

Challenging Corporate Power, Asserting the People's Rights

Session V — Private Property and the Recovery of the Commons

If we want to take away the disproportionate power held by those who own property and wealth and shift it toward people and their governments, it is necessary to know more about the head start that property rights had over people's rights in this country's formative years.

The design of the federal government relied heavily on the principle of self-interest narrowly seen as the right for a citizen (at that time elite, white males only) to acquire property and have that property protected and enhanced. The notion of liberty, so highly prized, was primarily taken as the liberty to own things. Jennifer Nedelsky, a student and writer of the Anti-Federalist period, states that the "court built upon the general acceptance of the sanctity of property... and aimed at containing the democratic threat to the rights the Federalists considered necessary to a stable market economy and a free and secure society." (There will be more about Federalists and Anti-Federalists in Session IX.) The states were denied the power to make decisions about property — its definition, production, movement, or distribution. Such matters were the province of the law, the courts, and the minority, not of politics, legislatures, and the majority.

According to this theory, progress would come about not through the promise of community or wide democratic participation, but through the virtuous male seeking stable conditions for securing property ("virtue" comes from Latin, *vir*, for man). The Founding Fathers sought to establish a pre-eminence of the talented minority over the ordinary majority. Talent was measured largely by one's capacity to accumulate material things.

With these sentiments written into the nation's founding doctrines, men of property, using the corporate form (deemed "private" property by the courts), took themselves to great heights of power and control. The costs of this court-granted illegitimate authority — in a country where We the People are supposed to be in charge — grow apparent as they grow enormous. This discussion invites us to examine the role property should or should not play in our lives, rights, and governance.

One reading in this session is included for two purposes. Marjorie Kelly's article provides fresh perspectives on wealth and property in the context of the stock market, which is particularly helpful at a time when the health of our economy (and therefore our country) is viewed so frequently through that lens. Her ideas are built, however, upon a clear enthusiasm for capitalism and an assumption that democracy is alive and well in the U.S. She notes that we haven't democratized economics, at the same time assuming that we *have* democratized politics. She sees corporations as needing to be accountable but is not demanding they be *subordinate* to human beings. As with all the readings, you should be alert for concepts with which you disagree. This particular reading may provide you with even more opportunity to do so because Ms. Kelly's assumptions are commonly shared.

Readings:

1 – WILPF handout on property (3 pages)

2 – "Labor Organizing and Freedom of Association," by Peter Kellman (4 pages)

3 – “The Divine Right of Capital,” by Marjorie Kelly (14 pages)*

4 – “Thinking Seven Generations Ahead,” by Winona LaDuke (3 pages)

**Note: For those who are not intimately familiar with the ownership terminology of the corporate world, a few critical definitions are provided at the end of the article to aid in its understanding. If this is not your area of expertise, you might want to check them out first.*

Discussion Questions:

1. How have the readings expanded or modified your beliefs about property? Do an exercise listing what you consider to be your property. Did you consider any public property as “yours”?
2. How have the legal concepts of what is public property and what is private property affected the power of citizens, workers, and employers? Discuss how other concepts of property might affect the development of democracy.
3. How do Marjorie Kelly’s insights into how the stock market works connect the modern-day corporation with its aristocratic roots in the 17th century?
4. All systems — social, cultural, economic, legal — work because the people affected by them continue to participate in them. Discuss the ways in which widespread beliefs about the stock market and its corporate engines enable its continued operation. What keeps the current allegedly stable system from collapse?
5. Explore Winona La Duke’s proposed Seventh Generation Amendment and its distinction between private and common property.

Supplementary Materials:

- *The Transformation of American Law* (two volumes), by Morton J. Horwitz. Harvard University Press, 1977. For the person interested in the story of the alliance between the legal establishment and the propertied interests of commerce; many chapters stand well on their own if you don’t wish to read the whole book.
- *Silent Theft: The private plunder of our common wealth.* By David Bollier. New York; Routledge (2002).

Challenging Corporate Power, Asserting the People's Rights

Women's International League for Peace and Freedom

Property

Throughout US history, property has been a major lens through which laws were passed and interpreted. Here is James Madison, main architect of the Constitution, writing about property in *The National Gazette*, March 29, 1792:

This term in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*

In the former sense, a man's land, or merchandize, or money is called his property.

In the latter sense, a man has property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties or his possessions.

Where there is an excess of liberty, the effect is the same, tho' from an opposite cause.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.

Madison's writings reflect beliefs not only about what property is but what the purpose of government is: to protect property. These are core values that permeate every aspect of our legal, political, and social systems in the US. Observing the evolution of these systems, in 1938 Max Lerner wrote in *Minority Rule and the Constitutional Tradition*:

American life has pushed forward along a variety of trails — farm, frontier, and factory; plantation and city; trade route, logging camp, mining town and real-estate boom; corporation and cooperative. But through all these the common base-line has been a persistent and pervasive sense of property... property individualism, born of the movements for European liberation, blessed with the approval of Protestant capitalism, flourishing in the wilderness of the American frontier, turned into laissez faire by the conditions of a reckless and exploitative capitalism; and finally, when individualism could no longer thrive as an idea because it has been extinguished as a fact in economic life, the clinging to the profit system and the cash nexus served as bulwarks against

social anarchy and the destruction of the social fabric. This sense of property, even when its widespread social base has been so largely destroyed in the age of absentee ownership, is still a powerful ally for judicial power.

Real and Intangible

When we hear the word *property*, most of us picture various forms of what is called **real property**: tangible possessions, land, buildings, animals — and sometimes human beings. For hundreds of years, millions of Africans, as well as indentured servants and other contract workers, were the legal property of their owners. Women and children have at some times and in some places been the property of men, and even when this was not the case legally, women's right to own property in their own name has historically been widely denied or limited (and still is in some countries).

From the perspective of the Founding Fathers, property was not only the right to private ownership, but also **the right to exclude others** from that which was owned. Real property was of two kinds: our personal possessions, the stuff of daily life — houses, clothing, the tools of an occupation, etc. — and that which could be amassed **in excess of one's needs**. This latter kind of property represented a private ownership of the valuables of the community, of the society. This was a system of property ownership that, through the exclusion of others, gave controlling power to owners over non-owners, to the few over the many.

Another form of property is called **intangible property**: the economic and political rights that people and corporations have claimed, and our judges have protected, as property rights. For corporations, these include the right to make contracts, the right to hire and fire at will, the right to own employees' work, and even the right to future profits. Managerial prerogative and business judgment is also a "property right" — any action taken in good faith and in the ordinary course of doing business is legally protected. "Intellectual property," such as copyrights, trademarks, and patents, are also forms of intangible property. Our laws and courts have guaranteed these "rights" for corporations, along with such Bill of Rights protections as free speech.

When we talk about property and challenge corporate claims to Constitutional rights, we need to consider both real and intangible property. From ownership of real property comes the **wealth, power, and control over people's minds and daily lives** that enable corporations to rule. From ownership of intangible property, corporations have gained the **legal authority to perform the functions of governance**: financing elections, framing public policy discussions, lobbying, and writing laws.

