

HOW WEALTH RULES THE WORLD



SAVING OUR COMMUNITIES AND FREEDOMS
FROM THE DICTATORSHIP *of* PROPERTY

BEN G. PRICE

FOREWORD BY DAVID KORTEN, AUTHOR OF *WHEN CORPORATIONS RULE THE WORLD*

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I dedicate this book to the people of every community struggling for control of their own destinies, and to my colleagues at the Community Environmental Legal Defense Fund, for their selfless commitment to making the future better and their devotion to correcting the errors of the past.

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Foreword

We the people of the United States are not the middle-class democracy of, by, and for the people many of us grew up believing our nation to be. Our current awakening to this truth is a first step toward achieving our aspiration of real democracy and a society that truly works for all.

To take the next step, we must understand why achieving the aspiration has so long eluded us. This makes Ben Price's book, *How Wealth Rules the World*, a distinctive and essential read for our time.

I was among those who grew up believing that the United States modeled the middle-class democracy to which most of the world's people aspire. With that belief as my guide, I devoted some thirty years of my early professional life to sharing the supposed lessons of US success with the world's less fortunate. This included twenty-one years living and working as a development professional in Ethiopia, Central America, the Philippines, and Indonesia.

Over these years, I began to see results very different from what I had gone abroad to serve. I observed "development" forcing people off the lands and waters from which they met their daily needs. A tiny number of people were lifted to new levels of opulence and a few to new levels of material comfort. Most, however, were reduced to a daily struggle to survive even

more brutal than the hardships they might previously have endured.

The real shock came when I realized that many in so-called advanced countries, including the United States, were experiencing a similar downward spiral. Eventually, I returned home to share what I had learned while abroad about the truth behind America's global mission. I documented that story in my book *When Corporations Rule the World*.

In *How Wealth Rules the World*, Price adds another layer of analysis to reveal a yet deeper truth and its roots in US history. He reveals how the inspiring and visionary words of the US Declaration of Independence mask the reality that the United States was born of the European conquest of the Western hemisphere, the theft of lands from the hemisphere's indigenous people, and the conversion of those lands into prosperous plantations by indentured servants fleeing extreme poverty in Europe and by slaves brutally abducted from Africa.

The rules of the new nation were written by members of a landed aristocracy resting on a foundation of stolen lands worked by their enslaved and indentured servants. Exactly whose rights and freedoms might we have expected these founder's preferred rules to guarantee?

It would come as no surprise that, as Price reminds us, the original US Constitution limited political power to white male property owners *and* that the first human rights victory of the citizens of the new nation came when white males without property won the right to vote. Nonwhite males followed only much later. Women, of course, came later still.

So, do we in the United States finally have democracy? Hardly. We are no longer ruled by a landed gentry, but rule remains in the hands of a propertied aristocracy. It isn't just some innocent fluke of history.

As Price elaborates, the legal code of the rights of property was inserted into the Constitution written by and for the owners of stolen property and the enslaved who worked it. It is not much of a stretch to suggest that the original Constitution was written to enshrine a US dictatorship of the propertied class.

I'm especially intrigued by the distinction Price makes between *personal* property that an individual has earned through his or her labor and *privileged* property that secures the rights of a propertied elite.

I often note that I believe private property is such a good thing that everyone should have some. By this I mean that all people should have a secure right to the property on which they depend for their basic livelihood. The land, tools, skills, and/or business from which the person makes a living for herself and her family. The place of lodging he calls home. These are the things in which every person should have an ownership stake as an individual or as a family or cooperative member.

Privileged property, as Price describes it, is property used by one person to extract unearned profits and/or to enjoy luxuries far beyond his personal need by controlling and limiting or prohibiting access by others to a means of living. It is a very important distinction between the right to make a living and the right to make a killing.

As Price describes, using a clever legal sleight of hand, the founders who drafted the Constitution made property into a rights-bearing canteen to be drunk from only by the holders of privileged property. They thereby assured that a propertied aristocracy of men like themselves would hold the powers of self-governance securely in their own exclusive hands.

As subsequent human rights victories led to constitutional amendments that weakened the rights of the propertied, a

judiciary schooled in rights-of-property legal doctrine regularly stepped in to assume for itself the Constitutional power to issue decisions that restored and strengthened the founders' "original intention."

Consequently, the real power in our system resides not with We the People, or even with the institutions that make the rules. It resides with a court system that has taken unto itself the power to *interpret* the rules. This all comes together to secure the power of the US Supreme Court—as ultimate representative of the interests of the owners of privileged property—to be the ultimate decider among the three branches of the US government.

I have long suspected that the founders might well have anticipated that a Supreme Court staffed by graduates of elite law schools—in their day exclusively white males born of wealthy families—would be the ultimate arbiter of the rules. I have also long wondered about the twisted legal logic of the Supreme Court justices who granted the rights of personhood to corporations owned by private shareholders. Isn't an owned person a slave?

The system of rule by property in the name of democracy that the US founders put in place is one of history's greatest and most successful deceptions. Libertarian think tanks, neo-liberal economists, and lawyers in service to the propertied class have more recently taken the deception global through the World Trade Organization and international trade and investment agreements.

