‘Selected Citations’,
Affirming & Supporting the Rights of Our Common People to Form Our Own Smaller & Responsibly Self-Governing Communities:

Blacks Law Dictionary, Fifth Edition, 1979; Selected Citations:
https://ConstitutionalGov.us/Blacks5th.htm

Commonwealth: The public or common weal or welfare. … a republican frame of government, -- one in which the welfare and rights of the entire mass of the people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such government. Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect to its immediate concerns, but forming an integral part of a larger government (or nation). … Any of the individual States of the United States and the body of people constituting the state or politically organized community, a body politic, hence, a state, especially one constituted by a number of persons united by compact or tacit agreement under one form of government and system of laws.

Confederacy: The association or banding together of two or more persons for the purpose of committing an act or furthering an enterprise … A league or agreement between two or more independent states, whereby they unite for their mutual welfare and for the furtherance of their common aims. ... more commonly used to denote that species of political connection between two or more independent states, by which central government is created, invested with certain powers of sovereignty, and acting upon the several component states as its units, which, however retain their sovereign powers for domestic purposes and some others. …

Confederation: A league or compact for mutual support, particularly of nations, or states. Such was the colonial government during the revolution.

Constable. … He is to preserve the public peace … There were formerly "high", "petty", and "Special" constables. In England the functions of these special constables have been taken over by police forces. … In Medieval law, high functionary under French and English kings, the dignity and importance of whose office was second only to that of the monarch. He was in general the leader of the royal armies, and had cognizance of all matters pertaining to war and arms, exercising both civil and military jurisdiction. He was also charged with the conservation of the peace of the nation.

Constituency: The inhabitants of an electorial district.

Constituent: He who gives authority to another to act for him. The term is used as correlative to "attorney", to denote one who constitutes another as his agent or invests the other with authority to act for him.

Decanatus: A deaconry. A company of ten persons. Also a town or tithing consisting originally of ten families of freeholders. Ten tithings compose a hundred. …

Decanus: In Ecclesiastical and old European law, an officer having supervision over ten, a dean. A term applied not only to ecclesiastical, but to civil and military, officers. Decanus monasticus; … an officer over ten monks. Decanus episcopi; a bishops or rural dean presiding over ten clerks or parishes. … An officer among the Saxons who presided over a friborg, tithing, decannary, or association of ten inhabitants; otherwise called a “tithing man” or “borsholder”, his duties being those of an inferior judicial officer. Decanus militarius; a military officer having command of ten soldiers. In Roman law, an officer having the command of a company ... of ten soldiers.

Decenna: In old English law; a tithing, or decennary; the precinct of a frankenpledge; consisting of ten freeholders with their families.

Decennarius: Lat … One of ten freeholders in a decennary. One of the decennarii, or ten freeholders making up a tithing. 1 Bl.Comm. 114

Decennary: At common law a tithing, composed of ten neighboring families.

Ex Relatione: Upon relation or information. Legal proceedings which are instituted by the attorney general (or other proper person) in the name and behalf of the state, but on the information and at the instigation of an individual who has a private interest in the matter, are said to be on the relation (*ex relatione*) of such person, who is usually called the realtor. Such a cause is usually entitled thus: State *ex rel*. Doe v Roe.

Government: … Republican Government: One in which the powers of sovereignty are vested in the people and are exercised by the people, either directly, or through representatives chosen by the people, to whom those powers are specially delegated.

Hundred: Under the Saxon organization of England, each county or shire comprised of an indefinite number of hundreds, each hundred containing ten tithings, or groups of ten families of freeholders or frankpledges. The hundred was governed by a high constable, and had it's own court; but it's most remarkable feature was the corporate responsibility of the whole for the crimes or defaults of the individual members. The introduction of this plan of organization into England is commonly ascribed to Alfred, but the idea, as well of the collective liability as of the division, was probably known to the ancient German peoples, as we find the same thing established in the Frankish kingdom under Clothaire, and in Denmark. 1 Bl.Comm. 115; 4 Bl.Comm. 411.

Hundred Court: In English Law, a larger court-baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors were the judges, and the steward the register, as in the case of a court-baron. It … resembled a court-baron in all respects except that in point of territory it was of greater jurisdiction. … 3 Bl.Comm. 34, 35

Hundreds Earldor, or hundreds man: The presiding officer in the hundred court.

Hundred gemote: Among the Saxons, a meeting or court of the freeholders of a hundred court. Persons impaneled or fit to be impaneled upon juries dwelling within the hundred where the cause of action arose. It was formerly necessary to have some of these upon every panel of jurors. 3 Bl.Comm. 359 360. The term "hundredor" was also used to signify the officer who had the jurisdiction of a hundred, and held the hundred court, and sometimes the bailiff of a hundred.

Liberty: Political Liberty: Liberty of the Citizen to participate in the operations of government, and particularly in the making and administration of the laws.

Local Option: An option of self-determination available to municipality or other governmental unit to determine a particular course of action without specific approval from state officials. Local option is often used in local elections to determine whether the selling and consumption of alcoholic beverages will be permitted in local areas. Such is also used in many states, to permit home rule elections for determining the structure of local government units. See also Home Rule.

Political Rights: Those which may be exercised in the formation or administration of the government. Rights of citizens recognized or established by constitutions which give them the power to participate directly or indirectly in the establishment or administration of government.

Political subdivision: A division of the state made by proper authorities there of, acting within their constitutional powers, for purpose of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public.

Republic: A commonwealth; that form of government in which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government.

