TREATISE –

A Legal System for Sovereign Rulers

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The author of this book does not give legal advice. Remedies are available if you know where to look for them. The purpose of this book is to reveal and compile the sources of some of these remedies that can be found in millions of pages of case law, statutes, codes, laws, rules, and regulations. This book is intended to decrease the time it takes to discover the components of your remedies and their application. It is the responsibility of the readers to understand their remedies, to seek assistance if necessary, and to apply proper and complete concepts to reach a successful conclusion to a dispute. This book does not exhaust the information that might be needed to successfully settle a dispute.

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Books

America – National or Federal?
Each state, in ratifying the Constitution, is considered a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, the new Constitution will, if established, be a federal and not a national Constitution. The Federalist, No. 39, James Madison

In Search of Liberty
Liberty, sir, is the primary object, …the battles of the Revolution were fought, not to make 'a great and mighty empire', but 'for liberty'. Patrick Henry

What Does Accepted for Value Mean?
Agree with thine adversary quickly, while thou art in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison. Verily I say unto thee, Thou shalt by no means come out thence, till thou hast paid the uttermost farthing.

Matthew 5:25-26

Booklets

1 ***When There is No Money*** FREE
For thus saith the Lord, Ye have sold yourselves for nothing, and ye shall be redeemed without money. Isaiah 52:3

2 ***Liberty*** FREE
Now the Lord is that Spirit: and where the Spirit of the Lord is, there is Liberty.
II Corinthians 3:17

3 ***The Natural Order of Thing*** FREE
Owe no one anything, except to love one another; for he who loves his neighbor has fulfilled the law. Romans 13:8

4 ***Sovereignty*** FREE

Even in almost every nation, which has been denominated free, the state has assumed a supercilious pre-eminence above the people who have formed it. Hence, the haughty notions of state independence, state sovereignty, and state supremacy. Justice Wilson, Chisholm v. Georgia, 2 Dal. (U.S.) 419, 458 (1792)

5 ***The Legal System for Sovereign Rulers*** FREE

The Lord shall judge the people with equity. Psalms 98:9

6 ***The Negative Side of Positive Law*** FREE

Therefore, one must be wise and attentive, since there are those among us who make kings and set up princes outside His law. Hosea 8:4

7 ***Resident/Minister*** FREE

You may also buy some of the temporary residents living among you and members of their clans born in your country, and they will become your property.

Leviticus 25:45

8 ***Introduction to Law Merchant*** FREE

Stand fast, therefore, in the liberty with which Christ hath made us free, and be not entangled again with the yoke of bondage. Galatians 5:1

9 ***Society of Slaves and Freedmen*** FREE

If men, through fear, fraud, or mistake should in terms renounce or give up any natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being a gift of ALMIGHTY GOD, it is not in the power of man to alienate this gift and voluntarily become a slave. Samuel Adams 1772

10 ***Introduction to Corporate Political Societies*** FREE

Finally, be strong in the Lord and in the strength of his might. Put on the whole armor of God, that you may be able to stand against the wiles of the devil. For we are not contending against flesh and blood, but against principalities, against the powers, against the world rulers of this present darkness, against the spiritual hosts of wickedness in heavenly places. Ephesians 6:10-12

11 ***Superior Law, Higher Law, My Law*** FREE

You have rights antecedent to all earthly governments' rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe. John Adams

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Quoted passages are bolded.

The Lord shall judge the people with equity.

Psalms 98:9

Prohibited wrongs or offenses; acts which are made offenses by positive laws, and prohibited as such. Acts or omissions which are made criminal by statute but which, of themselves, are not criminal. Generally, no criminal intent or mens rea is required and the mere accomplishment of the act or omission is sufficient for criminal liability. Term is used in contrast to mala in se which are acts which are wrongs in themselves such as robbery. *Ballentine's Law Dictionary*, 3rd ed.

TREATISE –
A Legal System for Sovereign Rulers

Converting the law of the natural order into a legal
system for a new or unnatural order of things

A – INTRODUCTION

This writing addresses the method used by certain organizations or groups desirous of controlling a vast empire or even planet Earth. That concept may sound unusual if you have not closely studied the systematical patterns that are continuously employed to alter country after country.

The method of operation generally follows a precise pattern. First there is a conquest, whether it is termed a war, conflict, or military action. This may be avoided if the people or government of a target country surrenders beforehand. Either way, the conqueror or military force wants an agreement on its terms and conditions.

Secondly, among these terms and conditions is the need to establish a national government that operates with so-called sovereign powers.

The national government is to be the supreme institution of the nation, with all else inferior to it. This is an unnatural order of things.

