

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 Two

## **HOW WEALTH RULES PART TWO**

# **PROPERTY IS NOT AN UNALIENABLE RIGHT**

**Ben G. Price**

*“I doubt whether a single fact, known to the world, will carry as clear conviction to it. . . of the treasonable views of the federal party. . . who having nothing in them of the feelings or principles of '76 now look to a single and splendid government of an Aristocracy, founded on banking institutions and monied in corporations. . . This will be to them a next best blessing to the Monarchy of their first aim, and perhaps the surest stepping stone to it.”*

-- Thomas Jefferson <sup>1</sup>

### **Devise and Conquer: The Legal Foundations of Empire**

In Lancaster County, Pennsylvania, residents have been trying to protect their community and environment from the Atlantic Sunrise Pipeline since 2014. They organized under the banner “Lancaster Against Pipelines,” and on October 17, 2017 – ironically “National Boss Day” – twenty-three members of the group were arrested for blocking a backhoe from tearing into land owned by a group of nuns, the Adorers of the Blood of Christ.

The pipeline is intended to transport “natural” gas from frack wells scattered throughout the Commonwealth to export terminals on the coast. The nuns’ land, and an outdoor chapel they’d built on the part of their land seized through eminent domain is in the path of the fossil fuel conduit. “*Eminent domain*” is government appropriation of *personal property* for a supposed public use with compensation to the owner.

According to the York Daily Record, “*The Adorers claim that the developer's seizure of the rights to the easement via eminent domain violated their religious freedom, since reverence for the land was among their deeply held spiritual beliefs.*”<sup>2</sup> The nuns had filed suit against the Federal Energy Commission (FERC) for permitting the violation of their religious rights, but on this October day, as that lawsuit went unanswered by the court, part of the shrine was dismantled and trenches dug, after the peaceful protestors were removed.

In July of 2018, the U.S. third circuit court of appeals ruled against the nun’s claim that their religious rights were being violated. The community group Lancaster Against Pipelines put

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<sup>1</sup> Thomas Jefferson to William Branch Giles, December 26, 1825.

<sup>2</sup> Mike Argento, “Protesters arrested near nuns’ chapel at Atlantic Sunrise pipeline site in Lancaster Co.,” The York Daily Record, October 16, 2017. <https://www.ydr.com/story/news/2017/10/16/nuns-vs-pipeline-arrests-made-after-atlantic-sunrise-pipeline-protest-lancaster-co/768487001/>

out a press release announcing the decision. They wrote, in part, “*It’s crystal clear from this ruling that the Natural Gas Act supersedes even our most fundamental Constitutional rights.*”

This real confrontation reveals power dynamics that are important to understanding how our system of law weaponizes wealth and disempowers those with less of it, or none. It’s a contest between anonymous humans pushing for the Atlantic Sunrise Pipeline, the residents opposing it, and the nuns whose land was taken lawfully and given to a corporation whose owners have plans to profit from the confiscated property.

The first dynamic to notice is that the law transferred control of the commandeered property to a private business corporation intending to use the land for profit, not as a public benefit. Through eminent domain, owners of corporate property were given the legal right to take possession of the nun’s property.

The second dynamic to notice is that, while rights in property under U.S. law exceed the rights inherent in people and living systems, the law also distinguishes between wealth and mere possessions.

The third dynamic to notice is that the law found greater value in the property rights of the owners of corporate property than the nuns’ right of ownership to their land. The nuns’ property and the preservation of their right to it do not serve the priorities of power and empire as much as advancing the corporation’s interests over the nuns’ property rights.

Herein is revealed the difference between *privileged property* and non-privileged *personal property*. If all property were the same in the eyes of the law, the nuns might have expected the courts to protect their right to it. Who the law works for and who it works against can be shown to depend on ownership of wealth.

The fourth dynamic to notice is that the rights of the residents of Lancaster County, including the ones arrested for their protest, were irrelevant to the legal permitting of the pipeline. Because they had no property interest in the land, the protesters had no “standing” before the law to have their grievances heard about safety, aesthetics, lost historic significance of disturbed Native American burial grounds in the path of the pipeline, and other perceived harms. Their only legal status was that of trespassers on condemned land and nuisances to the pipeline workers. The law didn’t represent their rights or interests.

The fifth dynamic to notice is that preserving the natural world did not factor into any of the legal proceedings. Nature is not a subject in the eyes of the law. It is an object, a collection of items to be owned and not a rights-bearing entity to be protected. If it is property, it may convey to the owner certain rights, but it has none itself.

