

# In Search of Mr Jefferson's Liberty



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Murphy, NC  
29 September 2018

# 1. Conflict in Society

rights – injustice – failure of civil government



# Cognitive Dissonance

- Collectivism v Individualism



# The Source Of “Rights”

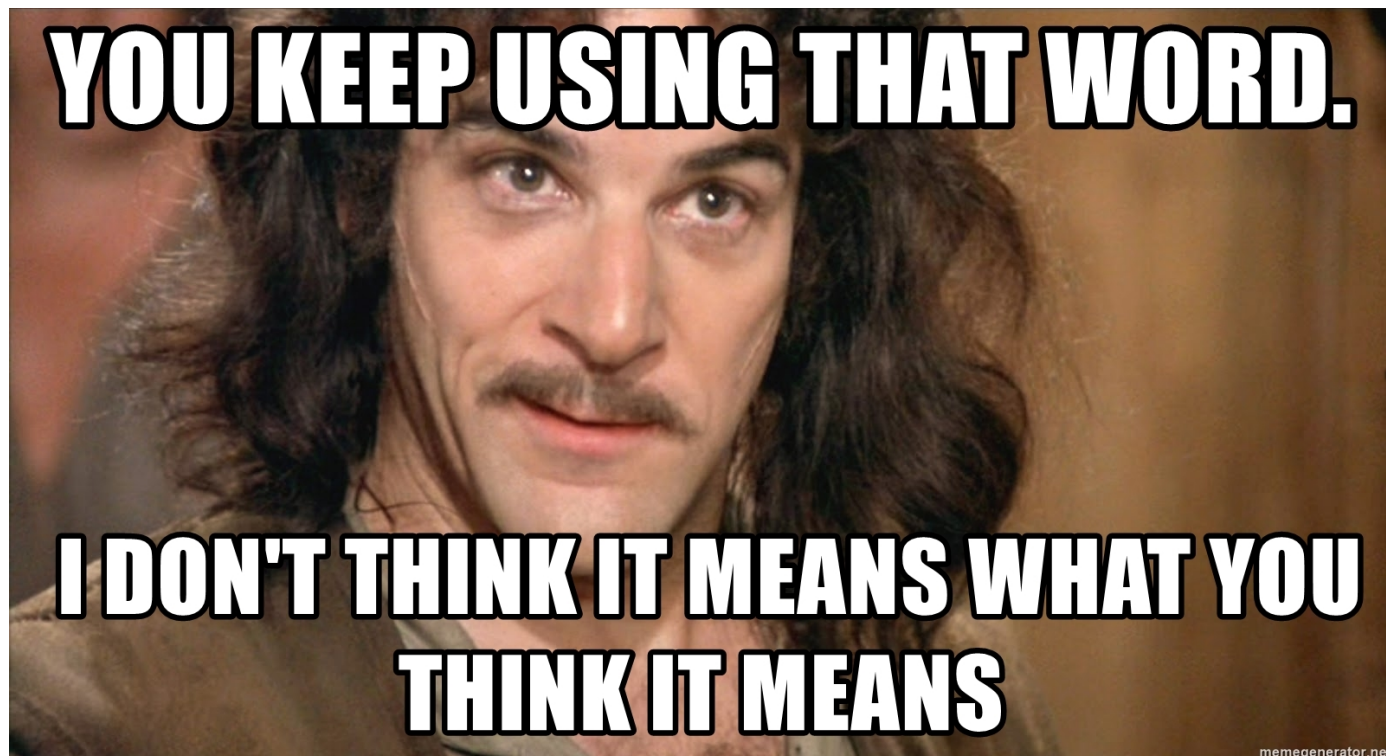
- Endowed by our Creator (a gift from God) or
- Privileges reluctantly granted by a government





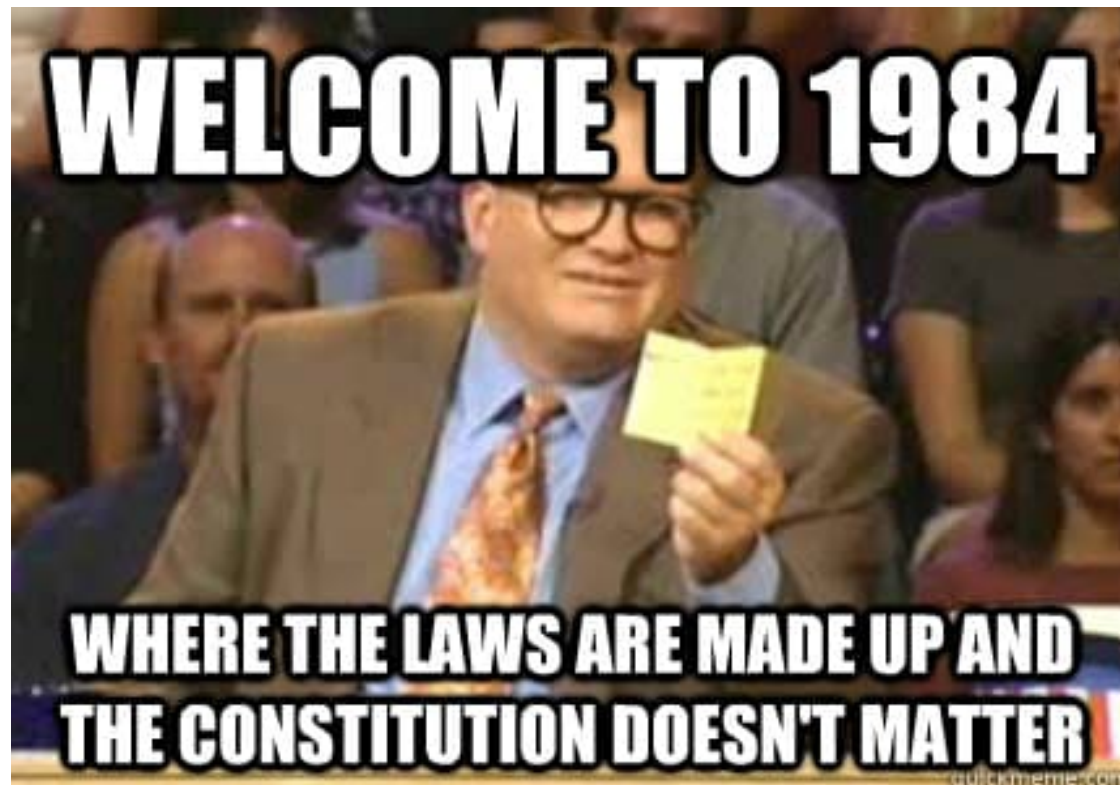
# The Meaning of “Rights”

- A confused mixture of Natural and Legal
- Right to free speech ... and ... free education ?



