Introduction: The Battle to Save Democracy

> *It's really a wonder that I haven't dropped all my ideals, because they seem so absurd and impossible to carry out. Yet I keep them, because in spite of everything I still believe people are really good at heart.*
>
> —Anne Frank, from her diary, July 15, 1944

On September 2, 2009, the transnational pharmaceutical giant Pfizer pled guilty to multiple criminal felonies. It had been marketing drugs in a way that may well have led to the deaths of people and that definitely led physicians to prescribe and patients to use pharmaceuticals in ways they were not intended.

Because Pfizer is a corporation—a legal abstraction, really—it couldn't go to jail like fraudster Bernie Madoff or killer John Dillinger; instead it paid a $1.2 billion "criminal" fine to the U.S. government—the biggest in history—as well as an additional $1 billion in civil penalties. The total settlement was more than $2.3 billion—another record. None of its executives, decision-makers, stockholders/owners, or employees saw even five minutes of the inside of a police station or jail cell.

Most Americans don't even know about this huge and massive crime. Nor do they know that the "criminal" never spent a day in jail.

But they do know that in the autumn of 2004, Martha Stewart was convicted of lying to investigators about her sale of stock in another pharmaceutical company. Her crime cost nobody their life, but she famously was escorted off to a women's prison. Had she been a corporation instead of a human being, odds are there never would have even been an investigation.

Yet over the past century—and particularly the past forty years—corporations have repeatedly asserted that they are, in fact, "persons" and therefore eligible for the human rights protections of the Bill of Rights.

In 2009 the right-wing advocacy group Citizens United argued before the Supreme Court that they had the First Amendment right to "free speech" and to influence elections through the production and the distribution of a slasher "documentary" designed to destroy Hillary Clinton's ability to win the Democratic nomination. (Some political observers assert that they did this in part because they believed that a Black man whose first name sounded like "Osama" and whose middle name was Hussein could never, ever, possibly win against a Republican, no matter how poor a candidate they put up.)

In that, they were following on a 2003 case before the Supreme Court in which Nike claimed that it had the First Amendment right to lie in its corporate marketing, a variation on the First Amendment right of free speech. (Except in certain contract and law enforcement/court situations, it's perfectly legal for human persons to lie in the United States. Nobody ever went to jail for saying, "No, of course you don't look fat in those pants!")

Corporations haven't limited their grasp to the First Amendment; pretty much any and virtually every amendment that could be used to further corporate interests has been fair game. (They haven't yet argued the Third Amendment—you can't force citizens to quarter soldiers in their homes—although Blackwater's activities in New Orleans during the aftermath of Hurricane Katrina could have provided an interesting test.)

As you'll learn in this book, in previous decades a chemical company took to the Supreme Court a case asserting its Fourth Amendment "right to privacy" from the Environmental Protection Agency's snooping into its illegal chemical discharges. Other corporations have asserted Fifth Amendment rights against self-incrimination as well as asserted that the Fourteenth Amendment—passed after the Civil War to strip slavery from the Constitution—protects their right "against discrimination" by a local community that doesn't want them building a toxic waste incinerator, commercial hog operation, or superstore.

If this trend continues, it's probably just a matter of time before a corporation (maybe one of the many mercenary forces that emerged out of George W. Bush's Iraq War?) claims the Second Amendment right to bear arms anywhere, anytime, and your credit card company's bill collector shows up at your home with a sidearm.

This legal situation is not only bizarre but also quite the opposite of the vision for this country held by the Founders of the nation and the Framers of the Constitution. They were sufficiently worried about corporate power that they didn't even include in the Constitution the word *corporation,* intending instead that the states tightly regulate corporate behavior (which the states did quite well until just after the Civil War).

The American Revolution, you'll learn in this book, was in fact provoked by the misbehavior of a British corporation; our nation was founded in an anti-corporate-power fury.

Corporate Personhood in the Making

The most significant and oft-quoted precedent to the turning point of corporate power in America began just after the Civil War. It rested on a Constitutional Amendment successfully written and passed by a group of "Radical Republicans" after the Civil War to take slavery out of the Constitution.

Given that today's Republican Party has—largely since the Robber Baron Era of the 1880s—been the party of big business and the very rich, it's a bit difficult for some people to get their minds around the possibility that the Republican Party started out as a reform party that for nearly seventy years (from before Abraham Lincoln until just after Theodore Roosevelt left the party to start a third party) had a strong progressive wing. But it did.

Although Lincoln was by today's standards a "moderate" Republican, he was still anti-slavery, pro-middle class, and pro-labor (he famously said, "Labor is superior to capital because it precedes capital"—nobody was wealthy until somebody made something—and was the first president both to use the word "strike" and to actually stop police and private armies from killing and beating strikers).

