Trust Fever V

"In Law or Equity"?

by Alfred Adask

For the past two or three generations, state and federal judges have increasingly ruled against Americans who defend themselves with the principles, rights, and laws mandated by their state or national constitutions. Occasionally, trial court judges even issue a seemingly impossible declaration, "Don't bring that Constitution into my court!" Although the reasons are unclear, there is growing suspicion that our courts are somehow no longer bound to recognize, obey, or enforce the law – and Americans can no longer demand the "unalienable rights" formerly guaranteed by our constitutions.

Some patriot researchers attribute governmental "lawlessness" to the fact that our currency (Federal Reserve Notes) is no longer lawful money (i.e., it's not backed by gold or silver). Others blame the loss of law on the "national emergency" that's effectively suspended the Constitution since 1933 [See "Rising Tides", this issues]. Others trace our loss of rights back to government's use of martial (military) law which was imposed on us "temporarily" during the Civil War (1861-1865) but allegedly continued to this day. While the explanations vary, there is widespread agreement that: 1) Americans no longer enjoy "constitutional Rights"; and 2) virtually all of today's courtroom "trials" are actually administrative hearings.

In 1997 (in *AntiShyster* Vol. 7 Nos. 1 & 4), I published my first speculation that government is using *trusts* (like Social Security, Medicare, and the National Highway Trust) as one of, perhaps *the* principle device to "legally" bypass the Constitution and thereby deprive us of our Rights. A year later, my "trust fever" burns even hotter, supported by a growing body of indirect evidence.

Some of this evidence is seen in the similarity between our court's persistent use of seemingly unconstitutional procedures, and the lawful (though not precisely "constitutional") procedures routinely the practiced in courts of *equity*.

Curiously, controversies involving trusts are 1) virtually always *administered* in courts of equity, not adjudicated in courts of law; 2) there are *no "legal rights"* in courts of equity; and 3) under Article III, Section 2 of the Constitution ("The judicial Power shall extend to all Case, in Law and Equity . . ."), courts of equity are absolutely *constitutional*.

In other words, if your case were "accidentally" tried in a court of equity rather than a court of law, you would experience the same frustration as "patriots" who see their constitutional rights ignored and their cases *administered* (under some mysterious procedure they can't quite understand) rather than *adjudicated* in law.

If government has truly established legal procedures in which we are tried administratively without constitutional rights, and *if* government is using lawful courts of equity to implement this procedure – then perhaps government has not imposed some bizarre new system of *law* (martial, maritime or admiralty, etc.) upon us, but has instead imposed a new individual *status* upon us which makes us "appear" as "entities" that can be properly tried in equity rather than law. Maybe government changed *us* from real, flesh-and-blood persons (who must be tried in law) to artificial entities (that must be tried in equity). If "trust fever" is valid, our failure to understand and recognize "equity" may be a fatal defect in our forays into the judicial system.

Dad – what's an equity?

Most of us have a dim idea of what "law" means, but few understand the meaning of "equity". However, before we can understand equity, we must first understand law, and to understand law, we must first understand Rights.

The primary purpose of courts of *law* is to determine each litigant's *legal* rights; the primary purpose of courts of *equity* is to determine each litigant's *equitable* rights. Legal rights are based on *legal* (not equitable) title and ultimately believed to be clearly given by God, not man. Equitable rights, on the other hand, are imperfect, imprecise, vague and while sometimes traceable to God, they are more likely to be derived from man.

It appears to me that if your rights are legal (based on legal, not equitable, title), you have "legal standing" and access to courts of law. However, if your "rights" are only equitable, you have *no legal rights and therefore no standing in law or access to courts of law*. If you don't understand the nature of

your rights (legal or equitable) you won't understand whether you are being tried in courts of law or courts of equity. The distinction is crucial since *courts of equity are not legally bound to recognize legal, constitutionally-protected, God-given rights*. Therefore, if you argue legal rights or law in a court of equity, the judge may lawfully dismiss your arguments as "frivolous" and you will lose your case.

Learning from history?

What follows are several definitions from the 1856 edition of *Bouvier's Law Dictionary* which illustrate the relationship and differences between rights, law and equity. For emphasis, I've *italicized* or underlined various words and phrases. Footnotes and [bracketed] comments are my insertions:

RIGHT. . . that quality in a person by which he can do certain actions, or possess certain things which belong to him *by virtue of some title*. . . .

[*Crucial* point: Apparently, rights flow from – and depend on – *title*. Without title, you have *no* rights. With title, your rights will depend on the "quality" of that title: I.e., lessor title generates lessor rights; superior title generates superior rights. Equitable title generates *equitable* rights, but only *legal* title generates *legal* rights.]

