of the U.S. Code, numerous problems arose in that it contained mistakes, errors and inconsistencies as compared to the Statutes at Large. Thus in 1947, Congress enacted several of the Titles into "positive law," such as the act: "To codify and enacted into positive law, Title 1 of the United States Code." In doing so they devised some new terminology:

> United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be

11 *Five Flags Pipe Line Co. v. Dept. of Transportation,* 854 F.2d 1438, 1440 (1988); *Stephan v. United States,* 319 U.S. 415, 426 (1943); 44 Statutes at Large, Part 1, preface.

12 *Murrell v. Western Union Tel. Co.,* 160 F.2d 787, 788 (1947); also, *United States v. Mercur Corporation,* 83 F.2d 178, 180 (1936).

> legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.[13]

Note the new term, "legal evidence." But what are these titles legal evidence of? It does not say these Titles of the Code are legal evidence of the statutes of Congress, or of the laws of the United States. They are "legal evidence of the laws therein contained." In other words, the fact that the laws are in the Code, is in itself legal evidence that they exist. So what! Such a statement really says nothing at all about the legal nature of those laws. It doesn't explain anything about its nature or its legal status other than its own existence.

This is like saying if a hammer is in your hand, then that hammer in your hand stands as legal evidence of the hammer in your hand. But it doesn't say anything about the legal nature of the hammer. Is it your hammer, or is it borrowed, stolen or lost? Is it the property of the government, or Joe Smith, or the XYZ corporation? Likewise, saying that the laws in a book are evidence of those laws in the book, says nothing at all about their nature. Are they Acts of Congress, or of the State of Florida, or of the United Nations? It does not say, but only makes the generalized remark that they are laws. It obviously does not mean that these laws are constitutionally enacted or exist constitutionally.

Congress, or lawyers in Congress, have made this statement to make it appear that there is a difference between the Code as it was, from the titles that have been enacted into positive law. There really is no significant difference between prima facie evidence and legal evidence. Prima facie evidence *is* legal evidence, just as "circumstantial evidence is legal evidence."[14] Even hearsay evidence when relevant to an issue can be treated as "legal evidence."[15] The term legal evidence is just a more general term for most types of evidence.

> **Legal evidence.** A broad general term meaning all admissible evidence, including both oral and documentary.[16]

Whether Congress has enacted a title into positive law is irrelevant, as it does not change it into a law of the United States. One Federal Court said that "Congress's failure to enact a title into positive law has only evidentiary significance."[17] In other words, it does not affect the nature of what it is legally. The Court further said, "Like it or not, the Internal Revenue Code is the law." It can indeed be called law, but what manner of law is it? Why did the court not say that it is an act of Congress? or a law under the Constitution? Another court said regarding the Code that, "Enactment into positive law only affects the weight of evidence."[18] This is because the Title has gone though extra proofreading and checking to remove the errors and inconsistencies. This measure does not change the legal nature of the Title of the Code, such as occurs with a bill when it is enacted into law.

The words "legal evidence" were used to convince people that some change occurred when in fact it is just a lot of double talk and does not change the nature of what the U.S. Code really is. It really makes no difference if a Title has been enacted into positive law, for its contents cannot be regarded as acts of Congress because they have no evidence of being such by way of enacting clauses. The greatest evidence of true law is that which bears an enacting clause. A Federal law requires an

13 61 Statute at Large 633, 638; 1 U.S.C. § 204(a).

14 *Hornick v. Bethlehem Mines Corp.*, 161 Atl. 75, 77, 307 Pa. 264.

15 *Oko v. Krzyzanowski*, 27 A.2d 414, 419, 150 Pa. Sup. 205.

16 *Black's Law Dictionary*, 2nd edition, p. 448.

17 *Ryan v. Bilby*, 764 F.2d 1325, 1328 (1985).

18 *United States v. Zuger*, 602 F.Supp 889, 891 (1984).

enacting clause to make it a law coming from the authorized source—Congress.

> The object of an enacting clause is to show that the act comes from a place pointed out by the Constitution as the source of power.[19]

The laws in the U.S. Code are unnamed; they show no sign of authority; they carry with them no evidence that Congress or any other lawmaking power is responsible for them. They lack the essential requisites to make them a law authorized under article 1 of the Constitution for the United States.

Look back at the cases cited which stated that the criminal jurisdiction of the United States exists only by acts of Congress pursuant to the Constitution. If the question is put forth to a Federal Court whether the Code cited in an indictment is an act of Congress, they could not rightfully say it is. If the court says it is, it should be asked, where is the congressional enacting clause for that law as required by 61 Statutes at Large 633, 634, § 101?[20] If no such clause appears *on the face* of the law, it is not an act of Congress. No criminal jurisdiction exists without a bona fide act of Congress. The argument in such a case is that the indictment does not set forth a case arising under the Constitution, as there is no act of Congress with a duly required enacting clause. Thus there is no subject matter jurisdiction pursuant to the federal judicial power defined in Art. III, § 2.

Nowhere does it say in the Code, or in pronouncements by Congress or the courts, that the laws in the U.S. Code are acts of Congress. In fact, the Code is always regarded as something different from the Statutes at Large:

> But no one denies that the official source to find United States laws is the Statutes at Large and the Code is only prima facie evidence of such laws.[21]

> STATUTE. State laws are generally called Session Laws (occasionally Acts); while federal laws are called Public Laws such as *Public Law* 89-110 which is the Voting Rights Act of 1965 and which can be found in 79 *Statutes at Large* 437 (1965), the latter being the official and preferred citation.[22]

The Statutes at Large are recognized by everyone to be the "official" publication of Federal laws. Why is not the U.S. Code, even when enacted into "positive law," ever called the "official source of United States laws?" Could it be because the "laws" in the Code are only the decrees of some committee?

Positive Law

The term "positive law" is also misleading. Positive law is a general designation for a "law that is actually ordained or established, under human sanctions, as distinguished from the law of nature or natural law."[23] Any rule or law established and written out by human agency is positive law. In this sense the U.S. Code was from the beginning a type of positive law, being written and established by human sanctions—i.e., the Committee of the House of Representatives.

The U.S. Code is also declared to be a codification of "all the general and permanent laws of the United States." But the articles of war, a treaty, or an executive order can also be called "general and permanent laws of the United States," or "positive law." They are laws that exist under the United States, but they are clearly of a different nature than acts of Congress which a citizen can be indicted for violating. We thus come again to the question of authority. What is the authority for citizens to follow the "laws" in the U.S. Code? None legally exists unless one acquiesces to such law.

---

19 *Ferrill v. Keel*, 151 S.W. 269, 272, 105 Ark. 380 (1912).

20 In § 102, Congress also established the "resolving clause" style that is to be used on all joint resolutions.

21 *Royer's, Inc. v. United States*, 265 F.2d 615, 618 (1959).

22 Edward Bander, *Dictionary of Selected Legal Terms and Maxims*, 2nd edition, Oceana Publications, 1979, p. 78.

23 *Bouvier's Law Dictionary*, Banks-Baldwin Law Pub., Cleveland, 1948, p. 955.

When Congress enacts sections of the Code into positive law they do so by passing a law, as they did with Title 18, stating to the effect:

> That Title 18 of the United States Code, entitled "Crimes and Criminal Procedure", is hereby revised, codified, and enacted into positive law, and may be cited as "18 U.S.C., §__", as follows:[24]

The text of Title 18 then follows. The measure does not really change anything since this Title had already been positive law just as it had already been codified. The State Legislatures often do the same thing with their Revised Statutes. They pass a law saying that the material in a certain collection of books is law. But it is fundamental that nothing can become a law just because the legislature says it is law.

> [N]othing becomes a law simply and solely because men who possess the legislative power will that it shall be, unless they express their determination to that effect, in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential.[25]

The "forms" of legislation include the title and enacting clause, which are both essential aspects of a law. This excerpt was quoted by the Supreme Court of Arkansas, who also said:

> All those rules and solemnities, whether derived from the common law or prescribed by the Constitution, which are of the essentials of law making, must be observed and complied with, and, without such observance and compliance, the will of the Legislature can have no validity as law.[26]

The U.S. code has none of the forms and solemnities that are essential to make it law which citizens in America are subject to, and Congress cannot make it law by its say-so.

It might be argued that the U.S. Title in question has an enacting clause and title as it exists in the Statutes at Large, and this is sufficient for the text of the entire Title of the Code. In the past some courts did hold that the titles on the specialized codes were sufficient for the entire code. Title 18 thus could only be called valid laws of the United States if its contents are cited from the Statutes at Large. But the government never cites Title 18 from the Statutes at Large on indictments, it only cites it as published in the U.S. Code, which has absolutely no enacting clauses on its face. It is always 18 U.S.C. § 1951, instead of the 62 Stat. Lg. 1084. The difference is critical.

The U.S. Code is not law of Congress, but it has fooled everyone because the laws used in it by the committee were based upon laws once passed by Congress. If Congress passed some laws which were then codified by the Russian government, which code was later recognized by Congress, no one would accept laws cited from the Russian code as valid law of Congress. A Russian law against forgery cannot be charged against us just because an identical law exists in our State. Now suppose, for instance, I listed some laws for you to follow such as:

- You shall not steal.
- You shall not murder anyone.
- You shall not kidnap anyone.
- You shall not commit adultery.

Now let me ask you, is there any authority behind these laws I have written and declared? Nearly everyone would say there is because they recognize that God issued similar laws, and thus there is authority behind them. But God did not issue these laws or enact them as law, I did. I never said they are laws of God but are my laws. They thus have no authority as law because I am not a source of law to which you are subject. There is no legal relationship between you and myself, just as there is no legal relationship between you and the "Law Revision Counsel" that drafted the U.S. Code.

---

24 62 *Statutes At Large*, 683, June 25, 1948.

25 *Caine v. Robbins*, 131 P.2d 516, 518 (Nev. 1942), citing *Cooley's Constitutional Limitations*, 6th Ed., p. 155.

26 *Vinsant, Adm,x v. Knox*, 27 Ark. 266, 277 (1871).

– 6 –

Procedure, Jurisdiction & Arguments

Now that this material of law has been presented, we next need to know how to properly use it in court or against government encroachment. Since this information can have a devastating affect on the very foundation of the current corrupt legal system, just arguing that the laws used against a person are not valid will not be very effectual. Even though there is no argument that can be raised against this material, judges will be motivated to set it aside or rule against it because their love of money is greater than their love of law and justice.

This material, however, can be used in different ways which will force bureaucrats and judges to accept it, or commit obvious acts of usurpation and corruption. The material can be used or presented by way of affidavit, abatement, habeas corpus, memorandum and motion to dismiss, or demurrer. In each case the main issues are that of no valid law, fraud, and lack of subject matter jurisdiction. It is important to understand how this material directly affects the jurisdiction of the court.

There have been, of course, many wrong and erroneous arguments upon the subject of jurisdiction. Most people readily see the results of a corrupt and spiritually debauched society, economy and government, and want nothing to do with it, so they make up some jurisdictional argument to "get out of the system." While the general concept seems right, the arguments about jurisdiction have not been legally sound. So we need to accurately understand the matter of jurisdiction in the criminal system.

Criminal Jurisdiction

Jurisdiction, in terms of the authority of a court, is of two main types, as Judge Cooley states:

> The proceedings in any court are void if it wants jurisdiction of the case in which it has assumed to act. Jurisdiction is, *first,* of the subject-matter; and, *second,* of the persons whose rights are to be passed upon.[1]

Both types of jurisdiction are required in criminal matters.