And just like in today's mainstream Democratic Party, where there's a progressive minority that always seems to be pushing the edges, in the Republican Party of the 1800s there was a very—even by today's standards—progressive faction.

The Radical Republicans were a splinter group that emerged in a big way from the Republican Party at its founding in 1854; and just after the Civil War, in 1866, they gained a majority among Republicans in the House of Representatives, where they had a powerful influence until the faction disintegrated in the 1870s during the presidency of Republican Ulysses S. Grant. They supported the absolute right of freed slaves to vote and participate in all aspects of government and society, and they pushed hard for the punishment of former Confederates (and Democrats in the South) and fought with the more moderate mainstream Republicans.

After Lincoln's assassination they had so much power in the House that they were able to push through the Civil Rights Act of 1866 and override President Andrew Johnson's veto of it (and a dozen other bills). They drove the impeachment of Johnson and missed by a single vote.

They also realized that if they wanted to really free Blacks, it wasn't enough to just pass a law. They had to get the implicit approval of slavery out of the Constitution itself, so they proposed three Constitutional amendments—what we now call the Thirteenth, Fourteenth, and Fifteenth Amendments, or the Reconstruction Amendments.

The Thirteenth Amendment explicitly abolishes slavery, saying, "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." The Fifteenth Amendment explicitly forbids any government within the United States to prevent Blacks from voting, saying, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Both of these changed the face of America, but the Fourteenth Amendment has proved the most radical—just not in the way its authors intended.

The main goal of the Fourteenth Amendment was to reverse the 1857 *Dred Scott v. Sanford* decision of the U.S. Supreme Court, which had excluded African Americans from access to the protections of the Constitution and the Bill of Rights (the first ten amendments to the Constitution).

Section 1 explicitly made them citizens (assuming they were born or naturalized here) and explicitly entitled them to the same "equal protections" under the law that White citizens enjoyed.

Sections 2 through 4 also made sure that Black Americans were counted as a full person (and not three-fifths of a person) for the purpose of determining congressional districts, and it took a swipe at the former Confederates and their sympathizers by, in Section 3, excluding them from participation in holding public office. The language was quite straightforward, reflecting the Radical Republican agenda:

The Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

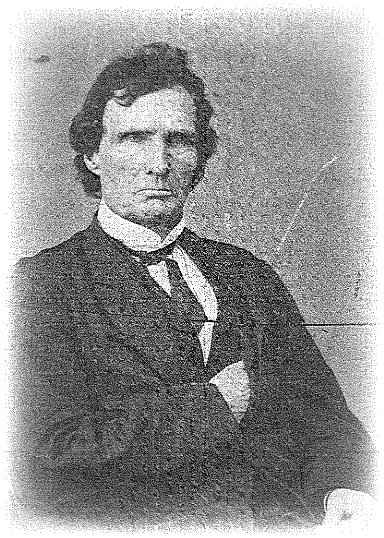
Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

As revolutionary as this amendment was, many Radical Republicans—who deeply opposed tyranny of all kinds—felt that it didn't sufficiently protect human beings from oppression. When the Fourteenth Amendment was first introduced to the House of Representatives on June 13, 1866, that body's Republican floor leader, Radical Republican Thaddeus Stevens, expressed reluctance at endorsing "so imperfect a proposition." Like many of his colleagues, he



Radical Republican
Thaddeus Stevens
(April 4, 1792–August 11, 1868)

thought the Reconstruction Amendments didn't go far enough in solidifying the rights of African Americans and poor Whites and in punishing the southern Democrats and Ku Klux Klansmen who still held sympathy with the vanquished Confederacy. In the end, however, Stevens urged his colleagues to endorse the bill on the grounds that he and they both "live among men and not among angels; among men as intelligent, as determined and as independent as myself, who, not agreeing with me, do not choose to yield up their opinions to mine. Mutual concessions is our only resort, or mutual hostilities."*[1]

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*Here's the part of Stevens's speech that precedes the quote above:

> In my youth, in my manhood, in my old age, I had fondly dreamed that when any fortunate chance should have broken up for awhile the foundation of our institutions, and released us from obligations the most tyrannical that ever man imposed in the name of freedom, that the intelligent, pure and just men of this Republic, true to their professions and their consciences, would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich.
>
> This bright dream has vanished "like the baseless fabric of a vision."
>
> Do you inquire why, holding these views and possessing some will of my own, I accept so imperfect a proposition?