Public and Private

Property can also be categorized as either public or private. **Private property** is that which is owned by an individual, group, or legal entity such as a corporation. **Public property** is that which is owned by everyone — air, water, parks, some utilities, some public buildings. Over the years more and more public property has been commodified and legally converted to private property. For example, a hot topic in international environmental circles is "air

pollution credits.” This is an arrangement whereby a corporation or country polluting more than the legal limit can buy credits from one polluting less than the limit, instead of changing their production so that it does not break the law or — even better — does not pollute at all. The commodification of water is also gaining international attention. Billions of people in the world do not have access to adequate safe water, and corporations in countries with abundant water are interested in making money by selling it for profit to the highest bidder.

The concept of publicly shared resources available to everyone is being rapidly eroded. It is ironic that, in a country that claims to have a government of, by, and for the people, much “government property” is labelled “Do Not Trespass” and is inaccessible to most citizens.

Considering Alternatives

It is important for people to be aware of the differences in the amount and kind of property that is owned by human beings and corporations. For example, how much intangible property do *you* own? We can challenge commonly held assumptions about what property is and who can own it. Not all societies hold the same beliefs about property that are prevalent in the US today. Some property theories hold that it is illegitimate to own anything beyond what you need, and everything else should be public property. Many traditional communities do not consider any part of the natural environment to be something that can be privately owned — they believe that air, land, water, plants, and animals all belong to everyone for wise use and careful stewardship. Different concepts of property and what role those concepts should or should not play in structuring a system of governance can result in widely varying societies. It is the work of sovereign citizens to consider the consequences of those alternatives.

Rachel's Environment & Health Weekly #698

Providing news and resources for environmental justice — May 25, 2000

Part 2 — LABOR ORGANIZING AND FREEDOM OF ASSOCIATION

[Because large economic inequalities create serious public health problems and give rise to social instability, and because labor unions help reduce economic inequalities, we are publishing this illuminating series on U.S. history from a labor perspective. — P.M.]

by Peter Kellman*

As we saw last week (*REHW #697*), American men of property in 1776 wanted to be free from English taxation and control. They wanted to be free to exploit the resources of America and not share the wealth with the English ruling class.

The American Revolution was promoted primarily by two groups of people. The members of these two groups had three things in common: (1) they owned property, (2) they were white, and (3) they were men. The first group consisted of speculators, large landowners, plantation owners and those that had large commercial interests. In the second group were shopkeepers and skilled artisans, the small business people of their day. These two groups made up at most 10% of the population. They organized the revolution and ran the state governments that took power when the 13 colonies declared independence in 1776. They formed the Republic of the United States.

However, most of the population was excluded from participating in the Republic. Those on the outside looking in included people who were the outright property of other people. Some of these people were African slaves and their American descendants who represented 20% of the population. Another group was indentured servants, people who were the outright property of other people for a set period of years. Indentured servants made up about 10% of the population. All women, native people and freemen without much property were denied the right to vote. In South Carolina in 1787, for example, “every free white man of the age of 21... and has a freehold of fifty acres” was eligible to register to vote.[1] But to be Governor of South Carolina the bar was raised even higher: one had to be worth 10,000 pounds.[2]

The U.S. Constitution

In 1776, the 13 colonies declared their independence from the British Crown and in 1781 the former colonies, now states, ratified a set of rules called the Articles of Confederation which determined their relationship to each other. In 1787 the state legislatures sent delegates to a meeting to discuss amending the Articles of Confederation.

Session V, Reading 2, page 1

This meeting is now known as the Constitutional Convention of 1787. It was a closed meeting, the minutes of which were made public 53 years later.[3]

Much had happened between 1781 and 1787 that caused the class of people who fomented the revolution to be concerned about their future. Divisions within the propertied class surfaced in the state legislatures and conflict between classes manifested itself in armed insurrections against the authority of state governments.

In the state legislatures, the interests of the small business owners and artisans clashed with those of the large commercial organizations. The small businessmen wanted high state tariffs to protect their small concerns, while those with large commercial interests demanded so-called “free trade” between the states. Meanwhile, the people who were clearing the land wanted to own it, and armed insurrection against state authority broke out in many places. For example, the rebellion of Vermont’s Green Mountain Boys against their New York landlords eventually led to the establishment of Vermont as the 14th State in 1777. But it was Shays Rebellion, the armed insurrection of western Massachusetts farmers against the policies of the commercial class in Boston in 1786-1787, that weighed most heavily on the large property owners who sat down in 1787 to write the Constitution of the United States. Those who wanted free trade between the states saw the need to have a strong federal government and federal army that would always be available to put down rebellions that could not be suppressed by state militias.

The men who assembled in Philadelphia in 1787 to write the constitution were all men of property. The noted historian Charles Beard states that James Madison, primary author of the Constitution, “...in more than one speech pointed out that the conflict of interests was inescapable. He told the convention that the greatest conflict of all in the country was between those who had property and those who had none.” Beard goes on to say that, “Leaders among the framers wanted, among other things, first to hold the Union together; second, to set up a government that would protect, regulate, and promote types of economic enterprise; third, to put brakes on the state legislatures which had been attacking the interests of protected classes.”[4]

Here is some of what the founding fathers came up with:

The Commerce Clause — The First NAFTA

The Commerce Clause of the Constitution, Article I Sec. 8(3), was written “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes” and was created to straighten out the conflict of interest between the small and large proper owners. After the Constitution was ratified, independent state legislatures were no longer able to erect protective tariffs that “hindered” the flow of goods between the states. The big commercial interests of the day had triumphed over the small enterprises trying to “grow” local businesses.

Recently a similar event took place when the large transnational corporate interests triumphed over national business interests and labor with the passage of the North American Free Trade Agreement (NAFTA). The Commerce Clause was the first “free trade” agreement in North America, and like NAFTA, it was negotiated at a closed meeting.
[5]

The Contracts Clause

The Contracts Clause of the Constitution, Article I Sec.10.(1), says in part that, “No State shall... pass any... Law impairing the Obligation of contracts.” Legal theory holds that contracts are agreements made between equals, and therefore the state should not meddle. [6] If a state were to pass a *public* law that, for example, set the maximum hours an employer could require people to work, it would be seen by the courts as *impairing* the right of individual citizens to negotiate contracts free from outside interference. Contracts are *private* laws. And thus most labor laws passed by state legislatures and Congress prior to 1937 were ruled unconstitutional by the U.S. Supreme Court because they violated the Contracts Clause. They were *public laws* that violated *private laws*. The meaning is clear. The obligation of the government, as stated in the preamble to the Constitution, to promote the “general Welfare,” is secondary to the *private* law, the law of contracts.

Once again, the theory of contracts is based on the assumption that the contracting parties are equals. The founding fathers would have us believe that an indentured servant negotiating a contract with his master was somehow equal to the master at the negotiating table. The situation is similar to a small local union with 200 members negotiating a contract with a large employer who brings to the table enough resources to move the plant. In practice this can hardly be called a contract negotiated between equals. But this is the legal fiction, and the courts, congress, national guard, army and police uphold this distortion of common sense.

