

The WTO, The US Constitution, and Self-Government

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NOTE: This article, written just before the historic WTO protests in Seattle, has enduring insights concerning the role of corporations in trade agreements, finance and all manner of usurped governance.

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If the World Trade Organization (WTO) were disappeared tomorrow, many people in other nations would feel a bit of relief. But nothing fundamental would change in the USA. This is because corporations already have the special privilege (which lawyers call their "right") to make basic governing decisions. WTO or no WTO, corporations are protected by our constitution and our Supreme Court, and therefore by the police, army, navy, air force, CIA .

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In late November, thousands from around the world will join people across the Pacific Northwest to protest WTO maneuvers in Seattle. Outside the United States, WTO decrees will inflict great harms upon human life and biological systems. We in the US have a responsibility to support efforts by activists from other lands to neutralize and abolish the WTO. So POCLAD is participating in and supporting efforts to raise hell in Seattle.

But after Seattle, we in the USA have a formidable challenge: to identify and undo over 200 years of constitutional doctrines and laws designed to clothe corporate property with the power of government.

One example (among a zillion) of how these doctrines work: a few years ago a Massachusetts people's movement got a law passed restricting state officials from buying goods or services from corporations trafficking with Burmese dictators. Corporate directors did not like this public assault upon their "rights." But they did not have to summon the WTO into action. Why? Because men of property in the USA have long relied on the federal courts as their very own safety net. So they *expected* federal judges to nullify this law. And these judges did not disappoint, saying simply that it was beyond the authority of the Massachusetts people to legislate such matters.

We have a long history of corporations vetoing people's laws and making their own. And the idea of merchants using some kind of world trade organization to do this work is nothing new. Towards the end of the 17th Century, a new class of global merchants -- architects of the expanding British Empire -- realized their need "to create or adapt agencies to enforce British law on the one hand and restrain colonial legislatures on the other." So they set up a

Board of Trade and Plantations to "scrutinize [the] colonial economy with an eagle eye . . . [and] recommend . . . with firm insistence the annulment of objectionable bills passed by colonial legislatures." [1]

The American Revolution unleashed a great democratic spirit. This led to struggles between the more-propriety and the less-propriety. In a number of states, activists were able to qualify more white men to vote, increase the authority of lower legislative houses, lessen the ability of creditors to milk their debtors forever and ever, and limit the veto powers of governors and judges.

This of course is not what the wealthy, landed men who helped lead the revolution had in mind. They were, after all, a small minority of 20%: European and Colonial class structures had already defined the majority -- women, slaves, Native peoples, indentured servants and workers in general -- as *non-legal persons*; indeed as property. So in self-defense, Washington, Hamilton, Madison and other leaders of this minority wrote and fixed in place a constitution "to contain the threat of the people rather than to embrace their participation and their competence." [2] Committed to "preventing popular liberty from destroying itself" because "the anarchy of the property-less would give way to despotism," [3] they made it extremely difficult for the majority to use the constitution to make basic changes in law even if and when they should ever win the civil and political rights of persons.

In addition, these Federalist [4] founders defined decisions about investment, production, labor and technology as private property's "rights." They believed such decisions were proper matters only for the wealthy landed gentry and commercial class (the corporate managers of today). Accordingly, at the 1787 constitutional convention in Philadelphia, Federalist delegates maneuvered a leap from the Articles of Confederation -- which had kept power and authority in state legislatures -- to a totally new constitution erecting a powerful central government. In the constitution's commerce clause (article 1, section 8), they forbade majorities, through state legislatures, from making rules for production, commerce and trade.

And to appointed Supreme Court justices, they gave the authority of kings.

So when today's corporate managers assemble at a meeting of the World Trade Organization, it is in this triumphant Federalist tradition that they deny legislatures representing communities, states, provinces and national governments the right to make decisions over what shall be produced, where it will be produced and who shall produce it under what conditions.

Photographs of the blue-green Earth floating in space help people see our planet's fragile place in the Cosmos. A decade's experience with the North American Free Trade Agreement (NAFTA), the proposed Multilateral Agreement on Investment (MAI) and the World Trade Organization can help us examine our country's camouflaged histories.

With critics properly identifying the Seattle WTO meeting as an illegitimate global

constitutional convention, we can now recognize the US constitution as the *first* NAFTA. Sent to Philadelphia by their states to address some problems of interstate commerce under the Articles of Confederation, the (mostly Federalist) delegates pledged themselves to secrecy. Once behind closed doors, they replaced the Articles with a new plan, and denied the public any details about their deliberations for 53 years.[5] Their constitution turned a cooperative venture among sovereign states into a set up where Congress would decide commerce, an unelected Senate[6] would approve treaties, a Supreme Court would dictate the law of the land, and an indirectly-elected president[7] would command a standing army.

There are many similarities in the critiques put forward by the foes of the 1787 constitution and by foes of today's corporate WTO:

- Ultimate authority to govern should be in the hands of elected legislators meeting in decidedly public processes, not of appointed judges;
- Government should promote democracy, community and public virtue, not special privileges for the few, not a commercial empire based on accumulation of wealth; property should not translate into privilege and political power;
- Communities and states should not give up their authority to distant, absentee rulers -- especially to an appointed Supreme Court or to tribunals of corporate lawyers and trade bureaucrats;
- The majority must be able to amend bedrock doctrines and laws without waging a revolution every time;
- Mechanisms must exist to cut out of the body politic all institutions which improperly seize property and governing authority, or cause vast harms.