### **Building Empire Under the Radar: Because Nobody Wants to Say that’s What’s Going On**

We need to untangle the braid of interacting rights in this case to understand where law begins, and justice ends. My thesis is that federal constitutionalism serves wealth, not people and communities, and that the underlying logic used to rationalize this system of law and government is intrinsically and ethically flawed. To expose these flaws, let’s start with a simple assertion. *Ownership of specific property is not an unalienable right.*

Not all of us are born equally advantaged with wealth. Unalienable rights are distributed equitably to all. Again, recall that “*unalienable*,” means intrinsic, impossible to be separated from, not able to be forfeited, sold, traded, or even voluntarily surrendered.

We can be *voluntarily* alienated from our property, as through gifting, sale or lease. We can be *involuntarily* alienated from property too, as in taxation, garnishment, condemnation (eminent domain), theft and other means. Hence, property is *not* an unalienable right.

Sometimes, as in the assertion of eminent domain against the Adorers of the Blood of Christ, the enforcement of law reflects this fact. The tenuousness of the right to *personal property* is made very clear. But the law's deference to rights vested in *privileged property* is so integral to American constitutionalism that loss of property rights generally only happens when the rights of one party conflict with the interests of another, wealthier party. And that is a fact worth understanding.

It takes the full collaboration of government and wealth to override the deference law generally pays to all sorts of rights in property. In a conflict between *personal property* and *privileged property*, the law and court precedent favor privileged rights over personal rights. This is the big secret that everybody knows but no one talks about.

American law developed in a culture of colonial expansion. It intentionally protects the accumulation of *privileged property* (wealth). There is no wonder in this. Such accumulation is the engine of empire. Protection of *personal property* by law follows the logic of empire. Small fortunes may grow to larger ones, and so they are to be protected. But that paternalism diverges from the absolute when doing so interferes with more effective means of acquisition and centralization of control over resources. The authority and rights developed over the years for large business corporations have been magnified for no other purpose than to facilitate this acquisition and centralization of power.

There are inadequate enforceable rules for safeguarding the earned wages and assets of less affluent people against the juggernaut of commercial empires both large and small. Today's business corporation falls into both categories, some able to compete as nations without a land base on the global scale. When law protects the privileges of empire by declaring wealth and its uses exempt from *public law* and thus not responsible for harming the rights of individuals, communities, and the whole planet, then we are all at risk.

The misapplication of eminent domain robs people of their certainty of justice, because to the average person property is property and the law should not favor one possession over another. Like so many other confrontations between unalienable rights and rights in property, eminent domain exposes an undemocratic arrangement. An unacknowledged partnership exists between government and wealth in the guise of corporate power. The legalized expropriation of *personal property* including labor, when it benefits private accumulation of profit and wealth, demonstrates what much of American law is all about.

The project of empire building is accomplished through legally sanctioned mechanisms for the appropriation of other people's property, labor, savings, and rights. The more primitive means involve physical violence. Domestically, those means have been largely replaced by procedural violence inflicted through agencies, departments, authorities, and the maddening bureaucracy of the courts.

The official misuse of eminent domain is only the most blatant example of how the rights of property rule over all other considerations. The personal right to property lodged in each natural person yields to the powers lodged in the *privileged property* of wealth and exercised through the courts. It is the battleground on which rights connected with *personal property* arrive unarmed by law to a fight with an arsenal of weaponized laws favoring *privileged property*. It is but one among many other legal curtailments of personal rights and liberties in service of the propertied class.

Over time, and under color of law, the rights vested in *privileged property* have eroded the natural rights of everyone but the propertied class. Rights conveyed to the wealthy through *privileged property* are prized above all others under American law. There is a reason. History

proves that those who serve empire are raised high. The Federalists, who insisted on a strong central government and not a democracy governed by the community at-large, had the building of a continental empire clearly in mind. They made provisions in the Constitution for the addition of new territories and states. They made other provisions to accelerate and defend minority ownership of most of the property, along with the control of lawmaking and governance by that same minority.

All of this is in sharp contrast to the aspirations of American revolutionaries, and the expectations of newcomers to the United States. It is antithetical to the idealism celebrated in songs and parades on the Fourth of July. What we have is the antithesis of what we want. The reason more than two-hundred communities in the United States have enacted local community bills of rights that challenge wealth-privileging legal doctrines is that people have begun to wake up from the sinister spell that insists this is the way it has to be.