Third, the conquerors want this new national government to establish a national military force. The first item of business for the national army is to destroy the original forms of defense existing prior to the conquest or submission to this new power, unless they were soundly defeated in battle to carryout the conquest.

You could study the Roman system for constructing the Roman Empire, or the era of William the Conqueror in England and the British Empire to see these methods of operation.

This scenario is depicted in the movie *The Last Samurai* (2003). In the mid 1800's the navy and army of the United States was used to force changes in the customary Japanese system, to establish a national government, create a national military force, and destroy the samurai who were for centuries the defense system for Japan.

In similar fashion, the several states of America each had their militias composed of the men of the area. They were not citizens or subjects of a national government. After the civil war, it was claimed that the national government was the conqueror, the states became political subdivisions of the United States Empire, and a national military force was established. The militias of the states, in the true sense, were disbanded and altered into various national units, like the national guard, operating under the supreme authority of a national

government. Originally, the government of the united States of America was a true federal government with limited authority expressly delegated in a Constitution.

More recently, in Iraq we see the United States once again using military force to change the system in place in Iraq and create a national system. It wants to establish a national government, set up a national military force, and eliminate the normal militias ordinarily serving as the means of security in the various parts of Iraq.

The same process has been used to conquer many other countries. Perhaps you are familiar with some of those events that altered the prior system leading to a national sovereign system. The following remarks from the supreme court of the United States illustrates the point being made here.

In Europe, the executive is almost synonymous with the <u>sovereign power of a State</u>; and generally includes legislative and judicial authority... Such is the condition of power in that quarter of the world, where it is too commonly <u>acquired by force or fraud, or both</u>, and seldom by compact. In America, however, the case is widely different. Our government is founded upon compact. Sovereignty was, and is, in the people.

Glass v. Sloop Betsy, 3 Dall. (U.S.) 6, at 13. (1794)

Law nor right come from force, and agreements or contracts entered under threat, duress, or coercion are unenforceable; therefore, the

concept of conquest or submission to avoid injury is not an agreement of compact done intentionally, voluntarily, and knowingly. Again, the idea is to have a national government exercising sovereign authority for the purpose of doing acts outside the laws of Nature and of Nature's God.

If certain commercial groups or associations can then control these sovereign national governments or nations around the globe, the world is under their domination to organize or alter as they see fit and with most or all the military force of the planet directly or indirectly within their control.

The point of this writing begins after a conquest or submission. How does one go about changing the system of law to fit the new paradigm of nationalism and government acting as the supreme power? The following will give some information about empires or nationalism, and statements to demonstrate that the American system has been altered.

Mr. Madison dwelt with great force upon the fact that "a delegated is not a surrendered power." The States surrendered no powers to the Federal Government. They only delegated them. The powers of the States are original. Those of the Federal Government are only derived and secondary; and they were delegated, not for the purpose of aggrandizing the Federal Government, but for the sole purpose of protecting the rights and sovereignty of "the several States." The Federal

Government was formed by the States for their own benefit. The Federal Government is simply an agency, commissioned by the "several States" for their own convenience and safety. In the Convention of Virginia, Patrick Henry said: "Liberty, sir, is the primary object. Liberty, the greatest of all earthly blessings -- give us that precious jewel, and you may take away everything else." And, with an eloquence more powerful than that which shook the throne of Macedon, he demonstrated that the battles of the Revolution were fought, not to make "a great and mighty empire," but "for liberty." It was for liberty -- for the liberty of the people of the "several States" that the Federal Government was established. Not for the kingly grandeur and power of government, but for the happiness, safety and liberty of "the people of the several States.

> *Historical Look at Government: Being a Review of Judge Story's Commentaries on the Constitution of the United States,* by Abel P. Upshur, with an introduction by C. Chauncey Burr

The purpose is manifest, to establish through the whole jurisdiction of the United States ONE PEOPLE, and that every member of the empire shall understand and appreciate the fact that his privileges and immunities cannot be abridged by State authority; that State laws must be so framed as to secure life, liberty, property from arbitrary violation and secure protection of law to all. *In Re Slaughter-House Cases,* 83 U.S. 36 (1872)

You might think those words sound good and noble and you are certainly welcome to your opinion. Nevertheless, we see the words

above describing a national government of one people, and members of the empire. The emphasis of this writing comes from a book by Sir Henry Sumner Maine called *Ancient Law*, first published in 1861. My opinion is that this book helped relay the foundational elements of this unnatural order of things to attorneys or other public officers so they might understand the change in government and the new law that was being orchestrated for a national system with sovereign power.

The following comes from *Ancient Law* and represents the thinking of those in England who desired a national system of government with sovereign power after the American Revolution, rather than ordinary government based upon natural order.