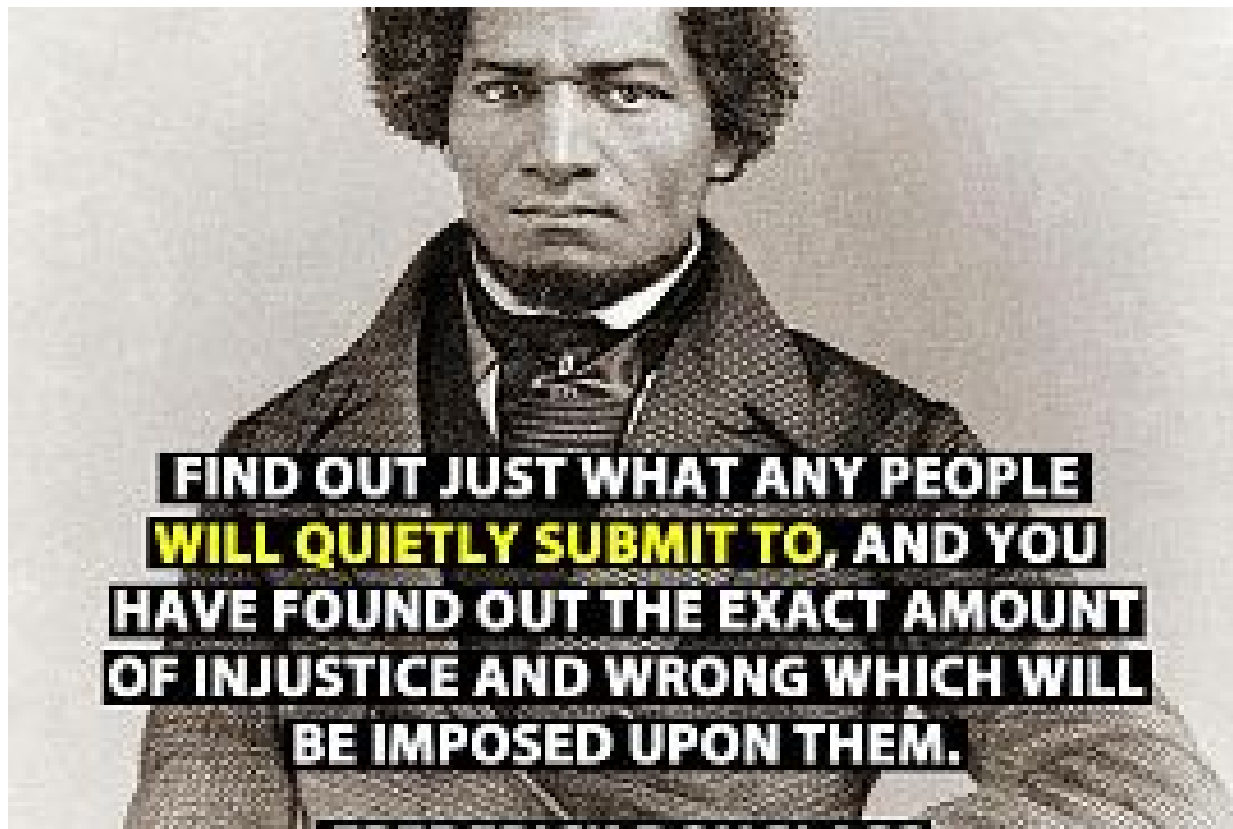
# In a Social System

- Natural Rights are either recognized or not
- They cannot be half-recognized



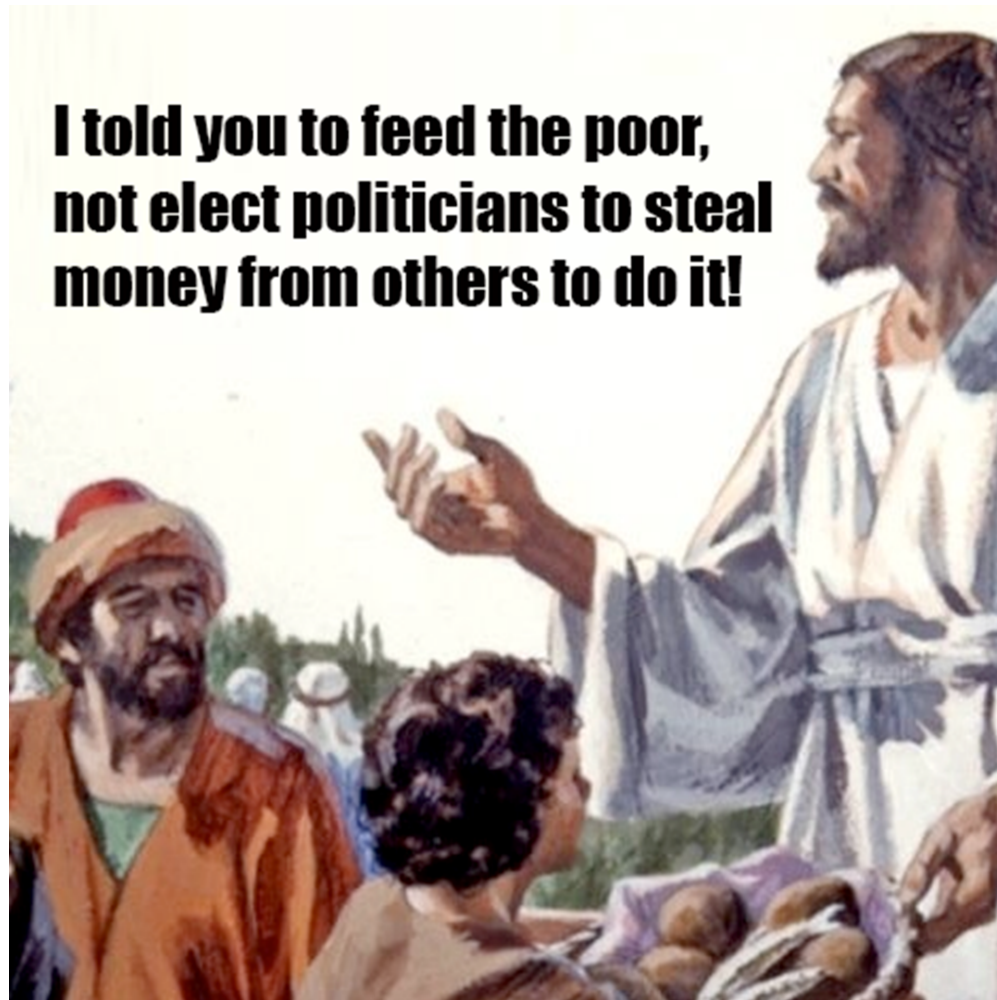
# Civil Government was a Solution

- Most people jump to this conclusion
- Yet it has a terrible record of outcomes



# “We” Embraced Political Solutions

- Used the State to coerce and manipulate





# “We” Embraced Democracy

- And suffer the tyranny of a majority

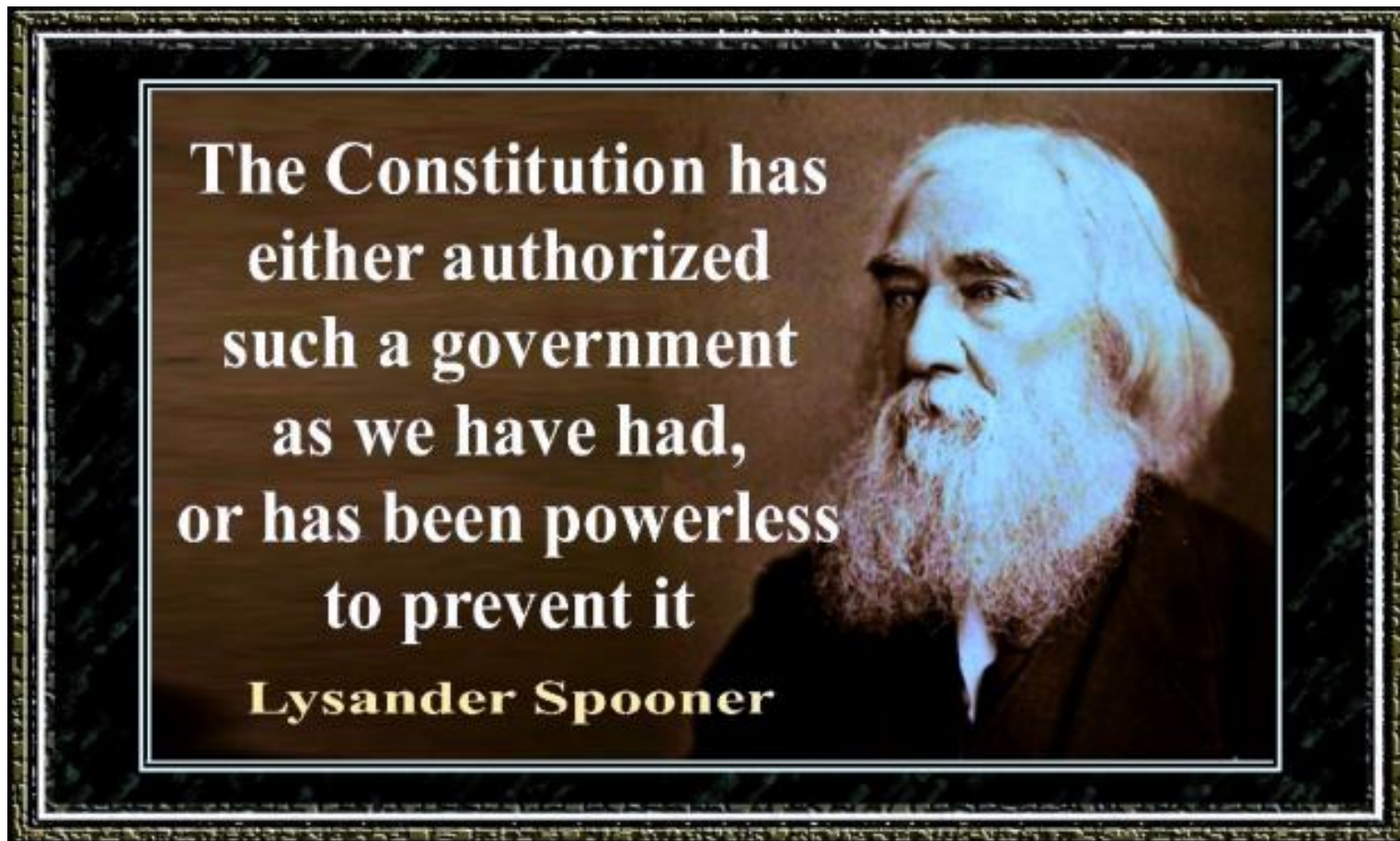


And, The Outcome ... ???