Those who gain possession of *privileged property* can invade the larder of common rights through many doors. They gain entry through expropriation, appropriation, inheritance, rent-seeking behavior,<sup>3</sup> usury,<sup>4</sup> garnishment,<sup>5</sup> seizure, assumption, trade, litigation, annexation, conquest . . . in fact, theft. Setting aside illegal and unscrupulous ways of achieving wealth, we can ask: “is the *accumulation* of property by legal means an unalienable right?”

The answer has nothing to do with legality. It has to do with basic logic. If *privileged property* can be increased, then the legal rights conveyed by it can be increased. If those rights are unalienable, then unalienable rights can be compounded. If so, we would have to conclude that some unalienable rights are not equal rights. By extension, some unalienable rights could be withheld legally from the majority or a disfavored minority, as we have seen historically. The more rational conclusion is that unalienable rights are in fact equal for all and that property is not an unalienable right.

Unalienable rights, unlike wealth, cannot be compounded. They are not able to be increased by accumulation. They cannot be purchased. But the rights conveyed by *privileged property* facilitate an exponential increase in the amount of deference law pays to people in possession of it. Wealth accumulation isn't just an increase in leisure and luxury. Rather it's a substantial decrease in rights for everyone else, to advantage the rich. A bias in the laws and Constitution of the U.S. makes it so.

### **Lines in the Sand: Property is Ink on Paper**

Let's ask the most basic question: Where does property come from?

Consider this: from outer space, it's not possible to see national borders or property lines on earth's surface. Our blue-green home doesn't look at all like a Rand-McNally atlas or a municipal plat. State and town boundaries are invisible. Property lines are undetectable.

So, if property in land and political borders can't be seen empirically, where do they exist? The answer is: they exist only in law and in the minds of people who believe law reflects reality.<sup>6</sup>

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<sup>3</sup> *Rent-seeking is the use of the resources of a company, an organization or an individual to obtain economic gain from others without reciprocating any benefits to society through wealth creation.* Examples: lobbying, loan subsidies, grants or tariff protection. —Investopedia <https://www.investopedia.com/terms/r/rentseeking.asp>

<sup>4</sup> Usury: excessive interest charged in payment of a debt.

<sup>5</sup> Garnishment: the legal taking of property or wages from a debtor to settle debt.

<sup>6</sup> See Berger and Luckman's "*The Social Construction of Reality*," (1966)

As if to insist that property created by blending land with law is real, society refers to it a *real estate*. To illustrate how this *real* property becomes real in our heads, let me tell you a brief story about the colonization of the western hemisphere by Europeans.

When Christopher Columbus returned from his exploratory venture to the Americas, he visited the monarchs of Portugal and Spain. Both kingdoms wished to claim the newly found lands for themselves. The dispute between them was settled by Pope Alexander VI. He drew a line on a crude map, from the North to the South Pole, and cut South America in two. To the east of the line, where present day Brazil juts to the right into the Atlantic Ocean, he declared Portugal would rule; to the west of that line, it would be Spain.

The pope's pen was as powerful as a magic wand. The spell he cast over history was slow to take hold, but the ink on that map changed the course of world events. It had no immediate physical effect on the planet. Neither that line on parchment nor the present border of Brazil can be seen from Earth orbit. Yet, that ink had the indelible effect of creating a *rule of property*<sup>7</sup> that opened the way for invading conquistadors. Meanwhile it left indigenous people by the millions, and the whole of the natural world, rightless and without protection. The Doctrine of Discovery espoused by Pope Alexander VI in his "*Inter Caetera*" Papal Bull of 1493 legalized conquest, plunder, and exploitation.

### **Justifying Injustice: The Pharos's Philosophers**

Thirty-three years later, Francis Bacon published his *Novum Organum*, laying out the basis for scientific inquiry. He imagined human beings could escape the limitations nature imposed on us by deducing *its* laws from observation. Where Pope Alexander VI drew a line and made a law that severed the physical world into parts and parcels, Bacon intended to dissect all of nature, own its secrets and use *those* laws to similarly enrich whoever could command them. Bacon is quoted as saying: "*My only earthly wish is... to stretch the deplorably narrow limits of man's dominion over the universe to their promised bounds... [Nature will be] bound into service, hounded in her wanderings and put on the rack and tortured for her secrets.*"

The rituals of mechanical intervention into nature, like the pope's ritual of dividing up the planet into estates, made world-spanning conquest possible. "*I am come in very truth leading you to Nature with all her children to bind her to your service and make her your slave,*" Bacon is purported to have said. "... *the mechanical inventions of recent years do not merely exert a gentle guidance over Nature's courses, they have the power to conquer and subdue her, to shake her to her foundations.*" These comments summarize the imperial spirit of the age, although they are generally confused with the rationale for scientific inquiry.

