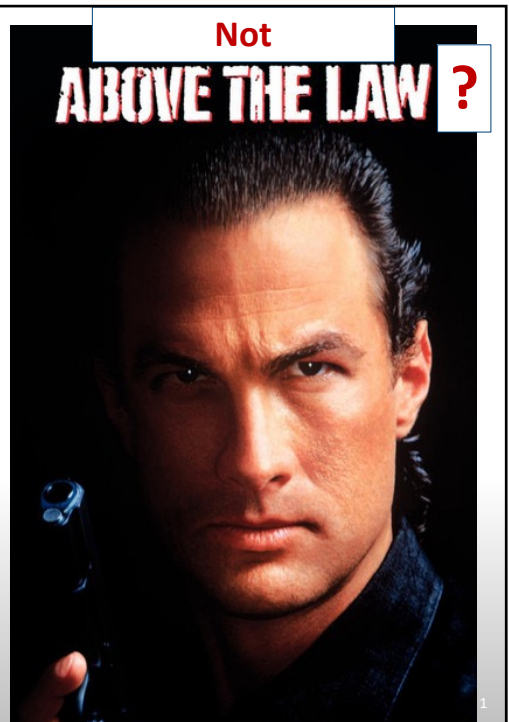


EQUITABLE AND DECLARATORY REMEDIES FOR *ULTRA VIRES* ACTS

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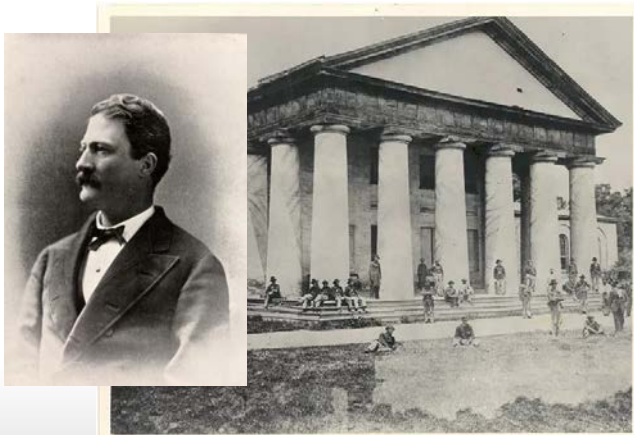
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Overview

1. Background: Sovereign immunity and *ultra vires* suits
2. Practice: Key aspects of litigating these cases
3. Update: Fifteenth Court and recent cases

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No one is above the law—sounds great!



No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.

U.S. v. Lee, 106 U.S. 196 (1882)

How do we put this into action?

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Sovereign immunity bars claims against the government

- Pre-1789 England: the Crown was (sort of) immune from suit without its consent.
- Early United States: No reason to change (ahem).
- Republic of Texas: adopted common law via statute in 1840; recognized sovereign immunity in 1843.
- Early Statehood: “[N]o state can be sued in her own courts without her consent, and then only in the manner indicated by that consent.” *Hosner v. DeYoung* (1847)



If the government does not consent to being sued, then no remedy?

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Young “Fiction”: Some suits against officers not barred



- **England:** King’s officers could be sued for illegal acts, including for damages.
- **U.S. Courts:** State officials can be sued for prospective relief for violations of federal law *U.S. v. Lee*; *Ex parte Young*; *Edelman v. Jordan*

An official’s act in violation of federal law “is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official . . . [who is] stripped of his official or representative character.”

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