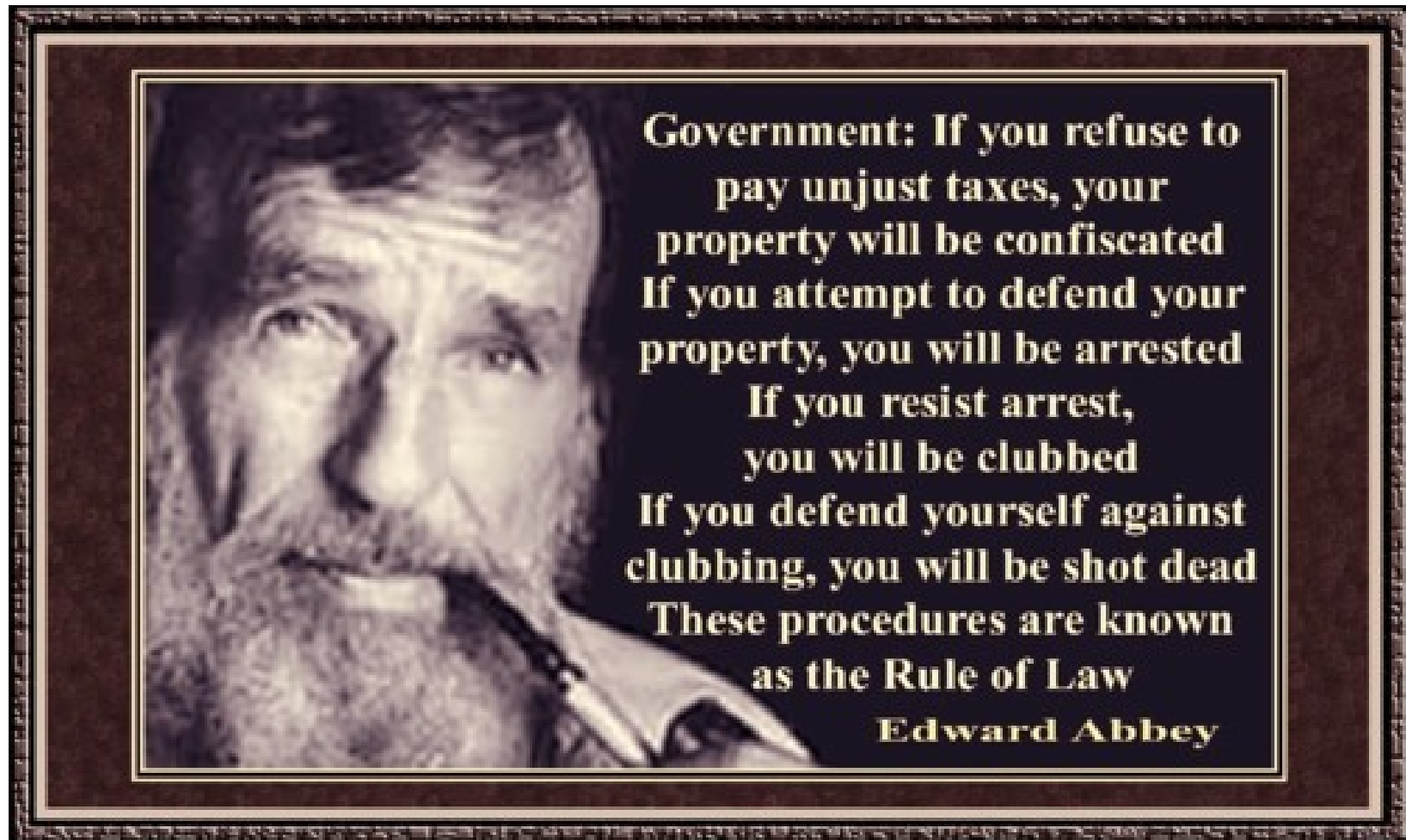
# The Republic Failed

- To prevent injustice at the level of society



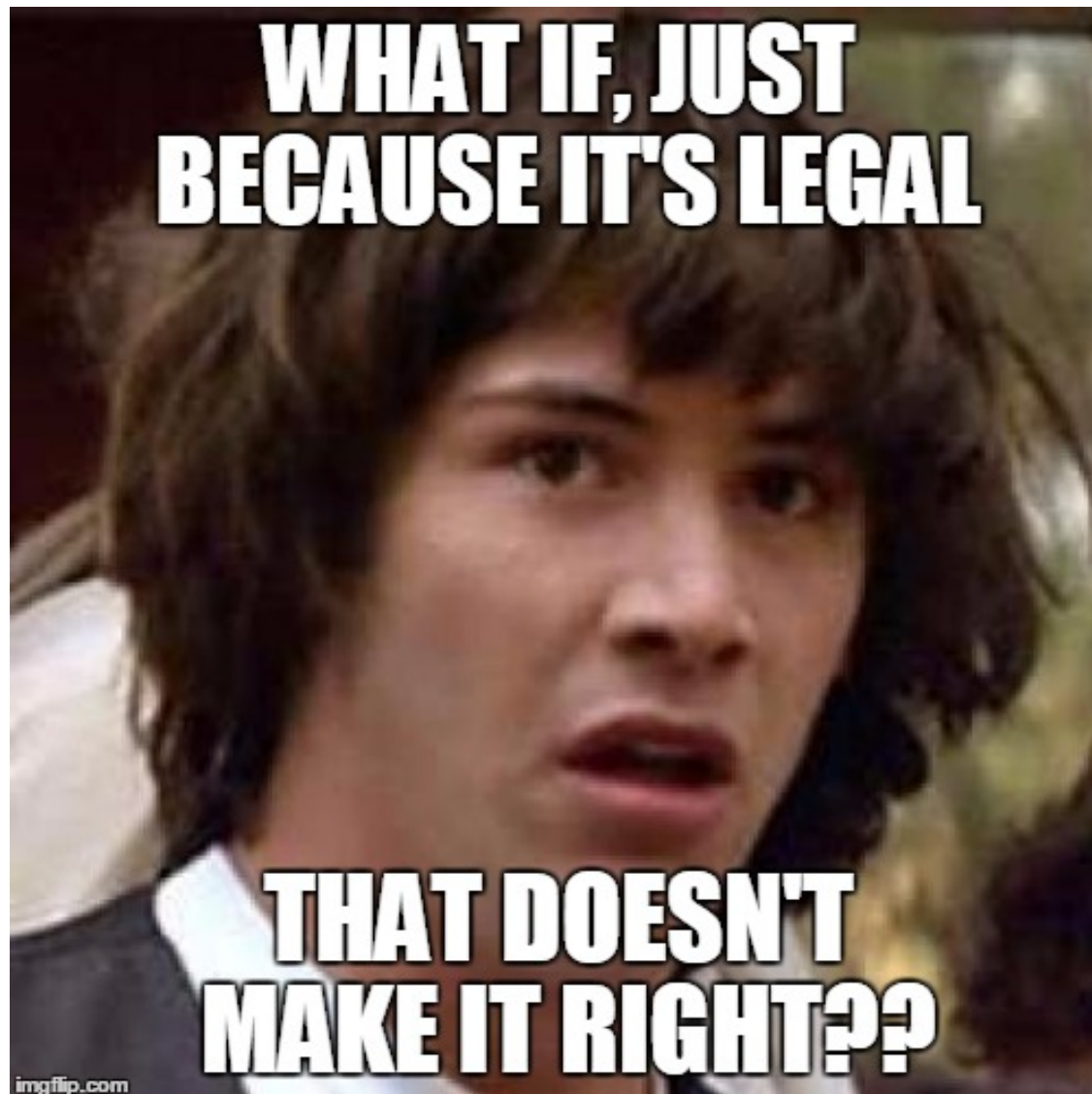
# Rule of Law Failed

- To prevent injustice for the individual





# WHY? “We” Used the Wrong ‘Law’

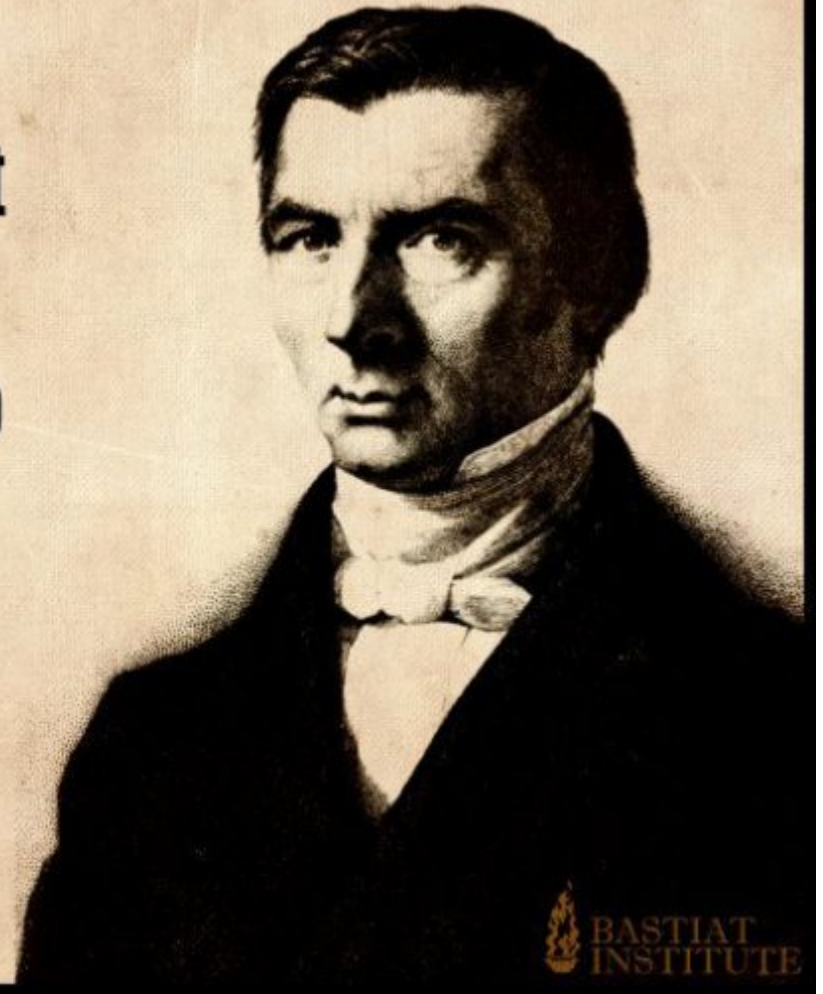


## 2. Liberty and Common Law

complementary aspects of a functional society

