CELDF is pleased to share updated monthly excerpts from the book “How Wealth Rules the World: Saving Our Communities and Freedoms from the Dictatorship of Property,” by long-time staff member Ben G. Price. Here is Part Three.

**HOW WEALTH RULES**

**PART THREE**

**THE ONGOING COUNTER-REVOLUTION**

**Ben G. Price**

“The uniformity of the Framers’ economic status had a predictable impact on the Constitution. It provides protections for property rights and limits the political powers of the poor. In contrast, it does not provide for the needs of the lower classes. Instead, those provisions focused on the poor are designed to suppress insurrections, to prohibit state debtor relief laws, and to prevent property redistributions.” -- Ann M. Burkhart

Where Do Rights Reside: In People or in Property?

Until the American Revolution, the proprietorship colony of Pennsylvania was run by a General Assembly overseen by the descendants of William Penn. It was made up of Quaker members of the commercial elite. They opposed independence because of their business dealings with England, and without Pennsylvania on board, other states refused to endorse secession from the empire.

Only wealthy white men were represented in the General Assembly, and as in most of the colonies, voting and holding office was open only to white men with substantial property. That left out most men and everyone else.

Thanks to some backroom chicanery by Sam and John Adams, Benjamin Franklin and Doctor Benjamin Rush, unbanked men from the rural countryside gathered and descended on the State House in Philadelphia, where both the Pennsylvania General Assembly and the Continental Congress were meeting. The rabble tossed out their colonial betters when they refused to send delegates with instructions to support a declaration of independence from England. The insurgents elected their own representatives to the General Assembly, and they quickly put Pennsylvania on the side of secession. With Pennsylvania on board, the scales tipped in the Continental Congress in favor of separation from the empire. Then the propertyless assembly got busy writing the first constitution of the Commonwealth of Pennsylvania.

When they gathered to draft their 1776 state constitution the rabble-run General Assembly decided to break with British tradition and allow all men – white and black – to vote and hold office, whether they were rich or poor. Benjamin Franklin was instrumental in crafting that early state constitution.

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To justify dropping property qualifications, he told this story: "Today a man owns a jackass worth 50 dollars and he is entitled to vote; but before the next election the jackass dies. The man in the meantime has become more experienced, his knowledge of the principles of government, and his acquaintance with mankind, are more extensive, and he is therefore better qualified to make a proper selection of rulers—but the jackass is dead, and the man cannot vote. Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass?"2

It's a very clear example of how law vests the right to govern within property, not men. The jackass is the most rudimentary example of privileged property. Franklin’s story is worth keeping in mind as we consider less obvious forms of privileged property. For instance, when we turn to constitutional mechanisms like the Commerce Clause we’ll focus on how wealth is used to weaponize law against democracy.

In writing the U.S. Constitution, the Federalists saw to it that when enough wealth is accumulated to allow its owners to engage in commerce across state borders, governance of interstate trade is commandeered from the states by the federal government. The Commerce Clause of the Constitution forbids state and local law makers to regulate the exchange of goods, services and finance across state lines. Interference with wealth’s extraterritorial reach, regardless of its impact locally, is thus prohibited.

How the Commerce Clause and other constitutional mechanisms infringe on the people’s right of self-government will become clear as we consider real-life examples of how rights in property exempt the wealthy from public governance while at the same time empowering private law to be publicly enforced. But before we zip too quickly into current events, let’s have another look at how, in the past, public rights were crudely privatized, vested in property, and how governing was made the exclusive privilege of those owning wealth.

In 1841-1842 a little-known civil war was fought in Rhode Island, called the Dorr War. Rhode Island was the last hold-out where state law allowed ownership of land to determine which white men would govern. The followers of Thomas Dorr, who led the rebellion against the state, held their own constitutional convention and created a competing state government during the uprising.