> To try a person for the commission of a crime, the trial court must have jurisdiction of both the subject matter and the person of the defendant.[2]

Personal jurisdiction, or the authority to judge a person, is primarily one of venue or procedure. Generally, if one is standing in a court, it has some degree of jurisdiction over that person. Thus if one is named in a suit, but is "absent" from court by being "either in prison or by escape, there is a want of jurisdiction over the person, and the Court cannot proceed with the trial." [3] In some cases certain irregularities in procedural matters, such as not having a complaint or affidavit signed, or failure to apprise the defendant of the nature and cause of the accusation, can affect personal jurisdiction. But such irregularities in obtaining personal jurisdiction may be "waived." Thus, "jurisdiction of the person may be conferred by consent and by pleading to the merits of this case." [4] Also, "any lack of jurisdiction over the person is waived by his

1 Thomas M. Cooley, *A Treatise on the Constitutional Limitations,* Little, Brown, & Co., Boston, 1883, p. 493.

2 21 *American Jurisprudence,* "Criminal Law," § 338, p. 588.

3 *State v. Brown,* 64 S.W.2d 841, 849 (Tenn. 1933).

appearance through counsel."[5] It is also true that any irregularities in procedural matters which might inhibit personal jurisdiction can be corrected and the case retried.

The jurisdictional arguments most patriots have been raising in recent times deal with personal jurisdiction, that is, they claim the court has no jurisdiction to try them personally. But one can not simply claim a lack of personal jurisdiction without any legal grounds and then expect the court to just dismiss the matter.

In summary, it is rare to have an issue regarding personal jurisdiction that will completely stop proceedings or end the action against a person. One of the few exceptions is if the person is a foreign ambassador or dignitary with diplomatic immunity, in which a treaty exists with his country.

Some have asserted that they are a "non-resident" or a "non-resident alien" and thus do not come under the jurisdiction of the courts or laws of Congress or the State. But it matters not where one lives or if he is a citizen or alien, for all in the land are subject to the laws of the nation. Aliens cannot come to this country and violate laws with impunity and then claim our courts are powerless to try and punish them for their acts. The courts do have jurisdiction over aliens. If you go to Mexico and break their laws and claim that you are a nonresident alien or America citizen it isn't going to hold any water. If that is your only defense you will end up in a Mexican prison.

Jurisdictional arguments, to be of any merit, even in the present day *de facto* courts, have to be based upon some concept of law that would have had merit 150 years ago. All of the popular jurisdictional arguments used today fail this test. But by Divine Providence a flaw has been placed within the current corrupt legal system, one which causes it to exist and operate without any actual jurisdiction to which citizens are subject. This flaw relates to subject matter jurisdiction, not personal jurisdiction. The system that has grown up around us has a defect which causes a lack of subject matter jurisdiction in the courts, which means that no criminal case can be lawfully tried.

But it is important that one know of this defect so it can be asserted against officials or in court, for if it is not, then it is as though the defect doesn't exist. The key then lies in understanding subject matter jurisdiction.

Subject Matter Jurisdiction

Jurisdiction of the subject matter involves the actual thing involved in the controversy. In civil matters it is usually some property or money in dispute, or it might be the tort or wrong one committed against another, or it might be a contract, marriage, bankruptcy, lien, or will that is in dispute. If the property or thing in dispute never existed there would be no subject matter jurisdiction.

In criminal proceedings the thing that forms the subject matter is the crime or public offense that is allegedly committed.

> The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute.[6]

Most cases in which there would be a want of subject matter jurisdiction are self evident. If a subject matter or crime is outside the territorial jurisdiction of the court, then the court would not have jurisdiction over the thing or crime involved. Also, certain types of courts are given the authority, either by constitutional grant or statute, to hear certain types of cases. A federal tax court has subject matter jurisdiction over federal tax matters, not

4 *Smith v. State,* 148 S. 858, 860 (Ala. App. 1933).

5 *State v. Smith,* 70 A.2d 175, 177, 6 N.J. Super. 85 (1949).

6 *Stilwell v. Markham,* 10 P.2d 15, 16 (Kan. 1932).

over state tax matters or over bankruptcy cases. A probate court has jurisdiction over a will, but has no subject matter jurisdiction over the crime of burglary. A Justice of the Peace who is given authority to hear misdemeanor cases, has no subject matter jurisdiction to hear any felony cases.

It thus is said in a general sense that subject matter jurisdiction refers to the power of the court to hear and decide a case, or a particular class of cases; this is because jurisdiction of a court is derived from law (constitution or statute), and cannot be conferred by consent.

> The law creates courts and defines their powers. Consent cannot authorize a judge to do what the law has not given him the power to do. [7]

Because subject matter jurisdiction is a matter of law and authority of the court to hear a matter, the accused can not waive the lack of it, or even give his consent to it if it does not exist. Thus, the issue of subject matter jurisdiction can be raised at any time during the case, even after a plea has been entered.

> Jurisdiction of the subject matter is derived from the law. It can neither be waived nor conferred by consent of the accused. Objection to the court over the subject matter may be urged at any stage of the proceedings, and the right to make such an objection is never waived. However, jurisdiction of the person of the defendant may be acquired by consent of the accused or by waiver of objections.[8]

> [I]t is everywhere held that jurisdiction over subject matter or cause of action cannot be conferred upon a Court by consent or waiver, but may be questioned at any stage of the proceedings.[9]

Even if one fails to raise the issue of the lack of subject matter jurisdiction at trial, he can still raise the issue upon appeal.

> It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. Accordingly, the appellants may raise the issue of jurisdiction over the matter for the first time on appeal although they initially failed to raise the issue before the trial court.[10]

> A reviewing court is required to considered the issue of subject matter jurisdiction even where it was not raised below in order to avoid an unwarranted exercise of judicial authority.[11]

There is nothing that one can do, or fail to do, that would cause the issue of subject matter jurisdiction to be lost. Even if a person pleads guilty he can raise the issue later on if the subject matter jurisdiction never existed.

> Subject matter jurisdiction cannot be conferred by a guilty plea if it does not otherwise exist.
>
> The guilty plea must *confess* some punishable offense to form the basis of a sentence. The effect of a plea of guilty is a record admission of whatever is well alleged in the indictment. If the latter is insufficient the plea confesses nothing.[12]

In this case a man was charged with a "felony-theft charge" to which he entered into a plea bargain and pleaded guilty. But the facts alleged in the indictment did not constitute the offense charged. There thus was no subject matter jurisdiction, and the conviction was void.

---

7 *Singleton v. Commonwealth*, 208 S.W.2d 325, 327, 306 Ky. 454 (1948).

8 21 *American Jurisprudence*, 2nd, "Criminal Law," § 339, p. 589.

9 *Harris v. State*, 82 A.2d 387, 389, 46 Del. 111 (1950).

10 *Matter of Green*, 313 S.E.2d 193, 195 (N.C.App. 1984).

11 *Honomichl v. State*, 333 N.W.2d 797, 799 (S.D. 1983).

12 *People v. McCarty*, 445 N.E.2d 298, 304, 94 Ill.2d 28 (1983), cases cited.

There are many cases where a person was convicted and put into prison, then upon discovery of a lack of subject matter jurisdiction, submitted a *habeas corpus* based upon the jurisdictional defect, and was released.

Subject matter jurisdiction involves more than having the right offense for the right court. Even if the court has jurisdiction over the type, class or grade of crime committed, it will still lack subject matter jurisdiction if the law which the crime is based upon is invalid, void, unconstitutional, or nonexistent.

> Jurisdiction over the subject matter of action is essential to power of court to act, and is conferred only by constitution or by valid statute.[13]

The court must be authorized to hear a crime, and have a valid law that creates a crime. Thus the crux of subject matter jurisdiction is always the crime or offense. If a law is invalid there is no crime; if there is no crime there is no subject matter jurisdiction.

> If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case.[14]

In a case where a man was convicted of violating certain sections of some laws, he later claimed that the laws were unconstitutional which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

> If these sections are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be a legal cause of imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law.[15]

In Wisconsin a case involved a charge for violating a law which had actually been repealed. There was a motion hearing on the issue of whether the court had subject matter jurisdiction, and the Supreme Court held:

> Where the offense charged does not exist, the trial court lacks jurisdiction.[16]

In a case in Minnesota, a man was charged with the offense of "Being an Habitual Offender." But the statute did not make this a crime it only increased the punishment for a crime. The State Supreme Court said the man could not be convicted of a crime because the statute used did not state an offense, which meant the "court was without subject matter jurisdiction."[17]

An invalid, unconstitutional or non-existent statute also affects the validity of the "charging document," that is, the complaint, indictment or information. If these documents are void or fatally defective, there is no subject matter jurisdiction since they are the basis of the court's jurisdiction.

> When a criminal defendant is indicted under a not-yet-effective statute, the charging document is void.[18]

The indictment or complaint can be invalid if it is not constructed in the particular mode or form prescribed by constitution or statute (42 C.J.S., "Indictments and Informations," § 1, p. 833). But it also can be defective and void when it charges a violation of a law, and that law is void, unconstitutional or non-existent. If the charging document is void, the subject matter jurisdiction of a court does not exist.

> The want of a sufficient affidavit, complaint, or information goes to the jurisdiction of the

13 *Brown v. State,* 37 N.E.2d 73, 77 (Ind. 1941).

14 22 *Corpus Juris Secundum,* "Criminal Law," § 157, p. 189; citing *People v. Katrinak,* 185 Cal.Rptr. 869, 136 Cal.App.3d 145 (1982).

15 *Kelley v. Meyers,* 263 P. 903, 905 (Ore. 1928).

16 *State v. Christensen,* 329 N.W.2d 382, 383, 110 Wis.2d 538 (1983).

17 *State ex rel. Hansen v. Rigg,* 104 N.W.2d 553, 258 Minn. 388 (1960).

18 *State v. Dungan,* 718 P.2d 1010, 1014, 149 Ariz. 357 (1985).

> court, * * * and renders all proceedings prior to the filing of a proper instrument void ab initio.[19]

Jurisdiction then is brought to a court by way of a complaint, information or indictment. If these instruments fail to charge a crime, there can be no subject matter jurisdiction.

> The allegations in the indictment or information determines the jurisdiction of the court.[20]

> Where an information charges no crime, the court lacks jurisdiction to try the accused, and a motion to quash the information or charge is always timely.[21]

> Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime.[22]

One way in which a complaint or indictment fails to charge a crime, is by its failure to have the charge based upon a valid or existing law. Complaints or indictments which cite invalid laws, or incomplete laws, or nonexistent laws are regarded as being invalid on their face. Thus they are said to be "fatally defective" or "fatally bad." Usually when such matters occur the accused would have the complaint or indictment set aside either by a "motion to quash," or a "demurrer." But with today's system, if they are not based on the jurisdictional question, such a motion can be easily denied.

The crux then of this whole issue of jurisdiction revolves around law, that is, the law claimed to be violated. If one is subject to a law, they are then under the jurisdiction of some authority. If a king passes a law then those who are subject to the law are under his jurisdiction, and they can be judged for the violation of the law by the king or one of his ministers. When a person is outside the king's jurisdiction, there is no law he is subject to. But the reverse of this is also true, that being, if there is no law of the king, then there is no jurisdiction or authority to judge the person, even if he is the king's subject.

If a crime is alleged but there is no law to form the basis of that crime, there is no jurisdiction to try and sentence one even though they are subject to the legislative body and the court. There has to be a law, a valid law, for subject matter jurisdiction to exist.

The current corrupt legal system has in effect sown its own seeds of destruction by arbitrarily forming codes and revised statutes. All complaints or indictments today cite laws from these codes or revised statute books which contain no enacting clauses. Laws which lack an enacting clause are not laws of the legislative body to which we are constitutionally subject. Thus if a complaint or information charges one with a violation of a law which has no enacting clause, then no valid laws is cited. If it cites no valid law then the complaint charges no crime, and the court has no subject-matter jurisdiction to try the accused.