**Government is the great  
fiction, through which  
everybody endeavors to  
live at the expense of  
everybody else.**

*Frederic Bastiat*



# Threshold Issue for Civil Society

- How do “we” prevent injustice from reigning?



# But What Constitutes Injustice ?

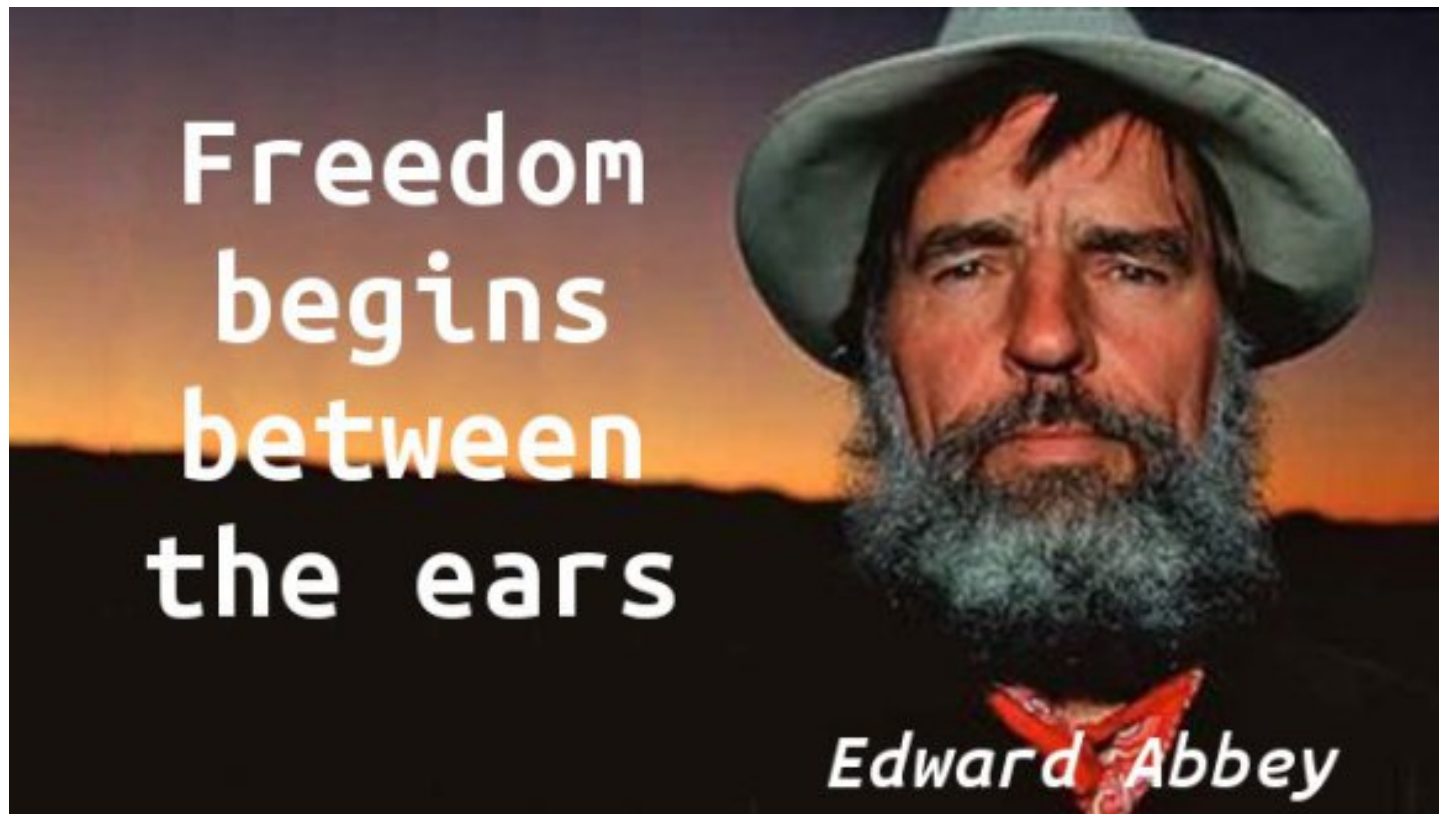
- Personal Injury, constraint of individual liberty
- Damage to property ... crimes in common-law