To justify adopting their People’s Constitution in defiance of the state legislature and without following the rules that let only land-owners participate in amending the constitution, they published a note from “the Nine Lawyers.” One of their arguments for the invalidity of the old constitution, which the “freemen” benefited from because they maintained the suffrage by right of land ownership, was that the American Revolution took sovereignty away from the king and gave it to the people as a whole. “[I]t held that the sovereign power of a State is the power which prescribes the form of government; in Rhode Island, at the Revolution, it passed to the whole people; for, if to a part, the owners of land, then it really passed to the soil itself.”3

As with Franklin’s jackass, the right to vote was vested in land as property and could be claimed only by those who came into possession of it. It could as easily be lost by separation from the property. By that logic, the “freemen” (landowners) of Rhode Island received their political freedom from the property they owned. Anyone could partake of sovereignty by buying or inheriting land. Self-government was not an unalienable right inherent in human beings, but a

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2 Benjamin Franklin on Property Qualifications for Voting, reflecting on drafting the 1776 Pennsylvania Constitution
privilege set aside, awaiting the arrival of whoever could wrest possession of the land or its riches from the rest of the community.

In the end, the unbanked and underbanked rebels were defeated. They didn’t get to keep their revolutionary constitution. Thomas Dorr, no longer governor of the shadow government, fled and went into hiding. A year later he returned and was charged with treason and sentenced to solitary confinement. But it was not an utter defeat. Both the authorized and the shadow governments had appealed to the federal government to intervene. President John Tyler decided not to take sides. And in 1843 the state created a new constitution that dropped the property requirements for white men born in the country. That same year Thomas Dorr was granted a pardon. He died later in the year.

With the end of the Dorr War, the civil rights struggle of propertyless white men came to an end in the United States. The achievement of *universal manhood suffrage* disarmed the propertied class of one of the weapons they had deployed against democracy. Despite that setback, vesting sovereign governing rights in property was just getting off the ground. It would evolve into the most powerful political and social tool ever defined in law.

**The Enclosure of the Commons: Today we Call it Privatization**

It will be wise to remind ourselves of the history of the British Enclosures. It is emblematic of the transference of public rights from the majority into the private possession of a privileged minority. The enclosures in England ended traditional rights in land. For three centuries the Enclosure Movement took land that had formerly been shared in common by all and changed it to privately owned land, always with lines on paper to document the appropriation.

The English government and aristocracy justified the enclosing of land with claims that large fields could be farmed more efficiently than individual plots. Some claimed that putting an end to subsistence farming and consolidating land and control would yield great commercial benefits. Similar claims about “efficiencies of scale” continue to be made today to rationalize the corporatization of agriculture and the privatization of schools and medicine in the United States. Enclosure and privatization, like the chartering of private corporations, have been extremely efficient at concentrating privileges for those entitled to reap profits, while leaving everyone else at a severe disadvantage.

It wasn’t only farmland that was privatized and expropriated from communities under the British enclosures. According to historians Linebaugh and Rediker, “...at the end of the fifteenth century, when water was drawn to London through wooden pipes...the Fellowship of the Brotherhood of Saint Christopher of the Waterbearers of London did most of the hauling from the conduits. Water was free. In 1581 this changed as the first privately owned, pumped water supply was constructed at the London Bridge. ‘We have water companies now instead of water carriers,’ wrote Johnson in 1598. By the 1660s the era of free water by right had ended – another commons expropriated.”

Today the “efficiencies” of privatization are noticeably calculated without regard to harms inflicted on society and the planet. Nestle and Coca Cola Corporations own legal

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monopolies to aquifers around the world, at a time of growing freshwater scarcity. Opposing the enclosures today means taking unalienable rights seriously and acting on the premise that our communities have not only full authority but a duty to protect those rights.

In 2008 the people behind the property known as the Nestle Corporation quietly sank twenty-three test wells in a supposedly protected forest in the New Hampshire town of Nottingham, unknown to the community. When the wells were discovered, community members pulled together and planned to do something about it at their annual town meeting. For a few months they worked behind the scenes with the help of Gail Darrell, CELDF’s New Hampshire community rights organizer, to draft an ordinance that would stop the Nestle corporation from moving forward with plans to privatize the town aquifer for a water bottling operation. Peter Brabec-Letmathe, former chairman and CEO of Nestlé, was widely known for his statement that water is not a human right.