No complaint or indictment can allege that a criminal act has been committed when there is no law which makes the act a crime. When common law crimes were prosecuted in state courts, there were many cases that arose where the accused claimed the act was not a crime at common law. Thus when issued a complaint or indictment, the accused would, before trial, demurrer to the complaint or file a motion to quash the complaint based on the fact that the complaint failed to cite anything that was a crime. It therefore might be held that the act

19 22 *Corpus Juris Secundum,* "Criminal Law," § 324, p. 390.

20 *Ex parte Waldock,* 286 Pac. 765, 766 (Okla. 1930).

21 *People v. Hardiman,* 347 N.W.2d 460, 462, 132 Mich.App. 382 (1984); 22 *Corpus Juris Secundum,* "Criminal Law," § 157, p. 188; citing, *People v. McCarty,* 445 N.E.2d 298, 94 Ill.2d 28.

22 *Honomichl v. State,* 333 N.W.2d 797, 798 (S.D. 1983).

was not a crime at common law, and since there was no law, the court had no jurisdiction over the subject matter.

The legal system today does not recognize common law crimes, and thus the only thing that is a crime is made so by statute. If there is no statute or law for the crime alleged, there can be no crime, and if there is no crime, there is no subject matter jurisdiction. If a law does not exist, or is not constitutional, the complaint is void and it cannot give subject-matter jurisdiction to the court.

Error Versus Usurpation

To better understand why this must be an issue of subject matter jurisdiction, we need to understand the powers and limitations placed upon a court by fundamental law.

The jurisdiction of a court is in essence its authority to hear and decide a matter. But a court or a judge is in actuality a human agency, and as such is liable to make a mistake or "error" on some issue he decides. All of history is replete with examples of such error occurring. It is universally recognized that a court, which has proper jurisdiction, has the right to be wrong in its judgment.

> The jurisdiction and authority to enter a judgment includes the power to decide a case wrongly.[23]

> Jurisdiction, it is agreed, includes the power to determine either rightfully or wrongfully. It can make no difference how erroneous the decision may be.[24]

> Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision.[25]

It matters not how unconstitutional a law is, it matters not how much your rights are violated, it matters not how arbitrary government has been in violating due process of law, a court can rule against you and it is only regarded as "error" or a wrong decision. The judge can give the most incorrect, erroneous or illogical decision and it is binding until it is reversed by a higher court.

> The power of a court to decide includes the power to decide wrongly. An erroneous decision is as binding as one that is correct until it is set aside or corrected in a manner provided by law.[26]

It may be hard for many to accept this concept, especially in light of the corrupt courts that exist today. But it would not be a problem if judges and other leaders were godly men as prescribed by the Bible:

> Moreover you shall select from all the people able men, such as fear God, men of truth, hating covetousness; and place such over them to be rulers (Exod. 18:21).

There was a time in this country that when a man was elected to office he had to take an oath that he believed in God and believed in a future state of rewards and punishments. But the spiritual condition of the nation has taken on an evil disposition, which has a definite affect on the nature of the legal system. The result has been courts which defy the law of God, uphold unconstitutional laws, support abortion, allow property to be taken without due process, and make other "wrong" decisions.

The key then is not to find the right law or argument to present in court, but to somehow remove the jurisdiction of the court so that the right to decide wrongly does not exist. This can be done by showing that there are no valid laws charged against you because they do not have enacting clauses or titles. Without valid laws there is no subject matter jurisdiction and any decision rendered is void. There can be no

23 *Provance v. Shawnee Mission Unified School*, 683 P.2d 902, 235 Kan. 927 (1984).

24 *Garcia v. Dial*, 596 S.W.2d 524, 528 (Tex.Cr.App. 1980); *Olson v. Cass County*, 253 N.W.2d 179, 183 (N.D. 1977).

25 *Pope v. United States*, 323 U.S. 1, 65 Sup. Ct. Rep. 16, 23 (1944), cases cited.

26 *Mayhue v. Mayhue*, 706 P.2d 890, 893, note 7 (Okla. 1985).

valid judgment, either right or wrong, without this type of jurisdiction.

> [N]o authority need to be cited for the proposition that, when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable, * * * and without any force or effect whatever.[27]

> Where judicial tribunals have no jurisdiction of subject matter, the proceedings are void.[28]

Where subject matter jurisdiction does not exist, any bad, wrong or corrupt decision is *void,* but if the jurisdiction exists, a wrong or erroneous decision is only *voidable* by appeal.

> The test of jurisdiction is the right to decide, not right decision. Judgments of courts, which at the time the judgments were rendered had no jurisdiction, * * * are absolutely void, and may be attacked and defeated collaterally. On the other hand, judgments of courts empowered to hear and determine issues related to the subject matters and persons, although such judgments may be illegal and wrong, are simply voidable and are not open to collateral attack.[29]

The only remedy to correct an error or illegal decision is by appeal. But the judges of the appeals court also have the right to make error or be wrong, and can thus support the illegal decision of the trial court. But if the trial court decision was void for lack of jurisdiction, it cannot be made valid by an appeal decision.

> Even though a void judgment is affirmed on appeal, it is not thereby rendered valid.[30]

When jurisdiction is lacking, the court can do nothing except dismiss the cause of action. Any other court proceeding is usurpation.

> *Lack of jurisdiction* and the *improper exercise of jurisdiction* are vitally different concepts. * * * Where the court is without jurisdiction it has no authority to render any judgment other than one of dismissal.[31]

A judge or court may be in a legal sense immune from any claims that it is guilty of corruption because of its improper exercise of jurisdiction. However, it has no such protection where it lacks jurisdiction and the issue has been raised and asserted before judgment. Thus when the lack of jurisdiction has been shown, a judgment rendered is not only void, but is also *usurpation!*

> Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction, and a usurpation thereof is a nullity.[32]

> If [excessive exercise of authority] has reference to want of power over the subject matter, the result is void when challenged directly or collaterally. If it has reference merely to the judicial method of the exercise of power, the result is binding upon the parties to the litigation till reversed * * * The former is usurpation; the latter error in judgment.[33]

> The line which separates error in judgment from the usurpation of power is very definite.[34]

Since the laws in use today are invalid on their face, it deprives the court of subject matter jurisdiction. For the court to proceed with trial and make a judgment or sentence after such a jurisdictional challenge has been made, it is simply an act of usurpation and treason. The importance of this material is that it forces the courts to either completely retract from enforcing corrupt and ungodly laws, or it forces them to establish the grounds for

27 *Hooker v. Boles,* 346 Fed.2d 285, 286 (1965); *Honomichl v. State,* 333 N.W.2d 797, 799 (S.D. 1983).

28 21 *Corpus Juris Secundum,* "Courts," § 18, p. 25; *People v. Mckinnon,* 362 N.W.2d 809, 812 (Mich.App. 1985).

29 *United States v. U.S. Fidelity & Guaranty Co.,* 24 F.Supp. 961, 966 (1938); 47 Am Jur 2d, "Judgments," § 916.

30 *Ralph v. Police Court of City of El Cerrito,* 190 P.2d 632, 634, 84 Ca.App.2d 257 (1948).

31 *Garcia v. Dial,* 596 S.W.2d 524, 528 (Tex.Cr.App. 1980).

32 22 *Corpus Juris Secundum,* "Criminal Law," § 150, p. 183.

33 *Harrigan v. Gilchrist,* 99 N.W. 909, 934, 121 Wis. 127 (1904).

34 *Voorhees v. The Bank of the United States,* 35 U.S. 449, 474-75 (1836).

revolution—usurpation and tyranny! There is no right to commit tyranny or usurpation, and such acts can be disobeyed or resisted. A maxim of law states:

> A judge who exceeds his office or jurisdiction is not to be obeyed.
>
> He who exercises judicial authority beyond his proper limits can not be obeyed with safety or impunity.[35]

A judge cannot claim immunity to acts of usurpation, for the law does not recognize such acts. Thus one cannot be punished for not obeying a judgment rendered by usurpation or want of jurisdiction:

> The rule is fundamental that, where the court has no jurisdiction over the subject matter of the action, all proceedings in such action are void. The rule is likewise well settled that refusal to obey a void order or judgment is not contempt.[36]

It should be stated in all fairness that an act cannot really be classified as usurpation unless the problem is revealed and the judge warned of the situation. The American colonists knew that it was proper to first warn King George of his acts of usurpation and tyranny before they could take action against him. Up to now judges have escaped being held accountable for committing usurpation or tyranny for using invalid law against citizens. If this is not pointed out and objected to, it is assumed the accused has acquiesced to the invalidity of the law. There must be notice and warning of the matter.

It is often held that a void judgment, or an act committed without jurisdiction, can be attacked collaterally, which means it can be attacked differently from what the law usually prescribes, as one text writer explains:

> There are only two ways to attack a judicial proceeding, direct and collateral. Any proceeding provided by law for the purpose of avoiding or correcting a judgment, is a direct attack which will be successful upon showing the error; while an attempt to do the same thing in any other proceeding is a collateral attack, which will be successful only upon showing a want of power.[37]

The American colonists at first attacked the usurpation and tyranny of King George directly with petitions and redresses. Later on they attacked it in a collateral sense by force of arms and by proclaiming their independence from that government. However, no act or judgment can be attacked until it is understood how and why it is without power or authority. This material on authority of law can give the people of this land the right to collaterally attack the legal system and government.

If one is asked to plead to the charges, it should be said that you can't plead at this time because you believe that the subject matter for this case is lacking, and you choose first to submit a motion to dismiss on those grounds. The government may try to say that, "the laws in question were lawfully passed by the Legislature pursuant to the Constitution." Technically this can be said since laws like the ones in the Revised Statutes (or U.S. Code) were passed by the Legislature, but this is not the issue. The issue is not whether the laws charged against you or laws like them were passed by the Legislature (or Congress), but rather that they don't exist in their current state as valid laws. That is, they fail to follow the valid form and style of a law due to the manner in which they are published or promulgated. If the court says that the authority for the law is the legislature, the reply should be, where is the legislative enacting authority for the law?

The following is an example of a memorandum and motion to dismiss due to lack of subject matter jurisdiction. With this argument you are not asking for the charges to be dismissed, since legally there are no charges, but rather that the cause of action be dismissed.

---

35 See, *Maxims of Law,* edited by C. Weisman, 63z, 66m.

36 *Wolski v. Lippincott,* 25 N.W.2d 754, 755 (Neb. 1947).

37 John M. Vanfleet, *The Law of Collateral Attack on Judicial Proceedings,* Callaghan & Co., Chicago, 1892, p. 5.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN 4TH JUDICIAL DISTRICT

State of Minnesota, Plaintiff,	)	**MEMORANDUM AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**
vs.	)	
John R. Smith, Accused.	)	Court Case Nos. KX-95-2125 KO-95-2277

COMES NOW THE ACCUSED denying and challenging the jurisdiction of the above-named court over the subject matter in the above-entitled cause, for the reasons explained in the following memorandum:

MEMORANDUM OF LAW

I. The Nature of Subject Matter Jurisdiction.

The jurisdiction of a court over the subject matter has been said to be essential, necessary, indispensable and an elementary prerequisite to the exercise of judicial power. 21 C.J.S., "Courts," § 18, p. 25. A court cannot proceed with a trial or make a judgment without such jurisdiction existing.

> It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. *Matter of Green,* 313 S.E.2d 193 (N.C.App. 1984).

Subject matter jurisdiction cannot be conferred by waiver or consent, and may be raised at any time. *Rodrigues v. State,* 441 So.2d 1129 (Fla.App. 1983). The subject matter jurisdiction of a criminal case is related to the cause of action in general, and more specifically to the alleged crime or offense which creates the action.

