LIBERTY TREE

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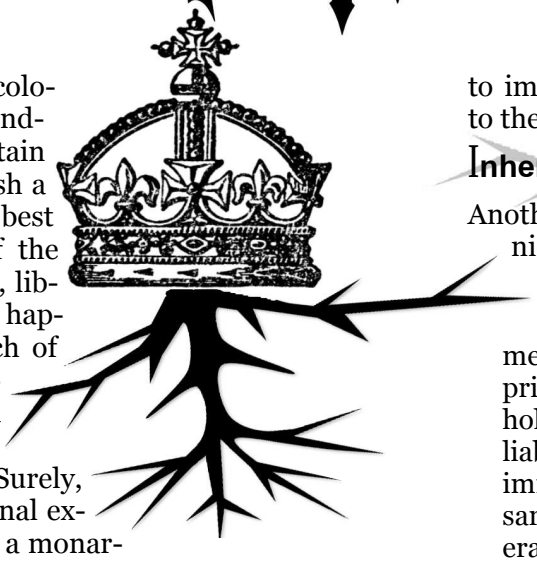
"There are a thousand hacking at the branches of evil to one who is striking at the root."

—Henry David Thoreau

The Roots of Monarchy

By Dick Greb



When the American colonists declared independence from Great Britain and set about to establish a government that would best secure the blessings of the inalienable rights to life, liberty and the pursuit of happiness bestowed on each of us by God, they ultimately believed that a republican form would best suit that purpose. Surely, most of them had personal experience with life under a monarchial form of government, and so their rejection of that form must have been a deliberate choice. Thomas Paine, in *Common Sense*, has this to say about the unnaturalness of kings:

> But there is another and greater distinction for which no truly natural or religious reason can be assigned, and that is, the distinction of Men into Kings and Subjects. Male and female are the distinctions of nature, good and bad the distinctions of Heaven, but how a race of Men came into the World so exalted above the rest, and distinguished like some new species, is worth enquiring into, and whether they are the means of happiness or of misery to mankind.

Yet, despite their rejection of the monarchial form as a whole, roots of monarchy still exist within the structure of the government we inherited from our forefathers. In the April 2010 issue of Liberty Tree, I discussed one of those roots — compelled testimony, based on the misguided principle that "*All subjects ... owe to the King tribute and service, not only of their deed and hand, but of their knowledge and discovery.*"[1] This kingly claim of a right to your knowledge (and your tribute) has wide-ranging effects throughout our society. It has been used to emasculate the Fifth Amendment, even taken so far as to imprison people who refuse to answer questions put to them by government functionaries.

Inherent Sovereigns

Another root of monarchy that affects us all is the tyrannical practice of *sovereign immunity*.

> **Sovereign immunity.** A judicial doctrine which precludes bringing suit against the government without its consent. Founded on the ancient principle that "the King can do no wrong," it bars holding the government or its political subdivisions liable for the torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inference from legislative enactment. The federal government has generally waived its non-tort action immunity in the Tucker Act, 28 U.S.C.A. §1346(a)(2), 1491, and its tort immunity in the Federal Tort Claims Act, 28 U.S.C.A. §1346(b), 2674. Most states have also waived immunity in various degrees at both the state and local government levels.[2]

As you can see from this definition, the government — that is, our *agents* — have deigned to waive their regal immunity from our suits in certain situations, all the while creating the hoops through which we must jump in order to do so, by statutory enactments. Of course, anything the legislature enacts, can just as easily be repealed by it also, whenever it decides that the latter course better promotes its interests. But the government's graciousness in allowing us some possibility of redress for its supposed wrongs against us must be tempered by the underlying premise that the ***king*** can do no wrong. In other words, this doctrine is based on the ridiculous premise that the ***government*** can do no wrong! The king was immune from suit *because* he could do no wrong. And why could he do no wrong? Simply because the very fact that he did something made it right. REX

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1. You can read that article at: www.libertyworksradionetwork.com/jml/index.php/opinions/dick-greb/129-absolute-right-to-remain-silent
2. *Black's Law Dictionary*, 6th Edition. Internal citations omitted and emphasis added.