Now in the twenty-first century we begin to see how both humanity and nature have been shaken and the bonds of equality and community severed. Our age is one of privileged immunity against community. Reducing the world to a matrix of possessions held-together by a tangle of laws defining who owns what and who owns naught has made the pope's ink on a map the point of contagion for a political idea that now rules the world. The laws of possession separate the haves and the have nots, making community into a jungle of competition for maximized individual control rather than a garden of mutual aid.

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<sup>7</sup> RULE OF PROPERTY – A rule of law affecting the ownership or transfer of property. The term is ordinarily used in connection with rules established by judicial decision, it being a general principle of law that decisions which have become rules of property, i.e. under which property rights have been acquired, will not be overruled, though erroneous. 30 Miss. 256; 4 N.Y. 261. See "Stare Decisis." Cyclopedic Law Dictionary, James C. Cahill, (1922)

Similarly, Bacon's extraction of mechanical rules from nature has severed humanity from nature's community. The privatization of nature and other societies became the obsession of a culture experimenting with altering its place in the world. Dominion has supplanted interdependence. Many today predict a terrible endgame when the laws of nature and human laws clash.

In the age of conquest, it was law as much as gunpowder that helped Europeans conquer whole continents. The law of boundaries, borders, enclosures, and property, armed with the distilled and lifeless laws of nature, had a hypnotic effect on European culture. Poorly understood complex dynamics were denatured into "laws" of nature and applied to human society as if an analog relationship exists between the two. As a result, a whole civilization was blinded to the horror and harm it would do, acting over centuries under false premises.

No thought was given by Pope Alexander VI to the cascade of injustices his pen stroke would precipitate. The lives of the people already living in the lands he cavalierly assigned to Spain and Portugal were dismissed as irrelevant. There was no anticipation of the future clear-cutting of the Amazon jungle, the centuries of war, oppression, revolution, and sadness the stroke of a pen would catalyze. The pontiff and his favored monarchs imagined only the wealth and power the lawful privatization of the western hemisphere would convey to them.

Jean-Jacques Rousseau wrote in the second volume of his work on inequality that "*The first man who, having enclosed a piece of ground, bethought himself of saying This is mine, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows: Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.*"<sup>8</sup>

Another philosopher of the era, John Locke, wrote that "*Government has no other end, but the preservation of property.*"<sup>9</sup> A hundred years later, American revolutionaries like Thomas Paine when he wrote *Common Sense* and, Thomas Jefferson when he wrote the Declaration of Independence had other aspirations. For them the purpose of government is securing unalienable rights, including the right to one's own labor and the product of it, and the right of the people to engage in self-government without deference to the priorities of wealth. But in America and in the nations around the globe whose social contract is rooted in conquest and colonialism, the ethics of power and possession prevailed.

### **Workers and the Law Serve Wealth**

Understanding the distinction between *personal property* and *privileged property* is necessary to further illustrate why the *accumulation* of property is not an unalienable right. Going back to early American sources we find Benjamin Franklin corresponding with the wealthiest man in the American colonies, the financier of the Revolution, Robert Morris. He wrote, "*All the property that is necessary to a man for the conservation of the individual and the propagation of the species is his natural right, which none can justly deprive him of; but all property superfluous to such purposes is the property of the public, who by their laws have created it, and who may therefore by other laws dispose of it whenever the welfare of the public shall demand such a disposition*".<sup>10</sup>

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<sup>8</sup> Jean-Jacques Rousseau, *Discourse on the Origin and Basis of Inequality Among Men*, (1754)

<sup>9</sup> John Locke, *Second Treatise*, §§ 89--94, 134--42, 212, (1689)

<sup>10</sup> Letter to Robert Morris, Dec. 25th, 1783; cf. Bigelow, John, ed., *The Works of Benjamin Franklin*, New York, 1904

Let's be clear about where *privileged property* comes from, as opposed to where the right to one's *personal property* comes from. In all cases, law creates property. We aren't born with it. Whether it is the nuns' land and chapel in the woods or the pipeline company's commandeered right-of-way through their sanctuary, law and government decide who owns what. That goes for all types of property.