2. . . Right is the correlative of duty, for, wherever one has a right due to him, some other must owe him a duty. [I.e, if I have a right, someone else has a duty. But if I have no rights, no one else (not even government) has any correlative duties. This concept is vital to understanding Law.] . . .

9. These latter rights are divided into absolute and relative. The absolute rights of mankind may be reduced to three principal . . . articles: the right of personal security, which consists in a person's *legal* and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation; the right of personal liberty, which consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's inclination may direct, without any restraint, unless by due course of law; the right of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, ["acquire" means to secure *legal* title to property; "purchase" means to secure *equitable* title.] without any control or diminution, save only by the laws of the land. . . .

10. The relative rights are public or p*rivate: the* first are those which subsist between the people and the government, as the right of protection on the part of the people, and the right of allegiance which is due by the people to the government; the second are the reciprocal rights of husband and wife, parent and child, guardian and ward, and master and servant.[1]

11. Rights are also divided into legal and equitable. The former are those where the party has the *legal title* to a thing, and in that case, his remedy for an infringement of it, is by an action in a court of *law*. Although the person holding the legal title may have no actual interest, but hold only as *trustee*, the suit must be in his name, and not in general, in that of the cestui que trust [a trust's *beneficiary*] . . . . Equitable rights are those which may be enforced in a court of equity by the cestui que trust.[2]

LAW. . . law denotes the rule . . . of human action or conduct. In the civil code of Louisiana . . . it is defined to be "a solemn expression of the legislative will."[3] . . .

2. Law is generally divided into four principle *classes*, namely; Natural law, the law of nations, public law, and private or civil law. When considered in relation to its origin, it is statute law or common law. When examined as to its different *systems* it is divided into civil law, common law, canon law. When applied to objects, it is civil, criminal, or penal. It is also divided into *natural* law and *positive* law[4] . . . Into law merchant, martial law, municipal law, and foreign law[5]. . . .

EQUITY. In the early history of the law, the sense affixed to this word was exceedingly vague and uncertain. . . It was then asserted that equity was bounded by no certain limits or rules, and that it was alone controlled by conscience[6] and natural justice. . . .

3. . . 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*. Rights which are recognized and protected, and wrongs which are redressed by the former courts [of law], are called *legal* rights and legal injuries. Rights which are recognized and protected, and wrongs which are redressed by the latter [equity] courts *only*, are called *equitable* rights and equitable injuries. The former are said to be rights and wrongs at common law, and the remedies, therefore, are remedies at common law; the latter are said to be rights and wrongs in equity, and the remedies, therefore, are remedies in equity. Equity jurisprudence may, therefore, properly be said to be that portion of remedial justice which is exclusively administered by a court of equity, as contradistinguished from that remedial justice, which is exclusively administered by a court of law.[7]

EQUITABLE ESTATE. An equitable estate is a right or interest in land, which, not having the properties of a legal estate, but being merely a right of which courts of equity will take notice, *requires the aid of such court to make it available*.[8]

2. These estates consist of uses, *trusts*, and powers. . . .

EQUITY, COURT OF. . . . one which administers justice, where there are no legal rights, . . . but [is used when] courts of law do not afford a complete, remedy, and where the complainant has also an equitable right. [see] Chancery.

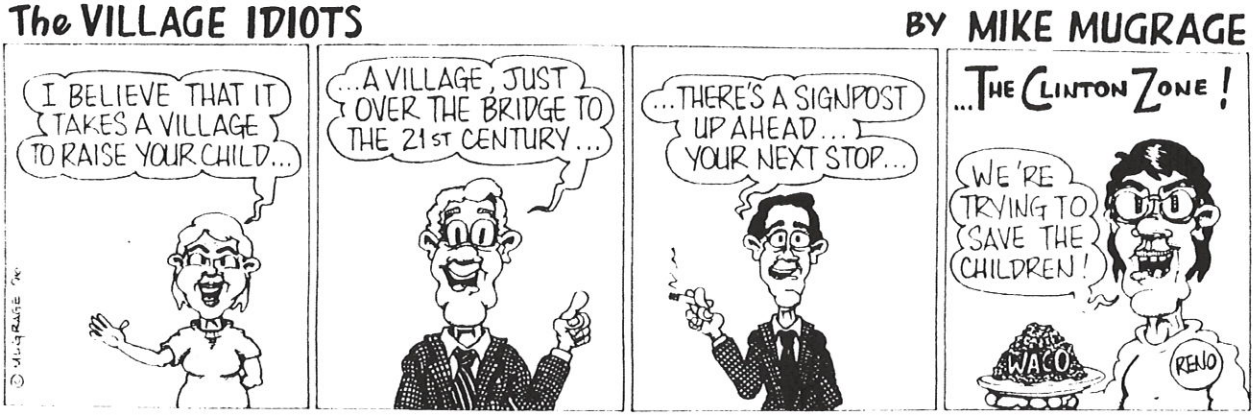
CHANCERY. The name of a court exercising jurisdiction *at* law, but mainly *in* equity.

