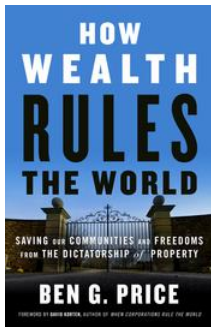


CELDf is pleased to share updated monthly excerpts from the book *“How Wealth Rules the World: Saving Our Communities and Freedoms from the Dictatorship of Property,”* by long-time staff member Ben G. Price. Here is Part Ten



## **HOW WEALTH RULES PART TEN**

# **PROPERTY’S INTERNATIONAL EMPIRE**

**Ben G. Price**

*“Under capitalism, man exploits man. Under communism, it’s just the opposite.” – John Kenneth Galbraith<sup>1</sup>*

### **Old Habits Die Hard**

European imperialism caused the dissolution and genocide of whole cultures throughout the world. The history of imperialism, colonialism, mercantilism and empire suggests it was superior technology that allowed Europeans to conquer and expropriate whole continents from the rest of the original human diaspora. But not until the meme of “property” infected the canon of law were muskets, cannons and sea-worthy vessels turned against the rest of humanity and the whole planet.

Most successful of the European empires was one with a self-aggrandizing name, “Great Britain.” It was a matter of enduring pride for an Englishman to say that “the sun never sets on the British Empire.” Today, nations that once were part of that world-spanning domain, including Canada, Australia, India, and fifty others, form the “Commonwealth of Nations.” To varying degrees, their post-colonial administrations emulate the British Parliamentary form.

The United States is a former colony of the empire but not a member of the Commonwealth of Nations. It broke its colonial bonds and declared its aspirations for a new kind of government based on the popular will and the protection of unalienable rights. Revolutionaries questioned the use of law to perpetuate excessive privileges in governing for the hoarding class. But the Federalists who betrayed those revolutionary aspirations conspired to impose a Constitution that differs only superficially from Britain’s class-based model of government. As a result, the “special relationship” established between England and America in later years is best understood as a shared commitment to perpetuating aristocratic privileges for the wealthiest of men. Nations that emulate the British and the Federalists’ systems of government share in that commitment.

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<sup>1</sup> John Kenneth Galbraith, *A Life in Our Times*, Galbraith quotes what he claims is an old Polish joke, (1981)

The U.S. Constitution established a tax-free zone for trade and wealth creation in North America. It removed trade barriers between the thirteen sovereign states that for a generation were a confederacy of nations after the Revolution. It abolished their sovereignty for the sake of unfettered interstate and international “commerce.” As such, it became a model emulated by new nations coming out of mercantilist colonialism.

It isn't surprising that leaders of the “Commonwealth of Nations” and protégés of American constitutionalism have been busy creating global “free trade” agreements to amplify the power of a minority controlled world-wide web of wealth. But it hasn't been only ex-colonies of Britain. Jeremy Lent, in his *The Patterning Instinct*,” argues that “*especially since the mid-twentieth century – what had once been the Western worldview has now become the dominant worldview of those in positions of wealth and power who drive our global civilization, from Bangkok to Beijing and from Mumbai to Mexico City.*”<sup>2</sup>

The secretly negotiated “trade” compacts that they devise, much as the American Constitution, constrain popular governance over the uses and abuses of wealth in its many forms. These multilateral accords are more akin to contracts than to constitutions. They turn international law into a type of *private law* that can be invoked by wealthy parties and enforced by unelected tribunals. They facilitate the privatization of member-states' domestic governments and resources. At the same time, they protect the propertied class from democratic meddling by the rest of humanity.

## Who Profits?

Qui bono? The underlying premises of international trade have changed over the centuries. From the age of competition for colonies among European nations to the nationalist agenda of mercantilism and protectionism, the world has emerged into the age of globalization. The underlying premise of this new international arrangement is the integration of markets, borderless exchange of capital and relocation of manufacturing and services in pursuit of cheap labor.

The World Trade Organization (WTO) was established in 1995 and signed by 159 nations, replacing the earlier General Agreement on Tariffs and Trade (GATT), which had operated since 1948. Although there is a bit of language in the preamble to the WTO agreement calling for “*raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services,*” it all boils down to opening new markets for corporations that are capitalized enough to engage in foreign trade. Much of the agreement focuses on protecting the equality of member nations and constituent corporate bodies in terms of taxes and duties, quotas on imports and exports, restrictions on domestic subsidies, simplification of import licensing, limitations on domestic anti-dumping measures, and the sanctity of property rights, including intellectual property.