I am struck by the truth of Price's extraordinary and perceptive observation that the US Constitution, which defined economic relations between thirteen formerly independent colonies with its clauses on contracts and interstate commerce, was effectively the first North American trade agreement securing the interests of big business and wealth concentration.

The division between the super-rich and everyone else continues to grow on a now global scale to create the greatest wealth gap in human history. As of 2018, the six richest people in the world owned more wealth than the poorest half of humanity. The combined wealth of the three richest US citizens exceeded that of the poorest half of the US population.¹

If democracy was the founders' intention, they failed terribly. If it was to secure elite privilege and an ever-growing gap between rich and poor, they succeeded beyond anything they could possibly have imagined.

What the US founders may have intended, however, is currently irrelevant. We the People—*all people*—have the right and the imperative to create the democracy of the people, by the people, and for the people that we have never had. *How Wealth Rules the World* unlocks the code that stripped us of our rights and that we must now strip from the laws and legal institutions by which we govern ourselves.

David C. Korten, author, *When Corporations Rule the World* and *Change the Story, Change the Future: A Living Economy for a Living Earth*

Preface

A concerted assault on local democracy is under way. In towns, counties, villages, and cities across the United States and around the globe, municipalities are forbidden the authority to secure and protect residents' rights through local law.

Every day, people are faced with assaults against their rights on the job. They are left helpless to preserve their local economies against giant retail chains, subsidies paid with their tax dollars to attract community-busting monopolies, exemptions from local laws and taxes for industries that bring poverty-level wages and toxic by-products for local disposal. They are stripped of self-governing tools to defend the air they breathe against the installation of refineries and fossil fuel pipelines. They are scoffed at for wanting to protect their families and neighbors against police violence. They can't protect the land they get their food from and the air their children breathe against aerial pesticide spraying by agribusiness juggernauts. And it's illegal for them to safeguard the water their children drink against polluting manufacturers and extractors when state law forbids ("preempts") protective local laws.

The plan of this book is to unmask the artifice of democratic representation that American law—and the laws of many erstwhile democratic nations—mocks in practice. It will expose the way the legal system has been engineered to guarantee that wealth and empire prevail over people and their

common birthright. It has been written for anyone who wonders “what went wrong” in a nation thought to have pioneered a system of democratic representation with rules that apply equally to everyone.

Community activists, labor leaders, working people, environmentalists, progressives tired of losing, and conservatives tired of believing in but not seeing reverence for foundational ideals will be interested in knowing how things got so screwed up.

Readers seeking a deeper understanding of why so many social and political challenges seem insurmountable and those who wonder why the legal system, economic policies, and international trade agreements seem to serve some purpose other than the public welfare will find in this book a new framework for productive thought.

Those involved with Move to Amend, Public Citizen, and similar organizations focused on ending the legal advantages with which courts have empowered corporations will find here an expanded and more nuanced view of the problem. Others whose critique of capitalism demands more than superficial reform will be interested to learn the hidden ways the wealthy are favored by a system of law that protects capitalism from democracy and sacrifices human and civil rights to ensure its success.

The information that people under siege need is not warm and fuzzy. It's stark and real. It may at times seem depressing, disempowering, and, frankly, not filled with hope. I can only say that, although these are common reactions to being exposed to our dire situation, that's not where the story ends. Extraordinary people have taken up the struggle for true freedom. They have begun to take seriously their unalienable right to protect themselves, their communities, and their natural environment against toxic uses of private wealth. *Unalienable*,

as used in these pages, means intrinsic; impossible to be separated from; not able to be forfeited, sold, traded, or even voluntarily surrendered.

Understanding the truth of our predicament always seemed more important to my colleagues and me than being sensitive to the desire to find easy answers and quick fixes. Our impatience with Band-Aid solutions to systemic oppression is driven not by callousness but by urgency. Our critique of traditional progressive organizing is a judgment not of character but of strategy.

The underlying framework for what's revealed in these pages is partially outlined in the curriculum we've developed and continue to revise in what we call Democracy School. It's an intensive seminar that the Community Environmental Legal Defense Fund (CELDF) has presented to many hundreds of communities around the country since 2003. I'm a Democracy School lecturer, a contributor to the curriculum, and the current national organizing director for CELDF.

My community organizing work over the past fifteen years has been as important in developing the ideas presented here as the legal and historic research. At CELDF we've gone beyond theory and history. I was CELDF's first community rights organizer. Fifteen years later, with a team of organizers in multiple states, we've helped hundreds of communities draft local laws that challenge legal privileges for wealth that violate the rights of people and the natural world.

Along the way we learned how the system is *fixed*. It works exactly as intended. It prevents democracy from inconveniencing the rich. When I use the term *democracy*, I mean that the people affected by governing decisions are the ones who make and enforce the law, directly or through representatives bound to the will of the governed and limited only by a strict respect for the unalienable rights of all beings.