The ordinance was enacted overwhelmingly by a show of hands at the town meeting. It was titled “The Nottingham Water Rights and Local Self-Government Ordinance.” Among other declarations in the preamble it states, “We the people of Nottingham declare that all of our water is held in the public trust as a common resource to be used for the benefit of Nottingham residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community – placing the control of water in the hands of a corporate few, rather than the community – would constitute tyranny and usurpation. . . duty requires us to recognize that two centuries’ worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities and requires us to take affirmative steps to remedy that usurpation of governing power.”

The ordinance prohibited corporations from extracting ground water within the town as a protection of the people’s unalienable right to water, which is essential to life. Before long the surreptitiously installed test wells were removed. Direct democracy prevailed for the moment.

In other towns across the continent the same water extraction issue arises frequently. And there are many other instances of concentrated wealth exploiting communities and violating their rights. National and state land reserves are being opened to clear-cutting, oil and gas extraction and strip mining. Municipal water authorities, once part of the public domain, are being gutted; their mandate to serve public needs converted into tools for private profit. Echoes of the enclosure of the commons in Britain accompany the march to privatize the public sector in the United States. Meanwhile the Community Rights Movement has been busy dismantling official rationalizations for laws that protect corporate property and wealthy investors against community attempts at self-preservation.

The same British merchant class that kicked traditional residents off privatized land during the enclosures prevailed on Parliament to make it illegal to be “landless and masterless.” Vagabonds faced imprisonment and indentureship, and whole families were delivered into

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5 “Coca-Cola And Nestlé To Privatize The Largest Reserve Of Water In South America.” 02/05/18, https://truththeory.com/2018/02/05/coca-cola-nestle-privatize-largest-reserve-water-south-america/


7 See Part 6.
bondage. The dispossessed of England, Scotland and Ireland provided unpaid labor for expansion of the empire. Many were forced to serve wealthy masters in far off lands and to labor without rights in the new colonies.

When the supply of dispossessed Irish and Scottish paupers who’d been *barbadosed* to the colonies for their free labor was not enough, the empire began transporting kidnapped Africans to its colonies. Although England had no legal precedent for treating human beings as property, and although the central government strictly forbade its colonies from lawmaking for the benefit of settlers, the Caribbean colonies were permitted to develop a body of law that defined African slaves as a new kind of property.

South African author Ronald Segal wrote, “The colonial legislatures, though subject to the imperial government, were left largely free to make laws for which there were no counterparts in Britain, and which were designed specifically to deal with the status and management of slaves. The colonial codes were based on the contention that blacks... constituted property... Legislators employed the very value of liberty... in a form of reverse moral leverage, so that it applied only to the rights of proprietorship and excluded even such rights for the slave as Roman law had allowed in conceiving that slaves were people as well as property.”

The rudiments of the rights vested in *privileged property* were being developed even before there was a United States of America. Those new laws extended greater privileges to a minority of slave-holding commercial aristocrats. The sacred status of law had the uncanny effect of beguiling them to believe their privileges were wholesome and for the best.

The land-rich men of colonial North America would have been familiar with this history of enclosure of public land and confiscation of human labor. The diverse faction of wealthy men known to history as the Federalists would create a compromise constitution between northern manufacturers and merchants and the southern slavocracy. In that new frame of government, they would pioneer a new sort of enclosure that privatized public law and government.

**Mad Tom: Thomas Paine in the Royal Neck**

Thomas Paine proposed a system for remedying the oppressions of the enclosures. Paine was a radical thinker and questioned everything from the legitimacy of the British monarchy, the beneficence of organized religion, and the justification for the American colonies remaining part of the empire.