The Agreement on Technical Barriers to Trade (TBT) is part of the WTO regime. It governs and “harmonizes” domestic regulations with international standards. Regulations set by

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<sup>2</sup> Jeremy Lent, *The Patterning Instinct: A cultural History of Humanity's Search for Meaning*, p. 20, (2017)

member nations for domestic products and processes, including standards for manufacturing and quality control, environmental protection and safety regulations are nullified. Standards secured through citizens' demands for the protection of customers, communities and nature are subordinated to the commercial dictates of the WTO agreement, which places them into the category of "unnecessary trade barriers." The TBT is the international version of ceiling preemption, applied domestically to every state and local government of the member nations.

According to the Office of the United States Trade Representative, the U.S. has "Free Trade Agreements" with twenty nations. The North American Trade Agreement (NAFTA), a pact eliminating tariffs and quotas between the U.S., Mexico and Canada, has been in effect since 1994, and at the time of this writing is being renegotiated by the Trump administration. The details of an Asia-Pacific trade agreement, known as the Trans-Pacific Partnership (TPP) have been negotiated, although not implemented by the U.S., and discussions continue over the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union.

According to Ronald D. Rotunda and John E. Nowak in their "Treatise on Constitutional Law: Substance and Procedure," even though "*the U.S. Supreme Court is 'the most powerful court the world has ever known,' the Investor State Dispute Settlement (ISDS) provisions of WTO, NAFTA, TPP and other international agreements can supersede decisions of the highest national courts, including the U.S. Supreme Court, and there is no appeal.*"<sup>3</sup>

The implications for the rights of people are substantial because the rights of property and the interests of the propertied class get direct representation in negotiations over international trade policies and free trade agreements, while the interests of communities and the freedoms characterized as "unalienable rights" of people are generally seen as irrelevant to trade or are made the subject of "side agreements" to trade pacts. They are akin to the U.S. Bill of Rights that applied to no one who didn't already have rights when they were adopted.

The Federalists' example of vesting the right to govern within *privileged property*, like slaves and corporations, and allowing that power to be transferred through the objects of wealth to the owners, has been emulated internationally. On a global scale, the WTO plays the role of the U.S. Congress in its capacity as sole arbiter of what constitutes cross-border commerce. The Constitution's *Commerce Clause* has been cloned and public governance of the so-called "private sector" neutralized. Corporations, investments, patents and copyrights convey to their owners the privilege of representation by trade tribunals. The effect has been the privatization of decision-making regarding regulation of industrial activities, environmental impacts and popular participation at all levels. Local and state laws that conflict with international trade treaties are subject to preemption by unelected and unknown people representing the interests of the propertied class.

### **It's the Same Around the World**

At the height of what was prematurely dubbed the "Arab Spring," U.S. Supreme Court Justice Ruth Bader Ginsburg said "*I would not look to the U.S. Constitution if I were drafting a*

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<sup>3</sup> Nowak, John E., Rotunda, Ronald D., *Treatise on Constitutional Law: substance and procedure*, 5th ed. (Thomson-Reuters-West 2012).

*constitution in the year 2012. I might look at the constitution of South Africa. That was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights.*"<sup>4</sup>

Justice Ginsburg rightly noticed that, unlike the U.S. Constitution, which tacked on the Bill of Rights as an after-thought, South Africa made human rights a more central element of their frame of government. But can those rights stand up to the rest of the document's reverence for rights wrapped up in wealth?

Justice Ginsburg either missed or was not concerned by the 1993 South African constitution's enthronement of rights for corporations. In a letter to the people of South Africa, Ralph Nader wrote: "*South Africa's new Constitution establishes that 'juristic persons are entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and of the juristic persons.'* *The American experience of providing corporations with similar rights that people have should ring alarm bells for South Africans concerned about preserving their newly won freedoms. While the U.S. constitution does not explicitly afford corporations the rights guaranteed in our Bill of Rights, court decisions have extended almost all those rights to corporate entities, with disturbing results.*"<sup>5</sup>

South Africa's constitution is exceptional in its unapologetic recognition of rights for property. Even the U.S. Constitution did not recognize corporations as rights-bearing entities until judges without democratic responsibility to the people saw things differently. Around the globe, other nations have created other devices to arrive at the same conclusion: those who own wealth should be given exponentially greater governing authority than those who do not.