Since all property exists subject to legal consent, law can either recognize a claim of ownership or deny it. What law cannot legitimately deny is the right to be free of servitude, where the fruit of one's labor belongs to another. What law cannot legitimately assert is that the value of the wages of servitude, in whole or in part, belongs to the master of the worker in pursuit of wealth. But, as we see, law readily and constantly does both.

Let's consider the case of earned wages for work done. American law has acknowledged a right to be free from involuntary servitude, including but not limited to slavery, since adoption of the Thirteenth Amendment in 1865. Section 1 of the amendment says that "*Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*"

Prior to adoption of that language into the Constitution, ownership of your own labor was not recognized as a right. Although hailed as the end of slavery in the United States, the Thirteenth Amendment didn't make freedom from involuntary servitude a recognized unalienable right. It allowed the enslavement of people convicted of crimes. With no cue from the amendment's language, judges have also decided that it allows government to impose involuntary military conscription on those unable to find a legal escape hatch. Neither was involuntary garnishment of a laborer's wages abolished, in deference to a creditor's claim of property rights vested in the laborer's debt.

We're examining the question of servitude to illustrate the difference between *personal property* and *privileged property*. The one, the right to own and control one's own labor and the fruit of that labor – that is, the use of one's own body and mind to produce added value and thereby profit -- is unalienable. It's not the added value, the property itself, that is unalienable. It's the liberty from labor for the benefit of another that is unalienable.

Liberty is one of three specific examples of unalienable rights mentioned in the Declaration of Independence. Servitude subtracts liberty from the person and is a direct violation of a fundamental right. But when rights are lodged in property itself, as when judges make corporate property the repository of Bill of Rights protections, then law acts to protect additive acquisition instead of the self-evident right of human beings to own and control their own bodies and minds. Vesting unalienable rights in property itself immunizes the possessors of such property against community obligations by attaching unnatural privileges to ownership.

It's that word "involuntary" that so clearly reveals that the amendment was never intended to end the legal advantages of masters over workers, or to guarantee freedom from servitude as a constitutionally protected right. The essence of unalienable rights is that they cannot be separated from the person, not even voluntarily. By including the word "involuntary" in the Thirteenth Amendment, servitude of poor people to wealthy people was preserved as a legally allowable arrangement.

Even though labor can no longer be stolen lawfully from a worker through enslavement, the laborer can still be persuaded to "voluntarily" waive rights to fair compensation in exchange for employment. The law allows it. What can be sold, surrendered, or volunteered is not by law unalienable. And so, in the eyes of the law, freedom from servitude is not an unalienable right.

Accumulation of *privileged property* (wealth) requires the confiscation of value from the past and future industriousness of many others. Legalized servitude makes wealth possible. Possession of *privileged property*, like a corporation, affords its owner the legal tools to protect wealth from redistribution by the community at-large, from which the wealth flows.

Thus, law creates a one-way gated pump for work converted into added value to flow away from its human producers and into *privileged property*, from which only the propertied minority is authorized to withdraw.

Legal scholar Morris R. Cohen wrote that “*The character of property as sovereign power compelling service and obedience may be obscured for us in a commercial economy by the fiction of the so-called labour contract as a free bargain and by the frequency with which service is rendered indirectly through a money payment. But . . . there [is] actually little freedom to bargain on the part of the steel-worker or miner who needs a job . . . Today I do not directly serve my landlord if I wish to live in the city with a roof over my head, but I must work for others to pay him rent with which he obtains the personal services of others. The money needed for purchasing things must for the vast majority be acquired by hard labour and disagreeable service to those to whom the law has accorded dominion over the things necessary for subsistence.*”<sup>11</sup>

Once personal constitutional protections are waived by private contract, public law and the protections of the Bill of Rights are powerless to intervene. The employee may be required to surrender free speech, assembly, privacy, religious and other rights on the job as a contractual condition of employment. Each unalienable right becomes alienable. Each conditional right becomes moot. Rights of persons are made subordinate to rights in corporate property. *Private law* is given deference over *public law*. Minority interests trump general rights. Immunity against community is institutionalized for a privileged aristocracy of wealth.

The worker’s right to wages is limited and maxed-out by whatever minimum wage (or lack thereof) is set in her political jurisdiction. Beyond that nominal regulation, the employer and not the worker or the law decides whether that right includes a paycheck adequate to cover the necessities of life. Ownership of *privileged property* gives the employer this power to decide what the working person and the law are powerless to decide.