It may be conveniently be called the imperative theory of law and sovereignty. It represented law as par excellence the irresistible command of a legally illimitable sovereign, or 'political superior', issued to a subject, or 'political inferior', who, being assumed to possess the habit of obedience, was absolutely bound by the obligation of submission. Sceptical, and justly sceptical, of the nebulous sanctions of natural or ideal law, it concentrated the whole of its attention upon the compulsion of positive law, and resolutely declined to consider either its historical or its ethical elements.

Ancient Law, Introduction, p. xii

The foregoing gives us some understanding of the situation for which a legal system is to be developed to match those concepts of a

political superior and subjects or a political inferior. This is outside the natural order of things, which will be reflected in the description of the elements below – fiction, equity, and legislation – used to bring "law" in harmony with the national system of sovereign power.

1 – FICTION

The following comes from the book *Ancient Law*, Its Connection with the Early History of Society and its Relation to Modern Ideas, by Sir Henry Sumner Maine, first published in 1861

But the sphere of civil law, small at first, tends steadily to enlarge itself. The agents of legal change, Fictions, Equity, and Legislation, are brought in turn to bear on the primeval institutions *[of the natural order], and at every point of the progress, a greater number of personal rights and a larger amount of property are removed from the domestic forum to the cognizance of public tribunals.

Ancient Law, by Sir Henry Maine, page 139

If we better understand the role of these three agents of change – Fictions, Equity, and Legislation – it is more likely the people can maintain their freedom and liberty. The following aids in laying out the format of legal fictions, equity, and legislation with the emphasis below on the fictions; however, it should be noted that all three elements pertain to fictions.

A general proposition of some value may be advanced with respect to the agencies by which Law is brought into harmony with society. These instrumentalities seem to me to be three in number, <u>Legal Fictions, Equity, and Legislation</u>. Their historical order is that in which I have placed them. Sometimes two of them will be seen operating together, and there are legal systems which have escaped the influence of one or the other of them. But I know of no instance in which the order of their appearance has been changed or inverted. …they exercise a sustained and substantial influence in transforming the original law.

I employ the word "<u>fiction</u>" in a sense considerably wider than that is which English lawyers are accustomed to use it, and with a meaning much more extensive than that which belonged to the Roman "fictiones". <u>Fictio</u>, in old Roman law, is properly <u>a term of pleading,</u> and <u>signifies a false averment on the part of the plaintiff which the defendant was not allowed to traverse; such, for example, as an averment that the plaintiff was a Roman citizen, when in truth he was a foreigner</u>. <u>The object of these "fictions" was, of course, to give jurisdiction</u>, and they therefore strongly resembled the allegations in the writs of the English Queen's Bench and Exchequer, by which those Courts contrived to usurp the jurisdiction of the Common Pleas: -- the <u>allegation that the defendant was in custody of the king's marshal</u>, <u>or that the plaintiff was the king's debtor, and could not pay his debt by reason of the defendant's default</u>. But I now employ the expression "Legal Fiction" to signify any assumption which

conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified. The words, therefore, include the instances of fictions which I have cited from the English and Roman law, but they embrace much more, for I should speak both of the English Case-Law and of the Roman Responsa Prudentum as resting on fictions. Both these examples will be examined presently. The fact is in both cases that the law has been wholly changed; the fiction is that it remains what it always was. It is not difficult to understand why fictions in all their forms are particularly congenial to the infancy of society. They satisfy the desire for improvement, which is not quite wanting, at the same time that they do not offend the superstitious disrelish for change which is always present. … [Fictions] are invaluable expedients for overcoming the rigidity of law. … Now legal fictions are the greatest of obstacles to symmetrical classification. The rule of law remains sticking in the system, but it is a mere shell. It has been long ago undermined, and a new rule hides itself under its cover. … *Ancient Law*. Pp 20-23

We observed above that the legal fiction element centers around the identity of the man. He is given a new title, as conquered people were given the title of Roman citizen, although the truth was they were not and had never been in Rome. This is a false identity presumed to be true, even though it is known to be false. The false identity, fictitious character, or title is used to give jurisdiction to the courts of the national sovereign power or its numerous "underlords"

often referred to as municipal corporations. Secondly, they applied this new system of law to external matter, to foreigners, not the countrymen of Rome. Thirdly, they used the fiction that the plaintiff was a debtor to the sovereign government, and the defendant was a debtor to the plaintiff. Therefore, the sovereign government had a moral right over both plaintiff and defendant. This is the foundational element of the exchequer courts in England in their use of fictions, equity (chancery), and legislation.

Has this scenario been used in the "United States"? Of course. The Civil Rights Act of 1864 created a new citizen, United States citizen, subject to the sovereign power of the national government. The same debtor classification we saw above has also been used.