The *Lochner v. New York* case of 1905 is a classic example of how the Contracts Clause suppressed the democratic legislative activities of working class people. As a result of popular agitation, the New York State Legislature passed a law limiting the hours of work for people employed in bakeries to no more than 10 per day and 60 per week. The U.S. Supreme Court ruled, “Under such circumstances the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution.” Do you know of any state or federal law today that limits the number of hours an employer can require an adult to work?

Dominance of the *private* law over the *public* law in our Constitution has made it very hard for working people to use the political process to better their conditions. This is true because the Constitution restricts our collective activity primarily to contractual relationships with employers, and the National Labor Relations Act limits our activity even further. So much for “We the People” forming a Government to “promote the general Welfare” that the Preamble to the Constitution promises. The question is: Who defines the “general Welfare.” So far it has been the lawyers of the elite, who become Supreme Court justices, not shop stewards, teachers or home makers. When the constitutionality of a law is questioned it is five Supreme Court justices who decide for the rest of us issues like: Is a maximum 40 hour week constitutional? Do workers have free speech at work? Do employers have free speech rights in union certification elections?

The Return Servants Clause

Human rights didn't seem to be high on the agenda of the constitutional fathers, but labor did make it into the Constitution.

Article IV Sec 2.(3) says, "No person held in Service or Labour in one State, under the laws thereof, escaping into another, shall, in Consequence of any regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

Men like James Madison and George Washington wanted their human property, slaves and indentured servants, to know that if they escaped into another state the Constitution of the United States guaranteed their return. James Madison, fourth President of the United States and "master builder of the Constitution," had a great financial interest in protecting his property. He "told a British visitor shortly after the American Revolution that he could make \$257 on every Negro in a year, and spend only \$12 or \$13 on his keep." [7] At one time James Madison enslaved 116 human beings. Based on his statement, Madison would have made a yearly profit of \$28,304 on slave labor and the slaves would have realized nothing but the inhumanity of being a slave. If you were a slave or indentured servant how would you feel about this "master builder of the Constitution" writing *your* constitution?

[To be continued.]

*Peter Kellman works for the Program on Corporations, Law and Democracy (POCLAD). For information on POCLAD: E-mail people@poclad.org; or www.poclad.org; or phone: (508) 398-1145; or mail: P.O. Box 246, So. Yarmouth, MA 02664-0246.

[1] *Minor v. Happersett*, 88 U.S. 162 (1875), 172-173.

[2] Francis N. Thorpe, *The Story of the Constitution of the United States* (N.Y.: Chautauqua Press, 1891), pg. 48.

[3] Jerry Fresia, *Toward an American Revolution* (Boston: South End Press, 1988) pg. 47.

[4] Charles Beard, *The Republic — Conversations on Fundamentals* (New York: Viking Press, 1943), pg. 285.

[5] "Free trade" is the international equivalent of "right to work." A "right to work" law is a state law that prohibits union membership as a condition of employment, even though everyone in a place of employment receives all the benefits that the union wins under a collective bargaining agreement. As labor people know, "right to work" means the right to work for less. The reality of free trade is that workers in one country are forced to work for less to compete with workers in another country. "Free trade" = right to work for less.

[6] A contract is an agreement between two or more parties, a private law enforceable through court action. When a union negotiates a contract with a private employer, the contract is not voted on by the state legislature. Yet if one party to a contract reneges, the aggrieved party will go to court to force the offending party to live up to the "private law."

[7] Howard Zinn, *A People's History of the United States, 1492-Present* (N.Y.: Harper Perennial, 1995), pg. 33.

Rachel's Environment & Health Weekly (ISSN 1078-103x) is published weekly by Environmental Research Foundation at 105 Eastem Avenue - Suite 101, Annapolis, MD 21403-3300. Second-Class Postage paid at Annapolis, MD. POSTMASTER: Send address changes to *RACHEL'S ENVIRONMENT & HEALTH WEEKLY*, P.O. Box 5036, Annapolis, MD 21403-7036. Peter Montague, editor (National Writers Union, UAW Local 1981/AFL-CIO); Maria B. Pellerano, associate editor; Todd Fiedorowicz, circulation manager. RATES: \$25 per year for individuals and citizen groups; \$45 for universities and libraries; \$80 for professionals and government agencies; \$15 for students and seniors; \$400 for businesses; in Canada and Mexico, add \$8.00; in all other countries, add \$15.00. All payments in U.S. funds drawn on U.S. banks. Visa & Mastercard accepted. Telephone (410) 263-1584; fax: (410) 263-8944; Email: erf@rachel.org. *Rachel's Environment & Health Weekly* is not copyrighted. Printed on kenaf paper (100% acid-free, chlorine-free, and tree-free).

Rachel's Environment & Health Weekly
P.O. Box 5036
Annapolis, MD 21403-7036

The Divine Right of Capital

Marjorie Kelly

Wealth

Where does wealth come from? More precisely, where does the wealth of major public corporations come from? Who creates it?

To judge by the current arrangement in corporate America, one might suppose capital creates wealth — which is odd, because a pile of capital sitting there creates nothing. Yet capital-providers (stockholders) lay claim to most of the wealth that public corporations generate. They also claim the more fundamental right to have corporations managed on their behalf. Corporations are believed to exist for one purpose alone: to maximize returns to shareholders. This principle is reinforced by CEOs, the *Wall Street Journal*, business schools, and the courts. It is the law of the land — much as the divine right of kings was once the law of the land. Indeed, “maximizing returns to shareholders” is universally accepted as a kind of divine, unchallengeable mandate.

In the business world at large, it is not in the least controversial. Though it should be.

What do shareholders contribute to justify the extraordinary allegiance they receive? They take risk, we’re told. They put their money on the line, so corporations might grow and prosper. Let’s test the truth of this with a little quiz:

Stockholders fund major public corporations — True or False?

False. Or, actually, a tiny bit true — but for the most part, massively false. What’s intriguing is that we speak as though it were entirely true: “I have invested in AT&T,” we say, imagining AT&T as a steward of our money, with a fiduciary responsibility to take care of it. In fact, “investing” dollars don’t go to AT&T but to other speculators. Equity “investments” reach a public corporation only when new common stock is sold — which for major corporations is a rare event. Among the Dow Jones Industrials, only a handful have sold any new common stock in thirty years. Many have sold none in fifty years.

The stock market works like a used car market, as accounting professor Ralph Estes observes in *Tyranny of the Bottom Line*. When you buy a 1993 Ford Escort, the money doesn’t go to Ford. It goes to the previous owner. Ford gets the buyer’s money only when it sells a new car. Similarly, companies get stockholders’ money only when they sell new common stock, which mature companies rarely do. According to figures from the Federal Reserve and the Securities and Exchange Commission, about 99 percent of the stock out there is “used stock.” That is, ninety-nine out of one hundred “invested” dollars are trading in the purely speculative market, and never reach corporations.

