

Divide and Conquer

by Alfred Adask

One place constitutionalists get into trouble is in their personal speculations on what various laws or excerpts from case law may mean or imply. We have a tendency to leap to "logical conclusions" that are dramatic but often based more on emotion than facts and study. It's a dangerous, addictive sport but far more exciting than hang-gliding.

I happen to be a master at constitutionalist speculation. I won't argue that I've ever leapt to a correct conclusion, but my "logical leaps" have nevertheless been interesting, sometimes even fascinating.

In "Trust Fever" (AntiShyster Vol. 7 No. 1) I began to speculate on the possibility that Trusts are one of — perhaps the — fundamental mechanism by which our government "legally" exceeds its constitutional limits and reverses the status of the American people from sovereigns to subjects. In fact, I have a hunch our modern "welfare state" might be more accurately described as a "trust state".

As with that first dose of "Trust Fever," this article is also based on little evidence and much speculation. It is therefore dangerous and meant for consideration, not belief. I don't doubt that elements of this article will be refined or rejected in the future. Nevertheless, I remain convinced that I'm exploring a fundamental insight into government's favorite mechanism for using "benefits" to oppress the American people.

When used by government, trusts have five characteristics that make them ideal for evading the Constitution and subverting our Rights:

1 Divided Title

The fundamental feature of any trust is the division of "full title" (real ownership) to a particular property into "legal title" (technical ownership) and "equitable title" (the beneficial right to possess and use the particular property).

The relationship between a father, teenage son and family car can broadly illustrate the essential trust feature of divided title. Dad functions somewhat like a "trustee" since he "owns" title to the car and is responsible to see that it is operated according to certain rules like insurance, drivers licenses, and safety. The son is the "beneficiary" who doesn't own the car, but has the "equitable title" to possess and use it on his Saturday night dates.

"Trustees" retain "legal title" to the property within the trust and are responsible for administering and enforcing all trust rules. "Beneficiaries" receive "equitable title" to use trust property they don't own * provided they obey all the trust's rules.

For example, if Dad (the "trustee"/ administrator) says the car must be back in the garage by midnight with a full tank of gas, then Junior (the beneficiary) is bound to have the car back in time as specified, or Junior will lose his "equitable title" to use the car next Saturday and wind up dating his girl on a bike.

In this way, Dad (the trustee) can use trust benefits (driving the car) to control his son's behavior. In fact, the Dad/ trustee can even impose a dress code on any beneficiary who wants to drive the car. If Junior doesn't cut his hair to a "trust-approved" length, his "equitable right" to use the car can be terminated.

Whenever I see evidence of a *divided title* (one party has legal title/ administrative control over a particular property, while a second party has equitable title/ beneficial use of that property), I generally assume I am looking at a trust.

3 Minimal Liability

Historically, the purpose of subdividing full title into legal and equitable titles was to minimize personal liability for both use and ownership of trust property. For example, if you own "full title" to your car outside of a trust, you can use your car whenever you like, but you are also personally liable for any damages caused by your car. If your son has an accident driving your car, you (as the owner) are liable and can be sued to the limit of your resources.

But if you place (grant) your car into a trust, you can designate yourself as the "trustee" (and retain legal title and administrative control to the car) and designate your son as the "beneficiary" who will receive "equitable title" to possess and use the car. Now, if your son has an accident, you (as trustee) are virtually immune from any legal liability. As a practical matter, your son/ benefi-

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ciary also can't be sued because he owns nothing (all his assets are in trust) and there's no point to suing a legal pauper — even if he lives in a mansion. The only entity that can be successfully sued is the trust itself, and then only for whatever property it contains. Even if your son caused \$1 million in damages, the most the injured party could recover was whatever property remained in the trust that held the car. If the trust only contained the now-wrecked car, that's all the injured party could legally collect; there would be no recourse against your home, bank account, or business.

3 Legal Superiority

Article I, Section 10 of our Federal Constitution declares, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." The rules of an explicit trust are established by a contract (or charter) called the trust "indenture". Therefore, if created by contract (not statute) and without fraud, trusts can be superior to any State law. In other words, if I create a lawful trust by voluntarily contracting with someone, the State can't pass a law which later "im-

pairs" (compromises or voids) any obligation imposed by my trust's "indenture" (contract). Therefore, trust rules can not only be superior to state constitutional law, they can even "legally" operate in opposition to constitutional precepts.

For example, the state may be prohibited from passing a law that violates my "unalienable right" to free speech. However, if I voluntarily contract to become a beneficiary of a trust which has indenture rules prohibiting free speech on certain trust-related subjects, I will have legally relinquished at least part of my First Amendment right to free speech. This ability to legally evade most constitutional prohibitions makes trusts used by government an extraordinarily dangerous strategy.

4 Compulsory Performance

According to a number of Supreme Court cases, any person who is merely in a position to receive "benefits" is obligated to obey the rules of the organization dispensing those benefits. In other words, even if you've never received a dime from Social Security (a trust), if you *could* receive benefits, you are obligated to obey the rules of the Social Security trust indenture. usait. * If one of those rules was "You must pay income tax" — whether you knew it or not — you'd have no constitutional or statutory defense against paying income taxes. As a result, you could easily be an unwitting "beneficiary" and thereby obligated to obey the rules of a trust you've never even heard of. You could be legally bound to obey an unknown series of administrative rules that were perplexedly unconstitutional but nevertheless legal. (Sounds a lot like our modern legal system, doesn't it?)