If the United States is a creditor of any citizen, or of any one else on whom process can be served, the usual, the only legal mode of enforcing payment of the debt is by a resort to a court of justice. … officers have been appointed to prosecute the pleas of the government in these courts. …The Court of Exchequer of England was originally organized solely to entertain suits of the king against the debtors of the crown. But after a while, when the other courts of Westminster Hall become overcrowded with business, and it became desirable to open the Court of Exchequer to the general administration of justice, a party was allowed to bring any commonlaw action in that court, on an allegation that the plaintiff was debtor to the king, and the recovery in the action would enable him to respond to the king's

debt. After a while the court refused to allow this allegation to be controverted, and so, by this fiction, the court came from a very limited to be one of general jurisdiction. Such an enlargement of jurisdiction would not now be tolerated in England, and it is hoped not in this country of written constitutions and laws.

Kilbourn v. Thompson, 103 U.S. 168, 193 (1880)

Do those words sound familiar? It is one of the favorite tactics. Such processes and others, it would seem, would tend to create more chaos than peace and harmony, subjecting the people to these unusual forms of proceedings and altered courts. Here is another one.

A mere fiction, that the defendant is in the custody of the marshall, has rendered the jurisdiction of the King's Bench universal in all personal actions. Another fiction, which states the Plaintiff to be a debtor of the Crown, gives cognizance of all kinds of personal suits to the Exchequer.

The United States v. Worrall, 2 U.S. 384, 391 (1798)

[Legal fictions] perform their two-fold office of transforming a system of laws and of concealing the transformation.

Ancient Lay, p. 25

Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole - a creature of ecclesiastical law - is an acceptable adversary and large fortunes ride on its cases.

The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes.

Sierra Club v. Morton, 405 U.S. 727, 742 (1972)

In *United States v. Amy* below, we find the court addressing matters pertaining to those who had been held in a condition of slavery. We see congress can create a civil or legal person. Do you think congress was creating a man or woman? No, it was creating fictional entities or titles generally referred to as *persons*. Once it creates this "person", it can cause the entity or fiction to have responsibilities or obligations, and be subject to fines and imprisonment.

The creation of a civil or legal person out of a thing, the investure of a chattel with *toga civillis*, may be an achievement of the imperial power, but it is beyond the compass of an American congress. Congress must first emancipate the slave, before it can endow him with the rights of a citizen under the constitution, or impose upon him the responsibilities of a legal person, or compel him to pay money, or part with liberty.

United States v. Amy, 24 Fed.Cas.792, 794 #14,445 (1859)

Did you know there are so many fictions in the legal system? As it says in *Ancient Law*, legal fictions are used to transform a system of laws and conceal the transformation. A man should be very careful

about the titles or names he assumes or claims as belonging to him. It is probably a legal fiction.

Probably no lawyer would deny that judges and writers on legal topics frequently make statements which they know to be false. These statements are called 'fictions.' There is scarcely a field of the law in which one does not encounter one after another of these conceits of the legal imagination. Sometimes they take the form of pretenses as obvious and guileless as the 'let's play' of children, as Roscoe Pound explained in his Interpretation of the Legal History, page 4, that:

"From time to time they (the judges) make the inevitable readadjustments … by fictions often comparable to the 'let's play' this and that of children."

At other times they assume a more subtle character and effect their entrance into the law under the cover of such grammatical disguises as, "the law presumes", "it must be implied", "the plaintiff must be deemed", etc. … Laymen frequently complain of the law; they very seldom complain that it is founded upon fictions.

25 *Illinois Law Review*, Dec. 1930, 'Legal Fictions"
by Univ. of Illinois Law Professor L.L. Fuller

We might erect a legal world in which silence is consent, taking is finding, attracting is inviting, to bring a suit is to achieve Roman citizenship; a world in which even the commonest expressions were to be understood in Pickwickian sense. This

attitude has, indeed, been dignified by a name – '<u>the theory of the juristic truth of fictions</u>.'

25 *Illinois Law Review*, Dec. 1930, page 378,
Univ. of Illinois Law Professor L.L. Fuller