Rich people hiding behind the legal immunities afforded by incorporation appeal to domestic courts and international trade tribunals to protect their interests against democracy. Laws, administrative agencies, and a plethora of ineffective regulations are programmed to favor and maximize advantages for the privileged. Around the world, legal traditions rooted deep in the hierarchical imperialism of a globe-spanning empire yield predictably undemocratic results. In nations that have emulated the US Constitution and system of law, and in others that once were colonies of the British Empire, as was the United States, the dictatorship of property is mistaken as the indispensable foundation of civilization.

The story of how property gained through conquest and confiscation is legally immunized from democratic governance has been kept quiet for far too long. Today's beneficiaries of the colonial tradition of genocide, slavery, and ecocide have a responsibility to educate themselves to the facts and abandon the heroic legends that mask the truth.

Victims of empire around the world don't need to learn the visceral lessons that privileged white descendants of imperial colonizers need to learn. But before the progeny of settlers can understand the misery and injustice brought on by their forebearers, a lot of false history needs to be unlearned, including how, after American independence, counterrevolutionary schemers erected a system of government that perpetuates the violently won gains of wealthy white men.

This is your invitation to know what those who game the system know and to pick up where the American revolutionaries left off. Come join the community rights movement. It's time we liberate ourselves from our delusions and from the dictatorial power that law conveys to a propertied aristocracy.

One Right to Rule Them All

THE DARK SIDE OF PROPERTY

When plunder becomes a way of life for a group of men living together in society, they create for themselves in the course of time, a legal system that authorizes it and a moral code that glorifies it.

—Frederic Bastiat

Owning Up to the Real Problem: Wealth Obliterates Self-Government

Let's get it out in the open: The United States of America and nations that emulate its governing principles are governed by a dictatorship of property. Is it plutocracy? Sure, but it goes deeper than that.

The US Constitution, as it was written and later interpreted by the Supreme Court, hijacked democratic rights that American revolutionaries thought they had won. The Federalists developed a whole system of law that serves the interests of wealth. Elements of that system include the following:

- ❖ State constitutions untethered from their revolutionary moorings
- ❖ International trade agreements that supersede local, state, and federal laws

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- ❖ Regulations administered by an unrepresentative bureaucracy
- ❖ Political parties that gerrymander legislative districts, so that they can choose their voters rather than allowing voters to choose representatives
- ❖ Corporate property that the Supreme Court has declared to be “persons” with Bill of Rights protections
- ❖ Federal and state statutes that privatize public governance and prohibit democratic limits on the uses of private fortunes
- ❖ Local governments declared to be property of the state and made unavailable to communities for municipal lawmaking

We live deep within an undemocratic matrix of law that masquerades as a democratic republic while it legalizes an aristocracy of wealth. The US Constitution was written by men who came from a uniformly privileged class. Charles Beard argued this point in his book *An Economic Interpretation of the Constitution of the United States*.¹ Beard analyzed the economic interests of those who met in secret to overturn the Articles of Confederation (the first constitution of the United States) and concluded that the Federalists were motivated by economic self-interest to establish a form of government that would protect their wealth against “an excess of democracy,” as Alexander Hamilton put it.²

The Federalists who replaced the Articles with the US Constitution were not fully aligned with the liberating agenda of commoners who risked their lives to throw off the hierarchical chains of the British Empire. They were wealthy men edu-

cated in British law with opinions that harmonized with aristocratic sentiments.

The authors of the US Constitution are often called the “founding fathers.” Popular history lumps the Federalist counterrevolutionaries in with the likes of Thomas Paine, who with his firebrand writings against monarchy, nobility, and special privileges for the few inspired the people to demand independence. Popular culture counts the Federalists as American Revolutionaries no less fervent for liberty than the men whose ideas of leveling the social class system inspired American farmers and day laborers to pick up their muskets and take on the Redcoats.

This conflation of the Federalist counterrevolutionaries with those whose “Spirit of ’76” is reflected in the Declaration of Independence and absent from the US Constitution is a troubling reminder that popular history too often preserves false memories.

What’s the evidence that the Federalists intended a constitution that weaponizes law to protect the accumulation of property and raise wealth above and out of reach of public governance? To begin with, their own words were recorded in Philadelphia in 1787 by James Madison and Robert Yates. Damningly, that record was held secret until every delegate to the clandestine conclave had died and the constitution they wrote had been the law of the land for two generations. We have that evidence, and it tells the tale I’ll share in chapter 2.

We also have the product of their cleverness to consider. The Federalists established a quasi-monarchical judiciary. Politically appointed judges wield the power to veto any legislation that departs from the Federalists’ original intent: to protect wealth accumulation from democratic oversight. We have the arguments of the Anti-Federalists who called out the would-be American aristocrats for betraying the Revolution.

If not for them, we would not have the first ten amendments to the Federalists' document, the Bill of Rights, which many identify as the soul of the US Constitution.

More immediate evidence that the original intent of the US Constitution was to immunize possession of unearned property from public regulation can be found in the antisocial way the document is interpreted by the courts and how it operates on society today.

The Dictatorship of Property

Here's my argument in a nutshell.