Republican Government: ... a government of the people, a government by representatives chosen by the people.

Right of local self government: Power of citizens to govern themselves, as to matters purely local in nature, through officers of their own selection. … See Home rule.

Special Law. One … operating upon a selected class, rather than upon the public generally. A private law. …

State: A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic, exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making

war and peace and of entering into international relations with other communities of the globe. United States v. Kusche, D.C.Cal., 56 F.Supp. 201, 207, 208. The organization of social life which exercises sovereign power on behalf of the people. Delaney v. Moraitis, C.C.A.Md., 136 F.2d 129, 130. In its largest sense, state is a body politic or a society of men. … A body of people occupying a definite territory and politically organized under one government. … A territorial unit with a distinct general body of law. … One of the component commonwealths or states of the United States of America. The term is sometimes applied also to governmental agencies authorized by state, such as municipal corporations. … any territory or possession subject to the legislative authority of the United States. Uniform Probate Code, ss 1-201(40). The people of a state, in their collective capacity, considered as the party wronged by a criminal deed, the public, as in the title of a cause, The State vs A.B. Term state as used in rules providing when a state may appeal in a criminal case is all inclusive and intended to include not only the state but its political subdivisions, counties and cities. Spokane County v. Gifford, 9 Wash.App. 541, 513 P.2d 301, 302. Federal Government is a state bound by all of provisions of the Interstate Agreement on Detainers. …

Tithes: In English law, the tenth part of the increase, yearly arising and renewing from the profits of the lands, … and the personal industry of the inhabitants. A species of incorporeal hereditament, being an ecclesiastical inheritance collateral to the estate of the land, and due only to an ecclesiastical person by ecclesiastical law.

Tithing: ...One of the civil divisions of England, being a portion of the greater division called a "hundred". It was so called because ten freeholders with their families composed one. It is said that they were all knit together in one society, and bound … for the peaceable behavior of each other. In each of these societies there was one chief or principle person, who, from his office, was called "teothing-man" now "tithing-man".

Tithing-man: A constable. After the introduction of justices of the peace, the offices of constable and tithing-man became so similar that they were regarded as precisely the same. In New England, a parish officer annually elected to preserve order in the church … and to make complaint of any dis-orderly conduct. In Saxon law, the head or chief of a tithing or decennary of ten families; he was to decide all lesser causes between neighbors. In modern English Law, he is the same as an under-constable or peace-officer.

~~~~~~

Constituent Assembly: a group of elected representatives that have the power to write or change their country's constitution.

http://www.ldoceonline.com/dictionary/constituent-assembly

Constituent Assembly. A constituent assembly (sometimes also known as a constitutional convention or constitutional assembly) is a body or assembly of representatives composed for the purpose of drafting or adopting a constitution. … a constitution cannot normally be modified or amended by the state's normal legislative procedures; instead a constituent assembly, … must be set up. … A constituent assembly is a form of representative democracy. … , the constituent assembly creates a constitution through "internally imposed" actions, in that members of the constituent assembly are themselves citizens, but not necessarily the rulers, of the country … .

https://en.wikipedia.org/wiki/Constituent_assembly

~~~~~~

"Local & Special Laws:
The word 'special' as here used, has the same meaning as 'Private' in the common law. …"

Lord's Oregon Laws, William Paine Lord, Oregon State Code Commissioner.
All of the Laws of a General Nature in Force in the State of Oregon.

Published by the Oregon State Printer: 'Willis Duniway', in 1910.
(Explaining 'Article 4, Section 23', of Oregon's Constitution:)

~~~~~~

California Civil Code – Definitions & Sources of Law; Section 22.2; 2016:

"The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State."

https://law.justia.com/codes/california/2016/code-civ/definitions-and-sources-of-law/section-22.2/
https://law.justia.com/codes/california/2007/civ/22-22.2.html
https://codes.findlaw.com/ca/civil-code/civ-sect-22-2.html
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&heading2=DEFINITIONS%20AND%20SOURCES%20OF%20LAW

~~~~~~

United States F. & G. Co. v. Bramwell; 217 Pac. 332.
Argued May 28, reversed and remanded July 10, 1923.

Common Law - Adopted as Part of Laws of Oregon.

The common law of England ... as it existed at the time of the American Revolution as far as it was general and not incompatible with the nature of our political institutions, or in conflict with the Constitution and laws of the United States or of Oregon has been adopted as part of the law of the state, in view of Article 1 Section 2, of the Organic Law of the Civil Government of Oregon, Adopted July 26, 1845, and of Constitution of 1857, Article 18 Section 7.

~~~~~~

" ... the American county, defined by Webster as "the largest territorial division for local government within a state ...," is based on the Anglo-Saxon county of England dating back to about the time of the Norman Conquest. ... "

(Oregon Blue Book; section on "County Government", as published in 1997-98 by Oregon's 'Secretary of State'; & as similarly worded in it's more modern but less specific wording, here:)
https://sos.oregon.gov/blue-book/Pages/local/counties/about.aspx

****

"Common Law Pleading"; by George L. Clark; Lawyers Co-Op, 1947.

"Before the Norman conquest of England in 1066, the people were the fountainhead of Justice. The Anglo-Saxon courts of those days were composed of large numbers of freemen, and the law which they administered, was that which had been handed down by oral tradition from generation to generation. In competition with these popular, non-professional courts, the Norman King, who insisted that he was the fountainhead of justice, set up his own tribunals. The judges who presided over these royal courts were the agents or representatives of the king, not of the people; but they were professional lawyers * * * and the courts over which they presided * * * gradually all but displaced the popular, non-professional courts."

"The Anglo-Saxon tribunals had been open to all; every freeman could appeal to them for justice. But there was no corresponding right to sue in the king's courts. That was a privilege which had to be purchased by any suitor who wished to avail himself of * * * royal justice. These privileges were issued to suitors by the king's secretary or chancellor, and the document which evidenced the privilege was called an original writ."

https://constitutionalgov.us/Citations-Short/CommonLaw-BeforeNormanConquest-FreePeopleWereFountianheadOfJustice-LawyersCoOp-GClark1947.pdf
~~~~~~

****

Encyclopedia Americana, International Edition, 1963.
Common Law / Historical Survey / Anglo-Saxon Law.