> The subject-matter of a criminal offense is the crime itself. Subject-matter in its broadest sense means the cause; the object; the thing in dispute. *Stillwell v. Markham,* 10 P.2d 15, 16 135 Kan. 206 (1932).

An indictment or complaint in a criminal case is the main means by which a court obtains subject matter jurisdiction, and is "the jurisdictional instrument upon which the accused stands trial." *State v. Chatmon,* 671 P.2d 531, 538 (Kan. 1983). The complaint is the foundation of the jurisdiction of the magistrate or court. Thus if these charging instruments are invalid, there is a lack of subject matter jurisdiction.

> Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime. *Honomichl v. State,* 333 N.W.2d 797, 798 (S.D. 1983).

> A formal accusation is essential for every trial of a crime. Without it the court acquires no jurisdiction to proceed, even with the consent of the parties, and where the indictment or information is invalid the court is without jurisdiction. *Ex parte Carlson,* 186 N.W. 722, 725, 176 Wis. 538 (1922).

Without a valid complaint any judgment or sentence rendered is "void ab initio" *Ralph v. Police Court of El Cerrito,* 190 P.2d 632, 634, 84 Cal. App.2d 257 (1948).

> Jurisdiction to try and punish for a crime cannot be acquired by the mere assertion of it, or invoked otherwise than in the mode prescribed by law, and if it is not so acquired or invoked any judgment is a nullity. 22 C.J.S., "Criminal Law," § 167, p. 202.

The charging instrument must not only be in the particular mode or form prescribed by the constitution and statute to be valid, but it also must contain reference to valid laws. Without a valid law, the charging instrument is insufficient and no subject matter jurisdiction exists for the matter to be tried.

> Where an information charges no crime, the court lacks jurisdiction to try the accused. *People v. Hardiman,* 347 N.W.2d 460, 462, 132 Mich.App. 382 (1984).

> [W]hether or not the complaint charges an offense is a jurisdictional matter. *Ex parte Carlson,* 186 N.W. 722, 725, 176 Wis. 538 (1922).

An invalid law charged against one in a criminal matter also negates subject matter jurisdiction by the sheer fact that it fails to create a cause of action. "Subject matter is the thing in controversy." *Holmes v. Mason,* 115 N.W. 770, 80 Neb. 454, citing *Black's Law Dictionary.* Without a valid law, there is no issue or controversy for a court to decide upon. Thus, where a law does not exist or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter jurisdiction to try one for an offense alleged under such a law.

> If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case. 22 C.J.S. "Criminal Law," § 157, p. 189; citing *People v. Katrinak,* 185 Cal.Rptr. 869, 136 Cal.App.3d 145 (1982).

> Where the offense charged does not exist, the trial court lacks jurisdiction. *State v. Christensen,* 329 N.W.2d 382, 383, 110 Wis.2d 538 (1983).

Not all statutes create a criminal offense. Thus where a man was charged with "a statute which does not create a criminal offense," such person was never legally charged with any crime or lawfully convicted because the trial court did not have "jurisdiction of the subject matter," *State ex rel. Hansen v. Rigg,* 258 Minn. 388, 104 N.W.2d 553 (1960). There must be a valid law in order for subject matter to exist.

In a case where a man was convicted of violating certain sections of some laws, he later claimed that the laws were unconstitutional which deprived the county court of jurisdiction to try him for those offenses. The Supreme Court of Oregon held:

> If these sections are unconstitutional, the law is void and an offense created by them is not a crime and a conviction under them cannot be a legal cause of imprisonment, for no court can acquire jurisdiction to try a person for acts which are made criminal only by an unconstitutional law. *Kelly v. Meyers,* 263 Pac. 903, 905 (Ore. 1928).

Without a valid law there can be no crime charged under that law, and where there is no crime or offense there is no controversy or cause of action, and without a cause of action there can be no subject matter jurisdiction to try a person accused of violating said law. The court then has no power or right to hear and decide a particular case involving such invalid or nonexistent laws.

These authorities and others make it clear that if there are no valid laws charged against a person, there is nothing that can be deemed a crime, and without a crime there is no subject matter jurisdiction. Further, invalid or unlawful laws make the complaint fatally defective and insufficient, and without a valid complaint there is a lack of subject mater jurisdiction.

The Accused asserts that the laws charged against him are not valid, or do not constitutionally exist as they do not conform to certain constitutional prerequisites, and thus are no laws at all, which prevents subject matter jurisdiction to the above-named court.

The complaints in question allege that the Accused has committed several crimes by the violation of certain laws which are listed in said complaints, to wit:

Intent to escape tax – M.S. §168.35
No Plates Affixed to Vehicle – M.S. §169.79
No insurance – M.S. §169.797, Subd. 2
No Minnesota Registration – M.S. §168.36
Driving after revocation – M.S. §171.24, Subd. 2

I have been informed that these laws or statutes used in the complaints against myself are located in and derived from a collection of books entitled "Minnesota Statutes." Upon looking up these laws in this publication, I realized that they do not adhere to several constitutional provisions of the Minnesota Constitution.

By Article 4 of the Constitution of Minnesota (1857), all lawmaking authority for the State is vested in the Legislature of Minnesota. This Article also prescribes certain forms, modes and procedures that must be followed in order for a valid law to exist under the Constitution. It is fundamental that nothing can be a law that is not enacted by the Legislature prescribed in the Constitution, *and* which fails to conform to constitutional forms, prerequisites or prohibitions. These are the grounds for challenging the subject matter jurisdiction of this court, since the validity of a law on a complaint or indictment goes to the jurisdiction of a court. The following explains in authoritative detail why the laws cited in the complaints against the Accused are not constitutionally valid laws.

II. By Constitutional Mandate, all Laws Must Have an Enacting Clause.

One of the forms that all laws are required to follow by the Constitution of Minnesota (1857), is that they contain an enacting style or clause. This provision is stated as follows:

> Article IV, Sec. 13. The style of all laws of this State shall be: "Be it enacted by the Legislature of the State of Minnesota."

None of the laws cited in the complaints against the Accused, as found in the "Minnesota Statutes," 1994, contain any enacting clauses.

The constitutional provision which prescribes an enacting clause for all laws is not directory, but is mandatory. This provision is to be strictly adhered to as asserted by the Supreme Court of Minnesota:

> Upon both principle and authority, we hold that article 4, § 13, of our constitution, which provides that "the style of all laws of this state shall be, 'Be it enacted by the legislature of the state of Minnesota,'" is mandatory, and that a statute without any enacting clause is void. *Sjoberg v. Security Savings & Loan Assn,* 73 Minn. 203, 212 (1898).

[Add other material here relating to the mandatory nature of enacting clauses]

III. What is the Purpose of the Constitutional Provision for an Enacting Clause?

To determine the validity of using laws without an exacting clause against citizens, we need to determine the purpose and function of an enacting clause; and also to see what problems or evils were intended to be avoided by including such a provision in our State Constitution. One object of the constitutional mandate for an enacting clause is to show that the law is one enacted by the legislative body which has been given the lawmaking authority under the Constitution.

> The purpose of thus prescribing an enacting clause—"the style of the acts"—is to establish it; to give it permanence, uniformity, and certainty; to identify the act of legislation as of the general assembly; to afford evidence of its legislative statutory nature; and to secure uniformity of identification, and thus prevent inadvertence, possibly mistake and

fraud. *State v. Patterson,* 4 S.E. 350, 352, 98 N.C. 660 (1887); 82 C.J.S. "Statutes," § 65, p. 104; *Joiner v. State,* 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

What is the object of the style of a bill or enacting clause anyway? To show the authority by which the bill is enacted into law; to show that the act comes from a place pointed out by the Constitution as the source of legislation. *Ferrill v. Keel,* 151 S.W. 269, 272, 105 Ark. 380 (1912).

To fulfill the purpose of identifying the lawmaking authority of a law, it has been repeatedly declared by the courts of this land that an enacting clause is to appear on the face of every law which the people are expected to follow and obey.

The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. The purpose of an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act. 73 Am. Jur.2d, "Statutes," § 93, p. 319, 320; *Preckel v. Byrne,* 243 N.W. 823, 826, 62 N.D. 356 (1932).

For an enacting clause to appear on the face of a law, it must be recorded or published with the law so that the public can readily identify the authority for that particular law which they are expected to follow. The "statutes" used in the complaints against the Accused have no enacting clauses. They thus cannot be identified as acts of legislation of the State of Minnesota pursuant to its lawmaking authority under Article IV of the Constitution of Minnesota (1857), since a law is mainly identified as a true and Constitutional law by way of its enacting clause. The Supreme Court of Georgia asserted that a statute must have an enacting clause, even though their State Constitution had no provision for the measure. The Court stated that an enacting clause establishes a law or statute as being a true and authentic law of the State:

The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity. *Joiner v. State,* 155 S.E.2d 8, 10 (Ga. 1967).

The failure of a law to display on its face an enacting clause deprives it of essential legality, and renders a statute which omits such clause as "a nullity and of no force of law." *Joiner v. State,* supra. The statutes cited in the complaints have no jurisdictional identity and are not authentic laws under the Constitution of Minnesota.

The Court of Appeals of Kentucky held that the constitutional provision requiring an enacting clause is a basic concept which has a direct affect upon the validity of a law. The Court, in dealing with a law that had contained no enacting clause, stated:

The alleged act or law in question is unnamed; it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for it. * * * By an enacting clause, the makers of the Constitution intended that the General Assembly should make its impress or seal, as it were, upon each enactment for the sake of identity, and to assume and show responsibility. * * * While the Constitution makes this a necessity, it did not originate it. The custom is in use practically everywhere, and is as old as parliamentary government, as old as king's decrees, and even they borrowed it. The decrees of Cyrus, King of Persia, which Holy Writ records, were not the first to be prefaced with a statement of authority. The law was delivered

> to Moses in the name of the Great I Am, and the prologue to the Great Commandments is no less majestic and impelling. But, whether these edicts and commands be promulgated by the Supreme Ruler or by petty kings, or by the sovereign people themselves, they have always begun with some such form as a evidence of power and authority. *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 172, 175, 160 Ky. 745 (1914).

The "laws" used against the Accused are unnamed. They show no sign of authority on their face as recorded in the "Minnesota Statutes." They carry with them no evidence that the Legislature of Minnesota, pursuant to Article IV of the Constitution of Minnesota (1857), is responsible for these laws. Without an enacting clause the laws referenced to in the complaints have no official evidence that they are from an authority which I am subject to or required to obey.

When the question of the "objects intended to be secured by the enacting clause provision" was before the Supreme Court of Minnesota, the Court held that such a clause was necessary to show the people who are to obey the law, the authority for their obedience. It was revealed that historically this was a main use for an enacting clause, and thus its use is a fundamental concept of law. The Court stated:

> All written laws, in all times and in all countries, whether in the form of decrees issued by absolute monarchs, or statutes enacted by king and council, or by a representative body, have, as a rule, expressed upon their face the authority by which they were promulgated or enacted. The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. If such an enacting clause is a mere matter of form, a relic of antiquity, serving no useful purpose, why should the constitutions of so many of our states require that all laws must have an enacting clause, and prescribe its form. If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted, so that the people who are to obey them need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a constitution, or unworthy of such an instrument, to prescribe a uniform style for such enacting clause.
>
> The words of the constitution, that the style of all laws of this state shall be, "Be it enacted by the legislature of the state of Minnesota," imply that all laws must be so expressed or declared, to the end that they may express upon their face the authority by which they were enacted; and, if they do not so declare, they are not laws of this state. *Sjoberg v. Security Savings & Loan Assn,* 73 Minn. 203, 212-214 (1898).