Public corporations do have the ability to sell new stock. And they do need capital (funds beyond revenue) to operate — for inventory, expansion, and so forth. But they get very little of this capital from stockholders. In 1993, for example, corporations needed \$555 billion in capital. According to the Federal Reserve, sales of common stock contributed 4

percent of that. I used this fact in one of those large-typeface quotes in a magazine article once, and the designer changed it to 40 percent, assuming it was a typo. It's not. Of all capital public corporations needed in 1993, stockholders provided 4 percent.

Well yes, some will say — that's recently. But stockholders did fund corporations in the past.

Again, only a tiny bit true. Take the steel industry. An accounting study by Eldon Hendriksen examined capital expenditures in that industry from 1900 to 1953, and found that issues of common stock provided only 5 percent of capital. That was over the entire first half of the twentieth century, when industry was growing by leaps and bounds.

So, what do stockholders contribute, to justify the extra/ordinary allegiance they receive? Very little. And that's my point.

Equity capital is provided by stockholders when a company goes public, and in occasional secondary offerings later. But in the life of most major companies today, issuance of common stock represents a distant, long-ago source of funds, and a minor one at that. What's odd is that it entitles stockholders to extract most of the corporation's wealth — forever. Equity investors essentially install a pipeline, and dictate that the corporation's sole purpose is to funnel wealth into it. The pipeline is never to be tampered with and no one else is to be granted significant access (except executives, whose function is to keep it flowing).

The truth is, the commotion on Wall Street is not about funding corporations. It's about extracting from them.

The productive risk in building businesses is borne by entrepreneurs and their initial venture investors, who do contribute real investing dollars to create real wealth. Those who buy stock at sixth or seventh hand, or one thousandth hand, also take a risk — but it is a risk speculators take among themselves, trying to outwit one another like gamblers. It has little to do with corporations, except this: Public companies are required to provide new chips for the gaming table, into infinity.

* * *

It's odd. And it's connected to a second oddity — that we believe stockholders *are* the corporation. When we say “a corporation did well,” we mean its shareholders did well. The company's local community might be devastated by plant closings, its groundwater contaminated with pollutants. Employees might be shouldering a crushing workload, doing without raises for years on end. Still we will say, “the corporation did well.”

We do not see rising employee income as a measure of corporate success. Indeed, gains to employees are losses to the corporation. And this betrays an unconscious bias: that employees are not really part of the corporation. They have no claim on the wealth they create, no say in governance, and no vote for the board of directors. They're not citizens of corporate society, but subjects.

Investors, on the other hand, may never set foot inside “their” companies, may not know where they're located or what they produce. Yet corporations exist to enrich investors

alone. In corporate society, only those who own stock can vote — like America until the mid-1800s, when only those who owned land could vote. Employees are disenfranchised.

We think of this as the natural law of the free market, but it's more accurately the result of the corporate governance structure, which violates free-market principles. In a free market, everyone scrambles to get what they can, and they keep what they earn. In the construct of the corporation, one group gets to keep what another earns.

The oddity of it all is veiled by the incantation of a single, magical word: "ownership." Because we say stockholders "own" corporations, they are permitted to contribute very little, and take quite a lot.

What an extraordinary word. One is tempted to recall the comment of Lycophron, a Greek philosopher, during an early Athenian slave uprising against the aristocracy. "The splendour of noble birth is imaginary," he said, "and its prerogatives are based upon a mere word."

* * *

A mere word. And yet the source of untold trouble. Why have the rich gotten richer while employee income has stagnated? Because that's the way the corporation is designed. It is designed to pay stockholders as much as possible, and to pay employees as little as possible. Why are companies demanding exemption from property taxes? Why are they cutting down 300-year-old forests? Because that's the way the corporation is designed. It is designed to internalize all possible gains from the community, and to externalize all possible costs onto the community.

"A rising tide lifts all boats," the saying goes. The corporation really functions more like a lock-and-dam operation, raising the water level in one compartment by lowering it in another.

The problem is not the free market. That notion — buyers and sellers regulating prices without external guidance — is relatively innocent. Indeed, brilliant. Nor is the problem capitalism. The capitalist system — private ownership driven by self-interest — is in many ways superbly effective. Certainly free-market capitalism is the most fruitful economic system the world has yet conceived. If we go rummaging through its entire basket of economic ideas — supply and demand, private property, competition, profit, unconscious regulation, wealth creation, and so forth — we'll find most concepts are sturdy and healthy, well worth keeping. But we'll also find one concept that is inconsistent with the others. It is the lever that keeps the lock and dam functioning, and it is these four words: maximizing returns to shareholders.

When we pluck this notion out of our basket and turn it over in our hands — really looking at it, as we so rarely do — we will see it is an aristocratic edict. In a competitive free market, it decrees that the interests of one group will be systematically favored over others. In a system devoted to unconscious regulation, it says corporations will consciously serve one group alone. In a system rewarding hard work, it says members of that group will be served regardless of their productivity.

Shareholder maximization is a form of entitlement. And entitlement has no place in a free market. It is a form of privilege. And privilege accruing to property ownership is a remnant of the aristocratic past.

Democracy

Alexis de Tocqueville observed that there are two great ages of human history: the aristocratic age and the democratic age. In the twentieth century, governments worldwide have made a great passage from one to the other. In the years just prior to World War I, kings and emperors sat enthroned atop most nations of the globe — but they did not, by and large, survive the two world wars. After a calamitous interval of dictatorship and communism, a majority of the world's nations had, by the 1990s, turned to democracy.

We have crossed a great divide in history from aristocracy to democracy. But we have done so only in government. We have yet to democratize economics.

We think of capitalism as the handmaiden of democracy, but that's only partially true. Free market theory points toward democratic outcomes in its emphasis on individuals getting what they earn. But corporate governance points toward aristocratic outcomes in its insistence on shareholder primacy. Corporate governance is anti-democratic. Or, perhaps, pre-democratic.

The wealth-owning class today is a kind of secular aristocracy, much as dictators were secular monarchs, attempting to reproduce aspects of privilege enjoyed in the aristocratic era. In the past, secular monarchs largely failed because they lacked the sustaining myth of the divine right of kings. As fallen dictators from Mussolini to Marcos showed the world, power without myth does not long endure. Analyzing the fall of dictators in a chapter tellingly titled “The Weakness of Strong States,” Francis Fukuyama observed, “The critical weakness that eventually toppled these strong states was in the last analysis a failure of legitimacy — that is, a crisis on the level of ideas.”

The secular aristocracy must cling to its sustaining myths. They provide the base of its legitimacy, without which the amassing of wealth begins to seem indefensible. That's why the core myth of today's aristocracy — that shareholder returns must be maximized — is considered unchallengeable, nearly sacred. It is a myth with the force of law. We might call it our modern version of the divine right of kings.

* * *

Although such myths serve to legitimate a bias favoring those who own property (which today we call “financial assets”), we do not hold them consciously; instead, our legal structures hold them for us, as they once held biases favoring men over women, or whites over blacks.

The first step to changing unconscious bias is to see it. To help us do so is the aim of this essay (and of the book I am writing of the same title). It is a venture into what Michel Foucault would call an “archaeology of knowledge,” a foundational dig, examining the

ancient conceptual structures on which wealth bias is built. It is an inquiry into the aristocratic echoes in the corporate worldview — the sustaining myths which support shareholder primacy.