Given all this context and history, a reasonable person would probably conclude that the Reconstruction Amendments—particularly the Fourteenth Amendment—were designed to grant rights exclusively to human beings. There's no discussion at all of corporations in the Amendment itself, and nobody in that day would have dared propose that the Civil War was fought to "free" corporations. (If anything, many residents of the southern states to this day believe that it was corporate power in New England—particularly the bankers and the commodity traders in New York—who triggered the Civil War by asserting their economic power to bring the White plantation owners and agricultural commodity traders in the South into servitude to the northern banks.) And when it comes to the intentions of the authors of the Amendment, that reasonable person would be right.

But here's the problem: the particular choice of words used in the Fourteenth Amendment created a loophole that corporations continue to exploit to this day—to our collective detriment as a democracy.

American constitutional law is, in many ways, grounded in British common law, which goes back to the sixth century. In common law there are two types of "persons": "natural persons," like you and me, and "artificial persons," which include governments, churches, and corporations. The creation of a category for governments, churches (and other nonprofits), and for-profit corporations was necessary so that the law (and taxes) could reach them.

Without some sort of category, they couldn't enter into contracts, be held accountable to the law, or be assessed and made to pay taxes, among other things. Knowing this, most laws having to do with just human beings used the phrase "natural persons"; and those laws that were designed to reach only governments, churches, or corporations would specify them or their type by name or refer to "artificial persons."

The Fourteenth Amendment, however, does not draw any distinction between "natural" and "artificial" personhood, and twenty years later corporate lawyers would seize upon that to turn corporations from mere ways of organizing a business into the transnational superpersons that they are today.

Of course, such sweeping ramifications never occurred to Thaddeus Stevens or his colleagues who drafted the Fourteenth Amendment. The clause that grants all "persons" equal protection under the law, in context, seems to apply pretty clearly only to human beings "born or naturalized" in the United States of America.

But fate and time and the conspiracies of great wealth and power often have a way of turning common sense and logic on its head, as you'll learn in just a few pages.

What Is a "Person"?

In today's America when a new human is born, the child is given a Social Security number and is instantly protected by the full weight and power of the U.S. Constitution and the Bill of Rights. Those rights, which have been fought for and paid for with the blood of our young men and women in uniform, grace the child from the moment of birth.

This is the way we designed it; it's how we all agreed it should be. Humans are born with human rights. Those human rights are *inherent*—part of the natural order to deists like Thomas Jefferson, given to us by God in the minds of the more religious of the Founders. And those rights are not to be lightly infringed upon by government in any way. They're explicitly protected by the Constitution *from* the government. We are, after all, fragile living things that can be suppressed and abused by the powerful.

For example, in 2001 then–state senator Barack Obama said in a radio interview on Chicago's WBEZ,[2] speaking of the charges that the Supreme Court under Chief Justice Earl Warren had been a radical or activist court, pointed out that the Constitution was designed not to give us rights but to prevent government from taking our rights. He noted:

> To that extent, as radical as I think people try to characterize the Warren Court, it wasn't that radical. It didn't break free from the essential constraints that were placed by the Founding Fathers in the Constitution, at least as it's been interpreted, and the Warren Court interpreted in the same way, that generally *the Constitution is a charter of negative liberties.* [It] says what the states *can't* do to you. [It] says what the federal government *can't* do to you, but doesn't say what the federal government or state government must do on your behalf. [Italics added.]

His 2001 reference to the Constitution as a "charter of negative liberties" was loudly criticized by his political opponents in 2008 when the tape of the radio interview was publicized, but as a constitutional law professor and scholar he was right. The Constitution doesn't give us rights: it restrains government from infringing on rights we acquire at birth by virtue of being human beings, "natural rights" that are held by "natural persons." The Constitution holds back (restraining government) rather than gives forward (granting rights to people).

While Thomas Jefferson felt it important to add a Bill of Rights to the Constitution (he wrote its first outline in a letter to James Madison), Alexander Hamilton spoke and wrote strongly against it, for exactly the same reasons President Obama had mentioned.

"The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS"[3] (capitals Hamilton's), he wrote in the Federalist Papers (No. 84). His concern was that if there were a few rights specified in the Constitution, future generations may forget that those are just examples and that the Constitution itself protects *all* human rights.

Those few examples may become the only rights to survive into future times, an outcome the reverse of the intention of the Framers of the Constitution. Instead of defining a few rights, Hamilton wrote in Federalist No. 84, "Here, in strictness, the people surrender nothing, and as they retain everything, they have no need of particular reservations."

Hamilton pointed out that England needed a Bill of Rights because the king had absolute power, but in the United States that power was reserved to the people themselves. Thus, he said, "I go further, and affirm that bills of rights, in the sense and in the extent in which they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous."

