

Uncolonizing Our Minds On the Supreme Court

by Richard Grossman

Counterpunch

16 April 2010

So the Supreme Court has been igniting passions, has it? Of its Citizens United decision, people cried: “shameless hypocrisy,” “nothing short of fraud . . . ,” “Truly frightening . . . ,” “a narrow elite is imposing itself through the legal system . . . ”

There are mobilizings to amend the constitution, impeach “the Supreme Court 5,” instruct the president on Justice Stevens’ replacement. Senator Schumer, here in the Empire State, is working on a bill that would force business and nonprofit corporations to reveal their involvement in elections!

If Schumer and others are determined to confront the Supreme Court, maybe they are unearthing the sources of Citizens United and related constitutional infelicities, formulating research questions like: By what flimflam did the 1787 “Miracle in Philadelphia” convention deny the majority of humans in this new nation standing before the law? Why did the people who were people in the early 1800s let Supreme Court justices seize the authority to amend the Constitution?

But Schumer isn’t very determined. He told the NY Times Company the other day: “What we’re trying to do first is make sure everything we do is within the constitutional mandate set by the Court.”

What’s with such obeisance? Why allow humans in black robes to limit our aspirations, supply our words, command our deeds? It’s not so hard to ask: So, what IS the United States Supreme Court? What has been the Court’s role in valiant human struggles to nullify England’s and the USA’s defining of whole classes of people – the majority, actually – as unequal, inferior, invisible? How often has it invoked the Anglo-Saxon’s unique reverence for law to instruct the rabble on progress and civilization?

When slaves, free Africans, Native peoples, women, indentured servants, immigrants, birth control and sexual orientation advocates appealed to the Constitution for remedy, how did our honorable justices craft the law of the land? When farmers, workers and whole communities built a mass movement to form a cooperative commonwealth instead of a

corporate-industrial order, whose values, sayeth the Court, wielded the Constitution against whom?

When people opposing US government imperialism and wars vexed white, male, propertied elites privileged with constitutional head starts, who, ruled the Court, properly called upon the armed might of the nation?

It's not a pretty story.

If the constitutional law professor who is president were somebody else, he might jump into this teaching moment. His first “Uncolonizing Our Minds” Chat could go like this:

“We can avoid careless analysis. Here’s something I found in an otherwise astute critique of Citizens United: ‘Congress passed reasonable regulations [on corporate spending in elections]. And over the decades the Courts have affirmed these regulations over and over, to keep the voice of actual citizens from being drowned out . . .’

“Alas, this does not pass the straight face test.

“Campaign finance laws regulating corporations (like laws legalizing corporate lobbying, like laws legalizing corporate domination in the workplace and corporate poisoning of the Earth), have been cheesy from birth. The ‘good precedent’ campaign spending cases Citizens United modified – such as Austin – were no less whimsical than Citizens United . . . and incoherent to boot. Court opinions on corporations and the Constitution – starting with the [Dartmouth College case in 1819](#) – have consistently affirmed the authority of a corporate few to do the real governing in these United States. So many of the Court’s decisions in [1st](#) and [14th](#) amendments cases violated those amendments’ clear intent and explicit language.

“Like, BEFORE Citizens United, our corporate class didn’t drown out public debate? Didn’t dictate the framing of issues and legislation? Didn’t filter out candidates? BEFORE Citizens United, financial corporations were not transferring unimaginable wealth from the many to the few? BEFORE Citizens United, people could relatively easily stop US government wars and preparations for wars? End this government’s manipulations of other peoples, flora, fauna, mountains, oceans, seeds, genes and governance?

“Majorities used to have constitutional authority to instruct their representatives to launch sane and just transitions in energy, health, agriculture, finance, manufacturing, media, the workplace? Majorities enjoyed constitutional authority to define business corporations as state actors? Render them subordinate to municipalities and states?

“Like, BEFORE Citizens United, the United States of America wasn’t a minority-ruled corporate-imperial empire?

“I’m delighted that people have been reading Citizens United. For those shocked at its lack of logic, argument by assertion, manipulation of precedent and juridical legerdemain, I suggest you read a few score more opinions.

“I commend to you the venerated Chief Justice Marshall – in my book, he’s Mr. Argument-By-Assertion. Of course, he’s in good company: Taney, Bradley, Waite, Brown, Field, White, Fuller, Brewer, Story, Swayne, Rehnquist and many more justices ably justified injustice. Holmes from his Brahmin perch deftly mocked appellants’ working class origins and perspectives. Taft saw anarchists lurking behind every blade of grass. And check out Chief Justice Warren – you might be surprised at the imperious well-settled law the Warren court chose not to trifle with.

“Read what the Court actually wrote in response to constitutional claims by slaves, women, workers, free speech and human rights petitioners across two centuries and into this 21st. Don’t miss the cases adjudicating Native people’s struggles in every generation, or those addressing people’s efforts to make peace with our planet.

“I realize that some advise caution about opening up dangerous floodgates. But as far as I’m concerned, people yearning to be free and self-governing are the floodwaters. We’ve been kept in check by grand myths and relentless agitprop about the nation’s founding, Anglo-American legal traditions, our Constitution, the rule of law. But those gates are made of fairy tales. They exist only in our minds. There’s no time like our time to start tearing them down.

“Then if we ever DO finally turn ourselves into free people, maybe we’ll know better than to let our sovereign governing authority be snatched from our hands by a few people in black robes . . . ”

RICHARD GROSSMAN’s work on the law, corporations and governance includes the books *Defying Corporations, Defining Democracy* (2001); the best-selling pamphlet [Taking Care of Business: Citizenship and the Charter of Incorporation](#) (1993) and [Fear At Work: Job Blackmail, Labor and the Environment](#) (1982) [See also these book reviews: [The Myths of Environmental Regulation](#) and [Job Blackmail \(3-page PDF\)](#)].

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