I'm primarily addressing public corporations, because they are fundamentally different from smaller, private, family-owned corporations. My premise is that the shareholder primacy that drives these mammoth firms is, like the divine right of kings, an increasingly archaic mandate, imposed on an organic system capable of self-governance. It is a stricture that is blocking the natural evolution of capitalism, because it is increasingly out of step with the times due to a number of massive changes in the nature of major public corporations:

1. Increasing size. Today, among the world's one hundred largest economies, fifty-one are corporations. They have revenues larger than nation-states, yet maintain the guise of being "private."
2. The shrinking of ownership functions. Though still considered "owners," stockholders in major public companies do not manage, fund, or accept liability for "their" corporations. Ownership function has shrunk to one dimension: extracting wealth.
3. The rise of the knowledge economy. For many companies, knowledge is the new source of competitive advantage. To allow shareholders to claim the corporation's increasing wealth — when employees play a greater role in creating that wealth — is a misallocation of resources.
4. The increasing damage to our ecosystem. The rules of accounting were written in the sixteenth century, when nature seemed an unlimited reservoir of resources, and an unlimited sink for wastes. That is no longer true, but the rules of accounting retain fossilized remnants of those ancient attitudes.

Major public corporations have evolved into something new in civilization, structures more massive, more dominant in the world than our democratic forefathers dreamed possible. They left us little guidance on governing these institutions — the word "corporation" appears nowhere in the Constitution — because only a handful of American corporations existed when that seminal document was written. Washington and Jefferson governed a nation of farmers, in which most nonagricultural businesses were indeed "private," run out of the parlor, or in the barn, as part of the private household.

As the name itself implies, "public" corporations are no longer private. The major corporation, as Franklin D. Roosevelt observed, "represents private enterprise become a kind of private government which is a power unto itself."

* * *

We fail to see the growing public power of corporations because we accept the myth that corporations are pieces of private property owned by shareholders whose primacy is a natural mandate of free markets, just as our ancestors accepted that nations were private kingdoms owned by kings whose supremacy was a natural mandate of God.

We live with these myths like buried shells from an old war, the war we thought we had won, between monarchy and democracy. When these invisible old bombs go off — as they have in the resurgence of sweatshops, the rise of income inequality, or the increasing demands of corporate welfare — we become alarmed. We ask, how can the “free market” go so wrong? Believing the myth that the system must remain unfettered, we feel powerless to reach down and defuse the explosive and buried nub of the problem, which is shareholder primacy. Or in broader terms, wealth bias.

Property

In searching for the source of stockholder privilege, we come around again to the incantation of that single, magical word: “ownership.” It is property ownership that gives stockholders power. Thus, like a feudal estate, a corporation must be considered a piece of property — not a human community — so it can be owned and sold by the propertied class.

This word “own” is deceptively small, and worth unpacking. Because stockholders “own” corporations, we are implicitly told: 1) the corporation is an object that can be owned; 2) stockholders are sole masters of that object; 3) they can do as they like with “their” object. It’s an entire worldview in three letters. And as a result of this tiny incantation (like the “Shazam” that turns a boy into Captain Marvel), stockholders gain omnipotent powers: they can take over massive corporations, break them apart, sell them, squeeze them dry, or shut them down — while employees and communities remain powerless to stop them.

Power of this sort has an unmistakable feel of something more ancient. Ownership — that bundle of concepts we also label “property rights” — is one antique tradition that has remained impressively intact. It comes down to us from that time when the landed class was the privileged class, by virtue of its wealth in property. To own land was to be master. And in the master’s view, what was owned was subordinate, as in the imperial presumption that India was a “possession” of the throne of England. Or the feudal presumption that lords could own serfs, like so much livestock.

Ownership, according to British law, conferred upon the owner “sole and despotic dominion.” The phrase is from William Blackstone’s eighteenth century *Commentaries on the Laws of England*. It is a phrase worth lingering over, for “dominion” shares the same root as “domination.” And “despotic” means the tyrannical rule of those who are not free.

Even in John Locke’s *Two Treatises of Government* — considered a founding document of democracy — God is conceived of as the Great Property Owner. Locke wrote:

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are....

This notion of one sovereign master extended to the marriage relationship, where only men were permitted to own property. In early American law, a husband became owner of his wife’s property upon marriage. He had sole right to administer it, had sole claim to its

profits, and was required to render his wife no accounting. In the 1764 case of *Hanlon v. Thayer*, a Massachusetts court said a husband owned even his wife's clothing — though she'd brought it with her at marriage. Husband and wife were one legal person, and that person was the husband.

* * *

Today, the corporation is considered one legal entity, and that entity is equated with stockholders. Like wives, employees “disappear” into the corporation, where they have no vote. The property of the corporation is administered solely in the interests of stockholders, who like husbands claim the profits, and are required to render employees no accounting. We have thus a “corporate marriage” in which one party has sole dominion. The reason is property.

Profit

The “property” stockholders have in corporations is represented by two numbers. The first is the stream of income, called profit, or earnings. Stockholders get a piece of it in dividends. The second is the value of the corporation itself, called market value, or capitalization. (It's the value of all shares added together.) Stockholders receive their portion of market value when they sell stock and pocket capital gains, if the stock has gone up. In analogy to a rooming house, you might say stockholders own the stream of rent coming in, and they own the house itself.

The key to it all is profits. This is the wealth — the “property” — the corporation creates each year. The value of the corporation as a whole is often expressed as a multiple of profits (generally called “earnings”), as in the price/earnings ratio. If earnings go down, the value of the corporation will often go down. Hence maximizing profits means working in the stockholder's interests — and if necessary, working against employee and community interests. Profit is often viewed as a neutral concept, and it could be, if companies made some rational, periodic analysis of how to allocate it. But they don't. Custom grants to employees and the community no right to a cut of profit. Capitalist theory says it belongs to stockholders alone.

Jeff Gates in *The Ownership Solution* calls this the “closed loop” of wealth creation. Stockholders are by definition those who possess wealth. And in the design of the corporation, all new wealth flows to those owning old wealth, in a closed loop.

In the current narrative of the corporation, it works like this: A corporation exists to generate profit. Profit belongs to stockholders, but they leave part of it in the corporation to fund growth. So a portion (about a third) is paid out as dividends, and the rest is kept as retained earnings. Those earnings are generated by the income statement, and retained on the balance sheet, where they are added to shareholder equity. Equity is what stockholders initially contributed when they purchased shares from the company. And by the magical closed loop of accounting, equity grows, year after year, while stockholders never contribute another cent out of their pocket.

Ergo: Stockholders “create wealth” without lifting a finger.

We call this “return on equity,” or ROE. It is designed to continue into infinity.