When it’s taxed there’s no assurance that the priorities of the worker will be represented in budgeting how the collected revenue will be spent. Often, the portion of wages taken by government will serve the interests of the employer and others similarly in possession of *privileged property*, and not those of the worker. There is no inherent reason for this. There is a bias in the law. A viable economy would still be possible if unalienable rights took precedent over property amassed as wealth. Empire, on the other hand, might not be possible.

### **Unequal Protection: The Myth of Equality Before the Law**

Law creates property in all its forms by sanctioning its existence. But how the law treats *personal property* contrasts sharply with how it treats *privileged property*, as we are beginning to see.

The species of *privileged property* have proliferated unchecked for a century and a half through modification of the law. From simple interest on loans to compounding interest; from mineral rights to intellectual property rights; from “naming rights” to copyrights; from stocks and bonds to future profits; from proprietary rights to corporate rights; from legal standing to

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<sup>11</sup> Morris Raphael Cohen, *Law and Social Order* (1933), Originally published: Cornell Law Quarterly XIII (1927), 8



engineered legal precedent: the list of ways legal privileges for wealth have been institutionalized has flourished with no sign of stopping.

It matters how all of this is understood. Adam Winkler, professor of constitutional law at UCLA school of law, has written an entertaining book titled *We the Corporations: How American Businesses Won Their Civil Rights*. The author tells the story from the droll perspective of victimized corporations struggling for justice and how they gained constitutional rights from the Supreme Court. He compares the pursuit of legal advantages for wealthy people and their corporate property to a civil rights movement. It is a clever device. But Winkler makes a more serious historical observation that, whereas it only required that the wealthy ask for those rights for their chartered property, it took decades of abolitionist struggles, a civil war, and three constitutional amendments to free African Americans from the status of rightless property. And still the United States is a nation of partheid.

A laughably baseless interpretation of the Fourteenth Amendment let the Supreme Court change corporate property into a person with protections of the law equal to that afforded to men. That was 1886, thirty-four years before the constitution was amended to recognize the right of women to vote. To this day, women lack an equal rights amendment, while corporations have been guaranteed equal rights with men under the Fourteenth Amendment for over a century.

The lesson here is that the American system of law assures wealth access to the Supreme Court to protect rights in property while ordinary people have no automatic entrée into the halls of justice to secure their rights.

In the last pages of his book, Winkler tells the story of Mora County, New Mexico and the Mora Community Water Rights and Self-Government Act of 2013. It's an ordinance I had a hand in drafting and shepherding to adoption at the request of community members and County Commissioner John Olivias. Winkler holds our ordinance up as an example of how communities might push back against the hegemony of wealth and the privatization of the federal Bill of Rights.

In a region where water is scarce and widespread hydraulic fracturing (fracking) was being proposed, county residents grew concerned. Fracking uses immense quantities of water to force natural [sic] gas out of the ground. In the process the water is tainted with poisons and not reusable. That's what prompted people in Mora County to contact CELDF and eventually enact their ordinance in 2013.

The county law declared that, because water is indispensable to life, it is an unalienable right. It declared the corporation's property interests in natural gas, its mineral rights, are *not* unalienable. And it held that unalienable rights supersede the inferior rights in property.

Later that same year, the Independent Petroleum Institute of New Mexico and a couple of similarly interested individuals sued Mora County for adopting an ordinance banning the extraction of fossil fuels within the county. The lawsuit claimed the ordinance violated the corporation's First, Fifth and Fourteenth Amendment rights. It was a civil rights suit against the county.

Without the overriding guidance of conscience and with a near sacred sense of obligation to precedent, it was all but preordained that a judge would eventually overturn Mora's water rights ordinance as a violation of the civil rights of a corporation. And that's what happened. In federal district court it was not the people's right to water that prevailed. No, it was the corporate property's mineral rights, the corporate property's free speech, due process and equal protection of the law rights that survived the so-called justice system's gauntlet.

There was no appeal. A well-funded political campaign to oust the Commissioners who enacted the ordinance succeeded in replacing them with industry-friendly Commissioners who walked away from the defense of the people's right to water.

Mora's ordinance is one of hundreds drafted by CELDF and enacted across the country. Wealth has deployed its arsenal of legal advantages against a few of them, punishing municipalities financially, even threatening to bankrupt them, while blaming CELDF for bringing grief and costly litigation upon them. Lower courts, unwilling to make decisions about constitutional issues, generally rely on mechanisms like state preemption to safeguard the interests of property and wealth. Federal courts lean on Supreme Court decisions to protect the civil rights lodged by it in corporate property.