# What Do ~~“We”~~ I Want ?

- Freedom of action, freedom from constraints
- A life free from trespass and encroachment



# Maximize ~~“Our”~~ My Liberty

- Freedom conditioned within a social context



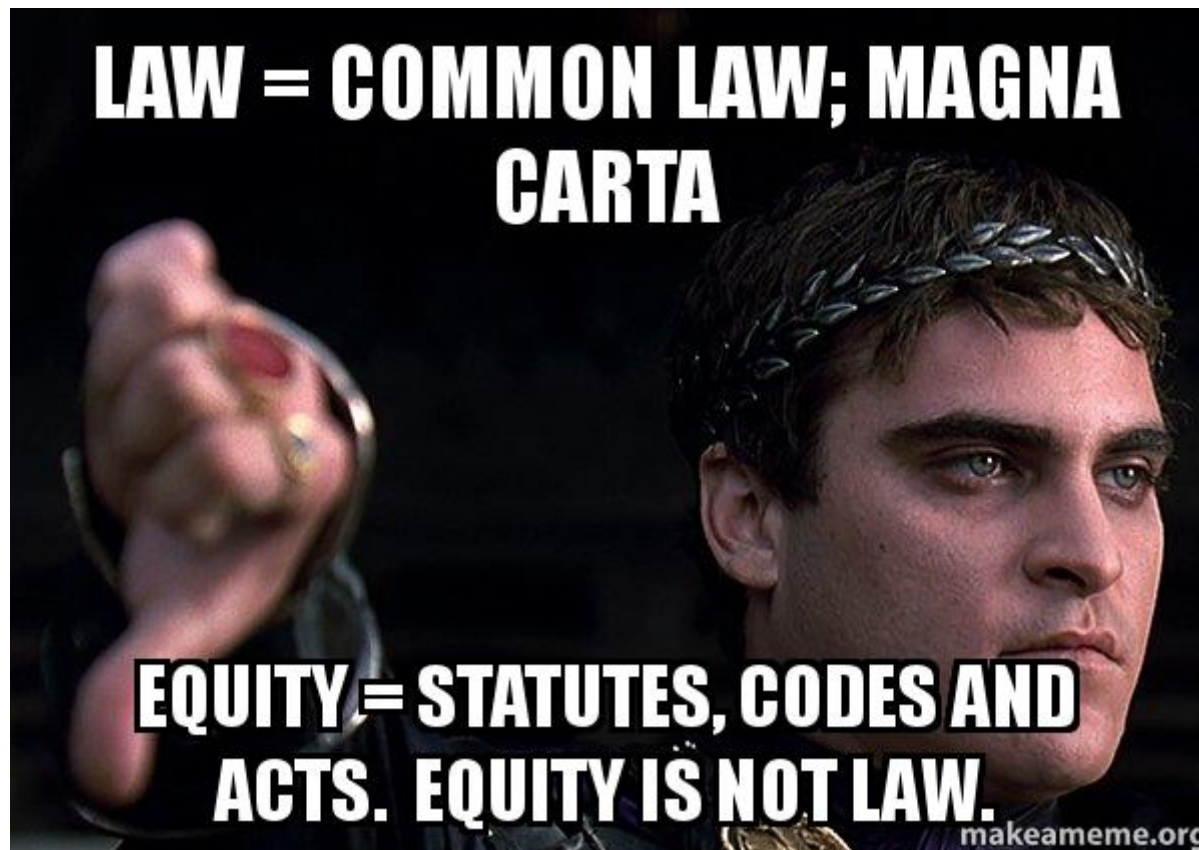
Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others. I do not add 'within the limits of the law' because law is often but the tyrant's will, and always so when it violates the rights of the individual.

(Thomas Jefferson)

izquotes.com

# To Minimize the Tyrants' Will

- Embrace natural law and common law
- Reject all forms of positive legislation



# To Return to Common Law

- Historical jurisprudence, neither divinely inspired nor created by positive edicts
- “Discovered” rather than proclaimed
- Reflecting the wisdom of an historically situated community, developed over generations
- **Where politics is an activity either within the law or beside law, rather than an activity that creates law**



# At Liberty Under Common Law

- An individual may do with his actions, possessions, and persons, anything he may see fit, without the consent or approval of any other individual, government, or human power
- The laws of nature only constrain him insofar as he may not create damage, violate the liberty or possessions of other, or create an obvious danger

# At Liberty Under Common Law

- A man is able to directly exercise the same powers that he may delegate to a government
- This is because Rights adhere to the individual and are not privileges granted by government