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LEX! ***The King*** is Law. So, if our government is also immune from suit, then it must surely be for the same reason. How else could the doctrine be interpreted?

Is there a king in America?

Paine, in expressing his ideas on the structure of a new government, had this to say:

> But where says some is the King of America? I'll tell you Friend, he reigns above, and doth not make havoc of mankind like the Royal Brute of Great Britain. Yet, that we may not appear to be defective even in earthly honours, let a day be solemnly set apart for proclaiming the Charter; let it be brought forth placed on the Divine Law, the Word of God; let a crown be placed thereon, by which the World may know, that so far as we approve of monarchy, that in America THE LAW IS KING. For in absolute governments the King is Law, so in free Countries the Law ought to be King; and there ought to be no other.[3]

Paine's reference to a 'Charter' was of a founding document for the government, his own conception of what would ultimately be consummated in our Constitution. His inversion of the royal principle to LEX REX (the Law is King) sets the stage for the supremacy of the Constitution over the government. However, even to this day, the roots of monarchy still exist in our political systems.

The roots still run deep

As early as 1805, the Supreme Court seemed to recognize the invalidity of the idea that the 'king' couldn't do wrong, at least with respect to a state:

> The adoption of the common law was to secure the liberty and property of the citizens of New-Jersey, without regard to foreign nations, and not with a view of enabling British subjects to hold lands in that state. It was not meant to adopt those parts which were inconvenient, or inconsistent with our situation—such as that the king can do no wrong—personal and perpetual allegiance, etc.[4]

And yet, to this day, the black-robed liberty thieves continue to uphold sovereign immunity, even though it's based on a tyrannical falsehood. Perhaps being part of the common law of England is the reason these monarchial doctrines have rooted so far into our systems. In discussing the power of all courts to issue writs of *habeus corpus*, Chief Justice John Marshall said:

> It is not possible to move a single step in any judicial or legislative proceeding, or to execute any part of our statutes, or of our constitution, without having recourse to the common law. The constitution uses, for instance, the terms 'trial by jury' and 'habeas corpus.' How do we ascertain what is meant by these terms? By a reference to the common law. This court has power, in some cases, to summon jurors, and examine witnesses. If an objection be made to the competence of a witness, or a juror be challenged, how do you proceed to ascertain the competence of the witness or the juror? You look into the common law. The common law, in short, forms an essential part of all our ideas. It informs us, that the power of issuing the writ of habeas corpus belongs incidentally to every superior court of record; that it is part of their inherent rights and duties thus to watch over and protect the liberty of the individual.[5]

In order to justify his claim of inherent rights of the courts, he sets up a straw man:

> If this court possessed no powers but those given by statute, it could not protect itself from insult and out-

Gene Basset's political cartoon depicts Nixon's actual words to David Frost (episode aired May 19, 1977), in seeking to justify his actions in Watergate. This statement followed his now-famous statement "when the president does it that means that it is not illegal," which showed Nixon believed he was a king, above the law, unlike the 'private citizens.' By using the phrase 'inherently governmental actions,' he was, however inarticulately, voicing the idea of most 'officials' that they have some *inherent power over others* by virtue of their role. This is the claim of monarchy, and cannot be said of governments who derive ALL of their powers from the consent of the governed; see the Declaration of Independence.

3. *Common Sense*, pg. 57; emphases in original.
4. *McIlvaine v. Coxe's Lessee*, 6 U.S. 280, 289 (1805).
5. *Ex parte Bollman*, 8 U.S. [4 Cranch] 75, 80 (1807).

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MAKING SENSE OF THE CENSUSES

"[C]ensus forms have become a frightening system of surveillance." — *Mike Adams, Natural News.*

OMB No. 0607-0931

On February 12, 2013, "Economic Census" forms sent to some "nearly 4 million businesses … representing all U.S. locations and industries" came due.[1] These "census forms" are tailor-made by the Dept. of Commerce for every conceivable business type, and "respondents" are told they are "required by law" to provide EINs, physical location, operational status, operating receipts, number of employees, payroll figures, franchisee information, and much more. The Census Bureau insists businesses have nothing to fear — confidentiality is guaranteed because Title 13 U.S.C. § 9 requires it to be so, and after all, it's just to "help government serve business."[2] Because federal agencies always adhere to the law, right?