An example he gave, particularly relevant today in the light of the recent *Citizens United v. Federal Election Commission* Supreme Court case, was the freedom of the press written into the First Amendment. "What is the liberty of the press?" Hamilton demanded. "Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable"[4] to try to define it or any right narrowly in a Bill of Rights.

But Hamilton lost the day, Jefferson won, and we have a Bill of Rights built into our Constitution that, as Hamilton feared, has increasingly been used to limit, rather than expand, the range of human rights American citizens can claim. And because it's in our Constitution, the only way other than a Supreme Court decision to make explicit "new" rights (such as a right to health care) is through the process of amending that document.

And in American democracy, like most modern democracies, our system is set up so that it takes a lot of work to change the Constitution, making it very difficult to deny its protections to the humans it first protected against King George III and numerous other threats—internal and external—since then.

Similarly, when papers called articles of incorporation are submitted to state governments in America, another type of new "person" is brought forth into the nation. Just like a human, that new "person" gets a government-assigned number. (Instead of a Social Security number, it's called a federal employer identification number, or EIN.)

Thanks to a century and a half of truly bizarre Supreme Court decisions (never bills passed by the elected legislature), however, today's new corporate "person" is instantly endowed with many of the rights and protections of human beings.

The modern corporation is neither male nor female, doesn't breathe or eat, can't be enslaved, can't give birth, can live forever, doesn't fear prison, and can't be executed if found guilty of misdoings. It can cut off parts of itself and turn them into new "persons," can change its identity in a day, and can have simultaneous residences in many different nations. It is not a human but a creation of humans. Nonetheless, today a corporation gets many of the constitutional protections America's Founders gave humans in the Bill of Rights to protect them against governments or other potential oppressors:

- Free speech, including freedom to influence legislation
- Protection from searches, as if their belongings were intensely personal
- Fifth Amendment protections against double jeopardy and self-incrimination, even when a clear crime has been committed
- The shield of the nation's due process and anti-discrimination laws
- The benefit of the constitutional amendments that freed the slaves and gave them equal protection under the law

Even more, although they now have many of the same "rights" as you and I—and a few more—they don't have the same fragilities or responsibilities, under both the law and the realities of biology.

What most people don't realize is that this is a fairly recent agreement, a new cultural story, and it hasn't always been this way. Traditional English, Dutch, French, and Spanish law didn't say that corporations are people. The U.S. Constitution wasn't written with that idea; corporations aren't mentioned anywhere in the document or its Amendments. For America's first century, courts all the way up to the Supreme Court repeatedly said, "No, corporations do not have the same rights as humans."

In fact, the Founders were quite clear (as you can see from Hamilton's debate earlier) that *only humans* inherently have *rights*. Every other institution created by humans—from governments to churches to corporations—has only *privileges*, explicitly granted by government on behalf of the people with the rights.

In the Founders' and the Framers' views, rights are human and inherent; privileges are granted conditionally. For example, deducting the cost of a business lunch from corporate income taxes is not a right; it's a privilege granted by laws that create and regulate the corporate form. Not being imprisoned without due process of law is a right with which every human is born. Even the "right" to incorporate is actually a privilege, since at its core it's simply a petition for a specific set of rules to do business by, which limits liabilities and changes tax consequences of certain activities.

But the Supreme Court has gradually—since the first decade of the nineteenth century in the *Trustees of Dartmouth College v. Woodward* case—been granting corporations *privileges* that looked more and more like *rights*. And, particularly since 1886, the Bill of Rights has been explicitly applied to corporations.

Perhaps most astoundingly, no branch of the U.S. government ever formally enacted corporate personhood "rights":

- The public never voted on it.
- It was never enacted into law by any legislature.
- It was never even stated by a decision after arguments before the Supreme Court.

This last point will raise some eyebrows because for one hundred years people have believed that the 1886 case *Santa Clara County v. Southern Pacific Railroad* did in fact conclude that "corporations are persons." But this book will show that the Court never stated this: it was added by the court reporter who wrote the introduction to the decision, a commentary called a headnote. And as any law student knows, headnotes have no legal standing.

It's fashionable in America right now—as it was during the Gilded Age—to equate unrestrained, "free market" laissez faire capitalism with democracy, even going so far as to suggest that democracy can't exist without unrestrained capitalism.

China, Singapore, and other free-market capitalist dictatorships give the lie to this notion: their markets are among the most robust and vibrant in the world—and in Singapore's case has been so for more than half a century. And this myth, promulgated by "free market" think tanks funded by big corporations and individuals who got rich using the corporate form, even goes so far as to suggest that democratic socialism—a regulated marketplace, a strong social safety net, and democratic institutions of governance—will inevitably lead to the loss of "freedom." Democratic socialist states like Sweden, Norway, and Denmark give the obvious lie to that, although most Americans are blissfully ignorant of it.