This case was initiated when it was discovered that the law relating to "building, loan and savings associations," had no enacting clause as it was printing in the statute book, "Laws 1897, c. 250." The Court made it clear that a law existing in that manner is "void" *Sjoberg,* supra, p. 214.

The purported laws in the complaints, which the Accused is said to have violated, are referenced to various laws found printed in the "Minnesota Statutes" book. I have looked up the laws charged against me in this book and found no enacting clause for any of these laws. A citizen is not expected or required to search through other records or books for the enacting authority. If such enacting authority is not "on the face" of

the laws which are referenced in a complaint, then "they are not laws of this state;" and thus are not laws to which I am subject. Since they are not laws of this State, the above-named Court has no subject matter jurisdiction, as there can be no crime which can exist from failing to follow laws which do not constitutionally exist.

In speaking on the necessity and purpose that each law be prefaced with an enacting clause, the Supreme Court of Tennessee quoted the first portion of the *Sjoberg* case cited above, and then stated:

> The purpose of provisions of this character is that all statutes may bear upon their faces a declaration of sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in the enforcement of laws. *State v. Burrow*, 104 S.W. 526, 529, 119 Tenn. 376 (1907).

The use of an enacting clause does not merely serve as a "flag" under which bills run the course through the legislative machinery. *Vaughn & Ragsdale Co. v. State Bd. of Eq.*, 96 P.2d 420, 424 (Mont. 1939). The enacting clause of a law goes to its substance, and is not merely procedural. *Morgan v. Murray*, 328 P.2d 644, 654 (Mont. 1958).

Any purported statute which has no enacting clause on its face, is not legally binding and obligatory upon the people, as it is not constitutionally a law at all. The Supreme Court of Michigan, in citing numerous authorities, said that an enacting clause was a requisite to a valid law since the enacting provision was mandatory:

> It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law. *People v. Dettenthaler*, 77 N.W. 450, 451, 118 Mich. 595 (1898); citing *Swann v. Buck*, 40 Miss. 270.

The laws in the "Minnesota Statutes" do not show on their face the authority by which they are adopted and promulgated. There is nothing on their face which declares they should be law, or that they are of the proper legislative authority in this State.

These and other authorities then all hold that the enacting clause of a law is to be "on its face." It must appear directly above the content or body of the law. To be on the face of the law does not and cannot mean that the enacting clause can be buried away in some other volume or some other book or records.

> **Face.** The surface of anything, especially the front, upper, or outer part or surface. That which particularly offers itself to the view of a spectator. That which is shown by the language employed, without any explanation, modification, or addition from extrinsic facts or evidence. *Black's Law Dictionary*, 5th ed., p. 530.

The enacting clause must be intrinsic to the law, and not "extrinsic" to it, that is, it cannot be hidden away in other records or books. Thus the enacting clause is regarded as part of the law, and has to appear directly with the law, on its face, so that one charged with said law knows the authority by which it exists.

IV. Laws Must be Published and Recorded with Enacting Clauses.

Since it has been repeatedly held that an enacting clause must appear "on the face" of a law, such a requirement affects the printing and publishing of laws. The fact that the constitution requires "all laws" to have an enacting clause makes it a requirement on not just bills within the legislature, but on published laws as well. If the constitution said "all bills" shall have an enacting clause, it probably could be said that their use in publications would not be required. But the historical usage and application of an enacting clause has been for them to be printed and published along with the body of the law, thus appearing "on the face" of the law.

It is obvious, then, that the enacting clause must be readily visible on the face of a statute in the common mode in which it is published so that citizens don't have to search through the legislative journals or other records and books to see the kind of clause used, or if any exists at all. Thus a law in a statute book without an enacting clause is not a valid publication of law. In regards to the validity of a law that was found in their statute books with a defective enacting clause, the Supreme Court of Nevada held:

> Our constitution expressly provided that the enacting clause *of every law* shall be, "The people of the state of Nevada, represented in senate and assembly, do enact as follows." This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the authority by which they were enacted; and, since this act comes to us without such authority appearing upon its face, it *is not a law." State of Nevada v. Rogers,* 10 Nev. 120, 261 (1875); approved in *Caine v. Robbins,* 131 P.2d 516, 518, 61 Nev. 416 (1942); *Kefauver v. Spurling,* 290 S.W. 14, 15 (Tenn. 1926).

The manner in which the law came to the court was by the way it was found in the statute book, cited by the Court as "Stat. 1875, 66," and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a law." It is only by inspecting the publicly printed statute book that the people can determine the source, authority and constitutional authenticity of the law they are expected to follow.

[Add other material here relating to the publication of statutes]

It should be noted that laws in the above cases were held to be void for having no enacting clauses despite the fact that they were published in an official statute book of the State, and were next to other laws which had the proper enacting clauses.

The preceding examples and declarations on the use and purpose of enacting clauses shows beyond doubt that nothing can be called or regarded as a law of this State which is published without an enacting clause on its face. Nothing can exist as a State law except in the manner prescribed by the State Constitution. One of those provisions is that "all laws" must bear on their face a specific enacting style—*"Be it enacted by the*

Legislature of the State of Minnesota." (Minn. Const., Art. IV, Sec. 13). All laws must be published with this clause in order to be valid laws, and since the "statutes" in the "Minnesota Statutes" are not so published, they are not valid laws of this State.

V. The Laws Referenced to in the Complaints Contain no Titles.

The laws listed in the complaints in question, as cited from the "Minnesota Statutes," contain no titles. All laws are to have titles indicating the subject matter of the law, as required by the Constitution of Minnesota:

> Article IV, Sec. 27. No law shall embrace more than one subject, which shall be expressed in its title.

By this provision a title is required to be on all laws. The title is another one of the forms of a law required by the Constitution. This type of constitutional provision "makes the title an essential part of every law," thus the title "is as much a part of the act as the body itself." *Leininger v. Alger,* 26 N.W.2d 348, 351, 316 Mich. 644 (1947).

> The title to a legislative act is a part thereof, and must clearly express the subject of legislation. *State v. Burlington & M. R.R. Co.,* 60 Neb. 741, 84 N.W. 254 (1900).

Nearly all legal authorities have held that the title is part of the act, especially when a constitutional provision for a title exists. 37 A.L.R. Annotated, pp. 948, 949. What then can be said of a law in which an essential part of it is missing, except that it is not a law under the State Constitution.

This provision of the State Constitution, providing that every law is to have a title expressing one subject, is mandatory and is to be followed in all laws, as stated by the Supreme Court of Minnesota:

> We pointed out that our constitutional debates indicated that the constitutional requirements relating to enactment of statutes were intended to be remedial and mandatory,—remedial, as guarding against recognized evils arising from loose and dangerous methods of conducting legislation, and mandatory, as requiring compliance by the legislature without discretion on its part to protect the public interest against such recognized evils, and that the validity of statutes should depend on compliance with such requirements * * *. *Bull v. King,* 286 N.W. 311, 313 (Minn. 1939).

The constitutional provisions for a title have been held in many other states to be mandatory in the highest sense. *State v. Beckman,* 185 S.W.2d 810, 816 (Mo. 1945); *Leininger v. Alger,* 26 N.W.2d 384, 316 Mich. 644; 82 C.J.S. "Statutes," § 64, p. 102. The provision for a title in the constitution "renders a title indispensable" 73 Am. Jur. 2d, "Statutes," § 99, p. 325, citing *People v. Monroe,* 349 Ill. 270, 182 N.E. 439. Since such provisions regarding a title are mandatory and indispensable, the existence of a title is necessary to the validity of the act. If a title does not exist, then it is not a law pursuant to Art. IV, Sec. 27 of the Constitution of Minnesota (1857). In speaking of the constitutional provision requiring one subject to be embraced in the title of each law, the Supreme Court of Tennessee stated:

> That requirement of the organic law is mandatory, and, unless obeyed in every instance, the legislation attempted is invalid and of no effect whatever. *State v. Yardley,* 32 S.W. 481, 482, 95 Tenn. 546 (1895).

To further determine the validity of citing laws in a complaint which have no titles, we must also look at the purpose for this constitutional provision, and the evils and problems which it was intended to prevent or defeat.

One of the aims and purposes for a title or caption to an act is to convey to the people who are to obey it the legislative intent behind the law.

> The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. *Megins v. City of Duluth,* 106 N.W. 89, 90, 97 Minn. 23 (1906); *Hyman v. State,* 9 S.W. 372, 373, 87 Tenn. 109 (1888).

> In ruling as to the precise meaning of the language employed in a statute, nothing, as we have said before, is more pertinent towards ascertaining the true intention of the legislative mind in the passage of the enactment than the legislature's own interpretation of the scope and purpose of the act, as contained in the caption. *Wimberly v. Georgia S. & F.R. Co.,* 63 S.E. 29, 5 Ga. App. 263 (1908).

> Under a constitutional provision * * * requiring the subject of the legislation to be expressed in the title, that portion of an act is often the very window through which the legislative intent may be seen. *State v. Clinton County,* 76 N.E. 986, 166 Ind. 162 (1906).

> The title of an act is necessarily a part of it, and in construing the act the title should be taken into consideration. *Glaser v. Rothschild,* 120 S.W. 1, 221 Mo. 180 (1909).

Without the title the intent of the legislature is concealed or cloaked from public view. Yet a specific purpose or function of a title to a law is to "protect the people against covert legislation" *Brown v. Clower,* 166 S.E.2d 363, 365, 225 Ga. 165 (1969). A title will reveal or give notice to the public of the general character of the legislation. However, the nature and intent of the "laws" in the "Minnesota Statutes" have been concealed and made uncertain by its nonuse of titles. The true nature of the subject matter of the laws therein is not made clear without titles. Thus another purpose of the title is to apprise the people of the nature of legislation, thereby preventing fraud or deception in regard to the laws they are to follow. The U.S. Supreme Court, in determining the purpose of such a provision in state constitutions, said:

> The purpose of the constitutional provision is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation. * * * Courts strictly enforce such provisions in cases that fall within the reasons on which they rest, * * * and hold that, in order to warrant the setting aside of enactments for failure to comply with the rule, the violation must be substantial and plain. *Posados v. Warner, B. & Co.,* 279 U.S. 340, 344 (1928); also *Internat. Shoe Co. v. Shartel,* 279 U.S. 429, 434 (1928).

The complete omission of a title is about as substantial and plain a violation of this constitutional provision as can exist. The laws cited in the complaints against the

Accused are of that nature. They have no titles at all, and thus are not laws under our State Constitution.

The Supreme Court of Idaho, in construing the purpose for its constitutional provision requiring a one-subject title on all laws, stated:

> The object of the title is to give a general statement of the subject-matter, and such a general statement will be sufficient to include all provisions of the act having a reasonable connection with the subject-matter mentioned. * * * The object or purpose of the clause in the Constitution * * * is to prevent the perpetration of fraud upon the members of the Legislature or the citizens of the state in the enactment of laws. *Ex parte Crane,* 151 Pac. 1006, 1010, 1011, 27 Idaho 671 (1915).

The Supreme Court of North Dakota, in speaking on its constitutional provision requiring titles on laws, stated that, "This provision is intended * * * to prevent all surprises or misapprehensions on the part of the public." *State v. McEnroe,* 283 N.W. 57, 61 (N.D. 1938). The Supreme Court of Minnesota, in speaking on Article 4, § 27 of the State Constitution, said:

> This section of the constitution is designed to prevent deception as to the nature or subject of legislative enactments. *State v. Rigg,* 109 N.W.2d 310, 314, 260 Minn. 141 (1961); *LeRoy v. Special Ind. Sch. Dist.,* 172 N.W.2d 764, 768 (Minn. 1969).
>
> [T]he purpose of the constitutional provision quoted is * * * to prevent misleading or deceiving the public as to the nature of an act by the title given it. *State v. Helmer,* 211 N.W. 3, 169 Minn. 221 (1926).

