

- 33 4. Rights secured by the constitutions to the individual are the "blessings of
34 Liberty"⁴ some of which are described in the bill of rights. These blessings are
35 understood by all to be "Life, Liberty and Happiness"⁵. "Happiness" is
36 understood by all primarily to mean "right to own property".
- 37 5. Individual property ownership⁶ is the exclusive province (territory⁷) of the owner⁸.
38 Lacking consent by the owner, use is barred to any other than the owner by right
39 secured by the constitutions. Use absent such consent is prima facie evidence
40 of the existence of a harm or injury upon the owner. The Individual owns his own
41 life, liberty and Property and Rights are also a property interest.
- 42 6. All public property is the property belonging to the people collectively.
43 Governments and their agents are merely trustees of that property⁹.
- 44 7. Possession¹⁰ of public property by one of the people is evidence of quasi-
45 ownership where no better title exists. As such, Title to public property is no

⁴ See Preamble to the Constitution for the United States of America

⁵ See para 2 line one Declaration of Independence.

⁶ WEBSTER: A right of ownership is associated with property that establishes the good as being "one's own thing" in relation to other individuals or groups, assuring the owner the exclusive right to dispense with the property in a manner he or she sees fit, whether to use or not use, exclude others from using, or to transfer ownership.

⁷ bouvier 1856 TERRITORY. 1. A part of a country, separated from the rest, and subject to a particular jurisdiction. The word is derived from terreo, and is so called because the magistrate within his jurisdiction has the power of inspiring a salutary fear. 2. The constitution of the United States, art. 4, s. 3, provides, that "the congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States; and nothing in this constitution shall be construed, so as to preclude the claims of the United States or of any state."

⁸ Jurisdiction: Generally.--Jurisdiction may be defined as the power to create legal interests. In the famous case of *Pennoyer v. Neff*,⁷⁷ the Court enunciated two principles of jurisdiction respecting the States in a federal system. First, "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and, second, "no State can exercise direct jurisdiction and authority over persons or property without its territory."⁷⁸ Although these two principles were drawn from the writings of Joseph Story refining the theories of continental jurists,⁷⁹ the constitutional basis for them was deemed to be in the due process clause of the Fourteenth Amendment.⁸⁰ From these beginnings, the Court developed a complex set of rules defining when jurisdiction--physical power--could be exerted over persons through in personam actions and over things, generally, through actions in rem.⁸¹

⁹ The municipality, which is a mere trustee of the public, and holds the streets and alleys in trust for that public, cannot deny the right of the public to use the streets and alleys. It cannot assume an exclusive ownership, and deny the rights of the beneficiaries under their trust, and arrogate to itself a power greater than that of a mere trustee, and prevent the use of the streets and alleys by individual members of the public. The right of the public to use the streets is the right to use them for purposes of travel in the recognized methods in which the public highways of the state are used. Any method of travel may be adopted by individual members of the public which is an ordinary method of locomotion, or even an extraordinary method, if it is not, of itself, calculated to prevent a reasonably safe use of the streets by others. *City of Chicago v Collins et al.*, Supreme Court of Illinois, 175 Ill. 445, 51 N.E. 907 (Oct. 24, 1898).

¹⁰WEBSTER: Possession is a property interest under which an individual is able to exercise power over something to the exclusion of all others. It is a basic property right that entitles the possessor to (1) the right to continue

46 better in one or a group of the people than in any other of the people.

47 Possession is a means by which right and title is measured¹¹. Respecting the
48 public right of way, I possess the land where my auto is and there is no better
49 title existing than my possession. This is a necessary element of liberty. There
50 can be no liberty without a right to be where you are. Your Liberty right is as
51 authoritative as ownership.

52 **Summary of the principles of law next above provided;**

53 The State has a sovereign power over its territory. Same for an individual of the people.
54 However that State territory is ever changing its character as individuals take and
55 release possession of parts thereof as an operation of their Liberty Right and their equal
56 Ownership of that territory with others of the people and as an operation of the Right of
57 possession as herein described. As such the volume of State territory is diminished by
58 a portion thereof being possessed by the individual while in possession thereof and
59 increased as that individual dispossesses it. The individual owns equally, with all other
60 individuals within the State, the State itself and all the territory within the State, that
61 equal ownership rises to private ownership by right of possession that is a necessary
62 element of the Right of Liberty, and the State nor the collective people that own it can
63 produce higher title than that of the individual in possession. The individual Liberty
64 Right is dependent upon this construction because the individual Right of Liberty must
65 be supported by a property Right without which Liberty could not be a Right at all.

66
67 While it is agreed by all that the State or Fed can lawfully wield sole dominion over their
68 territory, they are not authorized to do so over the Rights retained by the people
69 themselves. In fact. The Federal Constitution prohibits the state from having power
70 over the Life, Liberty and Property of the individual people. Since the Liberty Right of
71 the individual people divests both the Fed and State of elements of its territory as an

peaceful possession against everyone except someone having a superior right; (2) the right to recover a chattel that has been wrongfully taken; and (3) the right to recover damages against wrongdoers. Possession requires a degree of actual control over the object, coupled with the intent to possess and exclude others. The law recognizes two basic types of possession: actual and constructive.