# Maxims - Basis of Common Law

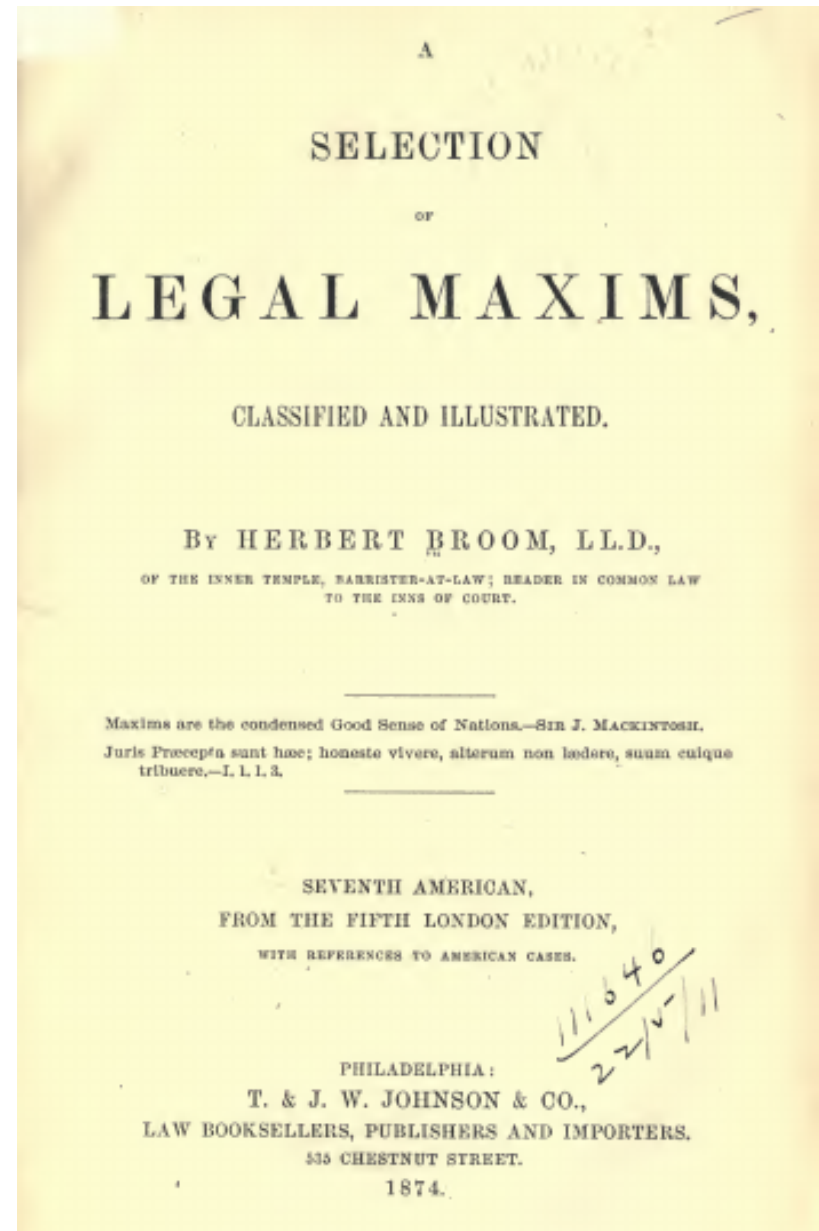
- Some are simple and familiar:
  - Might does not make right
  - Thou shall not steal
  - Thou shall not bear false witness
  - A person is innocent until proven guilty
  - Truth is paramount and the objective of the law
  - The people, as individuals, in America are sovereign

# Maxims - Basis of Common Law

- Others are logical and self-evident:
  - A man cannot give any thing, power or authority he does not have
  - No one has the right to force an obligation on another with impunity
  - All presumptions of law are rebuttable
  - Written law cannot lawfully or morally violate rights of a free man
  - Force, perjury, or subornation of perjury, voids all

# Compilations are Available

- Seek out publications from 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> century common lawyers
- From on-line PDF archives and rare / second-hand book sellers





# Where “We” Went Wrong

- At a time in history before the “progressive era” individual property rights were supreme
- The Maxim “sic utere...” was the primary measure in legal analysis:

**“Sic utere tuo ut alienum non laedas”**

*So use your own as not to injure another’s property*

- The legislative domain expanded the scope of “sic utere” to establish police powers

# Perversion of Meaning

- The legislative courts changed the meaning of one word in a complementary Maxim
- Railroad 'law' expanded the scope of "salus" 'safety and security' to 'well-being and welfare'

**"Salus populi est suprema lex"**

*The safety of the people is the supreme law*

- And created an obligation to do 'public good'

# We Must Restore Primacy of Rights

***“supremacy of universal duties to serve the cause of national progress was a political act.”***

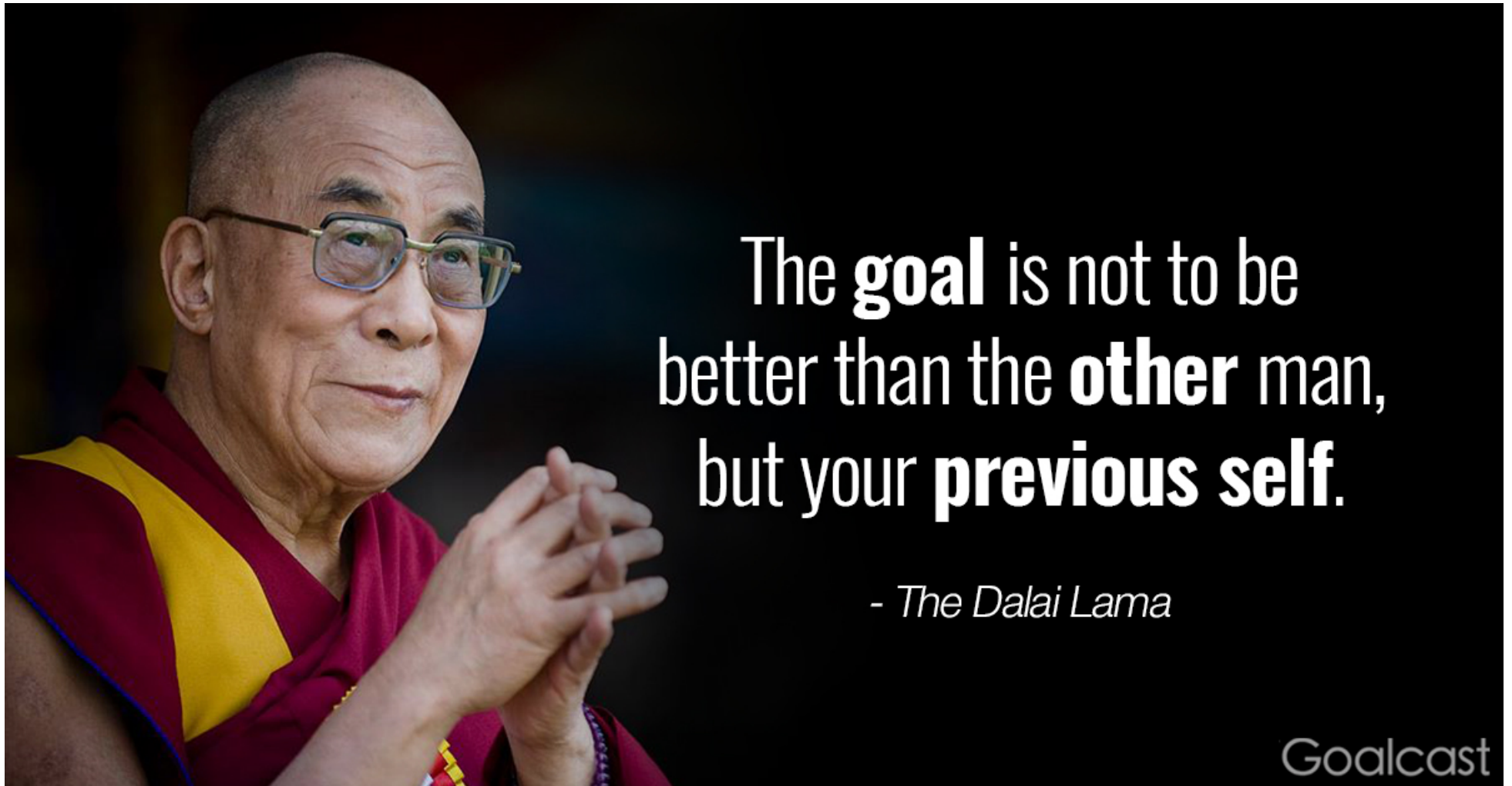
- To recover Rightful Liberty one must revive the supremacy of individual rights
- And restore the Maxims “sic utere” and “salus poplui” to their proper scope and intent
- Eliminate the false obligations ‘owed’ to others in the name of public duty and civic virtue

# And Recover Spontaneous Order

- Natural law, implemented through Common Law, is that law which corresponds to a spontaneous order in the absence of a state
- That law, which it is proper to uphold by unorganized individual violence, whether a state is present or absent
- And for which, in the absence of orderly society, it is proper to punish violators by unorganized individual violence