The purposes of the constitutional provision requiring a one-subject title, and the mischiefs which it was designed to prevent, are defeated by the lack of such a title on the face of a law which a citizen is charged with violating. Upon looking at the laws charged in the complaint from the "Minnesota Statutes," I am left asking, what is the subject and nature of the laws used in the complaints against me? What interests or rights are these laws intended to affect? Since the particular objects of the provision requiring a one-subject title are defeated by the publication of laws which are completely absent of a title, the use of such a publication to indict or charge citizens with violating such laws is fraudulent and obnoxious to the Constitution.

> It is to prevent surreptitious, inconsiderate, and misapprehended legislation, carelessly, inadvertently, or unintentionally enacted through stealth and fraud, and similar abuses, that the subject or object of a law is required to be stated in the title. 73 Am. Jur. 2d, "Statutes," § 100, p. 325, cases cited.

Judge Cooley says that the object of requiring a title is to "fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered." Cooley, *Const. Lim.,* p. 144. The State Constitution requires one-subject titles. The particular ends to be accomplished by requiring the title of a law are not fulfilled in the statutes referred to in the "Minnesota Statutes." Thus the laws charged in the complaints against me are not valid laws.

VI. The Minnesota Statutes are of an Unknown and Uncertain Authority.

The so called "statutes" in the "Minnesota Statutes" are not only absent enacting clauses, but are surrounded by other issues and facts which make their authority unknown or uncertain or questionable.

The title page of the "Minnesota Statutes" states that the statutes therein were, "Compiled, edited, and published by the Revisor of Statutes of Minnesota." It does not say that they are the official laws of the Legislature of Minnesota. The official laws of this state has always been listed in the "Session Laws" of Minnesota. The title page to the Session Laws makes it clear as to the nature of the laws therein, to wit—*"Session Laws of the State of Minnesota passed during the Forty-Fourth session of the State Legislature."* The Minnesota Statutes states that: "Minnesota Revised Statutes must not be cited, enumerated, or otherwise treated as a session law" (M.S. 3C.07, Subd. 1).

The "Session Laws" were also published by the Secretary of the State, who historically and constitutionally is in possession of the enrolled bills of the Legislature which become State law. The Constitution of Minnesota, Art. IV, Sec. 11 (1857) requires that every bill which passes both the Senate and House, and is signed by the Governor, is to be deposited "in the office of Secretary of State for preservation." Thus in this state, as in nearly all other states, all official laws, records, and documents are universally recognized by their being issued or published by the Secretary of State.

The "Minnesota Statutes" are published by the Revisor of Statutes, and are also copyrighted by him or his office. The "Session Laws" were never copyrighted as they are true public documents. In fact no true public document of this state or any state or of the United States has been or can be under a copyright. Public documents are in the public domain. A copyright infers a private right over the contents of a book, suggesting that the laws in the "Minnesota Statutes" are derived from a private source, and thus are not true public laws.

The Revisor of Statutes, in the preface to his statute book called "Minnesota Statutes," points out the difference in the various types of arrangements of laws, and states the following:

> In order to understand and use statutory law, it is necessary to know the meaning of the terms used and the inclusiveness and authority of the laws found in the various arrangements. The terms *laws, acts, statutes, revisions, compilations,* and *codes* are often used indiscriminately, but in the following discussion each has a specific meaning. "Minnesota Statutes," vol. I, p. x.

The Revisor then proceeds to point out the difference that exists between the "Session Laws" and that of a compilation, revision or code. He makes it apparent that the "Session Laws" are of a different authority than that of compilations, revisions and codes. The "Minnesota Statutes" are apparently a 'revision,' which was first published in 1945 (p. ix). The "Minnesota Statutes" appear to be nothing more than

a reference book, like "Dunnell Minnesota Digest," or "West's Minnesota Statutes Annotated," which are also copyrighted. The contents of such reference books cannot be used as law in charging citizens with crimes on criminal complaints.

The Revisor does not say that the statutes in his book are the official laws of the State of Minnesota. He indicates that these statutes are only in "theory" laws of the State (p. xii). There thus are many confusing and ambiguous statements made by the Revisor as to the nature and authority of the statutes in the "Minnesota Statutes." It is not at all made certain that they are laws pursuant to Article IV of the Constitution of Minnesota. That which is uncertain cannot be accepted as true or valid in law.

> Uncertain things are held for nothing. *Maxim of Law.*
>
> The law requires, not conjecture, but certainty. *Coffin v. Ogden,* 85 U.S. 120, 124.
>
> Where the law is uncertain, there is no law. *Bouvier's Law Dictionary,* vol. 2, "Maxims," 1880 edition.

The purported statutes in the "Minnesota Statutes" do not make it clear by what authority they exist. The statutes therein have no enacting authority on their face. In fact, their is not a hint that the Legislature of Minnesota had anything at all to do with these so-called statute books. Thus the statutes used against the Accused are just idle words which carry no authority of any kind on their face.

VII. Established Rules of Constitutional Construction.

The issue of subject matter jurisdiction for this case thus squarely rests upon certain provisions of the Constitution of Minnesota (1857), to wit:

> Article IV, Sec. 13. The style of all laws of this State shall be: "Be it enacted by the Legislature of the State of Minnesota."
>
> Article IV, Sec. 27. No law shall embrace more than one subject, which shall be expressed in its title.

These provisions are not in the least ambiguous or susceptible to any other interpretation than their plain and apparent meaning. The Supreme Court of Montana, in construing such provisions, said that they were "so plainly and clearly expressed and are so entirely free from ambiguity," that "there is nothing for the court to construe" *Vaughn & Ragsdale Co. v. State Bd. of Eq.,* 96 P.2d 420, 423, 424. The Supreme Court of Minnesota stated how these provisions are to be construed, when it was considering the meaning of a another provision under the legislative department (Art. 4, § 9):

> In treating of constitutional provisions, we believe it is the general rule among courts to regard them as mandatory, and not to leave it to the will or pleasure of a legislature to obey or disregard them. Where the language of the constitution is plain, we are not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. * * * The rule with reference to constitutional construction is also well stated by Johnson, J., in the case of Newell v. People, 7 N.Y. 9, 97, as

follows: "If the words embody a definite meaning, which involves no absurdity, and no contradiction between different parts of the same writing, then that meaning apparent upon the face of the instrument is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument; and neither courts nor legislatures have the right to add to or take away from that meaning. * * * It must be very plain,—nay, absolutely certain—that the people did not intend what the language they have employed in its natural signification imports, before a court will feel itself at liberty to depart from the plain reading of a constitutional provision." *State ex rel. v. Sutton,* 63 Minn. 147, 149, 150, 65 N.W. 262 (1895); affirmed, *State v. Holm,* 62 N.W.2d 52, 55, 56 (Minn. 1954); *Butler Taconite v. Roemer,* 282 N.W.2d 867, 870, 871 (Minn. 1979).

It is certain that the plain and apparent language of these Constitutional provisions are not followed in the publication known as the "Minnesota Statutes" which contain no titles and no enacting clauses, and thus it is not and cannot be used as the law of this State under our Constitution. No language could be plainer or clearer than that used in Art. 4, § 13 and § 27 of our Constitution. There is no room for construction! The contents of these provisions were written in ordinary language, making their meaning self-evident, as said by the Supreme Court of Minnesota:

In construing a provision of our constitution, however, we are governed by certain well-established rules. Foremost among these is the rule that, where the language used is clear, explicit, and unambiguous, the language of the provision itself is the best evidence of the intention of the framers of the constitution. If the language is free from obscurity, the courts must give it the ordinary meaning of the words used. *State v. Holm,* 62 N.W.2d 52, 55, (Minn. 1954).

No matter how much the courts of this State have relied upon and used the publication entitled "Minnesota Statutes" as being law, that use can never be regarded as an exception to the Constitution. To support this publication as law, it must be said that it is "absolutely certain" that the framers of the Constitution did not intend for titles and enacting clauses to be printed and published with all laws, but that they did intend for them to be all stripped away and concealed from public view when a compilation of statutes is made. Such an absurdity will gain the support or respect of no one. Nor can it be speculated that a revised statute publication which dispenses with all titles and enacting clauses must be allowed under the Constitution as it is more practical and convenient than the "Session Law" publication. The use of such speculation or desired exceptions can never be used in construing such plain and unambiguous provisions.

[T]he general rule of law is, when a statute or Constitution is plain and unambiguous, the court is not permitted to indulge in speculation concerning its meaning, nor whether it is the embodiment of great wisdom. A Constitution is intended to be framed in brief and precise language. * * * It is not within the province of the court to read an exception in the Constitution which the framers thereof did not see fit to enact therein. *Baskin v. State,* 232 Pac. 388, 389, 107 Okla. 272 (1925).

There is of course no need for construction or interpretation of these provisions as they have been adjudicated upon, especially those dealing with the use of an enacting

clause. The Supreme Court of Minnesota has made it clear that Art. 4, § 13 of our constitution "is mandatory, and that a statute without any enacting clause is void." *Sjoberg v. Security Savings & Loan Assn.*, 73 Minn. 203, 212. Being that the statutes used against me are without enacting clauses and titles they are void, which means there is no offense, no valid complaints, and thus no subject matter jurisdiction.

The provisions requiring an enacting clause and one-subject titles were adhered to with the publications known as the "Session Law" and "General Laws" for the State of Minnesota. But because certain people in government thought that they could devise a more convenient way of doing things without regard for provisions of the State Constitution, they devised the contrivance known as the "Minnesota Statutes," and then held it out to the public as being "law." This of course was fraud, subversion, and a great deception upon the people of this State which is now revealed and exposed.

There is no justification for deviating from or violating a written constitution. The "Minnesota Statutes" cannot be used as law, like the "Session Laws" were once used, solely because the circumstances have changed and we now have more laws to deal with. It cannot be said that the use and need of revised statutes without titles and enacting clauses must be justified due to expediency. New circumstances or needs do not change the meaning of constitutions, as Judge Cooley expressed:

> A constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion.* * * [A] court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. * * * What a court is to do, therefore, is *to declare the law as written*. T. M. Cooley, *A Treatise on the Constitutional Limitations*, 5th edition, pp. 54, 55.

There is great danger in looking beyond the constitution itself to ascertain its meaning and the rule for government. Looking at the Constitution alone, it is not at all possible to find support for the idea that the publication called the "Minnesota Statutes" is valid law of this State. The original intent of Article 4, §13 and §27 of the Constitution cannot be stretched to cover their use as such. These provisions cannot now be regarded as antiquated, unnecessary or of little importance, since "no section of a constitution should be considered superfluous." *Butler Taconite v. Roemer,* 282 N.W.2d 867, 870, (Minn. 1979). The Constitution was written for all times and circumstances, because it embodies fundamental principles which do not change with time.

Judges are not to consider the political or economic impact that might ensue from upholding the Constitution as written. They are to uphold it no matter what may result, as that ancient maxim of law states: *"Though the heavens may fall, let justice be done."*

MOTION

Based upon the above memorandum, the Accused moves that this action and cause be dismissed for lack of subject matter jurisdiction.

> A court lacking jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. *United States v. Siviglia,* 686 Fed.2d 832, 835 (1981), cases cited.

Nothing can be regarded as a law in this State which fails to conform to the constitutional prerequisites which call for an enacting clause and title. There is nothing in the complaints which can constitutionally be regarded as laws, and thus there is nothing in them which I am answerable for or which can be charged against me. Since there are no valid or constitutional laws charged against me there are no crimes that exist, consequently there is no subject matter jurisdiction by which I can be tried in the above-named court.