"The main features of Anglo-Saxon Law ... are known to us from texts dating from about 600 A.D. onwards . In general, they resembled the group of barbarian laws which grew up in northern France and Germany and Scandinavia, where invaders of the same or related stocks had made their homes. ... The texts of the Anglo-Saxons were much copied and used even after the Norman Conquest, and as late as the 12th century, the law generally in force was still essentially Anglo-Saxon, and administered in the Anglo-Saxon Courts of the Shire and the Hundred. The pre-Conquest kings, like all Christian Rulers, admitted a general responsibility for law and order, but did not claim more than a vague supervision. They avoided the direct administration of the law in all but the most exceptional cases, leaving local institutions to apply traditional rules and procedures which evidently varied from place to place.

Norman Law. The Norman Kings took a much more active view of their duties and interfered freely in the administration of Justice. First they had to tame the sheriff, who dominated the county (shire) court, so as to prevent him becoming an over-powerful magnate - and this without at the same time crippling an essential local institution. By Issuing writs authorizing the sheriff to do justice in the county court in the kings name, the king finally subjected the country to strict control. To subdue the local courts, strongholds as they were of the old Anglo-Saxon law, was only half the battle, for a central court was essential if that control was to be effective. Here the Normans broke with the old traditions, and invited the public to litigate in the kings court. ... By these means Henery II erected the most centralized judicial system of all of Europe.

" ... Through this closely knit system of central and local courts, the crown thus became the fountain of justice, dispensing a law which was "common"to all the land. The common law is therefore the expression of royal centralization at the expense of local institutions, and its origin in the principles and practices developed by the kings courts, particularly the court of Common Pleas.

"… Already in the 12th century it was becoming an acknowledged principle that none need answer claims against him … unless made by a royal writ. Thus the crown secured a monopoly of the most important sort of civil litigation.

https://constitutionalgov.us/Citations-Short/CommonLaw-PreconquestChristianKings-AvoidedDirectAdministration-EncyclopediaAmericana.pdf
https://constitutionalgov.us/Citations-Short/CommonLaw-NormanConquest-Apterations-AmericanaEnclpda.pdf

~~~

"Public Law - Finally, the common law was the basis of public law. ... royal attempts to assert arbitrary powers were challenged and checked in the common-law courts. ... When in the Tudor and Stuart periods claims were made to a mysterious "prerogative" of the crown, it was the common lawyers who resisted. When Parliament itself made exaggerated claims, usually under the cloak of "privilege" it was the common-law courts who protected the subject, and down to the time of Blackstone, they still favored Coke's doctrine that the common law would "control" even the acts of parliament. These ideas were familiar in America, and made it easy to accept the system of fundamental constitutional law."

https://constitutionalgov.us/Citations-Short/Jurisdiction-PublicLaw-Political-JudicialIndependence-Republic/PublicLaw-PublicInterest-PublicOffice-Copies/CommonLawIsBasisOfPublicLaw-EclpdaAmericana1963.pdf

~~~

The arrival of the Normans brought trial by battle, ... In actions such as debt, trial could often be by the archaic "wager of law" or compurgation, a relic of the Anglo-Saxon times, whereby the debtors oath, supported by a number of oath-helpers, was decisive.

…. In Criminal Proceedings, Grand Juries - which may have existed even before the Conquest in some parts of the Country, were organized by Henery II to present suspects who were subsequently tried by ordeal. … Thomas Jefferson fancied the laws of the Anglo Saxons.

Early Feudal Law - Feudalization was much accelerated by the Conquest, when the king made such extensive grants of land and of lordship over the land of other people, that it became a fact … that all land was held directly or indirectly by the crown ... Law of Tort - The line between crimes and civil wrongs or torts was drawn somewhat late. Anglo-Saxon law awarded punishments and damages simultaneously ..."

(The last above section of text might not be from this same "Encyclopedia Americana" source as cited above. Research is continuing to find its true source.)

****

"Essays on Anglo-Saxon Law"; by Henry Adams.
Little, Brown, & Company; Boston, 1876. Chapter 1: "The Anglo-Saxon Courts of Law":**

"The long and patient labors of the German scholars seem to have now established beyond dispute the fundamental historical principle, that the entire Germanic family, in its earliest known stage of development, placed the administration of law, as it placed the political administration, in the hands of popular assemblies composed of the free, able-bodied members of the commonwealth. This great principle is, perhaps, from a political point of view, the most important which historical investigation has of late years established. It gives to the history of Germanic, and especially English, institutions a roundness and philosophic continuity, which add greatly to their interest, and even to their practical value. The student of history who now attempts to trace, through two thousand years … , the slender thread of political and legal thought, no longer looses it from sight … , but follows it safely and firmly back until it leads him out on the wide plains of northern Germany, and attaches itself at last to the primitive popular assembly, parliament, law-court, and army in one; which embraced every free man, rich and poor, and in theory at least allowed equal rights to all.