In January of 1776, Thomas Paine published his pamphlet titled *Common Sense*. In clear, simple language he explained the absurdity of aristocratic government. He argued for independence from the British Empire and establishment of a government based on securing rights for all. The British press skewered the commoner Paine with political caricatures and named him “Mad Tom or The Man of Rights.”

*Common Sense* became an immediate best-seller. Just six months later Paine’s views on unalienable rights inspired dozens of communities to send delegates to the Continental Congress.

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demanding a break with Britain. Thomas Jefferson soon got his commission to write the Declaration of Independence.

Paine also wrote a lesser-known paper called Agrarian Justice that proposed a reversal of the injustices brought about by the enclosure of the commons. He understood the expropriation of land under color of law to be no more than rationalized theft. He had no tolerance for romanticizing imperial conquest as the “spread of civilization.” In his opening remarks he wrote: “Whether that state that is proudly, perhaps erroneously, called civilization, has most promoted or most injured the general happiness of man, is a question that may be strongly contested. On one side the spectator is dazzled by splendid appearances; on the other, he is shocked by extremes of wretchedness; both of which he has erected. The most affluent and the most miserable of the human race are to be found in the countries that are called civilized.”

Paine went further to say: “Man did not make the earth, and, though he had a natural right to occupy it, he had no right to locate as his property in perpetuity any part of it: neither did the creator of the earth open a land office, from whence the first title-deeds should issue.”

But Paine understood that there is a legitimate sense in which rights can be attached to land. He tells his readers that he intentionally titled his essay Agrarian Justice and not “Agrarian Law,” because common rights to the Earth were tempered when humans turned from nomadic lives to cultivating the soil. He claimed that “…landed property began…from the impossibility of separating the improvement made by cultivation, from the earth itself…till, in the end, the common right of all became confounded into the cultivated rights of the individual.”

Paine defended both these rights. He said that all members of the community had been “thrown out of their natural inheritance,” as well as the rights of the one who cultivated the land. “But the landed monopoly that began with it, has produced the greatest evil…In advocating the case of the persons thus dispossessed, it is a right, and not a charity, that I am pleading for.

To pay the rest of the community reparations for their common rights in land lost to cultivation and inseparable from the cultivated fields, Paine proposed a national fund. Out of this fund, every person, rich or poor, would be paid a certain sum at the age of twenty-one, and then at the age of fifty would continue to receive an annual sum, in compensation.

The monies for this national fund would originate “at the moment that property is passing by the death of one person to the possession of another. In this case, the bequeather gives nothing: the receiver pays nothing. The only matter to him is, that the monopoly of natural inheritance, to which there never was a right, begins to cease in his person.”

Thomas Paine saw his proposed national fund as a reasonable way to make amends for the loss of our common natural inheritance of the earth, and yet preserve the rights attached to personal property and the individual labor involved in cultivation.

Today’s apologists for amassed wealth seethe at the notion of an inheritance tax. They call it a “death tax” and promote that language to falsely accuse its promoters of stealing from the dead and from their children. Their unreasoned belief that property is an inherent and inheritable right, and that those with much owe nothing to the rest, conveniently ignores the pedigree of plunder and privilege from which those riches spring.

With Thomas Paine’s revolutionary Common Sense and Agrarian Justice in mind, it is worth noticing that there are no monuments to Paine in the nation’s capital. He is not generally included in the pantheon of the nation’s “founding fathers.” No bust adorns the Capitol rotunda.

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10 Ibid., p 482
11 Ibid., pp 484-485.
No memorials have been erected on the Mall or near Jefferson’s Tidal Basin memorial. He’s not even on the coins and paper money. In fact, in 1949, as hysteria over Soviet communist infiltration of American politics took hold, according to historian Peter Linebaugh, “the FBI ordered the removal from public libraries of Howard Fast’s influential wartime biographical novel, Citizen Tom Paine, as well as his one-volume selection of Paine’s Works.”