We are faced with social, political, and environmental problems that resist resolution because law empowers a wealthy minority to govern based on priorities often at odds with the general welfare. The Constitution—and its interpretation by the courts—amounts to an arsenal of weaponized law able to deliver special privileges to a propertied class. Certain legal mechanisms let those seeking to profit at the public expense block policies that compete with their interests.

These legal doctrines operate by a two-step process. First, they remove democratic rights from the public sphere and deposit them in concentrated accumulations of property. The oddity of attaching legal rights to property itself rather than to people roared into public consciousness with the Supreme Court's 2010 *Citizens United* ruling that affirmed corporate property's "personhood" and free speech rights. Although the ruling shocked the conscience of average Americans, it was not the first time the Court had vested civil rights within inert property. Nor were corporations the first type of property to be given legal rights.

The second step is for property imbued with rights to deliver those rights as an extra layer of legal privilege to the property owner.

When civil and human rights are deposited in property, that property is placed beyond the authority of the people to govern how it is used by its owner. This nullifies the majority's ability to decide directly or through elected representatives what the public policy will be.

As a result, we aren't allowed to resolve issues of immediate concern to every community. Even when we understand what needs to be done, we are often blocked. Privileges secured by law for an opulent minority outweigh our right to self-govern. We're left institutionally powerless when the interests of the rich conflict with settling issues like these through community lawmaking:

- ❖ Homelessness
- ❖ Police accountability
- ❖ Sanctuary cities, immigrants' rights
- ❖ Workers' rights on the job
- ❖ Minimum/living wage
- ❖ Fracking
- ❖ Retail chains
- ❖ Water privatization
- ❖ Genetically modified plants and animals (GMOs)
- ❖ Gun regulation
- ❖ School privatization
- ❖ Private vote tallying
- ❖ Corporatization of food production
- ❖ Prisoners' rights

- ❖ Prison privatization
- ❖ Unsustainable energy policies
- ❖ “Private” surveillance and data mining
- ❖ Factory farms
- ❖ Strip mining
- ❖ Predatory lending
- ❖ Pipelines
- ❖ Urban sewage sludge
- ❖ Toxic trespass (private poisoning of the public)

Our social and governing problems are rooted in the legal fiction of property. I say “legal fiction” because without law, property does not exist, as we’ll discuss thoroughly in chapter 1. For now, it’s important to realize that not all property conveys the same kind of governing clout to its owner. To make this clearer, I’ll draw a distinction between *personal property* and *privileged property*.

Personal property, as used in these pages, is derived from one’s own labor. Ownership of it is understandably a cherished right. Our homes and vehicles, our wages and savings (not “returns” on savings derived from interest)—these justly belong to each of us, meaning we have an exclusive right to them. The right to own the fruit of one’s personal effort is unalienable. Again, *unalienable* means intrinsic; impossible to be separated from; not able to be forfeited, sold, traded, or even voluntarily surrendered.

The right to one’s personal property is part of the right of self-preservation and includes the right of material security

within the social context and within the natural ecosystem. Personal property is a limited category, confined to what an individual can produce solely from personal effort. It may be just enough to subsist; it may be a significant treasure. But it is never accumulated at the expense of someone else's rights.

Privileged property is the kind of property to which the Federalists, and later their quasi-monarchical Supreme Court, attached legal privileges—the kind of property that is *not* earned by personal effort. Either it is the spoils of conquest, the booty of pillaging, or the result of the enclosure (privatization) of “the commons,” or it is ownership of amassed property through inheritance, purchase, garnishment, or confiscation.

Privileged property involves monopoly control, including the deprivation of the rights of others. It is accumulated and maintained by many mechanisms, including rationing of necessities and extortion of labor in exchange for them. Ownership of privileged property is regularly used to justify extractive activities that destroy the ability of human communities and ecosystems to sustain a healthy existence.

I am not claiming that privileged property is always used in antisocial ways. Large fortunes amassed by robber barons, real estate moguls, televangelists, and dictators are enjoyed through inheritance by their children, who sometimes apply a part of the hoard to philanthropic causes. Even when it is used for seemingly noble purposes, however, privileged property is still the result of anti-social behavior. Pierre-Joseph Proudhon (author of *What Is Property?* 1840), said of it, “Property is theft.”

The legal doctrines that institutionalized special privilege for the wealthy include the following:

- ❖ Federal preemption of state and local commercial law-making
- ❖ Privatization of public law
- ❖ Commoditization of unalienable rights by way of contract (e.g., mandatory waiver of rights to enter into routine business contracts; mandatory arbitration and juryless settlements)
- ❖ Corporate “rights”
- ❖ The denial of legal “standing” to appear in court without a property claim
- ❖ Subordination of local governments through state preemption (prohibitions on local law making)
- ❖ Legal biases in favor of the property rights of creditors and against the human rights of debtors
- ❖ The dictatorship of precedent over justice
- ❖ And many other devices

The rich handily override the rights of individuals and the will of community majorities. When our solutions to local harms involve restricting the use of accumulated wealth, the wealthy rely on rights vested in property to stop us. And the law is on their side.