2. It is not easy to determine how courts of equity originally obtained the jurisdiction they now exercise.[9] Their authority, and the extent of it, have been subjects of much question, but time has firmly established them . . . .

3. . . . "American courts of equity are, in some instances, distinct from those of law; in others, the same tribunals exercise the jurisdiction *both* of courts of law and equity, though their *forms* of proceeding are different in their two capacities.[10] The supreme court of the United States, and the circuit courts, are invested with general equity powers, and act *either* as courts of law or equity, according to the *form* of the process and the *subject* of adjudication. . . . In most of the states, the two jurisdictions centre in the *same* judicial officers, as in the courts of the United States; [In other words, both state and federal judges can hear cases in *both* law *and* equity.] . . . .

4. The jurisdiction of a court of equity differs essentially from that of a court of law. The remedies for wrongs, or for the enforcement of rights, may be distinguished into two classes those which are administered in courts of law, and those which are administered in courts of equity. . . .

In . . . America, courts of common law proceed by certain prescribed *forms*. [not precisely true since 1982] and give a general judgment for or against the defendant. They entertain jurisdiction *only* in certain actions, and give remedies according to the particular exigency of such actions. But there are many cases in which a simple judgment for either party, without qualifications and conditions, and particular arrangements, will not do entire justice . . . to either party. Some *modification of the rights* of both parties is required; some *restraints* on one side or the other; and some *peculiar adjustments*, either present or future, temporary or perpetual. In all these cases, courts of common law have no methods of proceeding, which can accomplish such objects. Their *forms* of actions and judgment are not adapted to them. The proper rem-



edy cannot be found, or cannot be administered to the full extent of the *relative* rights of all parties. . . . In such cases, where the courts of common law cannot grant the proper remedy or relief, the law . . . of the United States . . . authorizes an application to the courts of equity or chancery, which are *not confined* or limited in their modes of relief by such narrow [legal] regulations, but which grant relief to all parties, in cases where they have rights . . . and modify and fashion that relief according to *circumstances*[11]. . . .

The jurisdiction of a court of equity is sometimes concurrent with that of courts of law and sometimes exclusive. It exercises concurrent jurisdiction[12] in cases where the rights are purely of a legal nature, but [exercises exclusive jurisdiction] where other and more efficient aid is required than a court of law can afford to meet the difficulties of the case, and ensure full redress.

. . . The remedy [in equity] is often more complete and effectual than it can be at law. . . . [E]specially in some cases of fraud, mistake and *accident*,[13] courts of law cannot and do not afford any redress; in others they do, but not always in so perfect a manner. A court of equity . . . . will remove *legal impediments* to the fair decision of a question depending at law.[14] It will prevent a party from improperly setting up, at a trial, some title or claim, which [might be *legal*, but] would be inequitable. It will compel [the party] to *discover*, on his own oath, facts which he knows are material to the rights of the other party, but which a court of law cannot compel the party to discover.[15] It will perpetuate [record] the testimony of witnesses to rights and titles, which are in danger of being lost, *before* the matter can be tried [at law].[16]

It will counteract and control, or set aside fraudulent judgments. It will provide for the safety of property in *dispute* pending litigation.[17]

It will exercise . . . an exclusive jurisdiction . . . in all cases of merely equitable rights, that is, such rights as are *not recognized in courts of law.* [I.e., if you lack *legal* title to the subject of litigation, your case must be heard in equity; i.e., you have no access to *law*.]

Most cases of *trust* and confidence fall under this head.[18] Its exclusive jurisdiction is also extensively exercised in granting special relief *beyond* the reach of the common *law*. . . . it will restrain any *undue exercise of a legal right*, against conscience and equity [Courts of equity can "legally" overrule legal rights, but probably only on a case-by-case basis. I.e., an equity judge is "legally" empowered to ignore the litigants' legal rights and the law.]; . . . it will, in many cases, supply the imperfect execution of instruments, and reform and alter them according to the real *intention* of the parties;[19] . . . and, in all cases in which its interference is asked, its general rule is, that he who asks equity must do equity. If a party, therefore, should ask to have a bond for a usurious debt given up, equity could not decree it, unless he could bring into court the money honestly due without usury.