FICTION OF LAW. **The assumption that a certain thing is true, and which gives to a person or thing, a quality which is not natural to it, and establishes, consequently, a certain disposition, which, without the fiction, would be repugnant to reason and to truth. It is an <u>order of things which does not exist</u>, but which the law prescribes or authorizes; it differs from presumption, because it establishes as true, something which is false; whereas presumption supplies the proof of something true… Report of the Revisers of the <u>Civil Code</u> of Pennsylvania, March 1, 1832, p. 8. 2. ... Fiction is like art; it imitates nature, but never disfigures it, it aids truth, but it ought never to destroy it. It may well suppose that what was possible, but which is not, exists; but it will never feign that what was impossible, actually is. .. 3. Fictions were invented by the Roman praetors, who, not possessing the power to abrogate the law, were nevertheless willing to derogate from it, under the pretence of <u>doing equity</u>. Fiction is the resource of weakness, which, in order to obtain its object, assumes as a fact, what is known to be contrary to truth: when the legislator desires to accomplish his object, he need not feign, he commands. Fictions of law owe their origin to the legislative usurpations of the bench… 4. It is said that every fiction must be framed according to the rules of law, and that**

every legal fiction must have equity for its object.. To prevent their evil effects, they are not allowed to be carried further than the reasons which introduced them necessarily require. 5. The law abounds in fictions. … Rey, des Inst. de I'Angl. tome 2, p. 219, where he severely censures these fictions as absurd and useless. Bouvier, *A Dictionary of Law*, 1859

Probably the hostility of American states toward equity was chiefly due to memory of the highhanded administrative tribunals of the Tudors and Stuarts. In any of these cases a tribunal will feel that a rule cannot be changed avowedly and consciously. It will persuade itself that it is making no change. Where the circumstances of 'administering justice' require a change, the change will come indirectly and almost unconsciously in the form of a fiction.

Jurisprudence, (1959) by Roscoe Pound, Volume III, pages 461-2

So we see a system being described for the fiction of governments functioning with the fiction of sovereign powers, ruling over fictional persons (both natural and artificial persons as inferior or in submission to a higher human authority) and courts using or inventing fictions to make the system work which is actually an order of things that does not exist. I generally refer to this as an unnatural order of things. We saw above that equity plays a major part in these fictions which, of course, is one of the fundamental elements for changing a society.

2 – EQUITY

To a great extend, equity is the voice of sovereign power, sometimes compared to a god over its creatures, where equity will attempt to make a person fulfill his promises or what is deemed to be a promise, regardless of whether or not all the elements of a contract exist. If you receive a benefit from the exchequer or sovereign authority, you may have promised (constructively) to abide by certain rules or obligations. A breach of a promise, even an implied, constructive, or tacit promise or consent is deemed to be a most serious violations of the higher law of God and Nature.

First, you must remember we are speaking of a fictional reality carefully constructed so you will believe it is real. My studies indicate a primary tool used in this altered system is breach of a promise. To have a breach of a promise, one must have consented to be bound or obligated to do or refrain from doing some particular act. Then, if a *person* is charged with violating one or more of the voluminous statutes, codes or regulations of a prohibitory or regulatory nature, then a monetary fine may be required. It seems what gets people into trouble and into jail, is arguing, protesting, disputing, etc. the stupid statute or regulation. This is a violations of the higher law, as they say. This breach of a promise is a mala in se crime, as a crime against God, the Universe, and all of mankind. Not accepting the penalty of the violations originally charged is a contempt of court. This is a favorite of the equity court.

Below we will look at some statements about equity while keeping in mind it is part of the fiction designed to overturn the original law and lives of the conquered or submissive people. We know that civil law was designed as the law for conquerors to implement in the society they conquered once military rule can be relaxed. Equity came later for the Roman Empire.

The next instrumentality by which the adaptation of law to social wants is carried on I call Equity, meaning by that word any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supercede the civil law in virtue of a superior sanctity inherent in those principles. The Equity whether of the Roman Praetors or of the English Chancellors, differs from the Fictions which in each case preceded it, in that the interference with law is open and avowed. On the other hand, it differs from Legislation, the agent of legal improvement which comes after it, in that its claim to authority is grounded, not on the prerogative of any external person or body, not even on that of the magistrate who enunciates it, but on the special nature of its principles, to which it is alleged that all law ought to conform. The very conception of a set of principles, invested with a higher sacredness than those of the original law and demanding application independently of the consent of any external body, belongs to a much more advanced stage of thought than that to which legal fictions originally suggested themselves. *Ancient Law*, p 23-24

The Lord shall judge the people with equity. Psalms 98:9

We will see later that the term legislation is in reference to *positive law*. Notice Sir Henry Maine gives equity this godly sanctity, as do other writers on the subject. It is as though the people do not respect the laws of Nature and of Nature's God when they breach promises they don't know they have made; therefore, the sovereign government will force them into submission to the unnatural system and commands of right conduct, taking property at will and putting people in prisons so they will submit and uphold their promises. .