At the time of this writing, I’ve been working with citizens in Denver, Colorado, to place a “right to survive” amendment to the city charter on the ballot. Its intent is to secure the rights of people who are homeless against constant harassment and move-on orders by local law enforcement. Those orders serve the interests of the business community, but they violate the

fundamental rights of propertyless persons, who lack the legal protections afforded to wealth.

People deal with homelessness and all the other local challenges one at a time, as though they are unrelated. Activists organize locally to stop a gas pipeline, address police violence, object to aerial pesticide spraying, advocate for prisoners' rights, demand a living wage, prohibit the injection of toxic fracking waste into the same ground from which they draw their drinking water. They believe that there are regulations and protective laws they can invoke to their advantage. But most people who confront these issues run into the same wall. Just when they think they can't lose because their cause is just and they've gathered all the damning evidence they need to prove their case, it all gets wiped away.

People are frustrated by unreceptive courts and left baffled by negative outcomes. They feel blindsided. They begin to blame themselves for missing small details, for not organizing better, or for not figuring out how to navigate a complex system of law. When people ask regulatory agencies and elected representatives for protection, they are routinely told there's nothing to be done. Their local officials shrug and say that they wish they could help, but their hands are tied.

What these activists generally don't realize is that the outcome was in every case predetermined. It's not their fault. Rather than ensuring equal rights for all of us, our property-based legal system conveys privileged access to power to those who possess wealth, while denying it to everyone else. Issues that undeniably affect whole communities are decided by the courts primarily based on property claims. Contracts and corporate law are said to relate to matters of a private interests and are of no interest to the public. Using this reasoning, they are said to fall within the realm of *private law*. As such, they are

removed from the public sphere and immunized from public governance.

This privatization of law dealing with contracts and corporations treats the whole realm of economic behavior as if it had no impact on society at-large. It follows a logic that has as its premise the notion that individuals with wealth should decide all matters defined as “commerce” free from public interference. This explains our inability to make democratic decisions about many issues. Once removed from the purview of *public law*, the priorities of wealth are deemed off-limits to public governance. Public law is, of course, the kind we are most familiar with. It sets policies and places sanctions on anti-social behavior. It deals with issues of general concern to the community at-large. Our right to make public policies on issues in which wealth has an interest has been privatized. As a result, we are institutionally powerless.

Here's How We Know Whom Government Serves

By the mid-twentieth century, state governments were routinely being recruited by the corporate class to further curtail local self-governing rights. By the second decade of the twenty-first century, the practice of knee-jerk preemption (overruling) of the power of municipalities to govern corporate behavior moved with precision.

Municipalities are the institutions most commonly available to citizens for exercising the right of self-government. State preemption of local lawmaking frequently amounts to usurpation of public governance to benefit private interests. The courts regularly deny that preemption deprives people of their democratic rights, but forbidding municipalities to enact laws that protect the rights of people accomplishes just that. Underlying these rulings, the courts presume that the people

never had authority to employ the states' property for their own purposes.

Dillon's Rule, which we'll hear more about in chapter 5, is the legal theory that community governments are utterly subordinate to the state. It is asserted day in and day out, not by states intervening directly into municipal affairs, but by the managers and directors of business corporations suing local governments to overturn laws that interfere with their agendas. When they sue, they ask the court to rule that the municipality has acted outside of its valid authority in adopting a law prohibiting a corporate project. Predictably, industry front groups and lobbyists have already succeeded in having the state institute preemptive laws that the corporate lawyers then invoke to their advantage.

Preemption is a term that applies in situations where federal law blocks state law, and where state law trumps local law. The reason for a higher level of government to block lawmaking at a lower level is that some interested party has a claim that is prior and superior to the interests of everyone else. When fundamental rights are being protected by local law, the higher law can set minimal protections and forbid state or local legislation that weakens those protections. This is called *floor preemption*, and it is a legitimate protection of civil rights. When floor preemption is exercised, unalienable rights and other keystone values are held superior to other considerations.

Ceiling preemption works in the opposite direction. When rights in property are at risk of being diminished by a local law, the state sets *maximum* protections and forbids the municipality to legislate in a way that would exceed state regulations and protect the community more than the state allows. Ceiling preemption protects the interests of wealth against the interests of justice and is therefore illegitimate.

Ceiling preemption means that the state regulations will be minimal. It also means that wealthy speculators, investors, corporations, and developers can rest assured that municipal governments will not interfere with their primary goal of extracting profit from the community.

More significantly, ceiling preemptions are enforced through litigation by publicly chartered and licensed “private” corporations. The rights with which law imbues property empower corporate management to use the courts to strike down municipal laws that fail to show deference to the propertied class. Even though a preemptive law is adopted by the state, it is the wealthy people using the corporation and the extra rights attached to it who bring legal actions to usurp local governing rights and enlist the courts to enforce the preemption. Because it is enforced privately rather than by the government that enacts it, the supposedly *public law* of ceiling preemption amounts to the privatization of public governing authority.

Liberating Communities to Protect Themselves: Making Government Serve the Governed

It took only a couple of years for my colleagues and me to figure out that corporations and their court-bestowed rights aren’t the root of the problem. They’re a symptom. Our basic premise was that unalienable rights belong to the living and that they are higher law when it comes to a contest of legitimacy with rights stored in amassed property and conveyed to its owners. We started applying that basic premise to challenge each of the Federalists’ property-as-sovereignty legal doctrines.