Overpowered and outmaneuvered by the Federalist founders, critics of the constitution yielded when promised a Bill of Rights. With spotlights on global production and trade deals revealing our constitution as the first NAFTA, our Bill of Rights stands exposed as the first diversionary "side agreement!" This is because, just as the labor and environmental "side agreements" did not alter NAFTA's basic undemocratic design, the Bill of Rights did nothing to change the very specific language of the constitution which empowered the propertied minority to rule. In addition, the state ratification process -- during which the text of the constitution itself could not be changed -- was the continent's first "fast track" vote.

For two centuries, people -- especially those disinherited by the Federalist founders -- have sought to use these first ten amendments to gain their rights and stop assaults by the wealthy and powerful. But to this day, the courts have not used the Bill of Rights protect people from entities defined as *private* -- such as corporations. That is why, for example, workers on corporate property enjoy no Bill of Rights powers such as freedom of speech and assembly. Indeed, the Bill of Rights has been used *to give even greater powers to the propertied* -- as with the Supreme Court's creation and expansion of corporate "free speech."

What's more, invoking the Bill of Rights frequently requires appeals to property's safety net -- the federal courts. Such appeals legitimate federal court authority -- particularly the

Supreme Court's -- to nullify the laws of towns, cities and states (just as we legitimate the whole cockamamie NAFTA structure by invoking a NAFTA "side agreement" to save a worker or a tree). In other words, we empower the Supreme Court (or NAFTA) to amend the constitution. This is what Supreme Court justices did by ruling that the slave Dred Scott had no rights a court must respect because he was someone's property;[8] that states could not control railroad corporations within their borders; that unions were criminal conspiracies; that the Fourteenth Amendment made the corporation a legal person;[9] that speaking out against war was a crime.[10]

The surface language of the US constitution is about We the People, our delegated authority, consent of the governed, the blessings of liberty. But the coercive power of the constitution is directed to limiting authority of the majority to make the rules for governing this country.

The surface language of the WTO is about the free trade of goods and services across national borders. But the coercive power of the WTO is directed to limiting the authority of the majority *in every country* to govern -- that is, to control their own labor, spend their natural wealth, use their property, conserve their resources, structure their communities, define their institutions, choose their technologies. Backed by the military power of governments controlled by men of property (especially by the United States), the WTO is about enabling a few to rule over multitudes.

Let us all help get the WTO off the backs of other countries. But after Seattle, we'd best start changing the rules which the propertied minority put into our constitution two hundred years ago. Growing numbers of people have been exploring this challenge, but a definitive blueprint is yet to emerge. So there is great need for creative people from all walks of life to help frame this work.

As throughout human history, our collective task is protecting human rights over property privileges; empowering local, elected and public authority against private and distant unilateral decree; nurturing democracy, equal opportunity and the Earth, as opposed to protecting the wealthy minority's "property rights" in governing, accumulating and denying others.

This minority uses elections, mayors, governors, legislatures, regulatory agencies, courts, police, armed forces and the president to keep the people from assembling to make the rules for investment, production, work, property and self-governance. We can replace the legal codes, judicial precedents and corporate culture which enable them to do so.

It is up to We the People -- which now includes whole classes (such as women, African Americans, workers and Native peoples) who the culture, law and the Federalist founders once defined as property -- to define corporations as public instruments subordinate to the people, and not as private contracts.[11] Let us break the hold which dead Federalists and Supreme Court justices have maintained over our lives and this fragile Earth.

Endnotes

1. Charles and Mary Beard, *The Rise of American Civilization*, volume 1, 1927, pp. 197-98.
2. Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism: The Madisonian Framework and Its Legacy*, Chicago: University of Chicago Press, 1994, p. 159.
3. Nedelsky, pp. 27-28.
4. Wealthy planters, land speculators, bondholders and slaveholders like Washington and Madison who sought a strong central government, and who organized states to ratify the constitution (written largely by Madison), were known as "Federalists." Those who opposed these men and their constitution were labeled "Anti-Federalists." Among the most famous were Patrick Henry, Richard Henry Lee, Mercy Otis Warren.
5. Only after Madison's death were his detailed notes on the constitutional convention published.
6. The 17th amendment, ratified in 1913, replaced selection of senators by state legislators with direct election.
7. Electors appointed by each state -- comprising the so-called "electoral college" -- technically control selection of the president.
8. *Dred Scott v. Sandford*, 60 U.S. 393 (1856), 151, 198
9. *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 396 (1886), 68, 106, 199
10. See various court decisions supporting the legality of sedition laws punishing speech and assembly during World War I. --Ed.
11. In an 1819 decision (*Trustees of Dartmouth College v. Woodward*, 4 Wheaton 518), the Supreme Court wrote corporations into the Constitution, declaring that corporate charters were contracts which legislatures could not change. See "You've Heard of *Santa Clara*, Now Meet *Dartmouth*" in this volume.

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By What Authority, the name of our publication, is English for *quo warranto*. *Quo warranto* is the sovereign's command to halt continuing exercise of illegitimate privileges and authority. Evolved over the last millennium by people organizing to perfect a fair and just common law tradition, the spirit of *By What Authority* animates people's movements today. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. As a result, a minority directing giant corporations privileged by illegitimate authority and backed by police, courts and the military, define the public good, deny people our human and constitutional rights, dictate to our communities, and govern the Earth. *By What Authority* is an unabashed assertion of the right of the sovereign people to govern themselves. A publication of the Program on Corporations, Law and Democracy.

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