It’s a bit like the plant in *The Little Shop of Horrors*, which ate everything in sight. The more equity grows, the more it demands to grow. If equity is at, say, \$1 million, and grows 15 percent a year for ten years, it quadruples. So if a 15 percent return on equity initially means shoveling out \$150,000 worth of profits to satisfy shareholders, by the tenth year 15 percent requires a shovel four times as big, or \$600,000. The company needs four times the profits just to stay in place as far as stockholders are concerned, yielding the same ROE, year after year.

It’s like pushing a rock up a hill, and when you push nice and hard, the rock gets bigger. There is no top of the hill. You must do this for eternity.

It’s little wonder CEOs at public companies are desperate to boost profits however they can — sending jobs to sweatshops overseas, demanding corporate welfare, refusing to give raises, using temporary workers without benefits, wheedling tax breaks, downsizing staff. No one needs to stand up and tell them to do these things. The financial statements make the demand. The closed loop of corporate accounting holds the demand in place forever.

One enforcement mechanism is the hostile takeover, in which CEOs who fail to deliver are given the boot. Return on equity functions a bit like the Mafia, demanding a larger and larger payment every year, or the hostile takeover folks come and break the CEO’s kneecaps.

Return on equity lasts forever, as did title of nobility, which had a similarly tenuous connection to merit. At some point, it’s true, someone did invest dollars in the corporation, just as someone quite often did do something “noble.” But that single act granted passive privilege to a string of other folks, who did nothing. They continue to pass on privilege, hand to hand, forever. Of course, privilege of nobility passed by inheritance, while privilege of stock ownership passes by purchase. So we have made a few changes.

* * *

One might debate the legitimacy of this arrangement. One might question the rationale of an infinite payback for a one-time hit of money. (Even credit cards let you off the hook at some point.) But let us sidestep that debate.

Let us assume, for the sake of argument, that all profits legitimately belong to stockholders. Let us assume they own all tangible corporate assets: the book value of the corporation is theirs. (Book value means everything you own minus everything you owe. It’s what would be left, theoretically, if you sold everything and paid off debts.) Even granted this, stockholders are still running off with 75 percent of corporate value that’s arguably not theirs.

Consider: At year-end 1995, book value of the S&P 500 accounted for only 26 percent of market value. The combined book value of these companies totaled \$1.2 trillion. Market value was \$4.6 trillion. Thus “intangibles” were worth \$3.4 trillion — three times the value of tangible assets.

Thus, even if S&P stockholders owned the companies' tangible assets, they got off scot-free with other airy stuff worth three times as much.

Included in intangibles is discounted future value (what the market will pay today for estimated future value), plus things like patents and reputation. But also included is a company's knowledge base, its living presence. Or to call it by a simpler name: employees.

Human Capital

In owning intangible value, stockholders essentially own employees — or at the very least, they have the right to sell them (which amounts to the same thing).

Take the case of the Maryland company in Chapter 11 bankruptcy, which in 1997 sold itself to Space Applications Corp. (SAC) in Vienna, VA. The company's real assets were its one hundred scientists. So it sold them. As Edward Swallow of SAC told the *Wall Street Journal*, "The company wasn't worth anything to us without the people."

"Human capital" acquisitions happen all the time. Through 1997, Cisco Systems Inc. in San Jose, California, had made nineteen of them — mostly acquisitions of small software companies with little revenue but fifty to one hundred employees, for which it paid premium prices: up to \$2 million per employee.

* * *

It's revealing when the accountants go to record such purchases on the balance sheet. If you pay \$100 million for a company with, say, \$25 million in tangible assets, what's the other \$75 million of stuff you bought? How do you record it? Well, what you don't record is "one hundred scientists." In post-Civil War America, we recoil from the notion human beings might be bought and sold. So we say a company has purchased "goodwill." That's how it's booked: as a line item on the balance sheet called "goodwill."

The parallel to Blackstone is eery: our law does not support the literal buying and selling of persons, but it does support the principle that stockholders can own certain kinds of property in employees. We allow company owners to sell company assets, even when the primary assets are one hundred scientists. This doesn't make these scientists property in the sense slaves were property, because the scientists are free to leave. But neither are they property owners, with a right to vote on the sale and a right to pocket the proceeds. Their status is akin to a third category recognized by Blackstone: "that of a right-bearing subject who is also the property of another."

* * *

Employees-as-property is a disturbing concept. But evidence of it is disturbingly widespread — as in the commonplace observation that "employees are our greatest assets." Assets, of course, are something one owns.

And companies can take this quite literally. Consider the case of Evan Brown. This computer programmer claimed to have dreamed up a concept that would fix outdated computer codes, and he wanted to develop it on its own. But his employer, DSC

Communications in Plano, Texas, said the idea was company property, because Brown had signed an agreement granting DSC rights to inventions “suggested by his work.” Brown never made notes for his concept. So when DSC sued him, it wasn’t for ownership of his papers. It was for ownership of his thoughts.

* * *

How can companies own employees’ thoughts? Isn’t it unconstitutional to own human beings? Questions like these are not asked in the property-based society of capitalism. The fact that corporations fail to ask them is a sign of their pre-democratic bias: their archaic mental habit of seeing everything — even human knowledge — as property, and seeking to own it.

Through the lens of ownership, one either owns property, or becomes property. There is nothing else.

It’s an attitude that says, if I own the assets of a firm, I own everything created on top of those assets. All new wealth flows to old wealth. This is a feudal assumption — and we can see it more clearly if we make the analogy to land. Say a landowner pays a tenant to farm some land, and the tenant builds a house there. Who owns the house? The landowner or the tenant?

In feudal England, the landowner legally claimed the house. But as legal scholar Morton Horwitz points out, American courts rejected this claim, beginning with the 1829 case, *Van Ness v. Pacard*, where Justice Story wrote: “what tenant could afford to erect fixtures of much expence or value, if he was to lose his whole interest therein by the very act of erection?” Under democratic law, the rule became that “the value of improvements should be left with the developer.”

Refusing to bow to ancient property rights, democratic law articulated a new precedent: the house belongs to the person who built it. New wealth flows to those who create it.

In this tradition, employees who “build” atop the corporation (creating new products or new efficiencies) should have a legal right to the value of their improvements. But in corporate law that isn’t the case. Corporate law says stockholders own everything. Hence the increasing value of the corporation flows to shareholders, though they haven’t lifted a finger to create that value. The presumption is literally feudal.

Personal Assets

Tied up with this feudal presumption is the notion that property owners *are* the corporation. Employees are incidental: hire them today, get rid of them tomorrow, they’re of no consequence. They’re not on the balance sheet, so they don’t exist in the tally of what matters.

Yes, well. We might puncture this fantasy with a simple question:

What is a corporation worth without its employees?

This question was acted out, interestingly enough, in London, with the revolutionary birth of St. Luke’s advertising agency, which was formerly the London office of Chiat/

Day. In 1995, the owners of Chiat/Day decided to sell the company to Omnicom — which meant layoffs were looming — and Andy Law in the London office wanted none of it. He and his fellow employees decided to rebel. They phoned clients and found them happy to join the rebellion. And so at one blow, London employees and clients were leaving.