Mila Versteeg is associate law professor at the University of Virginia. While she was at Oxford she reportedly read all 186 national constitutions enacted since the Second World War. She and her colleague David Law, professor of Law at Washington University, have since studied those constitutions and in 2012 they published a paper titled "*The Declining Influence of the United States Constitution.*"

The New York Times reported on their work, recounting that "*In 1987, on the Constitution's bicentennial, Time magazine calculated that 'of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.'* *A quarter-century later, the picture looks very different. 'The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere.'*"

The Times went on to notice that nations replace their constitutions on average every 19 years, which is precisely what Thomas Jefferson advised in a 1789 letter to James Madison, because "*the earth belongs always to the living generation.*"

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<sup>4</sup> Interview on Egypt's Al-Hayat TV, January 30, 2012

<sup>5</sup> Ralph Nader, Letter to the People of South Africa, June 19, 1996, New Chautauqua Shakeout: Tools for the Countercoup, <http://www.nancho.net/corperson/cpnadrsa.html>,

Asked by interviewer Rob Kall if the constitutions Versteeg and Law studied gave corporate property similar rights to people, Versteeg replied, “*I’m pretty sure that none of them do.*”<sup>6</sup>

Their research predated South Africa’s 1993 constitutional language about “juristic persons.” Nader got that one right. And he was also right to say that corporate rights can’t be found in the U.S. Constitution, except by corporate lawyers who’ve gotten political appointments to the Supreme Court. But around the world, and in the U.S., rights vested in *privileged property* and conveyed to the owners of that property are common. They’re couched in case law, statutes and treaties if not constitutions.

A global campaign to remove the power of public governance to exert control over commerce (redistribution of assets from the unbanked and underbanked to the wealthy) and “the economy” has been raging for decades. Even though matters of extraction, production, labor, and trade have direct impacts on everyone, they are more and more being codified as private and not public concerns. International trade laws and treaties around the world do for the global aristocracy of wealth what the *Commerce Clause* does for the propertied class in the United States. They privatize matters of legitimate public concern and democratic governance.

### **It Just Gets Better and Better for the Wealthy**

Hernando De Soto, president of the Institute for Liberty and Democracy reported glowingly that “*the slow and steady improvement of property rights continues unabated. This year the world property rights average improved 3.45%, to 5.63 . . . The 2017 [International Property Rights] Index added a set of liberty measures . . . to evaluate how property rights impact the whole of society. The findings are striking. The legal and political environment was found to have the highest correlations with entrepreneurship and network readiness, a measure of liberty.*”<sup>7</sup>

According to Julian G. Ku, “*It has almost become conventional wisdom among international human rights scholars that corporations should be treated as full subjects under international law. This view has developed largely from the extensive academic literature . . . Corporations never achieved direct rights under international law until the postwar development of international investment law. Corporate rights were granted in such treaties by specific textual references and therefore never generated much controversy.*”<sup>8</sup>

When international treaties treat corporate property as “*full subjects under international law,*” privileged property is vested with rights transferrable to the owners. Ku suggests that corporations might better be held accountable for human rights violations if they are declared subjects with legal agency. In fact, this ruse would further immunize the propertied class from personal liability for the oppressive ways they use their property.

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<sup>6</sup> Rob Kall, *Is The USA The Only Nation in the World With Corporate Personhood?* *The Huffington Post Blog*, February 8, 2012

<sup>7</sup> Hernando De Soto, President, Institute for Liberty and Democracy, Property Rights Alliance, International Property Rights Index, 2017, <https://www.internationalpropertyrightsindex.org/> Accessed April 4, 2018

<sup>8</sup> Julian G. Ku, *The Limits of Corporate Rights Under International Law*, *Chicago Journal of International Law*, Volume 12 | Number 2 Article 13, 1-1-(2012)

The global aristocracy of wealth has been empowered to act with impunity. This is in accord with how the undeclared American aristocracy gained and uses its extra privileges under law in the United States. Rather than clearly stating within foundational documents the legal default giving supremacy to the rights in property, “*specific textual references*” to corporations as proprietary vessels able to convey sheltered rights were employed.