“I Cannot Tell a Lie”: Washington Schlepped Here

The contrast between the attitudes about property in land between the revolutionary Tom Paine and Federalist George Washington, “father of our country,” could not be starker. Washington treated neither commoners under his military command nor squatters on land he claimed to own with much paternal concern. He acquired much of his land holdings by buying up promissory notes issued to colonial infantrymen during the French and Indian War. The land grants were issued by the Virginia House of Burgesses in payment for their military service. Before the Revolution, those lands were part of the Virginia colony, and Washington was a member of the House.

Washington urged his men to sell the notes to him because he said the script was unlikely to be honored after the war. The soldiers, short on hard currency and in debt for unpaid taxes on the land they farmed, had little choice but to surrender their claims. But contrary to Washington’s allegation, the House of Burgesses did honor the script at the end of the war. With tens of thousands of purloined acreage now in his possession, his fortune seemed assured.

Whatever motivated Washington to throw in with the American revolutionaries to wage war on Britain, part of the calculation must certainly have been the Royal Proclamation of 1763. With it, King George III revoked land grants west of the Appalachian Mountains, to make peace with Native Americans and avoid the expense of military protection for settlers in the region. As a result, Washington’s property claims were rendered worthless while the British ruled.

The fate of Washington’s land claims would rise or fall on the success or failure of the Revolution. With victory in hand, he employed agents to secure his claims. They evicted homesteading dirt farmers who had cleared land and built homes. Then Washington put plans in motion to open his frontier holdings to the extraction of resources by building a canal.

James Madison, George Washington, and a cadre of fellow investors were itching for a man-made waterway that would open the frontier. They each had claims to large swaths of land in what is now western Pennsylvania and eastern Ohio. Their proposed canal would run parallel to the Potomac River along the Maryland and Virginia border.

To build it, they needed permission from the people of both states to charter a corporation that would oversee and finance the project. The Articles of Confederation, the then Constitution of the United States, reserved the chartering of corporations to each of the state legislatures. Washington and his partners would have to get the approval of Virginia and Maryland for the proposed Potomac Company to become a reality.

Chartering corporations was not taken lightly. The Revolution had been waged as much against the empire’s largest chartered corporation, the British East India Company, as against the empire itself. It was the East India Company’s tea that was famously dumped in Boston harbor. If the Potomac venture was to succeed, both states would have to independently agree to enact legislation chartering the desired company.

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12 Peter Linebaugh, *Stop, Thief! The Commons, Enclosures, and Resistance*, 2014, p. 194
It took ten years for the Potomac Company investors to receive the go-ahead from both states. The entrepreneurs resented the inconvenience. So much so that they hatched a counter-revolutionary plot to overturn the first constitution and remove democratic control of commercial activities from state and local governments.

The investors met in 1785 at Washington’s Mount Vernon slave plantation. Their private discussions led to a decision to invite delegates from all the states to a convention the next year, to be held in Annapolis, Maryland. The reason they gave for the meeting was to consider a uniform system of commercial regulation “for their common interest and their permanent harmony.” In 1786 they were disappointed to have delegates arrive from only five states: New York, New Jersey, Pennsylvania, Delaware, and Virginia attended.

The Annapolis delegates drafted a note to Congress requesting a convention be called for the following spring to consider improvements to the Articles of Confederation that would cover more than just commercial trade. Congress obliged, and on February 21, 1787 adopted a resolution that read: “That in the opinion of Congress, it is expedient, that on the second Monday in May next, a convention of delegates, who shall have been appointed by the several states, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the states, render the federal constitution adequate to the exigencies of government, and the preservation of the union.”

Historian Robert Schuyler commented that “It turned out that in sanctioning the Philadelphia Convention the old congress was in effect signing its own death warrant.”

Seventy delegates to the 1787 Philadelphia convention were appointed by the state legislatures, although Rhode Island declined to participate. Fifty-five of the appointed delegates made an appearance. The invitation didn’t mention the Federalist’s plans to dispose of the revolutionary Articles of Confederation. Other than the counter-revolutionary conspirators, those who came were expecting to revise the Articles of Confederation.