Or not.

The Constitution only authorizes a *decennial census* to *enumerate the people* in Art. 1, § 2: "The actual Enumeration shall be made … within every subsequent Term of ten Years, in such Manner as they shall by Law direct." If this is the case, whence comes the power to conduct an "economic census" of *businesses* in the States? The fact that the Census Bureau is part of the Dept. of Commerce provides a hint: the gathering of such data is collected under the congressional authority to "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes,"Art. 1, § 8.

1. See www.census.gov/econ/census/
2. See "*The Economic Census: How it Works for You*," January 2012 U.S. Census brochure.

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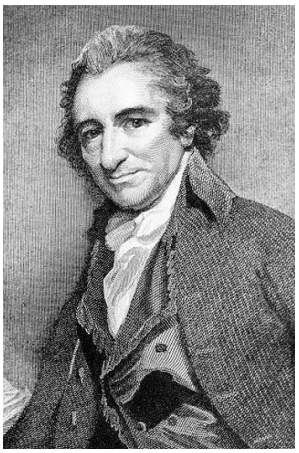
> rage. It could not enforce obedience to its immediate orders. It could not imprison for contempts in its presence. It could not compel the attendance of a witness, nor oblige him to testify. It could not compel the attendance of jurors, in cases where it has original cognizance, nor punish them for improper conduct. These powers are not given by the constitution, nor by statute, but flow from the common law. *Ibid.*

Notice that all of the things he claims the courts could not do without *inherent powers* could indeed be done with *powers granted by the Constitution or by statute.* And in a constitutional republic, that is the only proper method by which such powers could be obtained. So, as reasonable as Marshall's explanation appears at first, it ignores the most important aspects of a republican form of government: that it consist of representatives — that is, agents of the people; and that the powers to be exercised by those agents are only such as have been granted by the consent of the governed.

Unlimited Government?

If Marshall was right, then there really is no such thing as a government of limited powers. Since inherent powers are not granted by the people, then they also can have no say in how those powers are exercised. Any attempts to limit their use could simply be overruled on the basis of sovereign necessity. And of course, that is why governments love the whole principle of inherent sovereign powers. Their only limits are those that governments place upon themselves, without any regard to the consent of the governed. It's no surprise then that these inherent powers are so ripe for abuse. For example, "The right of eminent domain, that is, *the right to take private property for public uses*, appertains to every independent government. It requires no constitutional recognition; it *is an attribute of sovereignty*."[6] And Maryland's highest court declared:


Thomas Paine, 1731-1809, argued that all government must rest on the ultimate sovereignty of the people.

> [I]ndependent of constitutional provisions, and subject only to the limitations placed upon it by the Federal Constitution, the power of taxation is inherent in a sovereign State, because *the right to tax underlies its own constitution and is not granted by it*. Stated differently, the right may be regulated and limited by constitutional mandates, but *it exists without express authority in the fundamental law as a necessary attribute of sovereignty*. … Constitutional provisions relating to the power of taxation do not operate as grants of the power; but do constitute limitations upon a power in the government thus set up, which would be otherwise without limit.[7]

What none of the liberty thieves address however, is the precise point in the formation of a government at

6. *Boom Company v. Patterson*, 98 U.S. 403, 406 (1878).
7. *Oursler v. Tawes,* 178 Md. 471, 13 A.2d 763 (1940).

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In 1899, Congress passed an act calling for a census of "population, of deaths, and of the manufacturing, mechanical, and agricultural products of the United States."[3] Census agent William Moriarity was indicted for making a fictitious return, and objected that the act was unconstitutional. After overruling his objection on the grounds that the act didn't invade *his* rights, the court indicated that even the *suggestion* that congress can only enumerate the population was abhorrent. "[The census power] does not prohibit the gathering of other statistics, if 'necessary and proper,' for the intelligent exercise of other powers enumerated in the constitution," declared the court, in a hissy fit of *dicta*.[4] Proclaiming the federal government "a living political entity, sovereign within its just sphere, meeting its ever-widening obligations, and making large contributions to the welfare of its citizens and the world," the court listed many *unconstitutional* actions undertaken by congress as good reasons for it "to know something, *if not everything*"(!) about the people. Congress "may exercise the right to proclaim its commands, after careful and full knowledge of the business life of its inhabitants, in all its intricacies and activities," said the court. Since then, federal judges have approvingly cited this whenever citizens complain about census questions.[5] But while the courts may 'uphold' an unlimited, 'sovereign' federal power, it remains to the people to stand against this sedition, and in that spirit, we offer some observations regarding Title 13's provisions and the so-called "economic census."