One of the greatest contributions to law was made by the court of chancery [equity] when it invented the ***constructive trust***. In the twelfth century the chancery courts were unknown, but crooked deals in real property were not unknown. Because of the common law rule that the holder of the legal title prevailed in a court of law, it often happened that the true owner lost his property because he permitted someone temporarily to have his title deeds and a conveyance for a limited use. If the **person refused to fulfill his promise** and reconvey the legal title to the land, the true owner originally had no remedy. Here is where the court of chancery ultimately entered upon the scene and said that the holder of the legal title in bad faith should recognize the title of the true owner in spite of the rule to the contrary in the law court. This legal tool which enabled the true owner to recover his property from a wrongdoer is known as a *trust*; the wrongdoer is a *trustee*; and the

true owner is the *beneficiary*. Today this devise is used to great advantage at times, since it is not necessary to prove that either a writing or promise existed in order to seek redress in "trust" cases involving a wrongdoer. This principle is found in *The American Peoples Encyclopedia*, Grolier Incorporated, 1968, "equity", Vol. 7, pp 280-282

One might think the people would wise up and not convey their legal titles to another and hope to get it back without some definite agreement signed and witnessed. We are here to look at equity, which relies heavily on the notion of a promise, and a breach of promise even though no promise exists. The court of equity, in its sacredness, can see what looks like or should have been a promise, and then fictionally create a trust with the wrongdoer as trustee and the poor person who was wronged as the beneficiary. That scenario pretty well explains the inception of equity in Roman times.

> **It is a fundamental essential to the existence of any trust that there be a <u>trust res or subject-matter</u> and there there be a <u>separation of the legal estate from the beneficial enjoyment</u>. However, the beneficial interest may repose in persons standing in different relationships.** [My notation: There may be several or many beneficiaries including the ruler or government acting a sovereign who granted the right, privilege or property that may be involved in the wrongdoing.] **Indeed, it is frequently said that whenever the legal interest to property is in one person and the equitable in another, or where there are rights, titles, and**

interests in property distinct from the legal ownership, a trust is created in judicial intendment, to exist until these interests are completely reunited.

… [Regarding trusts] **The device had its inception in the early days of the Roman Empire and resulted from the then existing legal rule that a testator could not direct the devolution of his property beyond the first taker, who was held to receive an absolute ___ in the subject-matter of the gift, and therefore, if the testator desired that a second person should receive a benefit therefrom, he was obliged to place his confidence or trust in the good faith** [my notation: promise] **of the primary beneficiary who could not be held legally accountable although the third person might have a moral claim upon him. The Emperor Augustus directed the consuls to interpose their authority to compel the execution of these trusts, and finally a praetor was appointed, called fidel commissarius, who had jurisdiction over all fidel commissa.**

Corpus Juris, Trusts, Vol. 65, p 218-9

The Roman law knew cestui que trust as "fidel-commissarius"

65 *Corpus Juris* 219, 75 So. 335, 337

If you have problems with the current legal system, it probably stems from the concepts you just read. In this unnatural order of things, through fictions, equity, and positive law, they are constantly creating trusts, assuming the trustee violated a promise which is against God, nature and mankind. Such a mala in se wrong or crime

of the higher law deserves to be punished to the fullest, and the trustee goes to jail wondering what happened. Where is the damaged party? Who did I injure? In their thinking, you violated a sacred commandment. God is the damaged party, or maybe the sovereign governing authorities, as a god representing God on earth, have been violated by your immoral conduct in not keeping your promises.

The cestui que trust is the technical name given to a trust that is a beneficiary of another trust. It does not hold a legal claim to property or a thing, but merely holds a beneficial or moral right to property or a thing. Therefore, the person that is a cestui que trust cannot go into a court of law without a legal right. Equity was invented to deal with moral rights and moral wrongs that amount to a breach of a promise, not a breach of a legal duty, which is more apt to occur under the next topic of legislation and positive law.

In *Ogden v. Saunders*, 25 U.S. 213 (1827), there is an excellent description of the equity foundation. There we find "**that God himself … would act contrary to his own nature, if he did not perform his promises. …'It is a most sacred command of nature, and guides the whole order of human life.' … It is shown by the law of nature, that he who has made a promise to any one, has conferred on him a true right to require the thing promised; and that, consequently, not to keep a perfect promise, is to violate the right of another, and is as manifest an injustice as that of depriving a person of his property**.

Courts of equity make extensive use of contempt of court, even when it may not appear that is the reason for harsh penalties above the minor prohibitory penalty.

Fair criticism of the manner in which a court conducts its proceedings is not regarded as a contempt – at any rate if the aim of such criticism is the public utility, and not the attainment of private ends. <u>Courts of equity regularly enforce their decrees for performance or nonperformance of specific acts by punishing disobedience thereto as contempt</u>.