But far more interesting is the inverse: Is it possible that what's *really* incompatible with democracy isn't socialism or a regulated marketplace but, instead, is the ultimate manifestation of corporate power—*corporate personhood?* And, if so—a case I'll build in this book—how do We the People take back our democratic institutions like the Congress from their current corporate masters?

CHAPTER 18

Unequal Citizenship and Access to the Commons

> **fas-cism** *(fâsh'iz'em) n. A system of government that exercises a dictatorship of the extreme right, typically through the merging of state and business leadership, together with belligerent nationalism. [Ital. fascio, group.] -fas'cist n. -fas-cis'tic (fa-shis'tik) adj.*
>
> —*American Heritage Dictionary,* 1983

There are resources and there are resources. For corporations, resources include raw materials, labor, the property and the equipment they use, the talents of the people they employ, and cash. For humans, resources include air, water, food, shelter, clothing, health care, and the means of exchange to ensure these.

I remember growing up fifty-plus years ago in an America where an employer's responsibilities to their community were so well understood that bosses who laid off people were considered either evil or failures. There was a dramatic recalibration of this during the 1980s, as the word *layoff* was replaced with the more politically tolerable euphemism *downsizing* and then further euphemized to *rightsizing.* In England the same event is described much more directly: "I was made redundant."

This chapter is about what has happened to humans as their protections have been given to entities (corporations) that have entirely different values from those of living beings. Ironically, the bigger companies get, the more ability they have to influence people's lives for better or worse—but the bigger they get, the fewer choices are available to workers and customers. And in recent years, health researchers have identified that the inability to do anything about one's problems is a key contributing factor to stress.

Stress Kills

For many Americans a lengthening workweek, increasing debt, and dwindling job security are now part of life. Not surprisingly, this triad produces stress. Debt carries risk. A longer workweek reduces options for enjoying life and for escaping from debt. The decline of job security increases the risk of complete economic disaster—a scenario that corporations rarely have to confront.

The Clinton administration's ratification of NAFTA and GATT/WTO (as well as numerous other "trade agreements" since then) made it possible to shift manufacturing and production jobs from the United States to the developing world. The American situation is mirrored throughout the world, as industrialized nations lose manufacturing jobs and developing countries become spotted with sweatshops like a child with measles. Humans require passports and visas to travel from nation to nation, but corporations can now move anywhere with virtually no restrictions.

- The U.S. Centers for Disease Control notes, "From 1952 to 1995, the incidence of suicide among adolescents and young adults nearly tripled. From 1980 to 1997, the rate of suicide among persons aged 15 to 19 years increased by 11 percent and among persons aged 10 to 14 years by 109 percent."[1]
- Between 1972 and 1994, the number of Americans living below the poverty line almost doubled from roughly 23 million to about 40 million. By 2009 poverty had become so widespread and systemic in America that 58.8 percent of all Americans have or will spend at least a year of their lives in poverty.[2]
- Across Latin America, Africa, and Asia, the United Nation's International Labor Organization catalogs more than 250 million children between the ages of five and fourteen who are working in hazardous industries and slave labor.[3]
- The World Health Organization lists unemployment as one of its risk factors for child abuse.[4]

Elizabeth Warren, Harvard law professor and chair of the Congressional Oversight Panel for the so-called TARP funds used to bail out the banks in 2008 and 2009, noted bluntly in a posting on the *Huffington Post* on December 3, 2009:

> Today, one in five Americans is unemployed, underemployed or just plain out of work. One in nine families can't make the minimum payment on their credit cards. One in eight mortgages is in default or foreclosure. One in eight Americans is on food stamps. More than 120,000 families are filing for bankruptcy every month. The economic crisis has wiped more than $5 trillion from pensions and savings, has left family balance sheets upside down, and threatens to put 10 million homeowners out on the street.[5]

While this has been tragic for the people who are affected, a cynical view is that an increase in the number of desperate people can be beneficial to business: wages drop when more people are out of work and competing for available jobs. In fact, wages are lowest when the worker literally has no choice.

The Prisoner as Employee

Under the new WTO and NAFTA rules, an importing country *cannot* consider the conditions under which a product was produced. So, some corporations have discovered that they can profit by using prison labor to manufacture export products or perform services for offshore clients.

Although corporations can't be put in prison, they find it very profitable to put humans there: corporations in nations like Myanmar (Burma), China, and the United States have opened manufacturing or service facilities in prisons, paying their laborers anywhere from a few cents an hour down to nothing at all.

It's an enormously profitable enterprise, and some nations have moved to capitalize on it by passing laws that are easy to violate (so that people end up in prison who would not otherwise have been there), increasing the severity of penalties for existing crimes, more heavily criminalizing health problems (such as drug use), or criminalizing "anti-state" behaviors (such as practicing religion in China).