Then we took the next step. People resisting state-permitted dumping of toxic waste in their communities thought there was no way around laws preempting local bans. But if we take

seriously the primacy of unalienable rights, and that “democracy” means that the people affected by governing decisions are the ones to make those decisions, then state and federal preemptions forbidding local rights-protecting laws are illegitimate by logical extension.

That’s why we began including in the local laws we drafted language that specifically nullifies permits that pretend to legalize what the community banned to protect its health, safety, and environment. In Youngstown, Ohio, for example, residents have tried to amend their city charter—a local constitution—seven times, as of this writing. They’ve attempted to enact a Community Bill of Rights that would ban fracking and related infrastructure. They’ve been beaten back each time by a large influx of corporate money spent on scare tactics and misinformation.

When the community came within less than a percentage point of winning in 2016, a whole new opposition strategy unfolded the next time they tried. The state teamed up with the propertied class to keep the people’s proposed law off the ballot and prevent the voters from deciding. Industry honchos were tired of spending their money to thwart local democracy. They enlisted the state attorney general, the county boards of elections, and the courts to invent ever more tenuous legal reasons to block access to the ballot for the community’s initiative. Even more galling, the people’s own tax dollars were spent to defeat their efforts.

Thanks to CELDF Ohio organizer Tish O’Dell, the Protect Youngstown community group has not backed down, despite the withering opposition. They have a saying in Youngstown, after all these battles: “You don’t lose until you quit.” Every struggle for civil rights has come to the same conclusion.

One of the provisions included in their proposed amendment has been used over the years by dozens of communities

in other states. It rejects the notion that the state can legalize activities that violate the rights of community members. The section says this: “No permit, license, privilege, or charter issued by any state, federal or international entity which would violate this Charter shall be deemed valid within the City of Youngstown.”

Directly challenging long-standing legal doctrines is necessary because government has no legitimate authority to prohibit free people from protecting their rights with democratically enacted local laws. The right of the people to engage in self-government in their own communities is the essence of what community rights organizing is all about. Ceiling preemption, Dillon’s Rule, and municipal subordination to state government are legal doctrines used not for the general welfare but by a propertied minority keen to upend the unalienable right of self-government when it encroaches on the privileges of wealth.

When the City Council of Pittsburgh, at the insistence of a mobilized community, defied the state’s preemption and banned fracking in 2010, I discussed the implications of challenging doctrines like preemption with council members during the ordinance drafting process and in public testimony prior to the vote. With each new local law that we draft for our client communities, my colleagues and I include provisions that more completely address the violation of unalienable rights by the rights *of* property. Pittsburgh’s ordinance challenged the state’s authority to preempt rights-protecting prohibitions on fracking. It also denied corporate personhood and declared that “corporations in violation of the prohibition against natural gas extraction or seeking to engage in natural gas extraction shall not . . . be afforded the protections of the commerce or contract clauses within the United States

Constitution or corresponding sections of the Pennsylvania Constitution.”

That’s right. We took on the *commerce* and *contract clauses* of the US Constitution too, because they purport to enforce private privilege with public law and deprive fundamental rights in the process.

“We Wish We Could Help, but Our Hands Are Tied”

The lament of every municipal official confronted by a roomful of angry constituents could be summarized on a bumper sticker that says, “We wish we could help, but our hands are tied.” It’s the mantra that every one of us hears when we show up at a municipal meeting to ask local officials to do something to stop Project X. You know: the pipeline, the frack wells, the power lines and microwave towers, the landfill expansion, the big box store, the latest moneymaker that nobody wants.

The people we elect locally aren’t universally apathetic about the needs of their communities. They generally do what they can with what they’ve got, which is less and less as states breach their responsibilities to citizens more and more to save money for other priorities, like tax cuts for the rich and subsidies for the biggest of businesses.

When they tell us they can’t help us, our municipal officials are telling mostly the truth, although they always have a choice to buck the system and do what’s right. The ones who will take that stand are the ones community rights organizers love to bump into. They are the salt of the earth, the ones who offer hope that the precedent-driven repetition of errors of the past can be corrected. They are the special ones who know that neither the state nor the federal government can legitimately forbid public servants from standing up for the rights of the

neighbors who elected them. They understand that you can't protect wealth at the expense of everybody and everything else and pretend that's the way it should be.

Somebody Stole Our Revolution

By now many of us know that the US Supreme Court decided on its own, without direction from elected representatives of the people or precedent from judges of the past, that corporate property has constitutional rights. This is a prime example of what I mean when I say that law—including case law (the accumulated collection of court decisions)—lodges unalienable rights intended for people within property. The Supreme Court didn't invent the idea of stowing constitutional rights within inert property, although the choice of corporate property was a real innovation. They took their lead from the men who wrote the Constitution.