Thus arose a fascinating question: what exactly did the “owners” of the London office now own? Without employees and clients, what was the London branch worth? One dollar, it turned out. That was the purchase price — plus a percentage of profits for seven years — when Omnicom sold the London branch to Law and his cohorts. They renamed it St. Luke’s, and posted a sign in the hall: Profit Is Like Health. You Need It, But It Is Not What You Live For. All employees became equal owners. Ownership for St. Luke’s is a right that is free, like the right to vote. Every year now the company is revalued, with new shares awarded equally to all.

* * *

Thus we see how the presumptions of property hold up in the knowledge era: the fiction that outsiders can “own” a company, which is nothing but a network of human relationships, is as flimsy as a house of cards. Employees themselves are the cards, willingly holding the place together, even as stockholders walk off with the wealth that employees create.

How long this will be sustainable remains to be seen. But for the time being, employees seem content to remain hypnotized: believing themselves powerless, and accepting (shazam!) that stockholders have sole and despotic dominion.

No one thinks to object when employees are called “assets” — or sold in an acquisition. We don’t notice when employees are lumped with “intangibles”: as though they are not flesh and blood, but ghosts. It seems rational that corporate accountants recognize the value of “goodwill,” even as they ignore the value of employee knowledge.

We accept these notions, because we operate from the unconscious assumption that corporations are objects, not human communities. And if they’re objects — akin to feudal estates — then they’re something outsiders can own, and the humans working there are simply part of the property. Either you own property, or you become property: there is nothing else in a property-based world.

These antique notions inhabit us at levels beneath awareness. We don’t become conscious of them until someone like Andy Law, or Evan Brown, stands up to stockholders and says, “I am not your property.” Such gestures are reminiscent of the founding fathers standing up to Great Britain and saying, “America is no longer your property.” Or women standing up to men saying, “We are not your possessions.”

What seems solid melts under challenge. In the heat of confrontation, the notion of “owning” human beings slips away, like ice melting. Or like an incantation, fading, once we have broken its spell.

Wealthism

It's instructive to recall that at America's founding, the voting franchise was limited by three biases then considered legal: biases based on race, sex, and wealth. All three restrictions on the vote have since been removed. But only the first two restrictions have been recognized as unfair forms of discrimination, which we term "racism" and "sexism." The third, discrimination based on wealth, hasn't yet been fully recognized. We might begin by giving it a name. I suggest "wealthism."

Though it is pervasive, this bias has no coherent history or theory comparable to those dealing with racism and sexism. There is a large literature on "class," which is a vital beginning. But "class" is too amorphous a term. Wealth lurks in its background, but in the foreground are an array of issues, having to do with the family you're from, your mode of dress, where you went to school, how you speak — all of which may be only tangentially related to possession of wealth. Furthermore, America pretends it is a society without classes. But no one would suggest we are a society without wealthy individuals.

In point of fact, "wealthism" has a precision that "class" lacks. Corporate financial statements do not discriminate based on mode of dress. The voting franchise was not restricted based on how people spoke. These structural forms of discrimination find their basis in wealth.

Because we fail to name this discrimination precisely, we fail to see how it functions (how many people understand how financial statements work?) and we fail to claim its history. This history lies cloaked in collective amnesia, lost in a kind of vast national forgetting. How many of us could say when or how wealth restrictions on the vote were removed? How many of us remember Thomas Dorr?

Dorr was a hero in the fight for white manhood suffrage in Rhode Island, where property restrictions once kept more than half of adult males from voting. In the Dorr Rebellion of 1842, the disenfranchised rose up and created their own "People's Constitution" — mandating universal suffrage for white males — and elected Dorr as their governor. This put Rhode Island in the awkward position of having two governors until President Tyler stepped in to crush the rebellion. Dorr was sentenced to "life imprisonment" (which lasted one year), but his cause was soon triumphant: In 1843, state suffrage provisions were liberalized. By the 1850s, wealth restrictions on the vote were abolished in virtually all states.

We don't know this history, because wealth prejudice remains largely unconscious. Change begins by seeing. And we do not yet see.

* * *

Wealth bias is articulated — quite brazenly — in the mandate to maximize returns to shareholders. It is given institutional form in the denial of corporate voting rights to employees. It is right in front of our eyes.

The 1919 date of *Dodge v. Ford Motor Co.* — the case that said the purpose of the corporation is to serve stockholders — is worth noting, for it anchors the notion of

shareholder primacy in the era to which it belongs: that era which still denied voting rights to women and blacks, that era when such forms of discrimination were legal. In that time, when only white men were considered full members of society, it seemed natural that only wealth-holders would be full members of corporate society.

Corporations still live in the charmed circle of this taboo. They see their customs as unalterable, like the custom that only stockholders may vote, that wealth's only goal is more wealth, that the measure of success is a rising stock price. We buy into this belief system. With our tiny stashes of stock, we think the system is working for us, even as wages are sluggish, working hours are increasing, layoffs are rampant, and benefits are declining. Even as our children study in poorly funded schools while corporations elude the property taxes that once supported those schools.

There are seams of vulnerability here, once we think to look for them. Great seams of illegitimacy, of a creaky antiquity. One day, when there's been a bit more of a thaw in the climate of opinion, the time will come to strike at a few of these seams. Change might result more quickly than we imagine. Roosevelt enacted his most transformative New Deal laws in just one hundred days, or slightly over three months. This kind of opening for change is likely to come again. For if the system design is unsustainable (and it is), crisis becomes more likely. If the corporate governance system in the meantime seems impenetrable, it's because all closed societies seem impenetrable. The monarchy in its day seemed eternal. Shareholder primacy today seems likewise inevitable and eternal. But history suggests it will not be.

For those who are not intimately familiar with the ownership terminology of the corporate world, we provide the following definitions to aid in the understanding of this article:

Shareholder (or stockholder) — a person who owns shares in a corporation. The number of shares a corporation sells is controlled by the Securities and Exchange Commission. Some corporations have very few shares and some have millions. Public corporations sell their shares in stock markets, where anyone who can pay the price may purchase them. Shareholders have voting rights proportionate to the number of shares they own and can participate in the annual meetings held by corporations, so they are said to be owners of the corporation.

Public corporation — a corporation that sells its shares on the open stock market. There are also private corporations, which can limit the ownership, buying, and selling of their shares to a restricted group of persons. The term “public corporation” can be confusing, because they are considered to be privately owned — that is, the corporation is not owned by the public (like the

government); it's owned by private citizens, the stockholders. A new corporation that is offering stock for sale for the first time is said to be "going public." Before that time, the corporation is privately owned by its investors, who are usually some combination of the people who start the business and people or investment firms who advance money to get the business going (in hopes of a profitable return on their investment).

Equity — ownership in something. In this context, a stockholder is said to have equity in the corporation.

Free market — a concept developed by economists in the 17th and 18th centuries in which there would be no rules or governmental restrictions on the ability of people to trade goods and services among themselves. The belief was that in such an environment, competition would ensure allocation of resources (raw materials, labor, etc.) so that the best goods and services would naturally emerge to serve everyone's needs. In reality, there has never been such a market, because there have always been restrictive laws to protect one or another kind of interest (such as a local market, local custom or religion, the environment, the workers, and so forth). "Free market" is frequently used today to describe what would more accurately be called "corporate-controlled" market because there are many subsidies, tax breaks, and other forms of welfare provided to large corporations that hide their true cost of doing business and deflect many of their expenses to the public. Small businesses and individuals do not have access to this preferential treatment, so public resources are unequally available, a fundamental violation of a true free market.