Although China and Myanmar don't publish their figures, in the United States (the nation with the world's highest incarceration rate), the "correctional population" in 2006 was 7.2 million adults, resulting in one in every thirty-one Americans (3.2 percent of the U.S. adult population) in jail, on parole, or on probation. The consequence was a substantial pool of potential prison labor—about one in every one hundred Americans.[6]

Since the 1985 passage of new laws increasing criminal penalties for drug use and sale, drug convictions accounted for more than 80 percent of the increase in the federal prison population, driving up the budget of the Federal

Bureau of Prisons by 1,954 percent.[7] Prison populations in the United States were relatively stable compared with population growth from the early years of the twentieth century until the election of Ronald Reagan, whose administration blessed the private prison industry in the United States.

We were at a quarter-million prisoners in 1930, a number that slowly rose with population growth to a half-million in 1980. During Reagan's decade of the 1980s, prison populations in the United States doubled to more than 1 million people in 1990. The next decade they doubled again, hitting 2 million in 2000.[8]

From its birth in the 1980s, the American private prison industry has grown to be worth more than $1 billion today and is now moving international, with the two largest players having moved into direct construction or alliance partnerships in more than sixty nations.[9]

The percentage of American prisoners in private prisons who are now working for multinational corporations more than doubled between 1993 and 1998, according to www.prisonactivist.org. (Detailed and more recent statistics are hard to come by because the industry is not required to release such information and therefore chooses not to.) At the same time, American corporate prisons carry the highest rates of tuberculosis and HIV infection (and new infections) in the nation, and have a suicide rate twenty times higher than the country as a whole.[10]

But they can be very profitable: On February 8, 2002, America's largest private prison corporation "reported record high annual revenues for fiscal year 2001 of $2.8 billion, a 12.1 percent increase over its 2000 revenues of $2.5 billion" and that the security part of its business was doing well. The company's president said, "The North American security operations had a very strong quarter and year with a margin increase of 20 basis points for the fourth quarter, and a margin increase of 80 basis points for the year."[11]

Privatizing the Commons

Privatization is the idea of taking commons functions or resources out of the hands of elected governments responsible to their voters and handing their management or ownership over to private enterprise answerable to shareholders. Many arguments have been advanced about privatization; those in favor argue that corporations run for a profit can be more efficient than government, and those opposed usually argue that the resources of the commons should always be held in the hands of institutions that are answerable only to

the people who use them—the citizens—and thus must be managed by elected and responsive governments.

Opponents of privatization of the commons also usually point out that whatever increases in efficiency a corporation may bring to a utility, the savings produced by those increases in efficiency rarely make their way to the consumer but instead are raked off the top by the corporation and distributed to shareholders. One of the more high-profile examples is Enron and its role in the privatization of electricity worldwide, with particular focus on how Enron's privatization of electricity in California worked to the detriment of California's citizens but produced millions in profits for a small group of Texas stockholders; another example is an Enron subsidiary's meetings in 1999 with Governor Jeb Bush of Florida in which it proposed to privatize and take over much of the state's water supply.[12]

Supporters of privatization point to the creative ways corporations can extract profits from things governments previously just supervised in a boring and methodical fashion. For example, an article in the *Houston Chronicle* in January 2001 titled "Enron Is Blazing New Business Trail" noted the "extraordinary year" the Houston-based company was having, with most of the company's revenues coming "from buying and selling contracts in natural gas and electricity."

The article quoted Kenneth Lay, who, the newspaper said, "has a doctorate in economics," as extolling the virtues of profiting from trading in previously regulated or government-run commodities. "The company's emphasis on trading to hedge against risk has been emulated by other firms in energy," the article said, including "Duke Energy, Dynegy, Williams Energy—and increasingly in other industries."[13]

Who Owns the World's Water?

While Enron started the discussion in Florida in 1999 about privatizing that state's water supplies and the Everglades, the process was already a done deal in Bolivia. In 1998 the Bolivian government requested a $25 million loan guarantee to refinance its water services in the community of Cochabamba. The World Bank told the Bolivian government that it would guarantee the loan only if Bolivia privatized the water supply, so it was handed over to Aguas del Tunari, a subsidiary of several large transnationals, including an American corporation that is one of the world's largest private construction companies.

The next year Aguas del Tunari, in an effort to squeeze profits out of Bolivia's water, announced that water prices were doubling. For minimum wage or unemployed Bolivians, this meant water would now take half their monthly income, costing more than food. The Bolivian government, acting on suggestions from the World Bank and Aguas del Tunari, declared all water corporate property, so even to draw water from community wells or to gather rainwater on their own properties, peasants and small farmers had to first pay for and obtain permits from the corporation.