The Federalists got the ball rolling when they injected rights to extraordinary political representation within the privileged property of slaves. Until the Civil War, slaves counted as three-fifths of a person for purposes of proportional representation in the House of Representatives and delegates to the Electoral College. With the *three-fifths clause*, the Constitution injected political rights into human chattel and gave slave owners palpable political advantages over all American white males represented in nonslave states. The principle of one citizen—one vote was violated, even when only wealthy white males were granted suffrage. The patrician plantation culture of the South cut a deal with Northern proto-industrialists and avoided the most overt trappings of aristocracy in exchange for the political power of an aristocracy. Possession of privileged property (slaves) translated into superior power in the governance of the nation for otherwise outnumbered possessors of human chattel.

It must be said that neither inert corporate property nor enslaved people are able to enjoy the rights that the law deposits in them. They are mere vessels for conveying the rights of property to their owners, who capitalize on the extra political power thus conveyed. Corporations and slaves are examples of what I've been calling privileged property.

The original, unamended federal constitution included other methods of infusing privileged property with rights that convey superior political power to the best hoarders of capital. The power to govern, supposedly won by white male revolutionaries, was privatized and made unavailable even to the average unbanked white man on issues impinging on rights in wealth. This was accomplished by inclusion of such constitutional provisions as the commerce clause, the contract clause, and the fugitive labor clause. We're going to get to all that.

We'll examine each of these wealth-biased nuggets in later pages. They impose contractual obligations on each citizen, without the consent of each citizen, right there in the US Constitution. As we will see, the long-term effect has been to privatize decision-making on many issues that would otherwise reasonably be considered matters of public concern and democratic governance.

Over the past two hundred years, a succession of politically appointed Supreme Court judges has gone further than the Federalists dared by infusing all sorts of property with new governing powers that are transferable to the owners. Recent outrageous judicial decisions have caused an uptick in the number of people conscious of and alarmed by the ploy.

Citizens United v. Federal Elections Commission was the court case decided in 2010 in which the judges gave corporations a constitutional right to spend unlimited amounts of money to influence the outcome of elections. A sleeping public that hadn't noticed that American law already put the rich

in the driver's seat was suddenly roused. Some thought that the worst thing about the decision was that corporations had been declared legal "persons." They hadn't been taught that the courts made that decision 124 years earlier. Few realized that the decision wasn't about corporations at all. It was about clearing the way for the wealthy to decide who will govern in the United States. A scattering of voices could be heard calling for a constitutional amendment to overturn the decision.

If they succeed, it won't be nearly enough.

Half-Fast Measures

The Supreme Court betrays every American with rulings like *Citizens United*, but that's only the tip of the iceberg. Since the beginning of the nineteenth century, the courts have found ways to include corporate property in the Constitution, although corporations are never mentioned there. Over time, devotion to the "founders" became a more powerful meme than fealty to the ideals of the Revolution. Our awareness of betrayal has been sublimated beneath the surface of American jingoism. This explains the general reluctance to demand systemic change.

The most drastic proposals from constitutional reformers go no further than calling for constitutional amendments to overturn the damage done by *Citizens United*. The short of it is this: It's a losing strategy. Because the legal mechanisms for conveying extra power and authority to the wealthy are deeply engrained in US law, those amendments would do little to free us from the dictatorship of property. There's no delicate way to say it: We have much bigger problems.

Today, wealth inequality is a hot topic, but the fact that rich people enjoy more leisure and luxury than the rest of us is not the problem. It's not just about corporations, either. Judges

regularly attach legal privileges to property. Case law is a veritable La Brea Tar Pit filled with the preserved remnants of an extinct democracy, all covered in the black goo of legal double-talk. Judges have solemnly doled out legal opinions, insisting that their job is to serve the law and not administer justice, all without making it clear that precedent and the laws they serve favor a propertied class of aristocrats.

We are at a moment in history when a movement is afoot to amplify and strengthen legal rights attached to wealth. Occasional “rogue” court decisions, such as *Citizens United*, are taken as the exception even though the US Supreme Court has never failed to preserve the law’s protection of rights in property over the rights of people.

The court has regularly created new vessels to carry those privileges. Decisions like *Citizens United* are nothing new. They reinforce and expand the legal default settings that date back to 1789.

Making property into a rights-bearing canteen to be drunk from only by its owners guaranteed that we’d be ruled by an aristocracy of the propertied class and that we’d thirst for the deprived right of self-governance. The Federalists thought they knew better. We need to understand and believe they were wrong.

International House of Property: Wealth’s Global Dominion

The tactic of storing legal rights and governing authority in property, initiated by the Federalists, has had profound impacts into the twenty-first century not only in the US but globally. Around the world, nations have histories steeped in colonialism, with all its brutality, enslavement, and exploitation. Although the US escaped its colonial chains earlier than many countries, its racist, misogynistic, homophobic culture

preserved in its Constitution the oppressive inequities inherited from the British Empire. From the privatization of the commons (the “enclosures”) to the treatment of women and Africans as chattel, Americans took inspiration for institutionalized injustice from the empire that succeeded in claiming as its own much of North America.