Beyond this point it seems unnecessary to go. The State and the Law may well have originated here. ... There is strong internal evidence in the Germanic laws to indicate that … its earliest political and legal creation was a form of association of small families, … without a patriarchal chief; an association whose able-bodied male members, uniting, not a families, but as individuals equally entitled to voice, formed one counsel, which decided all questions of war and peace; elected all officers, civil or military … ; provided for the security of property; arbitrated all disputes … ; and left to the families themselves the exclusive control of all their private affairs … . … the state was already supreme. Within its own sphere, the family was uncontrolled.

The popular assembly was the primitive law court of the Germanic race. ... The Saxons, from whom the English sprung, have been from all historical time the inhabitants of the territory which their descendants still occupy. ... At the time when German law and society were first brought within the view of history, the German popular assembly consisted, and to all appearances had always consisted, of the free inhabitants of a fixed geographical district. The army, indeed, when assembled for war, was a court of law, because it was the people that were assembled; and the people, wherever assembled, were the state. ...

... The German organization is important only because … it is … a political organization; … a state. In this difficulty there seems to be no recourse better than that of adopting American usage. The idea to be conveyed is entirely expressed, both in its political and territorial meaning, by the American use of the word state, as in the term United States, signifying, as it does, not merely definite territorial boundaries, but confederated political organizations. ...

German society ... the entire race was divided into almost innumerable variety of such petty states, … each enjoying its own independence of action through its own popular assembly, and each considering itself at liberty to join or abandon a confederation with other states, as suited its ideas of its own interests. … The small states of which the Frankish kingdom was composed had not confederated together, but had been consolidated. … this policy of centralization ... hastened the decay of their democratic institutions, which could only be safe in states so small that the popular assembly could actually include the body of free men in healthy and active co-operation. From the moment the the small state became merged in a

great nation, the personal activity of the mass of free men in politics became impossible ... . Nevertheless, even in this case, the functions of a supreme court of law would remain vested in the great national assembly, until, with all other public rights, they fell ultimately into the hands of the king.

... The object seems merely to have been to group together in one district such hamlets, or village communities, as lay in convenient proximity to each other.

The name by which this district was known also varied … . … the word hundred has come into general use. … the thing itself existed almost, if not quite, universally; and that the district, whatever it may have been called, was the foundation of the German administrative system. For the present, it will be convenient … to use merely the word district to indicate the ordinary subdivision of the state, subsequently known as the hundred.

... The Germans who … settled upon the south-eastern coast of England during the later half of the fifth century belonged to the purest German stock. Among all German races, none have clung with sturdier independence or more tenacious conservatism to their ancient customs and liberties, than the great Saxon confederation, which stamped its character so often and deeply upon the history of northern Europe."

****

"Encyclopedia of the American Constitution"; 1986.

"Federalism (History): ... Prior to 1787, the term "federalism" had been used to signify confederation, a system in which the Sovereignty remained with the constituent states ... in which the central authority's legislature merely could propose measures to the states for approval. ...

Federalism (Theory): Federal democracy is the authentic American contribution to democratic thought and republican government. Its conception represents a synthesis of the Puritan idea of the covenant relationship as the foundation of all proper human society and the constitutional ideas of the English natural rights school of the seventeenth & early eighteenth centuries. Contractual noncentralization - the structured dispersion of power among many centers whose legitimate authority is constitutionally guaranteed - is the key to the widespread and entrenched diffusion of power that remains the principle characteristic of and argument for federal democracy.

Federal democracy is a composite notion that includes a strong religious component. The religious expression of federalism was brought to the United States through the theology of the Puritan, who viewed the world as organized through binding covenants that God had made with mankind, binding God and man into a lasting union and partnership to work for the redemption of the world ... .

According to federal theology, all social and political relationships are derived from that original covenant. This theological perspective found its counterpart in congregationalism as the basis of church polity and the town meeting as the basis of civil polity. Thus communities of believers were required to organize themselves by covenant into congregations just as communities of citizens were required to organize themselves by covenant into towns. The entire structure of religious and political organization in New England reflected this application of a theological principle to social and political life.

... The behavioral pattern resurfaced on every frontier ... in the wagon trains that crossed the plains, whose members compacted together to provide for their internal governance during the long trek westward. ...

In strictly governmental terms, federalism is a form of political organization that unites separate polities within an overarching political system, enabling all to maintain their fundamental political integrity and distributing power among general and constituent governments so that they all share in the system's decision-making and executing processes. In a larger sense, federalism represents the linking of free people and their communities through lasting but limited political arrangements to protect certain rights or liberties and to achieve specific common ends while preserving their respective integrities. To reverse the order, federalism has to do, first and foremost, with a relationship among the entities, and then with the structure that embodies that relationship and provides the means for sustaining it. Originally federalism was most widely recognized as a relationship to which structural questions were incidental;

but since the creation of the American federal system, in which a new structure was invented ... federalism has become increasingly identified in structural terms. This usage in turn has contributed to a certain emphasis on legal and administrative relations between the units and to the neglect of the larger question of the relationships federalism is designed to foster throughout the polity."