One of the successes we've come to expect from campaigns like the one in Mora is the exposure of the legal substructure that arms the priorities of wealth with power to neutralize the unalienable rights of people. That may not seem like much of a win, but in the context of public obliviousness to the true nature of American law, it is a necessary first step toward building communities liberated from the barbaric priorities of empire., by fostering a Community Rights Movement.

### **The Land Must be Liberated: Emancipating the Planet**

The Community Rights Movement into which you are being invited has in mind a much more inclusive definition of "community" than the framers of the U.S. Constitution had in mind. For them, white men who own property were the legitimate rulers of the nation. They constituted the privileged community to which the words "we the people" were intended to refer. Women, Native Americans, African Americans, paupers of all sorts, had no place in the governance of the community or the nation.

It's time to open the gates of immunity, where privileged people and their privileging possessions try to live separately from nature, fellow human beings and responsibility to them, smug in their presumed superiority. We can reconstitute community as it should exist, where people live in harmony with nature and each other rather than as parasites.

Nature is the greater community, and we are a part of it. We are not helpless to begin the task of correcting and making amends for the cultural, genocidal and ecocidal errors of the past. Or if we are, then the visceral longing for freedom and real justice and preservation of the planet are lost causes. But that is an intolerable outcome.

Liberating the planet from those who claim to own it must coincide with liberating communities to live from, in, with, and as nature, in right relationship. These inextricably interwoven causes have the same goal: extricating ourselves from the dictatorship of property to reestablish that right relationship and true freedom.

In 2006 I was working with clients in the Borough of Tamaqua in Schuylkill County, Pennsylvania. It's anthracite coal country, where a century and a half of mining has left the landscape pockmarked with holes and rubble and a shallow-rooted forest of perpetual saplings that will never become full-grown trees. Once the industrial revolution switched from coal to petroleum for most of its energy, the same communities from which natural "resources" had been stripped became the dumping ground for toxic waste. Gaping strip mines and deep mine shafts were eyed for "reclamation," meaning they'd be filled with industrial waste, coal fly ash, urban sewage solids, and river dredge.

The people of Tamaqua thought that was a bad idea. CELDF worked with them to draft a local law that included provisions my colleagues and I had been developing for a few years. At the heart of the ordinance was this concept: Unalienable rights come first.

As we worked on the draft ordinance, I had a conversation with Cathy Miorelli, a member of the Borough Council and full-time school nurse. She wasn't concerned that the draft law for the little town would take on the "well established" constitutional rights of the Lehigh Coal and Navigation Corporation and the preemptive authority of the Commonwealth of Pennsylvania. No. She went to the heart of the matter and raised the issue of property rights. How could Tamaqua Borough prohibit land owners from doing whatever they want with their property, to the point of creating serious hazards for the community? She knew the reverence for property central to American law. How could we challenge such a foundational doctrine?

It wasn't a question. It was a challenge. "No, really; how can we do it?"

As it turned out, CELDF's executive director, our historian and I had been having quiet, internal conversations about an idea that was raised in the 1970s by Christopher Stone, professor of law at University of Southern California, in his book "Should Trees Have Standing?" Its subtitle was "Toward Legal Rights for Natural Objects."

Professor Stone asked how society could really protect the environment when nature has been subdivided into privatized parcels. Under Western law, ecosystems and nature have but one legal status: that of property. Owners of property have few enforceable obligations to others when it comes to how they treat their property. If only nature had legal rights of its own, Stone mused; then maybe something could be done to protect it.

And that is what Cathy Miorelli was curious about. What could be done to stop the owner of the Springdale coal mine from filling it with toxins? Up to that point, no one had taken Christopher Stone's question seriously enough to test it. So, we did.

On September 19, 2006, Tamaqua became the first government of European heritage on Earth to recognize legally enforceable rights for ecosystems. Section 7.6 of the ordinance stated: *"It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. The Borough of Tamaqua, along with any resident of the Borough, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Borough, regardless of the relation of those natural communities and ecosystems to Borough residents or the Borough itself. Borough residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems."*

It was a first. The law still stands, not having been challenged with corporate or state litigation. Lehigh Coal and Navigation Company did not go forward with its dumping plans. It cannot be said that the ordinance or this new approach to protecting the environment, won the day once and for all. But it did gain international attention.