The price of water was pegged to the U.S. dollar to protect the corporation, and the Bolivian government announced that none of the World Bank loan could go to poor people to help with their water bills.

With more than 90 percent of the Bolivian people opposing this move, a people's rebellion rose up to deprivatize the water system. A former machinist and union activist, Oscar Olivera, built a broad-based coalition of peasants, workers, and farmers to create La Coordinadora de Defensa del Agua y de la Vida, or La Coordinadora. Hundreds of thousands of Bolivians went on a general strike, brought transportation in Cochabamba to a standstill, and evoked violent police response in defense of the Aguas del Tunari corporation's "right" to continue to control the local water supply and sell it for a profit. Victor Hugo Danza, one of the marchers, was shot through the face and killed: he was seventeen.

The government declared martial law, and members of La Coordinadora were arrested and beaten in the middle of an early April night. The government seized control of the radio and television stations to prevent anti-corporate messages from being broadcast. But the uprising continued and grew.

The situation became so tense that the directors of the American corporation and Aguas del Tunari abandoned Bolivia on April 10, 2000. They took with them key files, documents, computers, and the assets of the company—leaving a legal shell with tremendous debt.

The Bolivian government handed the debts and the water company, SEMAPA, to La Coordinadora. The new company is now run by the activist group—essentially a local government itself now—and its first action was to restore water to the poorest southern neighborhoods, more than four hundred communities, which had been cut off by the for-profit company because the residents didn't have the money to pay profitable rates for water. Throughout the summer of 2000, La Coordinadora held hearings through the hundreds of neighborhoods it now served.

In the meantime the American corporation moved its holding company for Aguas del Tunari from the Cayman Islands to Holland so that it could legally sue the government of Bolivia (South America's poorest country) under WTO and Bilateral Investment Treaty (BIT) rules that Bolivia had signed with Holland.

On January 19, 2006, a settlement was reached between the government of Bolivia and Aguas del Tunari, and it was agreed that "the concession was terminated only because of the civil unrest and the state of emergency in Cochabamba and not because of any act done or not done by the international shareholders of Aguas del Tunari." With this statement both parties agreed to drop any financial claims against the other.[14]

Why take such extraordinary steps against such a poor country? There's more at stake than the immediate situation. If this citizens' group is successful in turning a water supply back from private to government hands, and thus improving water service and making it more egalitarian and less expensive in this poverty-stricken country, it could threaten water-privatizing plans of huge corporations around the world.

The stakes are high, even as cities across India, Africa, and other South American countries hand their local water systems to for-profit corporations. Nonetheless politicians around the world are stepping up the rate at which they're pushing for a transfer of the commons to the hands of for-profit corporations. Checking voting records and lists of corporate contributors, it's hard not to conclude that there is a relationship between this political activity and the generous contributions these corporations give to pro-privatization politicians.

"Private Equity" Can Erase a Firm's Values

In today's business environment, when corporations are run in ways that benefit the environment or their workers as much as their stockholders, they're at risk. When good salaries and pension plans are cut, it's referred to as "unnecessary fat" that can be trimmed. (Note that such cuts are made much more feasible when wages are forced down by exporting jobs from the local economy.) Similarly, behaving in a more expensive but environmentally friendly way is "not efficient."

In an article in *Yes!* magazine, economist and author David C. Korten pointed out that for many years the Pacific Lumber Company was, in many regards, a model corporate citizen. It paid good salaries, fully funded its pension fund, offered an excellent benefit package to employees, and even had an explicit no-layoffs policy during soft times in the lumber economy. Perhaps most important to local residents who weren't employed by the company, Pacific Lumber "for years pioneered the development of sustainable logging practices on its substantial holdings of ancient redwood timber stands in California."[15]

In a nation where such employee- and nature-friendly values were both valued and defended, Pacific Lumber Company would have a bright future. But in a world where profit is the prime value, and humans and ancient trees are merely excess fat, Pacific Lumber was a sitting duck.

As Korten documents in his article, a corporate raider

> gained control in a hostile takeover. He immediately doubled the cutting rate of the company's holding of thousand-year-old trees, reaming a mile-and-a-half corridor into the middle of the forest that he jeeringly named 'Our wildlife-biologist study trail.' He then drained $55 million from the company's $93 million pension fund and invested the remaining $38 million in annuities of the life insurance company which had financed the junk bonds used to make the purchase and subsequently failed. The remaining redwoods were the subject of a last-ditch effort by environmentalists to save from clear-cutting.[16]

In the end the government stepped in to save some of the old-growth forests, but the business and its employees were already screwed, and the private equity artist had already taken his cut.