CAVEAT

I regard it as just and necessary to give fair warning to this court of the consequences of its failure to follow the Constitution of Minnesota and uphold its oath and duty in this matter, being that it can result in this court committing acts of treason, usurpation, and tyranny. Such trespasses would be clearly evident to the public, especially in light of the clear and unambiguous provisions of the Constitution that are involved here which leave no room for construction, and in light of the numerous adjudications upon them as herein stated. The possible breaches of law that may result by denying this motion are enumerated as follows:

1. The failure to uphold these clear and plain provision of our Constitution cannot be regarded as mere error in judgment, but deliberate USURPATION. "Usurpation is defined as unauthorized arbitrary assumption and exercise of power." *State ex rel. Danielson v. Village of Mound,* 234 Minn. 531, 543, 48 N.W.2d 855, 863 (1951). While error is only voidable, such usurpation is void.

> The boundary between an error in judgment and the usurpation of judicial power is this: The former is reversible by an appellate court and is, therefore, only voidable, which the latter is a nullity. *State v. Mandehr,* 209 N.W. 750, 752 (Minn. 1926).

To take jurisdiction where it clearly does not exist is usurpation, and no one is bound to follow acts of usurpation, and in fact it is a duty of citizens to disregard and disobey them since they are void and unenforceable.

> [N]o authority need be cited for the proposition that, when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable. *Hooker v. Boles,* 346 Fed.2d 285, 286 (1965).

The fact that the "Minnesota Statutes" has been in use for over forty years cannot be held as a justification to continue to usurp power and set aside the constitutional provisions which are contrary to such usurpation, as Judge Cooley stated:

> Acquiescence for no length of time can legalize a clear usurpation of power, where the people have plainly expressed their will in the Constitution. Cooley, *Constitutional Limitations,* p. 71.

2. To assume jurisdiction in this case would result in TREASON. Chief Justice John Marshall once stated:

> We [judges] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. *Cohens v. Virginia,* 6 Wheat. (19 U.S.) 264, 404 (1821).

The judge of this court took an oath to uphold and support the Constitution of Minnesota, and his blatant disregard of that obligation and allegiance can only result in an act of treason.

3. If this court departs from the clear meaning of the Constitution, it will be regarded as a blatant act of TYRANNY. Any exercise of power which is done without the support of law or beyond what the law allows is tyranny.

> It has been said, with much truth, "Where the law ends, tyranny begins." *Merritt v. Welsh,* 104 U.S. 694, 702 (1881).

The law, the Constitution, does not allow laws to exist without titles or enacting clauses. To go beyond that and allow the "Minnesota Statutes" to exist as "law" is nothing but tyranny. Tyranny and despotism exist where the will and pleasure of those in government is followed rather than established law. It has been repeatedly said and affirmed as a most basic principle of our government that, "this is a government of laws and not of men; and that there is no arbitrary power located in any individual or body of individuals." *Cotting v. Kansas City Stock Yards Co.,* 183 U.S. 79, 84 (1901). The Constitution requires that all laws have enacting clauses and titles. If these clear and unambiguous provisions of the State Constitution can be disregarded, then we no longer have a constitution in this State, and we no longer live under a government of laws but a government of men, i.e., a system that is governed by the arbitrary will of those in office. The creation of the "Minnesota Statutes" is a typical example of the arbitrary acts of government which have become all too prevalent in this century. Its use as law is a nullity under our Constitution.

Dated: February 26, 1996

John R. Smith
5384 Cedar Avenue
Minneapolis, Minnesota

-7-

Our Nonconstitutional Legal System

Many recognize that the legal system today does not follow constitutional law or the common law, as it once did, but is now operating under some other law. While it is generally agreed that we are under a different law and legal system, its exact nature seems to be in dispute. It has been said that we are under admiralty law, equity law and procedure, administrative rules, public policy, emergency measures, bankruptcy law, the war powers, international law, or martial law.

In a sense, all of these concepts are in part correct, since aspects of each of them are being arbitrarily followed. But none of them specifically state or identify the legal problem and situation. While the cause or source of the current corrupt law and legal system is to be found in the spiritual sector, there is a legal explanation for what is transpiring in the government and courts.

Constitutional Avoidance

The question many of us have often asked is, how can those who control the legal and judicial system avoid conflict with the constitution while implementing arbitrary and tyrannical laws and procedures?

The answer is that they make use of a concept known as "constitutional avoidance." By this basic concept it is never presumed that the legislature intended to act contrary to the Constitution or Bill of Rights, or that it "meant to exercise or usurp any unconstitutional authority."[1] Thus if a statute can be interpreted two ways, one which conflicts with the constitution, and one which does not, the courts will always adopt the interpretation that avoids constitutional conflict. They will also dispose of matters by some other means which does not involve the constitution if available.

> The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.[2]

> Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued. . .[3]

> A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.[4]

Thus a construction or decision which would be in conflict with the Constitution is to be avoided, if another is available that causes no conflict. In dealing with what it called a "nonconstitutional issue" the U.S. Supreme Court stated this rule of procedure:

> [T]he ordinary rule [is] that a federal court should not decide federal constitutional questions where a dispositive non-constitutional ground is available.[5]

---

1 *United States v. Coombs*, 12 Peters (37 U.S.) 72, 75 (1838); *San Gabriel County Water Dist. v. Richardson*, 68 Cal. App. 297, 229 P. 1055, 1056 (1924).

2 *Ashwander v. Valley Authority*, 297 U.S. 288, 347 (1935).

3 *Siler v. Louisville & Nashville R.R. Co.*, 213 U.S. 175, 193 (1908); *Light v. United States*, 220 U.S. 523, 538 (1910).

4 *Panama R.R. Co. v. Johnson*, 264 U.S. 375, 390 (1923); *United States v. Standard Brewery*, 251 U.S. 210, 220 (1919).

5 *Hagans v. Lavine*, 415 U.S. 528, 547 (1973).

Suppose that a Federal statute required all farmers to sell their grain to certain designated grain mills. One farmer had a contract with one of these grain mills to sell his grain to them. When the law is passed he stops sending his grain to that mill in protest of the law which is obviously not authorized by the Federal Constitution. The grain mill thus sues the farmer and the farmer claims that the statute which the grain mill bases its claim upon is unconstitutional. But as the record shows that the farmer was under a contract to sell his grain, the court holds that the farmer is required to sell his grain to the mill, and the statute appears to be held valid.

That contract became the "other ground" or the "nonconstitutional ground" upon which the matter can be settled. Thus if a non-constitutional ground exists, as well as an unconstitutional one, the issue will be decided upon the nonconstitutional ground to avoid conflict with the Constitution, no matter how much the statute involved might conflict with the Constitution. If there was no contract and thus no "other ground" existed, the court still would see if the statute could be interpreted in some reasonable way so as to avoid the conflict.

The concept of constitutional avoidance is basic and somewhat logical and just; but those who are in control of the current legal system have taken this principle and have expanded upon it and made it the basis of the system we now have. They have intentionally created other "nonconstitutional grounds" and "issues" to circumvent the application of constitutional law. They have done this through legislative action by creating a host of boards, commissions, agencies, bureaus and trusts which make up a rather new concept of law and government called "administrative law." The legal status of these entities is much like that of a corporation, which is also created by statute.

> The powers granted to an administrative body may be such as to establish it as a legal entity, and, although not expressly declared to be a corporation, it may be considered a public-quasi corporation.[6]

> The interstate Commerce Commission is a body corporate, with legal capacity to be a party plaintiff or defendant in the Federal courts.[7]

When a government is created by a compact or constitution, it too is in a sense a legal entity, or corporate body, but one which exists by the decree of the people or by the common law. But these administrative agencies or bodies, being creatures of statute, have a different relationship to the people than do the legislative, executive and judicial bodies created by the constitution. This point is critical since the relationship to an entity determines the authority for the "law" it might make.

These agencies and commissions are not true constitutional entities and have no common law authority being that they are created by the legislature. But, like a corporation, they also are not unconstitutional. Rather they are "non-constitutional" in nature, which simply means their existence does not come from the constitution. Thus, the problems and conflicts citizens have with these "legal entities" can be decided on some ground other than a constitutional one. It becomes an issue that can be decided without reference to the Constitution, as they are not its creatures.

> No creature of the Constitution has power to question its authority or to hold inoperative any section or provision of it. [8]

---

6 73 *Corpus Juris Secundum*, "Public Administrative Law and Procedure," § 10, p. 372, citing *Parker v. Unemployment Compensation Commission*, 214 S.W.2d 529, 358 Mo. 365.

7 *Texas & Pacific Railway v. Interstate Commerce Com.*, 162 U.S. 197 (1895). In 2 Am Jur 2d, "Administrative Law," § 32, p. 56, it states: "Some administrative agencies are corporate bodies with legal capacity to sue or be sued."

8 *Commonwealth v. Illinois Cent. R. Co.*, 170 S.W. 171, 175, 160 Ky. 745 (1914).

Artificial legal entities are creatures of the legislature, and are not "creatures of the constitution." Therefore they are not bound to the terms or limitations of the constitution, except as statute might make them. Thus when citizens have a conflict with these entities, the issue can be resolved upon a "nonconstitutional ground," not the constitution. The Internal Revenue Service is a typical example, as it is not a creature of the U.S. Constitution nor does it have common law powers. It is a mechanism created by government and thus any conflicts with it can be decided upon grounds other than the Constitution – nonconstitutional grounds.

The constitution with its requirements and limitations has been avoided by creating a *nonconstitutional* entity. The activities of such entities are generally immune from attack as being *unconstitutional.* This is especially so today with the adverse spiritual conditions that prevail in the land.

The Federal Reserve is another example of this, as it is an artificial legal entity created by Congress. While it is true its "Federal Reserve Notes" are not constitutional, since such things are obviously not specifically authorized by the U.S. Constitution, they also are not *unconstitutional,* since Congress is not printing or issuing the paper currency. Congress is clearly prohibited from doing such things since it is a constitutional entity and its actions are limited by the Constitution. But a corporation or trust is not. So to avoid constitutional conflict, certain lawyers got Congress to create an artificial legal entity and then let that entity issue the paper currency. It is no different if a corporation would print and issue its own "Monopoly" money. Such a measure is not unconstitutional because the corporation is not a constitutional entity. Thus all constitutional issues have been avoided with the creation of the Federal Reserve.

Whatever area these nonconstitutional legal entities have control over, they function to avoid conflict with the constitution and due process procedures. It is true that we are not legally bound to follow the laws of these entities, or to use or accept Federal Reserve Notes. Since the *powers that be* have avoided the Constitution, there must be a way in which we can legally avoid their nonconstitutional activities, rules and laws. This can be done by declaring a lack of authority and subject matter jurisdiction because of the lack of valid law from the Legislature or Congress.

Under the Christian republic of the past the problems associated with this "administrative law" would have been minimal or less severe. But America, and the world, has become plagued with an ungodly spiritual condition which has magnified these problems. Though this adverse spiritual problem is the source of the legal problems and dilemma we face today, the nature and reasons for it are beyond the scope of this treatise. But the spiritual realm does affect the legal realm, and it has made these legal entities created by statute a severe problem with regards to freedom and individual rights.

Nonconstitutional Laws

A law is constitutional if it conforms to the written constitution of the state or nation; it is unconstitutional if it is repugnant to that constitution. But this is based upon the presumption that the law was enacted and passed by the constitutional body which is authorized to do so. In other words, the law comes from a "creature of the Constitution."