Moreover, depending on the trust indenture, even trustees can be *bound* to enforce the rules without compassion or discretion. Did Junior get home late with Dad's car because he stopped to render first aid at an accident and saved someone's life? No matter. If the trust indenture's rules are uncompromising about returning the car on time, the father/trustee will be *forced* to terminate the boy's use of the car. (Does the Judge believe a particular individual, though

convicted, deserves a lenient sentence? No matter, sentencing guidelines in a trust indenture might force the judge to impose the harshest penalty.)

Both trustees and beneficiaries can be bound by trust rules to levels of performance that, at first glance, seem absurd or even unconstitutional.

5 Law of the Case

Every legal controversy is based on a particular body of law. I.e., you can't use probate laws to argue against a speeding ticket; you must base your legal defense on the traffic code — since it's the "law of the case".

In a trust, the "law of the case" is the trust indenture and rules therein. If those rules require a teenage boy to have his Dad's car back by midnight, and Junior shows up at 12:01, he is in technical violation of trust rules and has no constitutional or statutory foundation to challenge the trustee's decision to terminate his beneficial interest (use of the car).

This "law of the case" requirement stands even if you've never read the trust indenture (ever read all the rules of your Social Security Trust Fund?) or worse yet, *even if you don't realize you're "trapped" as a beneficiary in trust law.* The court presumes you know the relevant law, will not inform you of your ignorance, and will rule accordingly.

For example, suppose the Federal government created a lawful trust (like Social Security) and lured you into voluntarily entering that trust (perhaps, as an "applicant" for "benefits"). Later, if you realized that your new performance obligations were "unconstitutional", you could not normally use constitutional arguments to escape those trust obligations. In fact, if you only argued your "constitutional rights", you'd be as ridiculous as a man arguing football rules in a baseball game, and allow the judge to truthfully declare, "the Constitution has no place in my court." Instead, the only "law of the case" that you could effectively argue would be the Social Security trust indenture (you might argue you were fraudulently lured into contracting with the Trust, or otherwise challenge trust rules).

If we don't understand that the "law" in our particular case is some trust indenture, we can contest paying income tax forever since the 16th Amendment was never properly ratified. But if the "law of the case" (the rule that requires you to pay income tax) is contained in a trust, your constitutional arguments are irrelevant, even if that trust is virtually unknown to you. Because you are presumed to know the "law of the case," the court will assume you're incompetent, and rule inevitably and (seemingly) inexplicably against you.

Government can't take our Rights, but we can "voluntarily" (though ignorantly) contract them away. Therefore, trusts can be used by government to impose an endless series of obligations on Americans that would be unconstitutional if mandated by statute, but quite legal if "offered" as considerations for "benefits" which we voluntarily "applied" (contracted) to receive.

Trusts and political structure

For most of England's history, the King (or Queen) was the Sovereign and therefore "owned" legal title to all English land. English "subjects" were "entitled" to use/ possess the land, but the Queen always owned it (sovereign ownership of all land is probably the fundamental characteristic of all monarchies). Apparently, England's law, Monarchy, and political system have been based for centuries on the concept of divided title to land — the King had "legal title," the citizens had "equitable title" and possession.

Given the English system's use of divided title to property, was the English Monarchy a "trust"? Maybe, but in any

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case, title to all land was divided. Because "commoners" only possessed equitable title to their land, they were virtual beneficiaries (subjects; serfs?) of the King (trustee) and therefore obligated to obey all the King's Laws (indenture). Since the King "owned" legal title to the commoners' land, they were obligated to pay whatever tax (rent) the King demanded or be summarily forced to forfeit their possession of "his" land without legal recourse.

In movies about Robin Hood, Prince John's ability to violently remove commoners from their homes looks like the worst form of tyranny. But if the Prince held legal title to land and the commoners held only equitable title and failed to pay their tax/rent, eviction without legal recourse was not only lawful but mandatory.