In 2011, José E. Alvarez wrote that “*focusing on whether or not a corporation is a ‘subject’ under international law or an ‘international legal person’ is at best a distraction and that affirmative decisions to this effect may be a very bad idea. Contrary to what many human rights advocates apparently believe, those who want to hold corporations accountable for international law violations should not be too quick to assume that they want corporations to be ‘subjects’ of international law.*”<sup>9</sup>

International law enforces virtually no direct governance over the use of *privileged property*, but places nominal obligations on nations to regulate that behavior. In 2011 the UN published its *Guiding Principles on Business and Human Rights*. These “principles” were not binding on corporations. As voluntary proposals, they alarmed the corporate class sufficiently for them to trot out their lawyers and lobbyists to mount staunch resistance to any binding international constraints on corporate behavior.

The global battle being waged for the rights of property against the rights of people mimics U.S. tactics for protecting *privileged property* from responsibility to the larger community. In litigation brought within nation-states, the central government and the wealthy minority hiding behind corporate property (and asserting *its* rights), are increasingly allied against their middling peasant class and the poor.

As Juliette Renaud, corporate accountability campaigner for Friends of the Earth, France put it, “*Effective protection of human rights and environmental defenders cannot be achieved if the responsibility of one of the main perpetrators of such violations is evaded. An international tribunal and effective mechanisms of sanctions for transnational corporations are needed to prevent big companies hiding behind investment protection agreements and the legal personality of their subsidiaries to continue behaving with impunity.*”<sup>10</sup>

That said, neither the U.S. Supreme Court nor any international tribunal is being compelled to subject the privatized rights of property to public law. Meanwhile, in America and abroad, the private law of contracts and the establishment of corporate safe zones comprised of international treaties and reciprocal judicial accommodations are enforced as public law without public recourse or input. Business instruments chartered by public governments are born onto the global stage immune from control by the people in whose name they were created or the foreigners whose lives they wound.

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<sup>9</sup> José E. Alvarez, *Are Corporations “Subjects” of International Law?* Santa Clara Journal of International Law, Vol. 9, No 1, (2011)

<sup>10</sup> Juliette Renaud, Corporate accountability campaigner, Friends of the Earth France, <https://www.foei.org/news/un-treaty-transnational-corporations-human-rights-progressing> accessed 03-27-18

## Free Trade is About Free Labor

Alexander Hamilton's scheme for centralizing ownership of land and resources and building an empire on the backs of the poor has been internationalized. Debtors around the world wish they had the same social and political rights as the people from whom they borrow. They wonder why the people with enough to lend have the upper hand in governance over those without enough to get by. Their curiosity was anticipated over two millennia ago by Aristotle, who said "*oligarchy is when men of property have the government in their hands; democracy, the opposite, when the indigent, and not the men of property, are the rulers.*"<sup>11</sup>

The rancor over austerity programs being imposed in a growing list of nations echoes the outrage that followed two years after ratification of the U.S. Constitution. Quick on the heels of Hamilton imposing his anti-democratic domestic excise taxes to pay speculators in nationalized war debt, settlers in Western Pennsylvania revolted. Historians continue to condescendingly refer to the insurrection as the "Whiskey Rebellion."

Debt, as a globalized form of *privileged property*, transfers ownership of human work, community services, natural resources and self-governance to the owners of debt. According to a 2012 Economic Times report, defunding domestic programs and public services to pay the interest on national debt to owners of that debt is a growing international trend.

In Portugal, the IMF and other European countries agreed to a financial bailout of 78 billion euros on condition that Portugal cut the wages of workers in public services, raise income taxes and cut the military budget.

In Italy, where in 2011 the public debt was around 120% of GDP and interest rates on the debt were escalating, public salaries were frozen and public jobs were drastically reduced, pensions were cut, healthcare fees were raised, as were income taxes for top brackets

In the Irish Republic, a bailout of 85 billion euros by the IMF and European countries required a minimum wage cut for workers, 5% cut in wages for public sector workers, a 25% increase in capital gains, severe cuts to welfare and child benefits, a cigarette tax and a water tax.

In Greece, austerity measures that met with widespread protest included spending cuts, a public sector hiring freeze, and an increase in the retirement age.