The commissions, committees, or revisors who drafted the codes and the comprehensive revised statutes in this country are not "creatures" of any constitution. They are a creation of the legislature or Congress and thus are creatures of statute. The "laws" they write are not subject to any constitution. Thus any conflict a citizen might have with their laws is not subject to a constitutional attack. As nonconstitutional entities there is no constitutional issue that can be raised. Thus

any constitutional issue raised will be avoided and the matter decided on other grounds.

Suppose the parliament of France passes a law that prohibits anyone from having over 200 dollars on them while in public, and any violation thereof shall be punished by 90 days imprisonment. That law cannot be called a constitutional law from the perspective of the U.S. Constitution, since it did not come from Congress. But it also cannot be called unconstitutional, no matter how oppressive it is or how contrary it is to the U.S. Constitution. Such a law could only be regarded as being "nonconstitutional" in nature.

Suppose now that you happen to be charged with violating this law by the Federal Government. In your defense you argue in court that this law violates your rights under the 4th and 5th Amendments, and is repugnant to the Constitution. The judge ignores your arguments and holds that the law is not "unconstitutional." The court would, of course, be correct but it would seem to you and everyone else that the court is corrupt and has no regard for the U.S. Constitution.

When the nature of this law is made known the decision of the court makes sense. The law was not a law of Congress, though it might have been presented as such, but rather was a law from another legal body. The clue should have been clear to all by the fact that the law in question did not have an enacting clause for Congress that said:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

The law in question was nonconstitutional because it came from a nonconstitutional source. This is because the French Parliament is not subject to the U.S. Constitution. While you are subject to certain laws that Congress can enact under the Constitution, you are not subject to laws of the French Parliament. But your failure to raise this fact of the non-constitutional law created the implication that you were subject to the law. Your position should have been that there is no valid law of Congress on the indictment, which makes the indictment insufficient, which causes a lack of subject matter jurisdiction of the court.

The French Parliament cannot pass any unconstitutional laws because their legislative authority does not come from the constitution, nor are they legally bound to its terms as is Congress. From our perspective in America, all laws passed by this assembly are nonconstitutional, that is, they have no relation to the U.S Constitution or any state constitution. But if one fails to point this matter out in court, such laws will be used against him.

This same situation is what is occurring with the current legal system. The laws we are being charged with violating are written by commissions and committees, and are held out to the public as being laws of the State or nation. But we are not required to follow these laws as they do not come from a constitutional source. Congress and the State legislatures have created these legal entities to write laws which are based upon laws they once passed, so as to make it appear they are laws of Congress or the Legislature.

If the California Legislature passes a law and then the Legislature of Texas copies that law verbatim and enacts it as a law, no one can look at what the Legislature of Texas wrote and enacted and say it is a California law. If a prosecutor in California had the Texas Statute book which contains this law and cited from it on a complaint, would that make a valid complaint? No, it wouldn't because the law is not a law of the California Legislature, as it does not have the enacting clause of the California Legislature. The fact that the California Legislature passed an identical law is irrelevant because that law is not referred to in the complaint. Likewise, the laws from the commissions and committees do not become

laws of the State Legislature just because they are similar to laws once passed by that Legislature. The laws of these entities do not have the enacting clause of the Legislature.

Let us look at another example of this problem. Suppose that General Motors corporation passed a regulation or by-law which prohibited anyone from parking their car in neutral gear. You are caught doing so and your car is towed away by the city, and you are charged for violating this regulation by the State. The complaint or indictment might cite the regulation as GMR 142.65, subd. c (GMR=General Motors Regulations).

If you argue that the law or regulation is a violation of the Bill of Rights, or is unconstitutional, you shall not prevail because General Motors cannot do anything unconstitutional, nor can they violate your rights of life, liberty and property as prescribed by the Bill of Rights. They can commit torts, trespasses, false imprisonments, thefts, and damages, but they can never write a rule, regulation or by-law which would violate your rights under the Constitution. As a corporation, General Motors is not subject to the limitations of the Constitution. Only duly constituted offices, departments or positions under the constitution, or which exist by the common law, are subject to the constitution. Only these entities can do something "unconstitutional." Thus your claim that the law violates your constitutional rights and exceeds the limits of the Constitution would be denied and held as frivolous.

It is true that the Regulation of General Motors (GMR 142.65, subd. c.) is not a constitutional law, but it also is not an unconstitutional law. It is a "nonconstitutional law," meaning it comes from a source outside the realm of the constitution, because General Motors is not a constitutional entity. The law passed by General Motors has no authority behind it which would make you obligated to follow it. The law contains no enacting clause showing that it comes from the State Legislature or some authority to which you are subject. There is no obligation on your part to follow the law because there is no legal relationship between you and General Motors. If one is an employee of General Motors the law might apply to him, since some manner of legal relationship then exists. But the law could not apply to employees of other companies.

Creating an Issue for Trial

The issue of a trial or hearing exists when the plaintiff and defendant arrive at some specific point or matter in which one affirms and the other denies.[9] In a criminal matter this issue is that a law has or has not been violated. But if there is no valid law, or the accused is not subject to the law in question, no issue can legally exist as the basis for the point of contention does not legally exist.

The current corrupt legal system has actually sown its own seeds of destruction by arbitrarily forming codes and statute revisions. All complaints or indictments today cite laws from these codes and revised statute books which contain no enacting clauses. Any law which fails to have an enacting clause is not a law of the legislative body to which we are constitutionally subject. The laws from the U.S. Code or Revised Statutes of the State are from another legal entity, that being some commission or committee.

Since there are no valid laws on the complaint or indictment, there legally is no issue before the court. But the court system creates an issue by asking the accused how he pleads to the charges. The plea causes an issue to exist because it creates a controversy. The controversy relates to what is on the complaint or indictment because the plea acknowledges that it is a genuine document.

9 Black's Law Dictionary, 2d ed., West Publishing, 1910, p. 657.

> The very act of pleading to it [an indictment] admits its genuineness as a record.[10]

If there is a law on the complaint which is unconstitutional, or is from another state or other legal entity, the violation of that law can become a triable issue by way of the plea. Thus when one pleads to a false or invalid charge on the complaint, he establishes an issue which would not have otherwise existed.

> The plea forms the issue to be tried, without which there is nothing before the court or jury for trial.[11]

It is essential to a valid trial that in some way there should be an issue between the state and the accused, and without a plea, there could be no issue.[12] If you make a plea of "not guilty" to the charge of violating GMR 142.65, subd. c, or the law of the French Parliament, you have admitted or acknowledged that the law used in the complaint is genuine. It has now been established that there exists an issue which can be tried. When one is charged for violating a zoning ordinance, driving without a license, or failure to file an income tax return, and a plea of "not guilty" is made, one has in effect acquiesced to the validity of these laws. The only way one can prevail is by showing they did not commit them, or by showing they are unconstitutional. But since these are nonconstitutional laws of some committee or commission, such constitutional arguments will not work. The one thing that can stop this procedure is showing a lack of subject matter jurisdiction, which can be shown because the laws used have no enacting clauses and are thus void. It now is an issue of authority for that law to exist as a law of the state or Congress.

When you are charged with a violation of some "Code" of some committee, the court proceedings are in *equity* since your conflict is not with a constitutional source of law, or with a common law crime.

The legal system today does not recognize or proceed upon common law crimes, and thus the only things that are crimes are made so by statute (or rather code). A crime exists when a law exists which prohibits or commands an action. If there is no law, there can be no crime, and if there is no crime, there can be no subject-matter jurisdiction of the court to hear a matter. A nonconstitutional law has the same effect upon a complaint or indictment as does an unconstitutional law or a non-existent law. It renders the charging instrument void.

A nonconstitutional law is not a law to which we are subject, so doing what it prohibits cannot constitute a crime. Thus if General Motors passes a law requiring all persons to show up for work by 6:00 A.M. or they will lose their jobs, it is a nonconstitutional law. Unless one is an employee of General Motors, he is not subject to that law and so cannot be charged for violating it. Because it is a nonconstitutional law it is has no force and effect as a law over you and the court lacks subject matter jurisdiction to try the matter.

Only a constitutionally established government, or that which exists by the common law, (sheriffs, constables, coroners, mayors, etc.), can do something that is unconstitutional. Only the State Legislature is limited by the provisions of the State Constitution regarding laws enacted. Thus only the State Legislature can enact an unconstitutional law or statute. General Motors, Inc., or the Parliament of France, can pass all sorts of rules, regulations and laws, but none of them can ever be declared unconstitutional. But they are not valid laws which we are subject to, for we have no legal relationship to these entities. Likewise, we have no legal relationship to the commissions which drafted the modern-day "Codes" or "Revised Statutes."

10 *Frisbie v. United States*, 157 U.S. 160, 165 (1894).

11 *Koscielski v. State*, 158 N.E. 902, 903 (Ind. 1927); *Andrews v. State*, 146 N.E. 817, 196 Ind. 12 (1925); *State v. Acton*, 160 Atl. 217, 218 (N.J. 1932).

12 *United States v. Aurandt*, 107 Pac. 1064, 1065 (N.M. 1910).

-- 8 --

Conclusions and Comments

The comprehensive codes and revised statutes that exist today are but a clandestine means to subject citizens to some legal entity other than the State Legislature or Congress. They also serve as a clandestine means to bring laws into existence that are not limited to the confines of a constitution or the common law. While these codes were intended to solve the problem of massive amounts of law, they have created even bigger problems.

There is no way anyone can say that it was the intent of the framers of the Constitution, and the people who adopted it, to have all titles and enacting clauses stripped away from all the laws when they are published. Such a measure totally defeats the purpose for which these forms of law were intended and thus required in the State constitutions. In Washington it was held that the compilation entitled "Revised Code of Washington . . . is not the law."[1]

It has been repeatedly said that the comprehensive codes were done for the sake of "convenience." It also has been said that it would not be practicable to have the enacting clause or title precede every law within a revision or comprehensive code.[2] But note that nothing is ever raised or said about the constitutionality of such a measure. If those in government are free to do things based solely upon what they deem to be more practicable or convenient, then we truly live under an arbitrary and despotic government.

> The necessities of a particular case will not justify a departure from the organic law. It is by such insidious process and gradual encroachment that constitutional limitations and government by the people are weakened and eventually destroyed. It has been well said:
>
> "One step taken by the Legislature or judiciary in enlarging the powers of government opens the door for another, which will be sure to follow, and so the process goes on until all respect for the fundamental law is lost, and the powers of government are just what those in authority please to make or call them." Oakley v. Aspinwall, 3 N.Y. 547, 568.[3]

Constitutions were written to prescribe certain ways of doing things, which means there will no doubt be other means of doing the same thing which are easier and more convenient. Governments naturally tend do that which is easier, more convenient and practical for their own sake. Whenever they do so they always transcend constitutional limitations and trespass on individual rights, and all of history attests that this is the result of arbitrary action.

The enacting clause acts as a sign or seal of constitutional authority of law. A king may have a seal which indicates his authority. All things that bear the seal of the king are recognized as existing by his authority. If a king's agent presents a document claiming it is from the king but has not his seal, many may believe it is by the authority of the king, though it is not. This is what the government has done with the codes and revised statutes. It has presented to the public a collection of statute books, claiming they are from the State Legislature or Congress, but the laws in them do not have the seal of authority upon them. They do not have the official enacting clause upon them to indicate they are laws from an authorized source. They thus are laws which no one needs to respect or obey.

---

1 *In re Self v. Rhay*, 61 Wash. (2d) 261, 264, 265, 377 P. (2d) 885 (1963).

2 This argument is also not sound as the Illinois revised statutes had been compiled with titles and enacting clauses.

3 *Village of Ridgefield Park v. Bergen Co. Bd. of Tax.*, 162 A.2d 132, 134, 135, 62 N.J. Super. 133 (1960); citing *State v. Burrow*, 104 S.W. 526, 527, 119 Tenn. 376 (1907).