****

"Administrative Justice and the Supremacy of Law in the United States"; John Dickenson, 1927; by the President and Fellows of Harvard College; 1955. On pages 84-88; he writes:

"To the Middle Ages and the men who were the heirs of the Middle Ages ... law was a transcendental force, "the breath of God, the harmony of the world," clothed with an inherent and independent authority, and ruling the sovereign from above and without, as the sovereign in his own turn ruled from above and without the individuals and groups who were his subjects. This was the idea which had been used as a weapon against kings in the Middle Ages; one of the counts in the indictment against Richard II was that he had enforced enactments which were erroneous and repugnant to the law and to reason. And this was the idea for which Coke did battle against James.

What was the nature and content of this law, which was not the creature of government but was above government? The idea, as a practical force appears to have had a Teutonic and not Roman origin. The Romans made much, of course, of natural law; but at the time of the invasions they had come to recognize positive law as deriving its authority from the will of the emperor - that is, as we should say, from the government. The Germanic conception of positive law, on the other hand, was the product of less sophisticated institutions. The law that they knew was custom - the immemorial usages which had crystallized within the tribe and were pronounced from time to time in the solemn dooms of the elders. 'It was part of the national or tribal life; it had grown with the tribe, changing, no doubt, but the people or the tribe were hardly conscious of the changes.' 'To them the law was not something made or created at all ... legislative acts were not expressions of will, but records or promulgations of that which was recognized as already binding upon men.' Law was thus naturally conceived as a permanent thing, something always existing and to be found by the elders in council, announced by them but not made. In fact, the greatest possible violation of law was to change it. Hence the clamor against progressive kings raised throughout the Middle Ages by people, demanding back their "good old laws"; every reform had to be distinguished under the appearance of a restoration of long lost legal rights. Gradually from Roman courses filtered in the idea of a law of nature, in England spoken of as simply a law of reason ... Forescure, whom Coke follows in the main on this point, says ... statute does not make new law; it promulgates, and gives greater emphasis and clarity to, what had always been law before.

It is the peculiar relation which subsisted in England between "natural law" or the "law of reason," on the one hand, and the customary law of the land on the other, that lends the English common law its distinctive flavor. Common law was essentially custom, but it was also something more: it consisted of customs which were regarded as reasonable ... . The common law thus conceived was fused of ... custom (and) ... the "perfection of reason". So ... was the manner in which these two elements united to form it, that it was a science ... to be known only after hard ... study. On the other hand, such was the intrinsic and independent authority of the elements themselves, natural reason and immemorial tradition, that the common law, so intimately compounded of both, was well qualified from the standpoint of the times to occupy in mens minds a position more venerable than even the sovereign power of a monarch. ... (as) described by Father Figgs:

'The Common Law is pictured invested with a halo of dignity peculiar to the embodiment of deepest principles and to the highest expression of human reason and of the law of nature implanted by God in the heart of man.... there shall be in England as system, older than Kings and Parliament, of immemorial majesty and almost divine authority. ... The Common Law is the perfect ideal of law; for it is natural reason, developed and expounded by collective wisdom of many generations." *Divine Right of Kings*, 1st ed., pp.226-228."

Footnotes: P. 96 97: "Jefferson indicates his belief that common law was a survival of lost enactments of the Saxon period: 'The authentic text of these enactments has not been preserved; but their substance has been committed to many ancient books and writings, so faithfully as to have been deemed genuine from generation to generation.' The other branch of Wilmont's doctrine, vis., that common law was natural justice, was adopted by Alexander Hamilton in his argument in People v. Croswell, 3 Johns, Cas. App. 344: 'The common law is natural law & natural reason applied to the state & condition of society.' (Works, ed. Lodge, viii, 421.)"

23: Hooker, *Ecclesiastical Polity*, Book 1, ch. xvi; or Mr Justice Holmes has phrased it, a brooding in the sky," Southern Pacific Co. v. Jensen, 244 U.S. 205 at p 222.

27: Discovery of the Theory of Law. This notion of law as something not made, but existing and to be found, was common to European peoples so long as their institutions remained fairly primitive. Thus it forms a part of the well-known definition of law attributed to Demosthens: 'Every law is a discovery, a gift from the Gods, a precept to wise men, a righting of intentional and unintentional wrongs, a compact between all the members of the state, in accordance with which all who are within the state should live', ... For a very early expression of the view that law is a "discovery," coupled oddly with an anticipation of the doctrine of legislative sovereignty, see Herodotus, III, 31: (Latin) ... For a very late view, see Calvin Coolidge, *Have Faith in Massachusetts*, p.4 "Men do not make laws. They do but discover them. ... That state is most fortunate in its form of government which has the aptest instruments for the discovery of laws." For an intermediate view, which dominated the thought of the middle ages, and which identified the "immutable law" with the "law of god," see St Augistine, *De Vera Religione*, c. 31: (Latin) …

****

Introduction to the study of :

"The Law of the Constitution".

Albert Ven Dicey; 1885.

Liberty Fund Books, Indianapolis.

https://catalog.libertyfund.org/law/introduction-to-the-study-of-the-law-of-the-constitution-paperback-detail.html

Quoted Chapter: ""Rule of Law Compared With Droit Administratif".