Capitalism — (from Webster's Ninth) an economic system characterized by private or corporate ownership of capital goods, by investments that are determined by private decision rather than by state control, and by prices, production, and the distribution of goods that are determined mainly by competition in a free market.

ECONOMIC POLICY

TIKKUN VOL. 15, No. 4

Marjorie Kelly is the cofounder and editor of Business Ethics, PO Box 8439, Minneapolis, MN 55408, www.business-ethics.com. This article is excerpted from a forthcoming book of the same title.

Toward Freedom, March/April, 1997

Winona LaDuke is Program Officer for the Seventh Generation Fund's Environmental Program and Campaign Director for the White Earth Land Recovery Project. She was Green Party candidate Ralph Nader's vice-presidential running mate in 1996.

Thinking Seven Generations Ahead

The founding "fathers" of the US envisioned life, liberty, and the pursuit of happiness, but had little idea of what was to come. Since that time, we've seen the continent's landscape change dramatically: culturally, politically, ecologically, and economically. Today, the social and technological foundation of the society has outstripped the law itself. It's time to amend the Constitution to preserve "the commons" for all of us. It's time for a Common Property, or Seventh Generation, amendment to the US Constitution.

WINONA LADUKE

The Constitution's preamble declares as one of its purposes securing "the Blessings of Liberty, to ourselves and our Posterity." Shouldn't those blessings include air fit to breathe, water decent enough to drink, and land as beautiful for our descendants as it was for our ancestors? Instead, US public policy has come to reflect short-term interests, fiscal years, and "deficit reduction" programs while being increasingly absent of any inter-generational perspective. That long-term view is crucial to our wellbeing and a valuable role for democratic government. Without it, what is collectively ours — oceans, air, rivers, water, forests, public lands — is often pilfered or degraded by private interests.

The Exxon Valdez oil spill disaster is one example of the destruction of common property by private interests. An accident, and we hope the exception. The rule, however, is chilling.

Consider the challenge of industrial fishing. Seafood conglomerate Tysons and its factory trawlers work inside the US 200-mile limit of the North Pacific Ocean. Tysons' nets plunder the ocean with an "economic efficiency" that leaves little behind. One net can hold up to six jumbo jets in its grasp, and such fleets now dominate the industry. With 38,000 registered commercial fishing vessels on the seas, it's ironic that only 60 boats bring in 21 percent of the total US catch. More ironic is the waste. Factory trawlers annually waste 580 millions pounds of fish, in the North Pacific alone, tossed dead-as-a-door-nail back into the ocean.

In the past decade, we've seen the collapse of the Atlantic haddock, salmons, and soon pollack stocks, all largely because of "over fishing" and factory trawling. That collapse put thousands of people out of work in Canada, costing US taxpayers millions in economic aid. The impact will last decades, *if* the fish recover at all. The question might be asked: "What

right does the factory trawling industry have to cause the collapse of an entire species of fish — our fish?”

Here’s another example: Dow Chemical, Monsanto, Dupont, and dioxin. Dioxin is a true 20th-century child. Its chemical family was created by Herbert Dow in the 1900s and later begat that household savior, chlorine bleach. Subsequent offspring have included most pesticides, solvents, and plastics. Dioxin now appears throughout our economy and food chain. The Environmental Protection Agency (EPA) has known of dioxin’s serious health consequences since the early 1970s but has taken limited action, largely because of lobbying by groups like the Chlorine Council, the industry’s advocacy group. A huge EPA study begun in 1992 was released this year, and reveals that the problems are worse than anticipated.

Nearly everyone in the country is already carrying what is called a “body burden of dioxin” 500 times greater than that carcinogen’s “acceptable risk” level. Dioxin can be considered a sort of environment hormone that ravages the endocrine system, distorting cell growth. In men, dioxin elevates testosterone levels, reduces sperm count and leads to increased rates of diabetes. In the last 50 years, sperm counts declined by more than 50 percent, while testicular cancer tripled.

In women, dioxin seems to prompt endometriosis, a painful uterine disorder that now afflicts 5 million women a year. Dioxin exposure is linked to breast cancer, which more than doubled since 1960. Pregnant women are especially vulnerable, since the daily level of dioxin intake is enough to cause long-term fetal damage, prompt birth defects, disrupt sexual development, and cause immune system damage.

If you live in the Great Lakes region, your dioxin body burden may be two to three times greater than that of someone living on the West Coast. Weather patterns and chemical plant clustering produce this additional exposure. Dioxin is a fat-soluble chemical, bio-accumulating up the food chain. For example, fish from Lake Michigan show levels of dioxin over 100,000 times higher than the surrounding water, plants, and sediment. However, two-thirds of the average US citizen’s exposure to dioxin comes from milk, cheese, and beef, a result of cows eating contaminated crops.

What’s the problem? Environmental laws of today are outstripped by the poisons in our air, water, and land, and their cumulative impacts. We are facing a “catch up” situation at best, and most frequently there is no cumulative or long-term policy protection. We don’t even know what the combined impact of a complicated chemical soup is on our bodies, in our ecosystem, or on future generations. Public policy is lagging behind our ability to destroy ourselves.

We need a Seventh Generation Amendment to ensure the blessings of liberty to ourselves and our posterity. The Fifth Amendment (we hope) preserves our rights to private property, and the protection of that property. The US legal system needs to establish a clear distinction between private property and common property. And both must be defended vigorously. If private property has found safe haven in the Fifth Amendment, where is common property equally protected?

Common property resources are those that aren't or can't be owned by an individual or a corporation, but are held by all people. These "Blessings of Liberty" envisioned in the US Constitution should be used or enjoyed only in ways that do not impair the rights of others — including future generations — to use or enjoy them. This is perhaps best reflected in the Iroquois Confederacy's philosophy: We must consider the impact of a decision made today on the impact on the Seventh Generation from now.

The rights of the people to use and enjoy air, water, and sunlight are essential to life, liberty, and the pursuit of happiness. These most basic human rights have been impaired by those who discharge toxic substances into the air or water, thereby taking away life, liberty, and the ability to pursue happiness. These rights are also damaged by those who cause our fish population's crash or who destroy our oceans. Such "taking" must be recognized as a fundamental wrong in our system of laws, just as a taking of private property is a fundamental wrong.

A Seventh Generation Amendment, or Common Property Amendment, to the US Constitution could state, "The right of citizens of the United States to use and enjoy air, water, sunlight, and other renewable resources determined by the Congress to be common property shall not be impaired, nor shall such use impair their availability for the use of future generations..."

It's hard to imagine that those who framed the US Constitution could have imagined the US at the millennium. It's harder yet to imagine what we'll pass on, if we don't think of the Seventh Generation from now.