# 3. Social Change

only possible through self improvement





# One Cannot Legislate Morality

- “One of the greatest delusions in the world is the hope that the evils in this world are to be cured by legislation.” – Thomas B. Reed
- **“I am free, no matter what rules surround me. If I find them tolerable, I tolerate them; if I find them too obnoxious, I break them. I am free because I know that I alone am morally responsible for everything I do.”** – Robert Heinlein

# Live As An Example To Others

- The moral basis necessary for sovereign individuals to prosper together in peace, is adequately defined by the “ideal laws for a civil society”:
  - Do not encroach upon others or their property
  - Do all that you agreed to do
- *“There’s only one way to improve society: present it with a single improved unit: yourself.”*
  - Albert Jay Nock

# Learn More About The Maxims

- Maxims are “truths” based in natural law and reason. The claim of antiquity serves as a presumption, not a proof, of wisdom
- Maxims provide a moral framework within which the actions of men may be judged against the injury they cause others and their property

# Train In Common Law

- An “Action” is nothing less than the lawful demand of ones’ right. - Lord Coke

## HAND-BOOK OF COMMON-LAW PLEADING

BY  
BENJAMIN J. SHIPMAN

SECOND EDITION

ST. PAUL, MINN.  
WEST PUBLISHING CO.  
1895

### CHART OF COMMON-LAW PLEADING.

The Syllogism of Pleadings.

#### Of the Declaration or Complaint.

First:  
Against the Defendant who has forcibly entered upon my lands—or who owes me a sum of money and neglects or refuses to pay although due—or who has assaulted me—or broken the conditions of his contract, etc., etc. I have a right by law to recover damages.

MAJOR  
PROPOSITION  
understood by the  
Court.

Second:  
Statement or allegation of the matters of fact: That is to say, that he did so enter upon my lands, that he owes the debt and neglects or refuses to pay although requested, etc., etc.

MINOR  
PROPOSITION  
must be logically  
stated with  
simplicity and  
certainty.

Third:  
Because of the truthfulness of the major and minor propositions. Demand for judgment.

THE CONCLUSION  
Must be stated  
and amount  
demanded.

#### Contested by Defendant.

First:  
Denies the Major Proposition, Declaration or Pleading not sufficient in Law.

Tenders an issue of Law.

Demurrer.

Second:  
The Minor Proposition is not true as matter of fact.

Tenders an issue of Fact or Law and Fact.

Plea to the Action.

Third:  
The Conclusion.

Confesses Major and Minor, but avoids because of new matter which excuses—or, applying Syllogism of Defense.  
First: Major proposition—If he upon whose lands I unlawfully entered has released me, or has legally excused my so entering, he has no right by law to recover damages.  
Second: He has so released me.  
Third: Conclusion—He cannot recover.

Confession  
and  
Avoidance.

# Become A Common Lawyer

Learn how to prepare the various Actions

- **Assumpsit:** an undertaking to perform an agreement, to perform an act or pay a sum of money
- **Trespass:** to recover compensation for transgression against another's person or property
- **Trover:** to recover the value of personal property wrongly converted by another to his own use
- ... **Replevin, Covenant, Debt, Account, Detinue, Ejectment, Writ of Entry, Detainer, ...**



# Endeavor To Banish Injustice

- Begin as a council of arbitration for agreements
- Offer dispute resolution services so neighbors may avoid State courts of admiralty / equity
- Explore how to voluntarily bind participants to the outcome of arbitration and dispute resolution
- Research penalty and punishment proportional to the magnitude of damage inflicted, and consistent with historic precedent

# Establish A Community Court

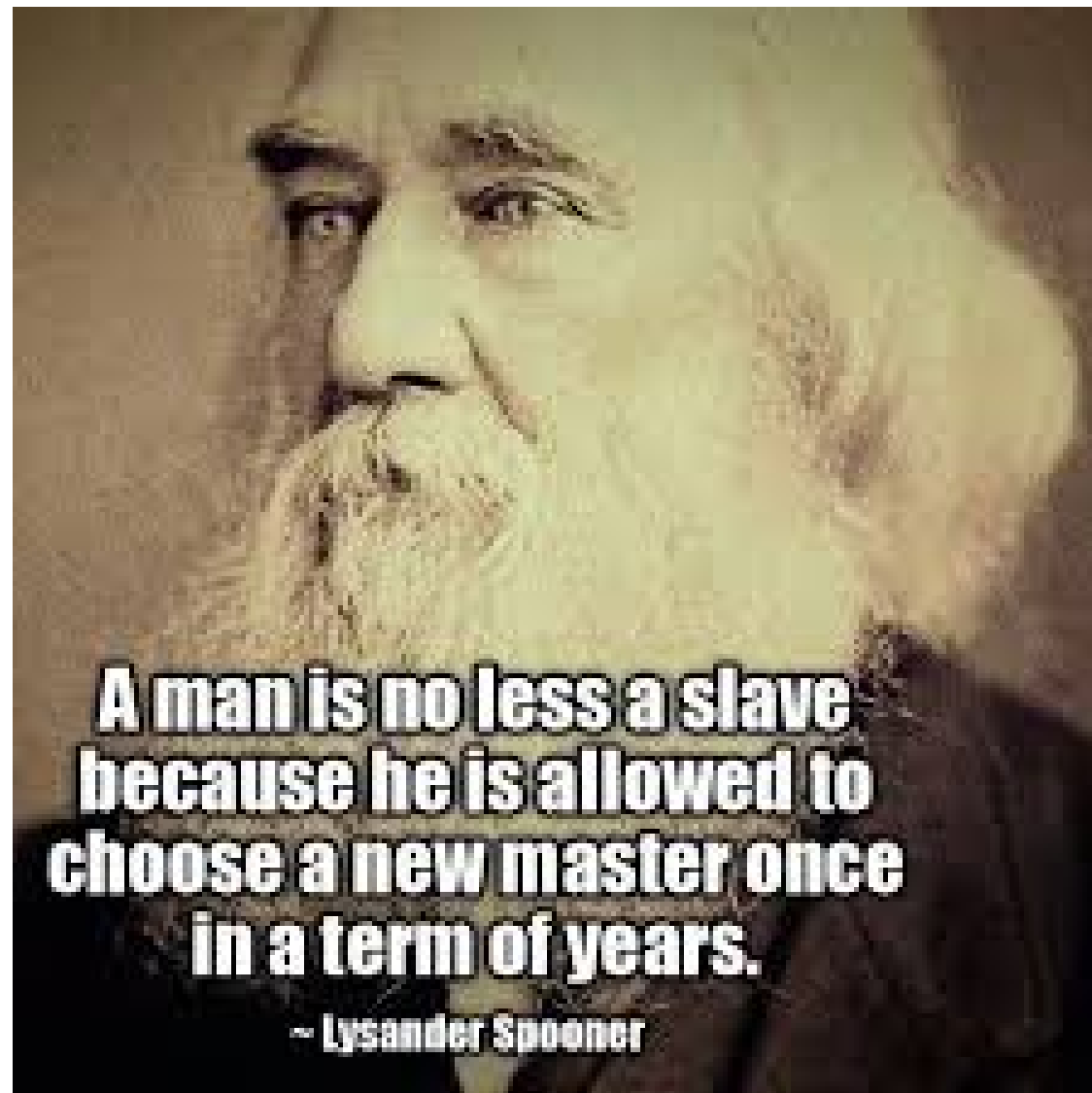
- Common-Law may be applied to actions of men, regardless of whether the men involved have consented to be governed
- Nothing prevents us from the practice of common-law today. Our state constitutions almost universally acknowledge the validity
- Appoint your best community Common Lawyer as a local Magistrate or Justice