By the end of the convention, only thirty-nine signed and recommended their handiwork to the states for ratification. The fourteen who declined to sign, along with those who chose not to attend, including Richard Henry Lee, Patrick Henry, Thomas Jefferson, Samuel Adams and John Hancock, all notable Anti-Federalists who opposed ratification of the Federalists’ document.

**The Constitution Makes Public Law Privileged Property**

James Madison arrived in Philadelphia with a draft for a completely new form of government, called the Virginia Plan. It became the blueprint for the constitution that would replace the Articles. He had competition from Alexander Hamilton who arrived with his New York Plan. It proposed a limited monarchy.

Madison kept notes of the deliberations and recorded Hamilton’s comments this way: “I believe the British government forms the best model the world ever produced … It is admitted that you cannot have a good executive upon a democratic plan. See the excellency of the British executive . . .. And let me observe, that an executive is less dangerous to the liberties of the people when in office during life … I confess that this plan and that from Virginia are very

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remote from the idea of the people. . . But the people are gradually ripening in their opinions of government -- they begin to be tired of an excess of democracy."  

John Dickinson of Pennsylvania, according to Madison’s notes, believed “A limited Monarchy [is] one of the best Governments in the world . . . A limited Monarchy however was out of the question. The spirit of the times – the state of our affairs, forbade the experiment, if it were desirable.”  

In 1788, Madison confessed that “Among those who embraced the Constitution, there were, no doubt, some who were openly or secretly attached to monarchy and aristocracy.”  

But there were no claims to noble birth among the colonial gentry. Charles Cotesworth Pinckney of South Carolina remarked that he did “not suppose that in the confederation, there are one hundred gentlemen of sufficient fortunes to establish a nobility . . . If we have any distinctions, they may be divided into three classes. 1. Professional men. 2. Commercial men. 3. The landed interest. The latter is the governing power of America, and the other two must ever be dependent on them.”  

So it was that land became the first species of privileged property. The constitutional counter-revolutionaries agreed among themselves that property in land, and in all the resources to be derived from it, would be the best measure of the legitimacy of a man’s claim to membership in the governing class.  

In the end, due to the “spirit of the times” as Dickinson put it, the Federalists decided not to institute a monarchy, and instead made wealth king. They accepted Madison’s Virginia Plan as their starting point and then haggled over the details through the sweltering summer. But eleven years earlier Thomas Jefferson, inspired by Thomas Paine, had written eloquently in the Declaration of Independence that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights…”  

In the spirit of those revolutionary times, he altered the usual triumvirate of enlightenment era rights typically listed as “life, liberty and property,” replacing “property” with “the pursuit of happiness.” It was this language and not the rhetoric of the Federalists that mobilized commoners to take up arms and risk their lives for independence from Britain.  

The aspirations of commoners who fought for liberty from the empire were abandoned when George Washington, James Madison, Alexander Hamilton, Robert Morris, and other wealthy Federalists crafted the current U.S. Constitution. Edmund Randolph of Virginia commented that the purpose for overturning the first constitution was “to provide a cure for the evils under which the U. S. labored; that in tracing these evils to their origin every man [present at the convention] had found it in the turbulence and follies of democracy.”  

The thirty-nine delegates who were motivated to sign off on the Constitution at the end of the convention agreed that the country could live without venerating royal privileges, but they concluded that reverence for a wealthy land-owning class, to which they all belonged, was indispensable to good governance.  

They were well on their way to enthroning wealth as the repository of the right to govern.

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16 James Madison, paraphrasing Alexander Hamilton, Monday, June 19th, 1787 Madison’s Notes on Debates in the Federal Convention
17 James Madison paraphrasing John Dickinson, Saturday, June 2, 1787, Madison’s Notes on Debates in the Federal Convention
19 From John Locke, The Two Treatises of Civil Government, (1689)
NEXT MONTH

HOW WEALTH RULES
PART FOUR

OF LAWS AND MEN

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