(C. Stewart: Commentary: An English Legal Scholar of the 1800's named Albert Ven Dicey was well recognized by prominent Legal Scholars after him as holding an equivalent status on these matters of Anglo/ American Constitutional-Law, as did William Blackstone himself during the 1700's. In his Treatise: "The Law of the Constitution" (Introduction to the study of, 1885, a 400+ page work); Professor Dicey devotes an entire Chapter to the Profound Differences between our Anglo/American Constitutional-Republican "Rule of Law", as compared with the "Administrative" Proceedings. The profound growth of "Administrative-Law" with-in what passes as a Constitution for the Country of France, is reflected in the Title for the 60-page Chapter, which is called" the "Rule of Law Compared With Droit Administratif"; & where-in Professor Dicey opens, & then continues, as follows:)

"In many continental countries, and notably in France, there exists a scheme of administrative law – known to Frenchmen as droit administratif – which rests on ideas foreign to the fundamental assumptions of our English common law, and especially to what we have termed the rule of law. ... Our aim should be ... to make clear ... how ... administrative law makes the legal situation of every government official in France different from the legal situation of servants of the State in England, and in fact establishes a condition of things fundamentally so inconsistent with what Englishmen regard as the due supremacy of the ordinary law of the land. ... It is only when we examine the administrative law of France ... that we can rightly appreciate the essential opposition between our existing English rule of law and the fundamental ideas which lie at the basis of administrative law, not only in France but in any country where this scheme of State or official law has obtained recognition. ...

... the droit administratif of France ... rests ... on two ideas alien to the conceptions of modern Englishmen. The first of these is that ... every servant of the government, possesses ... a whole body of special rights, privileges, or prerogatives as against private citizens, and the extent of these rights, privileges, or prerogatives is to be determined on principles different from the considerations which fix the legal rights and duties of one citizen towards another. An individual in his dealings with the State does not, according to French ideas, stand on anything like the same footing as that on which he stands in his dealings with his neighbor.

... Nor were the leaders of the French opinion uninfluenced by the traditional desire felt as strongly by despotic democrats as by despotic kings to increase the power of the central government by curbing the authority of the law courts. ... No part of revolutionary policy or sentiment was more heartily accepted by Napoleon than the conviction that the judges must never be allowed to hamper the action of the government. He gave effect to this conviction in two different ways. ... he constituted ... two classes of Courts. The one class consisted of "judicial" or, as we should say, "common law" Courts. ... The other class of so-called Courts were and are the administrative Courts ... These two kinds of Courts stood opposed to one another. ... The law of 16-24 August 1790 is one among a score of examples which betray the true spirit of the Revolution. The judicial tribunals are there-by forbidden to interfere in any way what-ever with any acts of legislation. ... The judges must

not, under penalty of forfeiture, disturb or in any way interfere with the operation of administrative bodies, or summon before them administrative officials ... . Napoleon had imbibed to the utmost the spirit of these enactments. He held ... : "the judges are the enemies of the servants of the State, and that there is always reason to fear their attempts to compromise the public interests by their ... interference in the usual course of government business."

The fourth and most despotic characteristic of droit administratif lies in it's tendency to protect from the supervision or control of the ordinary law Courts any servant of the State who is guilty of an act, however illegal ... ."

****

That in a confederation like the United States the Courts become the pivot on which the constitutional arrangements of the country turn is obvious. Sovereignty is lodged in a body which rarely exerts its authority and has (so to speak) only a potential existence; no legislature throughout the land is more than a subordinate lawmaking body capable in strictness of enacting nothing but bye-laws; the powers of the executive are again limited by the constitution; the interpreters of the constitution are the judges. The Bench therefore can and must determine the limits to the authority both of the government and of the legislature; its decision is without appeal; the consequence follows that the Bench of judges is not only the guardian but also at any given moment the master of the constitution. ...

From the fact that the judicial Bench supports under federal institutions the whole stress of the constitution, a special danger arises lest the judiciary should be unequal to the burden laid upon them. In no country has greater skill been expended on constituting an August and impressive national tribunal than in the United States. Moreover, as already pointed out, the guardianship of the Constitution is in America confided not only to the Supreme Court but to every judge throughout the land. Still it is manifest that even the Supreme Court can hardly support the duties imposed upon it. No one can doubt that in the varying decisions given the legal-tender cases, or in the line of recent judgements of which *Munn v. Illinois* is a specimen, show that the most honest judges are after all only honest men, and when set to determine matters of policy and statesmanship will necessarily be swayed by political feelings and by reasons of state. But the moment that this bias bias becomes obvious a Court loses its moral authority, and decisions which might be justified on grounds of policy excite natural indignation and suspicion when they are seen not to be fully justified on grounds of law. American critics indeed are to be found who allege that the Supreme Court not only is proving but always has proved too weak for the burden it is called upon to bear, and that it has from the first been powerless whenever it came into conflict with a State, or could not count upon the support of the Federal Executive. These allegations undoubtably hit a weak spot in the constitution of the great tribunal. Its judgements are without force, at any rate against a State if the President refuses the means of putting them into execution. "John Marshal", said President Jackson, according to a current story, "has delivered his judgement, let him now enforce it, if he can"; and the judgement was never put into force.

****

Rule of Law & US Constitutionalism.

The following discussion of the significance of the U.S. Constitution comes from
a book written by James McCellan, & entitled as:
Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government
(3rd ed.) (Indianapolis: Liberty Fund, 2000);
Part 4: Basic Constitutional Concepts: Federalism, Separation of Powers, and the Rule of Law, section
C The Rule of Law and The Basic Principles of the American Constitution, pages: 347-54.
http://oll.libertyfund.org/pages/rule-of-law-us-constitutionalism

C. The Rule of Law.

The America of 1787 inherited from medieval England the concept of rule of law, sometimes expressed as "a government of laws, not of men." One may trace the rise of this principle in English history all the way back to the signing of Magna Charta in the year 1215, when King John found it necessary to guarantee his obedience to English laws. For that matter, medieval English writers on law derived their understanding of the rule of law from ancient Roman jurisprudence.