. . . [I]n matters within its exclusive jurisdiction, where substantial justice entitles the party to relief, but the positive law is silent, it is *impossible to define the boundaries* of [equitable] jurisdiction, or to enumerate, with precision, its various principles."

Unbridled power

If Bouvier is correct and equity has no "defined boundaries" or limited "enumeration of its various principles," there is truly *no* "law" in a court of equity. In a sense, a court of equity is absolutely contrary to the constitutional mandate for a limited government. The judge (or other government official acting as a trustee) can do virtually anything he deems proper that is consistent with "public policy" so long as his actions can be justified as "reasonable" or at least not "shocking to the conscience". This is consistent with allegations that courts (of equity) now "legislate from the bench" to create "judge-made law" by exercising the unbridled power that the Constitution was intended to prevent.

I suspect that the fundamental flaw in our Constitution may be the legitimization of courts of equity where litigants had no rights and judges have no law. This may be the fundamental constitutional "crack" that allowed the entrance of big, non-constitutional government, bureaucracies et. al.

Ha. Ha. Ha. It is to laugh.

At first, it sounds kinda nuts, but "by law," courts of equity can't recog-

nize "law". That is, according to Bouvier's definitions, courts of equity can't normally recognize legal arguments or determine legal issues. As a result, if you try to defend yourself in a court of equity with legal arguments based on positive law and constitutionally-protected Rights, you'd probably lose since the judge can't "legally" recognize legal arguments. You'd be as absurd as a man arguing baseball rules at a football game, and the judge would properly dismiss your arguments as "frivolous".

But stranger still, even though you used "frivolous" legal arguments in a court of equity, if the judge merely liked you, or felt capricious, or particularly disliked your opponent, the judge could rule in your favor – for no discernible legal reason! As a result, one man could make a legal argument in a court of equity and win, while another man could make the same legal argument under identical circumstances, and not only lose but wind up in jail. Because the equity court judge has virtually unlimited discretion/ power, the "law" would become a complete crapshoot, where the only way to win would be to suck up to the judge, and the only thing a judge might fear would be public exposure. That's a fairly accurate description of today's judicial system. (This also signals that the "magic words" for court watchers' affidavits might be the judge's ruling "shocked my conscience" or was "unreasonable".)

Further, the resultant confusion and misunderstanding might be enormous and even intentional. Suppose a particular "patriot" reached the erroneous conclusion that the traffic courts were acting under admiralty law. Suppose he defended against a speeding ticket with (erroneous) admiralty arguments, but the judge still knowingly ruled in his favor. Next thing you know, that patriot could be out on the seminar circuit, charging $100 a head to hear him explain how to beat traffic tickets with admiralty law. Then, hundreds of his students would start jamming the traffic courts with admiralty arguments, and virtually all of 'em would be quickly wisked off to jail before the judge burst out giggling at their lunacy.

In theory, I can even imagine a group of judges, sitting around a bar, holding their sides with gleeful laughter as they swapped stories of the last irrational decisions they made in court. "Admiralty?!" gasps one. "Hell, that's nothin' – I just ruled in favor of a kid who argued the cop was a *space alien!* You wait six months, and every fool patriot in the country will be arguing the cops are all 'greys' from *Jupiter!*"

OK, maybe the hypothetical judges didn't really meet to snicker over the latest irrationality they "seeded" into the patriots' "understanding" of law. But what about the lawyers? Wouldn't they also be frustrated and driven half nuts by the unbridled discretion of equity court judges and the resultant judicial caprice? How long would it take the average lawyer to realize that (for whatever reason), there's no point to studying or arguing *law* because *law* no longer works. If you want to win, you kiss the judge's butt, join the same country club, be a Mason, make huge financial contributions to the judge's political campaign fund (even if he has no opponent in the election), and in really important cases, bribe the old s.o.b. Does this sound a like a fairly accurate representation of current judicial reality? Yes.

My point is that a judicial system that relied almost entirely on equity would soon deteriorate into a chaos reminiscent of Alice In Wonderland. Every time you turned around, there'd be some "Red Judge" hollering "Off with his head!" A judicial system that recognizes no legal rights or positive law is destined to degenerate into a raw power struggle, a kind of feeding frenzy between lawyers, litigants and judges.

America cannot survive without legal rights, positive laws, and courts that recognize them.

Lose your form, lose your substance

One reason for the confusion between law and equity goes back to 1982 when the federal courts in their infinite wisdom *combined* the procedural "forms" of law and equity into a single, uniform procedure. The usual explanation for unification of legal and eq-