¹¹ Duffey v. Rafferty, 15 Kan. 9 "mere priority of possession gives precedence where no better title can be shown as belonging to either." Meaning; where a man stands no other man or group of men can lawfully charge him rent on that place nor force him to move against his consent and so long as the man does not obstruct the liberty of another there can be no lawful State or Local regulatory interest that can alter that fact

72 operation of Liberty and possession, the territory which is actually possessed by one of
73 the people does not have the character of being State or Fed domain. As such, during
74 that period when the piece of land is not the territory of the State, the state retains no
75 authority to determine conditions on its use as that determination is within the sole
76 province of the individual who possesses it. As such, the State office holder has no
77 standing under its police power to restrain such an individual for not adhering to a State
78 Rule such as licensing, parking etc.. Same goes for local governments. The fact that
79 both the fed and State do restrain individuals under such circumstances must be
80 overreaching of its sovereign power and an injury to the object of that restraint.

81

82 **DUE PROCESS FACTS AND LAW**

83

84 While the general wisdom of both the contemporary federal and state legal communities
85 recognize due process to be simply "notice and opportunity to be heard". Due process,
86 as in *Ekern v. McGovern*¹² is far more than just that. It is the Due Process of the
87 Common law as adjusted for this American Society and every department and agent of
88 government is bound to know and observe it rightly¹³. That due process has been in
89 place since at least 1215 AD in the Magna Charta and hasn't changed in substance
90 from that day to this, as it is immutable.

91

92 Due process conditions acts of all agents of government and failure to meet that due
93 process mandate results in loss of jurisdiction over the subject matter¹⁴ and the person
94 and thrusts the office holder out of the office and into their own private capacity when

¹² : "Due process of law does not mean merely according to the will of the Legislature, or the will of some judicial or quasi-judicial body upon whom it may confer authority. It means according to the law of the land, including the Constitution with its guaranties and the legislative enactments and rules duly made by its authority, so far as they are consistent with constitutional limitations." *Ekern v. McGovern*, 154 Wis. 157, 142 N.W. 595, 620 (1913)

¹³ "Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process", Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 – *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

¹⁴ *The U.S. Supreme Court, in Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person).

95 their acts exceed the authority of the office¹⁵. This fact applies to judges, as well as all
96 other officeholders.

97

98 In addition to the facts related in the previous paragraph, all office holders are required
99 to know the law of this land and to observe and apply it rightly¹⁶ or risk losing their
100 immunity by losing jurisdiction over the subject matter. The law of this Land is the
101 organic Constitutions, both Federal and State. Common among them is right to due
102 process of law as was comprehended by the framers that included those laws into our
103 constitutions in the 4th, 5th, 6th, 9th and 10th Amendments and state counterparts. The
104 Framers understood Due Process of law to mean Due Process of the Common Law as
105 existed during the 4th year of the reign of King James 1st of England as evidenced by a
106 bill of right passed in 1297 AD¹⁷.

107

108 Due Process of the Common Law then is; (in addition to fn 9) 1. That no freeman will
109 be harmed in any way where he has harmed no one¹⁸; 2. That No government official
110 may be a witness in court. And if he is going to impose his law on another, then he must
111 have the support of non-government witnesses (2 or more). Witnesses paid by the
112 government are not considered faithful witnesses¹⁹; 3. That there will be no government

¹⁵ Should the judge not have subject-matter jurisdiction, then the law states that the judge has not only violated the law, but is also a trespasser of the law. *Von Kettler et. al. v Johnson*, 57 Ill. 109 (1870) ("if the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers."); *Elliott v Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) ("without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.

¹⁶ **MAGNA CHARTA** (some elements material to this action):

ARTICLE 45. "We will not make men justices, constables, sheriffs, or bailiffs, unless they are such as know the law of the realm, and are minded to observe it rightly."

MEANING IN THIS SOCIETY: Officials must be knowledgeable about the law, and willing to apply it rightly and obey it as a condition of their office of trust.

¹⁷ **CONFIRMATIO CHARTARUM LAT.** Confirmation of the charters. A Statute passed in the 25 Edw. I., whereby the Great Charter is declared to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word or deed or counsel, act contrary thereto or in any degree infringe it. 1 Bl. Comm. 128. ; Blacks Law dict 1st page 250 October 10, 1297, 25 Edw. i, c. i. Danby Pickering (ed.), Statutes at Large (Cambridge, 1726-1807), I, 273-75. Declares the Magna Charta to be the common law of England and was so declared during the era eluded to in #1 above

¹⁸ **ARTICLE 39:** "No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed--nor will we go upon or send upon him--save by the lawful judgment of his peers or by the law of the land."