The American Peoples Encyclopedia, Grolier Incorporated, 1968, "contempt", Vol. 5, pp 446, 447

CONTRACT. **… In certain cases, notably when the contract is for the sale of land, the courts will <u>decree</u> specific performance. In other words, the defendant will be ordered to perform according to the terms of the contract, and, if he refuses to obey, he is subject to punishment for <u>contempt of court.</u> Frequently, however, <u>specific relief is denied for reasons of public policy</u>. <u>To order the performance of contracts for personal service would result in involuntary servitude</u>. Moreover, a judgment for damages is deemed an adequate remedy for the breach of most contracts.**

The American Peoples Encyclopedia, Grolier Incorporated, 1968, "contract", Vol. 5, p. 451

Realizing that courts of equity rely heavily on establishing constructive trusts and breach of a promise by a constructive or

fictional trustee, the decree of an equity court should be viewed as a contempt of court where the constructive trustee has appeared to violate his presumed moral duty to a beneficiary. For this transgression against the sacred laws of God and Nature or in contempt of the same, he is penalized more severely for the more serious violation. It is not about the facts of the case, nor about the other party who appears to be wronged.

To better understand the situation, it might be appropriate to view the judge in his black robe as a priest sent directly by God to rule on your actions or omissions. It is the violation of Godly standards the equity judge is looking for, and that is primarily a breach of a promise considered to be a moral wrong, a sin against God. The priest or judge will then pass sentence based upon such a transgression. This is why commentaries on equity courts refer to the "superior sanctity inherent in equity principles", that a promise is a "most sacred command of nature", or equity principles are of "paramount sacredness".

Equity can also mirror other courts as cases in rem involving the res, or in personam.

In personam. **An interest in property which a court of equity will protect. Equity deals primarily with the person, and usually only through him with the res. Although an equity court still has the power to act in personam, by force of statute, <u>its judgment or decree also operates in rem to establish a title or right</u>.**

Ballentine's Law Dictionary, 3rd ed

A key element in understanding equity courts may be found in the following quote.

<u>A grantor may name himself as a cestui que trust</u> [beneficiary trust] or as one of several cestui que trustents. A grantor may reserve the power of revocation or of changing the terms of a trust, though he cannot make such changes, in absence of a reservation.

Siter v. Hall, 204 S.W. 767 (1927)

In equity, he or those that are viewed as the cestui que trust are in the best position. The cestui que trust is generally seen as the one who has been wronged due to a trustee's failure to fulfill his promise to the beneficiary. This is a moral obligation and the cestui trust is seeking relief in equity due to the violation of a moral duty. Also, who is the biggest grantor in the "nation"? Who grants civil rights, patents, titles, licenses, etc. In all this cases, the government or sovereign power would possibly be the cestui que trust or beneficial owner. The cestui que trust or beneficial owner is, in equity, often said to be the true owner.

There will be a separate writing with more detail on the topic of Equity, but this will give you some foundational information necessary to understand how the three elements – fiction, equity, and legislation – work together to alter the original system of government and law.

3 – LEGISLATION

Now we are going to see how it is the governments in a national system utilizing the powers of sovereignty, are basically limitless. In a democracy, which is typical for this unnatural order so as to give the appearance of free will and liberty, the only thing limiting legislation is the commands from those running the program outside the view of the people, and the opinions of the public. If legislation goes too far, and is too intrusive, the people might riot, or tear down such a system and establish a new one. In this fictional system, public officials need to keep an eye on public opinions and gage their conduct and legislation or regulations accordingly.

Legislation, the enactments of a legislature which, whether it take the form of an autocratic prince or of a parliamentary assembly, is the assumed organ of the entire society, is the last of the ameliorating instrumentalities. If differs from Legal Fictions just as Equity differs from them, and it is also distinguished from Equity, as deriving its authority from an external body or person. Its obligatory force is independent of its principles. [my notation: Its principles are said to come from Nature or Nature's God, of high sanctity and moral virtue, but its obligatory force is human force that some might describe as tyrannical.] **The legislature, whatever be the actual restraints imposed on it by public opinion, is in theory empowered to impose what obligations it pleases on the members of the community. There is nothing to prevent its legislating in the wantonness of caprice.**

Legislation may be dictated by equity, if that last word be used to indicate some standard of right and wrong to which its enactments are indebted for their binding force to the authority of the legislature and not to that of the principles on which the legislature acted; and thus they differ from rules of Equity, in the technical sense of the word, which pretend to a paramount sacredness entitling them at once to the recognition of the courts even without the concurrence of prince or parliamentary assembly. … a student of Bentham would be apt to confound Fictions, Equity, and Statute law under the single head of legislation. They all, he would say, involve law-making; they differ only in respect of the machinery by which the new law is produced. That is perfectly true, and we must never forget it; but it furnishes no reason which we should deprive ourselves of so convenient a term as Legislation in the special sense. Legislation and Equity are disjoined in the popular mind and in the minds of most lawyers; and it will never do to neglect the distinction between them, however conventional, when important practical consequences follow from it.