"The king himself ought not to be under man but under God, and under the Law, because the Law makes the king. Therefore let the king render back to the Law what the Law gives him, namely, dominion and power; for there is no king where will, and not Law, wields dominion." So wrote Henry de Bracton, "the father of English law," about the year 1260, during the reign of Henry III. This teaching that law is superior to human rulers has run consistently through English politics and jurisprudence all the way down the centuries. It was rather belligerently asserted from time to time by the English colonies in North America.

This doctrine that no man is above the law applied not only to kings but also to legislative bodies and judges. Sir Edward Coke, we saw earlier, fiercely resisted not only attempts by King James I to interpret the law for himself but also Acts of Parliament that contravened the common law. Citing Bracton as an authority, he asserted that "the king must not be under any man, but under God and the law." In *Dr. Bonham's Case* (1610), Coke laid down the principle of judicial review, claiming that judges had a right, when interpreting Acts of Parliament, to declare them null and void if they conflicted with established principles of law and justice. "And it appears in our books," said Coke, "that in many cases, the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void; for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such an Act to be void."

That the English had turned their backs on their own tradition and respect for rule of law was the principal grievance of American colonial leaders. In his famous pamphlet *The Rights of the British Colonies Asserted and Proved* (1764), James Otis wrote:

To say the Parliament is absolute and arbitrary, is a contradiction. The Parliament cannot make 2 and 2 [equal] 5. … Parliaments are in all cases to *declare* what is good for the whole; but it is not the *declaration* of parliament that makes it so. There must be in every instance a higher

authority—God. Should an act of parliament be against any of *His* natural laws, which are *immutably* true, *their* declaration would be contrary to eternal truth, equity and justice, and consequently void.

Similar arguments were made by the State supreme court judges after 1776. Their attempts to nullify legislative enactments through the power of judicial review were largely unsuccessful, however, because most early State constitutions, like the English Constitution, followed the doctrine of legislative supremacy. Acts passed by the State legislatures were expected to conform to the State constitutions. But there were no provisions calling for the supremacy of the State's constitution over laws passed by the legislature should the judges decide that a law conflicted with the State's constitution. Thus, the absence of a supremacy clause in these State constitutions rendered the power of judicial review weak and ineffective.

The Federal Constitution of 1787 drastically changed the concept of constitutional government by introducing the principle of constitutional supremacy. Article VI declared that "This Constitution … Shall be the supreme law of the land." Laws passed by Congress, though supreme in relation to State constitutions and State laws, were ranked below the Constitution. Indeed, Article VI explicitly stated that such laws must conform to, and be made in pursuance of, the Constitution. Noting the significance of the Supremacy Clause, Chief Justice John Marshall held in the famous case of *Marbury v. Madison* (1803) that an Act of Congress contrary to the Constitution was not law:

[I]n declaring what shall be the supreme law of the land, the Constitution is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.

It may thus be seen that the American Constitution and the power of judicial review are an extension of rule of law. The Constitution is law, the highest law, and the President, Congress, and the Federal Judiciary are bound by its terms. A government of laws and not of men is, then, the underlying principle of the American political and legal system.

This means that no person, however powerful or talented, can be allowed to act as if he were superior to the law of the land. Public decisions must be made upon the basis of law, and the laws must be general rules that everybody obeys, including those who make and enforce the law. A law that violates the Constitution is not a law and is not, therefore, enforced. This was the principle that Marshall followed in *Marbury v. Madison*. Likewise, rule of law means equality before the law. A law that singles out certain people for discriminatory treatment, or is so vague and uncertain that one cannot know what it requires, will not be treated as a law.

Rule of law, then, is not rule of *the* law, but a doctrine concerning what the law *ought* to be – a set of standards, in other words, to which the laws should conform. Merely because a tyrant refers to his commands and arbitrary rulings as "laws" does not make them so. The test is not what the rule is called, but whether the rule is general, known, and certain; and also whether it is prospective (applying to future conduct) and is applied equally. These are the essential attributes of good laws – laws that *restrain* but do not *coerce*, and give each individual sufficient room to be a thinking and valuing person, and to carry out his own plans and designs. This does not mean that the individual is free to do as he pleases; for liberty is not license. As the Framers

knew well, absolute freedom would be the end of freedom, making it impossible for society to be orderly, safe from crime, secure from foreign attack, and effectively responsive to the physical, material, and spiritual needs of its members. Under God, said the exponents of the rule of law, the law governs us; it is not by mere men that we ought to be governed; we can appeal from the whims and vagaries of human rulers to the unchanging law.

Though this is a grand principle of justice, often it is difficult to apply in practice. Passion, prejudice, and special interest sometimes determine the decisions of courts of law; judges, after all, are fallible human beings. As the Virginia orator John Randolph of Roanoke remarked sardonically during the 1820s, to say "laws, not men," is rather like saying "marriage, not women": the two cannot well be separated.

Yet the Framers at Philadelphia aspired to create a Federal government in which rule of law would prevail and men in power would be so restrained that they might not ignore or flout the law of the land. The Supreme Court of the United States was intended to be a watchdog of the Constitution which might guard the purity of the law and forcefully point out evasions or violations of the law by the other branches of government or by men in public office.