¹⁹ **ARTICLE 38.** "No bailiff, on his own simple assertion, shall henceforth put any one to his law, without producing faithful witnesses in evidence."

113 interference with the court of a freeman²⁰; 4. That prosecution on your behalf in pursuit
114 of right or justice is guaranteed²¹. Due process of the common law as is represented
115 here is not alterable by any court or legislature in America and is therefore the supreme
116 law of this land as comprehended by the 4th, 5th, 6th, 9th and 10th Amendments, the 14th
117 amendment or the Selective Incorporation doctrine notwithstanding.

118
119 Breach of these or any statutory due process protections causes loss of jurisdiction and
120 all office holders who so breach and continue to act under color of law while in that
121 breach are doing so on their own private behalf and without governmental authority or
122 immunity. If they injure another they are personally liable for that act that injures in
123 exactly the same way as any criminal would be. Those who hide their crime²² by failing
124 to observe the law of this land rightly²³ are accomplices to the original act²⁴.

125

126 SUMMARY

127 **The preceding principles of law and due process are the unassailable Law**
128 **of this land and they combine to bar every department of government and**
129 **every agent and office holder thereof from interfering with Oyer's**

²⁰ **ARTICLE 34.** "Henceforth the writ which is called Praecipe shall not be served on any one for any holding so as to cause a free man to lose his court. "

²¹ **ARTICLE 40.** "To none will we sell, to none deny or delay, right or justice. "

²² The United States Supreme Court recently acknowledged the judicial corruption in Cook County, when it stated that Judge "Maloney was one of many dishonest judges exposed and convicted through 'Operation Greylord', a labyrinthine federal investigation of judicial corruption in Chicago". Bracey v. Gramley, case No. 96-6133 (June 9, 1997). Since judges who do not report the criminal activities of other judges become principals in the criminal activity, 18 U.S.C. Section 1, and since no judges have reported the criminal activity of the judges who have been convicted, the other judges are as guilty as the convicted judges.

²³ "Knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes 'notice' of everything which such inquiry pursued in good faith would disclose. Twitchell v. Nelson, 131 Minn. 375, 155 N.W. 621, 624; German-American Nat. Bank of Lincoln v. Martin, 277 Ill. 629, 115 N.E. 721, 729." Black's Law Dictionary, 4th Ed., p. 1210.

²⁴ OWEN VS. CITY OF INDEPENDENCE, MO. Because the question of the scope of a municipality's immunity from liability under 1983 is essentially one of statutory construction, see Wood v. Strickland, 420 U.S. 308, 314, 316 (1975); Tenney v. Brandhove, 341 U.S. 367, 376 (1951), the starting point in our analysis must be the language of the statute itself. Andrus v. Allard, 444 U.S. 51, 56 (1979); Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975) (POWELL, J., concurring). By its terms, 1983 "creates a species of tort liability that on its face admits of no immunities." Imbler v. Pachtman, 424 U.S. 409, 417 (1976). Its language is absolute and unqualified; no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the Act imposes liability upon "every person" who, under color of state law or custom, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."

130 **Dominion over his Life, his Liberty and his property without probable**
131 **cause he has injured another, the greater good for the greater number**
132 **notwithstanding.**

133 John Michael Oyer avers that agents of the City of Kansas City, Mo has failed
134 to bring an action for which this court can lawfully provide a remedy because
135 the action complained of is an individually retained prerogative right of action
136 protected by the controlling constitutions because the action exists and is
137 performed solely at the prerogative Right of John Michael Oyer upon which no
138 government entity was or even could be granted authority to prohibit nor charge
139 money for the use of a right by one of the people. Whereas the City of Kansas
140 City nor the State of Missouri hold all right and title in the public right of way,
141 and whereas a condition of Oyer's liberty right is that where no better title is
142 apparent as is the condition on the public right of way, possession is sufficient
143 title; Duffey v. Rafferty, 15 Kan. 9 "mere priority of possession gives
144 precedence where no better title can be shown as belonging to either." Meaning
145 where a man stands no other man or group of men can lawfully charge him rent
146 on that place nor force him to move against his consent and so long as the man
147 does not obstruct the liberty of another there can be no lawful State or Local
148 regulatory interest.

149 **WHEREFORE;** John Michael Oyer, sui juris, appearing specially, demands this
150 court to take the only action it lawfully has available to it which is to dismiss above
151 stated cases with prejudice and order return of Oyer's Auto, in comprehension of
152 defendants testimony, in his affirmative defense, exhibits and affidavits and the
153 resulting fact that plaintiff has failed to provide this court with jurisdiction over the
154 subject or the person;

¹⁶ And Monell held that these words were intended to encompass municipal corporations as well as natural "persons."

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156 JMO knows The law and facts herein to be true and unassailable and offers the
157 foregoing As testimony by the real party in interest.

158

159 John Michael Oyer

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