Ancient Law, pp. 24, 25

You probably thought government was limited to delegated powers in a constitution. Look at all the subjects over which a legislature enacted "laws". Are all of those subjects derived from constitutionally delegated authority? That was the intent, but things sometimes change without most people realizing alterations have occurred. Below is a quote that addresses this issue.

In *Walley's Heirs v. Kennedy*, 2 Yerg., 554, it is held that "the rights of every individual must stand or fall by the same rule or law that governs every member of the body politic, or land, under similar circumstances; and every private or partial law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void." Hence, "that is not legislation which prescribes a rule contrary to the general law, and orders it to be enforced. Such power assimilates itself more closely to despotic rule than any other attribute of government." The order to pay a certain sum (by railroad) could apply to host of other situations. "And whatever the object of such legislation may be, it eventuates in a decree taking property from one man and giving it to another; but such legislation is repugnant to the fundamental principles of individual rights, the maxims of the common law, and the constitutional limitations, and therefore it cannot be "the law of the land"." "…where it is clear that the legislature has transcended its authority, it is imperatively required of the courts to maintain the paramount authority of law.." Ervine's Appeal, 16 Pa St., 266.

Atchison & Nebraska R.R.Co. v. Baty, 6 Nebr. 37, 46 (1877)

You can probably sympathize with those principles of law being addressed above. In other words, what is going on? Looking to the

court to set things right may not work, because the courts are changing also.

In *Bouvier's 1859 Law Dictionary*, we find **positive law** is used to mean "**in opposition to natural law**". The term positive law describes "**those rules which are <u>presumed</u> to be law**" and derive their force "**by tacit, but implied agreement**".

From *Black's Law Dictionary*, 4th edition, we see positive law "**is enforced by a sovereign political authority**". It is distinguished from "**the principles of morality and the so-called laws of honor**". All laws that are "**authoritatively imposed**" may be "**described as positive laws**".

We find that legislation in the unnatural order or a state of society is generally described as positive law. We might refer to such statutes as penal statutes. These positive laws can be administered in a court of law, but it is not the original kind of court of law as found in the natural order or original character of the federal government. These statutes or positive laws are a form of equity legislation, where the legislature is determining right and wrong without regard to the laws of Nature or Nature's God.

In essence, the court of law and the court of equity are one in the same in this unnatural order. They only pretend that there is a difference. If there is a charge of violating a positive law (penal statute), then the court is said to be on the law side which can be both

the civil side or the criminal side. It is all quite an illusion not marked by definite lines of separation. Now when the court sees a violation of a promise or a moral wrong, it is said to act on the equity side using its inherent powers as a court of equity of a higher sacredness than legislation and positive law, and in this capacity the court has no need for a statute, regulations, nor constitution.

In a moral sense … equity, in its true and genuine meaning, is the soul and spirit of the law; positive law is construed, and rational law is made by it. In this, equity is made synonymous with justice; in that, to the true and sound interpretation of the rule." 3 Bl. Com. 429. 3. But equity has a more restrained and qualified meaning. The remedies for the redress of wrongs, and for the enforcement of rights, are distinguished into two classes, first, those which are administered in courts of common law; and, secondly, those which are administered in courts of equity.

Bouvier's 1859, "equity"

In *Black's Law Dictionary*, 6th edition, we see under the word mala prohibita, that it describes **"Prohibited wrongs or offenses; acts which are made offenses by positive laws, and prohibited as such. Acts or omissions which are made criminal by statute but which, of themselves, are not criminal. Generally, no criminal intent or mens rea is required and the mere accomplishment of the act or omission is sufficient for criminal liability. Term is used in contrast to mala in se which are acts which are wrongs in themselves such as robbery."** *Ballentine's Law Dictionary*, 3rd

edition, we find under mala prohibita, that it is a wrong **“forbidden by positive law … but not immoral**”.

We find moral issues like moral rights and moral claims are part of the inherent power of the courts of equity if not covered by positive laws. There is a separate writing on positive law that will aid in further understanding this section on legislation and positive law.

We should be able to see how the three major elements of legal change – fictions, equity, and legislation – all are pieces of the whole; elements that cause the unnatural order to appear as real. When you look closely to discover how this “justice system” is working, it may cause some concern. Some governors of states have stopped executing prisoners on death row because it is unknown if they are guilty of the crime or not. Others have expressed similar concerns. With further study, you should be able to avoid some of the chaos inherent in the system of fictions, equity, and positive law legislation.

By Byron Beers
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