The Framers knew, too, the need for ensuring that the President of the United States, whose office they had established near the end of the Convention, would be under the law – not a law unto himself. The President's chief responsibility, in fact, is to enforce and uphold the law, and to "take care that the laws be faithfully executed." Whereas the members of Congress and the Federal Judiciary, and other Federal and State officials, all take an oath "to support this Constitution" (Article VI, Clause 3), the President – and the President alone – swears on the Bible (or affirms) that he will "preserve, protect and defend the Constitution" (Article II, Section 1, Clause 8).

Thus in the final analysis the nation looks to the President as the person ultimately responsible for upholding the rule of law and the supremacy of the Constitution. By making him Commander-in-Chief of the armed forces and by giving him the power to supervise the heads of the various departments of the executive branch, the Constitution also confers upon the President the means by which he may fulfill his law enforcement responsibilities.

By and large, America has enjoyed rule of law, not of men. No President of the United States has ever tried to make himself dictator or to extend his term of office unlawfully. Martial law – that is, a suspension of the law and the administration of justice by military authorities in times of war, rebellion, and disorder – has never been declared nationwide. No party or faction has ever seized control of the Federal government by force or violence. The Constitution of the United States has never been suspended or successfully defied on a large scale. Thus the rule of law has usually governed the country since 1787 – a record true of very few other countries of the world.

The Basic Principles of the American Constitution.

Federalism, separation of powers, and rule of law are the heart of the American Constitution. But there are other fundamental principles of the system as well, all of which

contribute significantly toward the achievement of liberty, order, and justice. Viewing the Constitution as a whole, as the Framers perceived it, we observe that its essential features include the following:

First, the Constitution is based on the belief that the only legitimate constitution is that which originates with, and is controlled by, the people. Thus a constitution is more than a body of substantive rules and principles. As Thomas Paine wrote, "A constitution is not the act of a government, but of a *people* constituting a government, and a government without a constitution is power without right." This principle is declared in the Preamble of the Constitution, which proclaims that the Constitution is ordained and established not by the government, but by "We the People."

One of the most remarkable debates ever staged in Congress occurred in March 1850 over the slavery question. This was the last joint appearance on the public stage of that great triumvirate, Henry Clay, Daniel Webster, and John C. Calhoun. Webster advocated compromise to save the Union, and his plea for moderation was heeded.

In this extraordinary picture, it is possible to identify each member because the artist used photographs to create an exact likeness. Webster is standing. To his left (front row, bottom right) is Stephen A. Douglas. Clay is directly behind Webster's uplifted hand, almost seeming to stare at the back of it. Calhoun is directly behind the fourth member (front row, left to right), and beside him, to his right, is Jefferson Davis. (Courtesy of the Library of Congress.)

Second, the United States Constitution subscribes to the view that the government must in all respects be politically responsible both to the States and to the governed. This is achieved through the election and impeachment process, with only the members of the House of Representatives being directly accountable to the electorate. Though not directly represented, the States exercise some influence by virtue of the Electoral College, control of the franchise, and the amendment process. Prior to the adoption of the Seventeenth Amendment in 1913, the States were also able to protect their interests in some instances by virtue of the fact that members of the Senate were indirectly elected by State legislatures rather than directly by the people.

Third, the Constitution rested on the proposition that all constitutional government is by definition limited government. A constitution is a legal, not just a political limitation on government; it is considered by many the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law. Parliamentary supremacy, identifying all law with legislation, is thus hostile to the American Constitution, which declares that the Constitution shall be the supreme law of the land.

Fourth, the Constitution embraced the view that in order to achieve limited government, the powers of government must be defined and distributed – that is, they must be enumerated, separated, and divided. A unitary and centralized government, or a government in which all the functions or functionaries were concentrated in a single office, was a government that invited despotism and would inevitably become tyrannical and corrupt. This tendency toward "tyranny in the head" might be prevented, or at least discouraged, through a separation of powers among

the three branches of the Federal government, and a reservation to the States of those powers that were not delegated to the Federal government.

Conversely, the Framers were also mindful that in order to be limited, it did not follow that government must also be weak. Too little power was as dangerous as too much, and if left unattended might produce "anarchy in the parts," or a state of disorder into which the man on the white horse would ride to forge tyranny out of chaos. The solution for avoiding these extremes of too much and too little power was to balance power and to balance liberty and order, allocating to the people and to each unit of government a share of the national sovereignty.

Fifth, the American Constitution was premised on the seemingly unassailable assumption that the rights and liberties of the people would be protected because the powers of government were limited, and that a separate declaration of rights would therefore be an unnecessary and superfluous statement of an obvious truth. Since the government of the United States was to be one of enumerated powers, it was not thought necessary by the Philadelphia delegates to include a bill of rights among the provisions of the Constitution. "If, among the powers conferred," explained Thomas Cooley in his famous treatise *Constitutional Limitations* (1871), "there was none which would authorize or empower the government to deprive the citizen of any of those fundamental rights which it is the object and duty of government to protect and defend, and to insure which is the sole purpose of a bill of rights, it was thought to be at least unimportant to insert negative clauses in that instrument, inhibiting the government from assuming any such powers, since the mere failure to confer them would leave all such powers beyond the sphere of its constitutional authority." In short, the Constitution itself was a bill of rights because it limited the power of the Federal government.

****

Also please see this related book.

https://constitutionalgov.us/Citations-Longer/RuleOfLaw-TheConcept-CourtneyHarama-McmasterU-2009-146pgs.pdf

and please brows the others, in this same directory, here:
https://constitutionalgov.us/Citations-Longer/