For good or ill, the US Constitution has been emulated by newly emancipated nation-states, so that many have adopted parts of it as their own. Others, once British colonies, have modeled their governments closer to that of their former imperial master. And fifty-three former colonies are aligned as members of the Commonwealth of Nations to this day. Over the past half century, neoliberalism and globalization have entrenched the acquisition of wealth and the centralization of control over trade, commerce, and finance as the core values of a planetary regime. International trade agreements are negotiated by those whose privileged property empowers them to act in the sphere of domestic and international governance as free agents. Stowing superior political rights in property may have a “Made in the USA” label on it, as a legal innovation, but by now it’s as ubiquitous globally as jazz and rock ’n roll.

The niceties of republicanism, citizenship, representation, and even sovereignty have been courteously mooted. Turning the whole planet and its every aspect and inhabitant into commoditized property is no longer a patrician pipe dream. Totalitarian capitalism has been legalized. Protecting home, family, habitat, and the future from the dictatorship of property is illegal, pretty much no matter where you go.

Planetary Emancipation

There is a movement afoot that could undermine this dystopian reality. Internationally, a movement for the legally en-

forceable rights of nature is under way. It began humbly, in a little borough in Pennsylvania. It spread to Ecuador, Bolivia, New Zealand, and India. It has a life of its own, and that is why it is unstoppable.

How can recognizing the unalienable rights of nature challenge and defeat the global juggernaut of rights legally attached to property? The answer is in the question. When nature is no longer categorized in its every aspect as property, and when forests, mountaintops, aquifers, coal seams, ore deposits, genetic material, natural medicines, and every subset of the natural world are emancipated from the legal status of property, then the threat to our rights and our common inheritance posed by the hegemony of private ownership can be ended.

Humans are a part of the natural world. Although the grand philosophies that justified and inspired imperial conquests over other lands, people, and nature are based on the premise that some special humans exist apart from and above nature and have monopoly rights over it, that's simply not the case. We are one of many species on the tree of life, dependent for our breath, sustenance, and survival on all of it and exempt from none of its priorities.

Because so many still believe that the ideals of the Declaration of Independence are alive, if imperfectly, in the US Constitution and the government it spawned, it's not possible for many Americans to discover the truth right under their noses. But for people in nations more recently liberated from colonialism and exploitation, and in those nations still suffering under its power, the hypocrisy is more immediate. The unalienable rights bestowed on every one of us by "Nature . . . and Nature's God," as the Declaration has it, and the aspiration to establish government at the consent of the governed have been betrayed in America and around the world where

those ideals gain no more than lip service. It is an unnatural situation.

An Invitation

The dictatorship of property has insinuated itself into our hometowns. It sits as a gatekeeper at all our town meetings in the seat of the municipal attorney who advises the erstwhile elected representatives of the people that they must ignore the will of the community and defer to the power and preemptions of their wealthy masters.

These are not idle claims. They are direct observations from the front lines of the community rights movement. If it all sounds too depressing and surreal in a country where the people are supposed to be in charge, take courage from the fact that there is hope. It's been here all along. But do take courage, because you'll need it. We're the ones we've been waiting for. It's time to wake up and act. Others have begun. You can join them.

About the Author

Ben is national organizing director for the Community Environmental Legal Defense Fund (CELDF). A lifetime of observation and curiosity about the way people seem to fall into rigid social categories in industrialized countries eventually led Ben to write this book. He noticed the inflexibility of social class lines from the downside looking up. Curiosity about the source and perpetuation of that unjust arrangement moved him to inquire into how beliefs can overwhelm self-trust in the evidence of our own eyes and ears. That eventually led him to study the way history reflects the past through perceptions biased by class identity.



Kara Scott

Ben learned that, hidden deep in the loam of the past, constantly evolving techniques of deception have served the agenda of power and contradict the legends of the founding of civilizations. He learned that privileges for some and servitude for the many constitute an arrangement that has supported the building and maintaining of empire, and that this arrangement is opposed to democracy and justice.

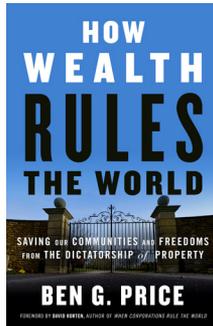
In 2004, Ben joined CELDF and since then has advised and organized in hundreds of communities, many of which adopted CELDF-drafted local laws that codify the rights of human communities and the rights of nature, while advancing

social justice and prohibiting activities that violate those rights.

In 2006, Ben worked closely with community leaders and elected officials in Tamaqua, Pennsylvania, in a campaign that resulted in the borough becoming the first community on earth to enact legally enforceable rights for nature. Because of that groundbreaking work, CELDF was invited to Ecuador in 2008 and asked to draft language for the country's Constituent Assembly that would enshrine the rights of Mother Earth. Ecuador's new national constitution was adopted with overwhelming public support, and Ecuador is the first nation on earth to recognize legally enforceable rights for nature.

Ben continues to strive for real local self-government and the rights of nature through his work with colleagues, communities, and the community rights movement.

We hope you enjoyed this excerpt from Ben Price's book *How Wealth Rules the World*. Now that you've gotten started, why not buy the whole book at your favorite bookseller?



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