# Above All, Be Tolerant

- Be patient with those who choose not to engage on this journey:
  - So long as they are not hostile to the journey
  - Remember, you are an example ... a better “self”
- Be inclusive of those who differ in faith but have a genuine desire to live in Rightful Liberty

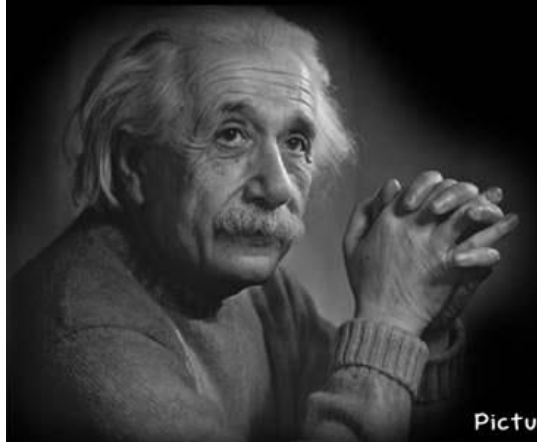
***Christianity neither is nor ever was part of the Common Law.*** - Thomas Jefferson

## 4. Closing Thoughts



# Government Is Not The Solution

**Insanity: doing the  
same thing over and  
over again and  
expecting different  
results.**



**Albert Einstein**

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# We Always Have A Choice

- Choose to retain your moral sense
- Choose to live your life by common law

When law and morality **contradict** each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law.

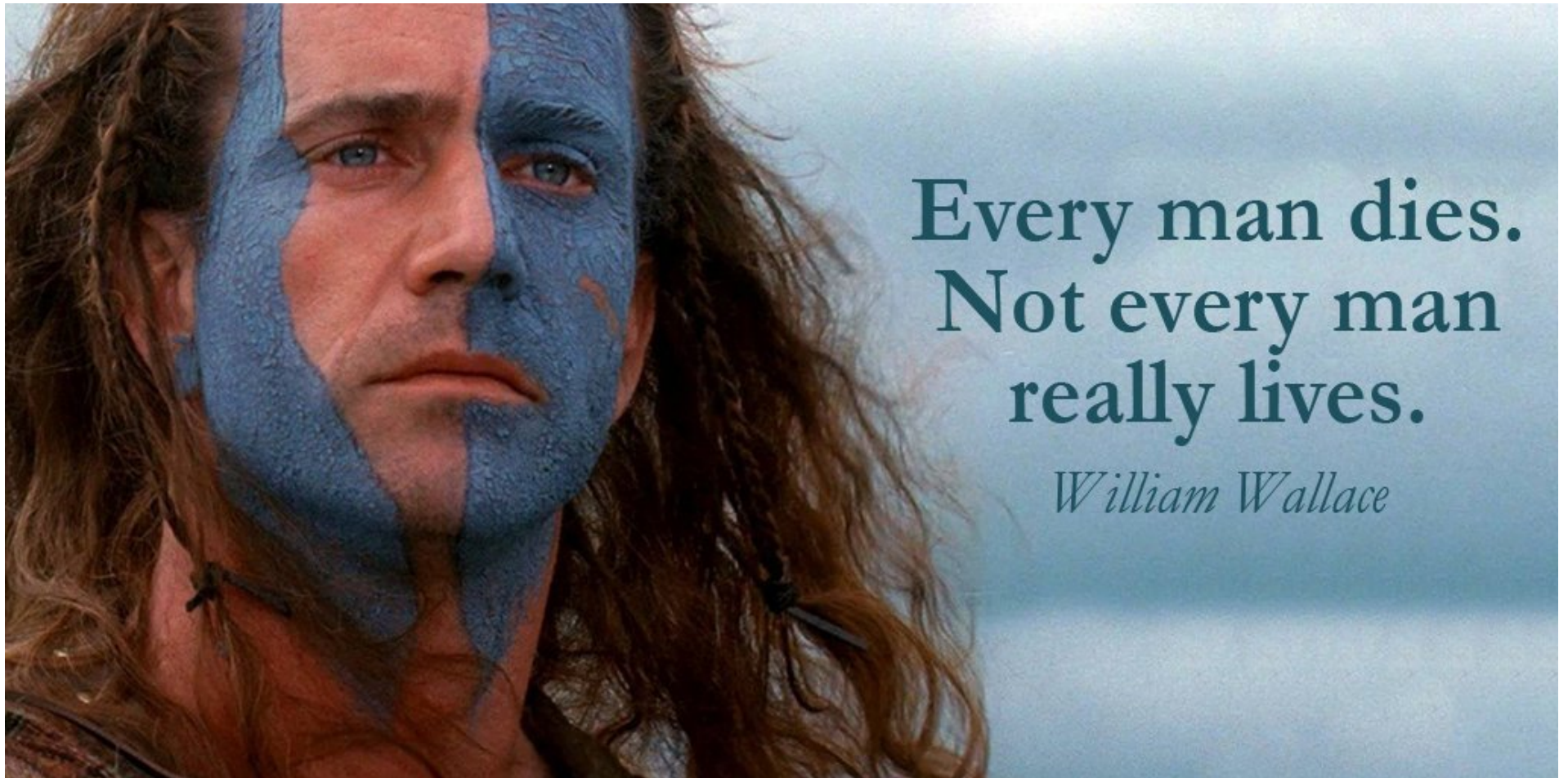
*~Frédéric Bastiat*



# Live Each Day In Rightful Liberty

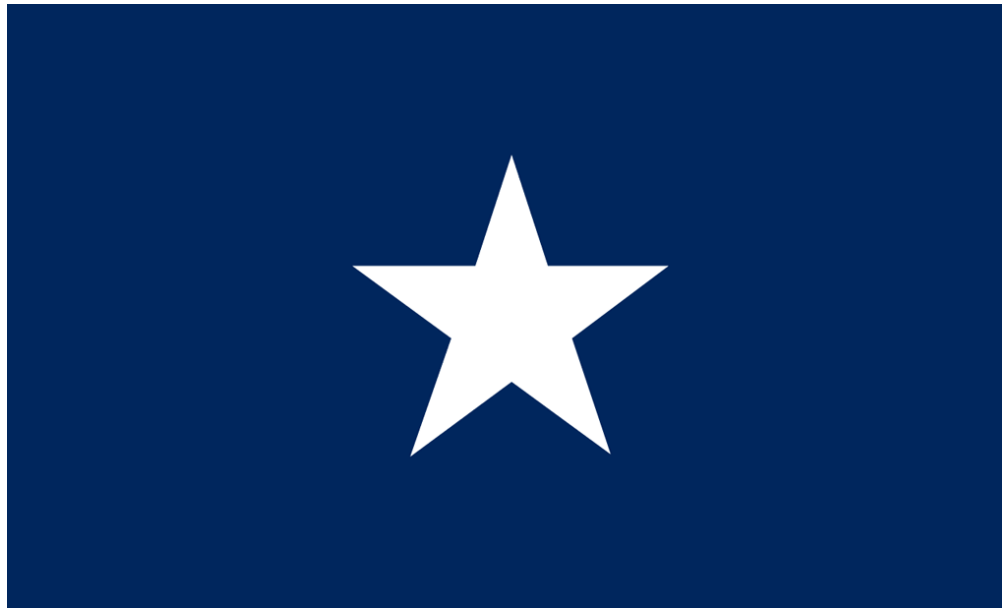


# Stand ...





*We are a band of brothers and native to the soil,  
Fighting for the property we gained by honest toil;  
And when our rights were threatened, the cry rose near and far,  
Hurrah! for the Bonnie Blue Flag that bears a single star.*



**Si vis libertatem, imperium esse delendam.**

(If you desire liberty, the power to command must be eliminated.)