First, we note the term "economic census" appears nowhere in the statutory sections cited by Commerce as its authority. When Commerce first applied for an OMB Number[6] for its current "economic" collection of information, it listed the statutory authority as "NONE," but since then, it has settled on § 131:

> *The Secretary shall take*, compile, and publish censuses of manufactures, of mineral industries, and of other businesses, including the distributive trades, service establishments, and transportation ... every fifth year ... (emphasis added)

Section 131 only commands *the Secretary* of Commerce to *take* censuses — who is required to *answer* his questionnaires? For that, the Census Bureau cites § 224:

> Whoever, being the owner, official, agent, [etc.] ... of any company, business, institution, establishment, religious body, or organization of any nature whatsoever, neglects or refuses, when requested by the Secretary or ... authorized employee of the [Dept. of] Commerce ... to answer completely and correctly to the best of his knowledge all questions relating to his [business, etc.] ... contained on any census ... or questionnaire prepared and submitted to him *under the authority of this title*, shall be fined not more than $500, and if he willfully gives a false answer to any such question, he shall be fined not more than $10,000. (emphasis added)

Note that only refusniks of questionnaires submitted *"under the authority of this title"* are to be fined. Keeping in mind that 68 Stat. 1025 (1954) provides "No inference of a legislative construction is to be drawn by reason of the chapter ... in which any section is placed, nor by reason of the captions or catchlines used in such title," we find that § 301 sets out a clear and concise authorization for the Secretary to *collect information*:

> (a) The Secretary is <u>*authorized to collect information*</u> from all persons *exporting from*, or *importing into*, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control, and from all persons *engaged in trade between the United States and such noncontiguous areas and between those areas, ...* and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, as he deems necessary or appropriate to enable him to foster, promote, develop, and further the commerce, domestic and foreign, of the United States and for other lawful purposes. (emphases added)

It would seem the Census Bureau may collect data from businesses exporting to, importing from, or trading with the noncontiguous U.S. territories. At any rate, this is the only manner in which its authority would conform to Art. 1, § 8 of the Constitution. Do you own a business engaged in such trade, exportation, or importation? You may wish to comply with the census. Otherwise, it is doubtful the Commerce Secretary has any lawful claim on your response or lack thereof.

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which the so-called sovereign powers inhere. Exactly how many powers must be granted to a *common agent*[8] before they automatically acquire the inherent powers? Is there some magic number, or is even one power enough to trigger the kingly jackpot of undelegated powers? Could it logically be argued that if the people established some central authority for the sole purpose of say, *establishing Post Offices and post Roads* throughout the geographical region they inhabited, that the very act of doing so immediately subjected them to being taxed without limits, their property seized for "public purposes," without even a possibility of redress for any harm caused by such central authority, whether intentional or not? Looked at in this light, the absurdity becomes obvious.

The bottom line is that all inherent sovereign powers are manifestly incompatible with our republican form of government — that is, governments of limited and enumerated powers. These so-called inherent powers are simply the evil fruit springing up from the corrupt roots of monarchies, and as long as we are held in subjection to them, our futures are just as uncertain as under the arbitrary rule of any tyrannical king.

3. 30 Stat. 1014
4. *U.S. v. Moriarity*, 106 F. 886 (Cir. S.D. NY, 1901).
5. See, *e.g., U.S. v. Little*, 321 F. Supp. 388 (D.C. Del., 1971)
6. Required under the Paperwork Reduction Act.
8. For more on this subject, see "Government? Agents!" at libertyworksradionetwork.com/jml/index.php/opinions/dick-greb/121-government-agents