By now the Rights of Nature has become something of a *cause celebre*. Beneath the legal fight to protect the planet and its living systems is a battle to the death – or to life -- over legal rights vested in property and the status of nature in the eyes of the law. Word of what Tamaqua had done traveled far and abroad. For those who doubt that what we do locally in our hometowns can have any important or lasting effect, take note.

Following news of Tamaqua's brave leap into uncharted territory, Ecuador recruited CELDF staff to advise their Constitutional Assembly in drafting a key part of what would

become their new national constitution. They wanted to include rights for Pachamama, that is, Mother Earth. By popular vote in 2010, with overwhelming support, Ecuador's new national constitution recognizing fundamental legal rights for nature became their new law of the land. The English translation of the constitutional provision on which my colleagues worked says this: *"Natural communities and ecosystems possess the unalienable right to exist, flourish and evolve within Ecuador. Those rights shall be self-executing, and it shall be the duty and right of all Ecuadorian governments, communities, and individuals to enforce those rights."*

What Tamaqua had done, and what Ecuador did, became an example for bold American communities and nation-states around the globe. Readers may be familiar with the changed legal status of nature and natural systems in New Zealand, Bolivia, India, Columbia and elsewhere. In 2010, colleagues and I traveled to Ecuador to establish the Global Alliance for the Rights of Nature (GARN), and in October of 2022 I traveled to Siena, Italy to meet with GARN members from six continents. Here in the U.S., through our Community Rights organizing, we've added a new Rights of Nature (RoN) component to all the local laws we draft for American communities.

The "no fracking" Community Bill of Rights enacted by Pittsburgh in 2010 recognized the rights of ecosystems, saying: *"Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems."*

We were not involved in New Zealand's settling with the aboriginal Maori people to recognize legal rights for the Wanganui River. The movement for nature's rights has begun to take on a life of its own. Activists in dozens of nations and hundreds of communities have taken up the cause of emancipating the planet from legal bondage as property.

Here in the U.S., scores of cities, municipalities, and counties have enacted laws recognizing nature as a rights-bearing entity. Craig Kauffman, working within the Academic Hub of GARN, is developing the [Eco Jurisprudence Monitor](#) to catalog and document the proliferation of RoN laws adopted globally. No longer mere property in which special privileges are stored, later to be enjoyed by its human owners, nature is recognized in those communities as fully qualified to enjoy its own rights and to have them enforced and defended in court if necessary.

It is the privilege to destroy what they possess that makes the owners of land and "resources" dangerous to life on earth. The rest of us, who do not claim to or want to own the world, have unalienable rights including the right to withdraw presumed privileges of property ownership when they threaten others' rights and do harm to the world. The authority to destroy is among the cache of governing powers conveyed to landowners by the rights vested in *privileged property*. It has brought to the world the climate crisis, a mass species die-off, and the ecocide of the oceans, not to mention the proliferation of disease, dislocation, misery and suffering for people and life in general. To argue that the community has no authority to bring this carnage to an end is a blithe absurdity.

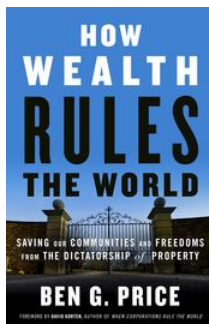
There is no doubt that making the needed changes to privileges associated with property will be one of our culture's greatest challenges. Freeing nature from bondage to those who possess it will alter the meaning of the word *property* in ways that will defy centuries of institutionalized privilege for those who possess the lion's share of everything. The propertied class will resist any change that diminishes their dominion over us and the entire living world. They will employ uninformed and uniformed friends, family and strangers as their armed

workforce to resist our efforts. They will engage in propaganda and misinformation, name-calling, villainization, and criminalization of our efforts, our gatherings, even our thoughts, to stop us from wresting total control from them. The stakes could not be higher. To lose is to lose everything. Your help is needed in this struggle for survival.

## **NEXT MONTH**

### **HOW WEALTH RULES PART THREE**

# **THE ONGOING COUNTER-REVOLUTION**



Purchase a copy of *How Wealth Rules the World: Saving Our Communities and Freedoms from the Dictatorship of Property*, by CELDF's Ben G. Price from publisher Berrett-Koehler here: [BK Bookstore | Shop Books for Businesses and Company Events \(bkconnection.com\)](https://www.bkconnection.com)