In Spain, the country's austerity program for paying back international loans included tax increases, cuts in pay for civil servants, a 30% cut in infrastructure spending, a 28% tobacco tax increase, a freeze on raises for public employees and a lowering of department budgets of almost 7%.

In Germany, the austerity measures included a reduction in military personnel by 40,000, reduction of civil servants by 10,000 and new taxes on nuclear power.

In the United Kingdom, austerity measures amounting to the "*biggest cuts in state spending since the second world war*" included "*490,000 public sector jobs over four years, cut*

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<sup>11</sup> Aristotle, *The Politics*, Book III, (c.340 BCE)

*most departmental budgets by 25%, increase VAT rates by 2.5% and increase capital gains tax.*"<sup>12</sup>

In the United States, as of 2018, the national debt stands at over twenty-one trillion dollars. Deep cuts in social services, public employment, infrastructure maintenance, and attempts to privatize Social Security and Medicare align with the world-wide austerity measures driven by public debt. Public policy is being driven by debt obligations. The authority to govern has been transferred from the public sector to the private. To accommodate the rights of property stored in the *privileged property* of debt, these measures have proliferated globally.

In the United States, rather than framing such measures as austerity policies, the American public has been heavily propagandized by political opponents of public services who characterize them as "creeping socialism." It seems to be working. Millions of duped Americans demand the programs they pay for and benefit from be cut. The irony is that when public funds are withdrawn from social programs that benefit the majority, the retrenchment is justified by villainizing those with the least as "takers," and praising the profiting wealth hoarders for their investments in the future. But the funds withheld from public services are redirected to pay interest on debt, to finance subsidies and tax cuts for corporate property and to further enrich the wealthy minority who have never worked for any of it.

Civilization is built on a pyramid scheme that rewards those who hoard more and more of what they have no legitimate right to own. Our culture is a Ponzi scheme that deceives participants into believing they too can cobble together a formula for living that will reward them with returns on investments exceeding exerted effort. What is rarely acknowledged is that none of it is possible without the injustice of theft from everyone else, including generations yet to be born.

Our exploration of the network of laws that sustains the dictatorship of property revealed that it cannot be reformed. Adopting new regulations or electing new leaders can't bring about the systemic change that's vital to our viability as a society and a species. Laws that encourage privatization, acquisition, and exploitation are sociopathic and anti-democratic.

The Community Rights Movement has begun to take up the necessary challenge. It's a young struggle still testing the loges of avarice for weaknesses and chinks. We face a global crisis that is too big for any of us to confront on the planetary scale. That's why we need to adopt a rational strategy in which each of us strives, in the places where we live, to wrest control from the legal and cultural machinery of raw greed. We know that greed will not surrender without a colossal fight.

We have few options. Daunting as the task may appear, our lives must be devoted to this struggle, since so many lives depend on it. It's our challenge to establish an economy of life and justice, and an end to privilege and exceptionalism for the hoarding minority.

The place to begin is in our communities. Following the example of hundreds of others who have enacted local community bills of rights, you can assert your community's collective

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<sup>12</sup> Mishita Mehra, *A look at countries with most severe austerity measures and ramifications*, The Economic Times, June 5, 2012. <https://economictimes.indiatimes.com/news/international/a-look-at-countries-with-most-severe-austerity-measures-and-ramifications/articleshow/13846767.cms>, Accessed March 29, 2018



right of local self-government, recognizing that it is a right limited only by an absolute reverence for the rights of others.

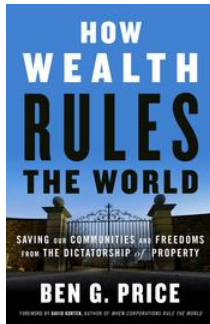
For the Community Rights Movement to triumph, one hometown after another must take a stand and secure social and environmental justice for the local human and natural community. To change the world for the better, let's acknowledge that these goals have greater value than financial profits, and that we already have the authority to secure them in enforceable law.

Despite preemption, despite bogus case law claiming corporate property has rights, despite constitutions written with the protection of wealth against democracy in mind, we share a common humanity and as the living generation we are entitled to an equal but not greater share in the life of the planet. We are also obligated to preserve and sustain the dignity and quality of life on this planet for future generations. Action is required.

## **NEXT MONTH**

### **HOW WEALTH RULES PART ELEVEN**

### **CONCLUSION**



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