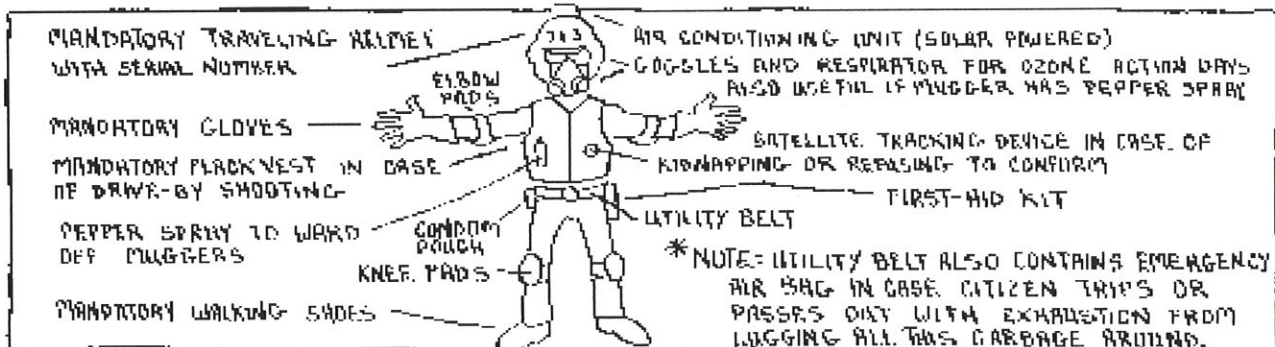
Today, we see a similar situation when you buy a car with a bank loan. In a sense, although you get to drive and "possess" your new car, the bank "owns" it until you repay the loan. Anyone who doubts the bank "owns" your car need only stop making car payments. Just like Prince John, the bank will quickly "repossess" the car without going to

court. Lacking title to "your" car, you (like the English commoner) had no legal recourse against "repossession".

Of course, because you had some equity (but not title) in the car, you still had an "administrative remedy" against repossession (you might produce cancelled checks proving you'd made timely payments). However, since you lacked "legal title", you would only have recourse to a court of "equity" (which determines equitable titles and beneficial interests in administrative hearings). Lacking legal title, you had no recourse in Law (the determination of legal title).

The rallying cry of the American Revolution was "No Taxation Without Representation". This implies that King George was charging Americans a tax on land or other property (like tea) without their consent.¹ But if the King owned "legal title" to all the property in his realm (including the Thirteen Colonies), the colonists were virtual "beneficiaries" enjoying the equitable use of the King's property. If the comparison between Colonists and trust beneficiaries is valid, Colonists might have had no legal right to "representation" since beneficiaries are prevented by law from

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having legal or administrative control over the trust rules or property.

This possibility implies that the driving force behind the American Revolution was not to achieve the generic "Freedom" we like to talk about, but more precisely to allow common Americans to have full title to their property. I suspect that Americans of the 1780's were the first people in modern history to hold both legal and equitable title to their private property. As such, they were "sovereigns". Their homes truly were their "castles" (protected by walls of legal title rather than moats) and the American government could not tax or regulate that land or property to which it lacked legal title except by the consent of the People as expressed by their Representatives in Congress.²

Return to bondage

If divided title to land and property was the fundamental characteristic of the English Monarchy (and probably all other totalitarian, socialist and communist governments), and if every man's right to "full title" to his property was the fundamental purpose for the Ameri-

can Revolution and our Constitution — then what shall we make of our current government's apparent inclination to create and administer trusts which divide title to property? By reestablishing a trust-based, divided-title political and legal system, our government is arguably changing this nation back from a post-constitutional Republic (where people have full title to their property) into a pre-constitutional colony.

In this emerging "U.S. colony" the people, at best, have equitable title to property and function as beneficiaries subject to the "divine rights" of government. I'll even bet the fundamental principle behind the New World Order (NWO) will be "divided title" to all land (and later, all property and probably persons) into "legal title" (held by the NWO) and "equitable title" (mere possession) held by the world's people.

Any attempt by our government to diminish our right to full title ownership of our property must be viewed with alarm as un-American, treacherous, and even treasonous. As such, I have a hunch that any government (or government agency) based on trusts (divided titles) might be challenged as "communitic" and contrary to our constitutional guarantee of a "Republican [full title to property] form of government".

That which is Caesar's

If government trusts (like Social Security and the National Highway Trust) pose serious problems, they're nothing compared to the possibility that our "money" may also be a trust instrument.

If there's one Biblical passage that's bewildered me, it's *Luke 20:20-25* where the Pharisee's tried to trap Jesus by asking, "Is it right for us to pay taxes to Caesar or not?" Jesus replied, "Show me a denarius [a Roman coin]. Whose portrait and inscription are on it?" "Caesar's," they answered. "Then render unto Caesar that which is Caesar's, and unto God that which is God's." According to the Bible, "astonished by his answer, they became silent."

Maybe everyone else understands that passage, but until now I just didn't get it. But now I begin to suspect that what Jesus meant was, "He who owns the money, owns the property which was

bought with the money." Sounds so obvious as to be irrelevant, hmmm? Maybe not. Maybe Jesus hinted at a subtle aspect of money that's gone largely unnoticed for thousands of years.

Again, the usual process for purchasing a new car includes your contract with a bank for a loan. Although you "possess" (use and drive) the car, under the terms of your contract, the bank "owns" the car until you've repaid the entire loan and can therefore "repossess" it if you fall behind in the payments. If you actually "owned" (had title) to the car, the bank could not take it from you without a court hearing. Point: in a sense, the bank owns "your" car until you repay the entire loan.

In the U.S., the "creation of money" is somewhat like purchasing a new car:

1. New Federal Reserve Notes (FRNs) are printed (created) by the Federal government's Bureau of Printing and Engraving. Each note has a particular serial number.

2. The new FRNs are reportedly sold at their printing cost (approximately \$0.03 each, regardless of their denomination) to the Federal Reserve System

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