Once upon a time, America had laws that corporations couldn't own other corporations. If that were still true, situations like that chronicled by Korten would become illegal rather than the norm. (And people who become multimillionaires by employing such predatory leveraged-buyout and private equity techniques, from Mitt Romney to T. Boone Pickens, would actually have to work for a living.)

The reason Madison and Jefferson—and even Hamilton and Adams—worried so loudly about "associations and monopolies" growing too large and powerful is that they would begin to usurp the very lives and liberties of the humans who created them. It becomes particularly problematic when companies are bought and stripped of their assets by other companies that aren't even in their industry but are simply asset hunting.

In the realm of government, the Founders kept power close to the people with the Tenth Amendment and other constitutional references to the

powers of states over the federal government. A similar principle could apply to corporations.

The breakup of AT&T between 1974 and 1984 led to vigorous growth in the telecommunications industry, although that industry is once again reconsolidating in the absence of Sherman Act enforcement.

Seizing Other Nations' Commons via Patent

Because international courts have recently held that life forms and their by-products are patentable, multinational corporations in wealthy nations have been busily patenting the living products of poorer nations.

For example, people in India have been using the oil of the neem tree as a medicine for millennia: but now more than seventy patents have now been granted on the tree and its by-products in various nations. One European patent on its use as a fungicide was recently thrown out, but others stand.[17]

In similar fashion, Maggie McDonald notes in the British magazine *New Scientist* that "a botanical cure for hepatitis traditionally used in India can be patented in the U.S." She notes that Vandana Shiva documents how this is not a process that is driving innovation or competition, as multinationals often claim, but instead, "a survey in the U.S. showed that 80 percent of patents are taken out to block competitors."[18]

Ironically, that same issue of *New Scientist* has a feature on recruitment news that extols the wonders of becoming a patent agent. In the new world of international biotechnology, the article says, "Wealth is measured not in gold mines, but in the new currency of 'intellectual property.'" Eerily echoing Shiva's claim, the very upbeat article on getting a job in the patent business says, "The aim is to lock away these prize assets [for your company] so they can't be plundered by commercial rivals."[19]

And the business of locking up these assets pays very well. Ted Blake of Britain's Chartered Institute of Patent Agents is quoted as saying, "You're looking at six-figure salaries for those who make it as partners in an agents' firm." Not only is the pay good but the work is also very chic. Reiner Osterwalder of the European Patent Office told the magazine, "Patents are no longer stuck in a dusty corner. They're sexy, and touch questions of world order."[20]

The British Broadcasting Corporation notes that not only can plants and their uses be patented but the very genetics of the plants can be nailed down. An article about the patenting of the neem tree published in 2000 on the BBC Web site says, "Genes from nutmeg and camphor have also been patented with the aim of producing their oils artificially—a move which would hit producers in developing countries."[21]

And it's in developing countries where the race to patent indigenous life forms is most rapid, particularly by American-based companies, because U.S. patent law doesn't recognize indigenous use of a product as "prior art," meaning once a use for a plant is "discovered" by an American company—even if that plant has been used in that way for ten thousand years by local tribes, it's considered new and thus patentable. The Web site www.globalissues.org notes, "In Brazil, which probably has the richest biodiversity in the world, large multinational corporations have already patented more than half the known plant species."[22]

The consequences of this behavior are profitable for corporations but can be devastating to the humans who find that their food or medicinal plants are now the property of a multinational corporation. Corporations say that this is necessary to ensure profits, but the thriving herbal products industry—made up mostly of domestic plants that cannot be patented—testifies to the untruthfulness of this assertion. Selling plants may not be as profitable as selling tightly controlled and patented plants, but it can be profitable nonetheless.

This is not to say that plants should or should not be patentable. In a democracy the benefits or liabilities of corporations' patenting life forms would be discussed and decided by popular vote. Because of the *Santa Clara* "decision" and its consequences, however, corporations have exercised their "right" to get patent laws changed and exemptions established that would be difficult to impossible for an ordinary human to accomplish.

Changing Your Citizenship in a Day

For a human to change his or her citizenship from one country to another is a process that can take years, sometimes even decades, and, for most of the world's humans, it is practically impossible. Corporations, however, can change their citizenship in a day. And many do.

The New Hampshire firm Tyco International moved its legal citizenship from the United States to Bermuda and, according to a 2002 report in the *New York Times*, saved "more than $40 million last year alone" because Bermuda does not charge income tax to corporations while the United States does. Stanley Works, which manufactures in Connecticut, will avoid paying U.S. taxes of $30 million. Ingersoll-Rand "saves" $40 million a year.[23]

Offshore tax havens figured big in the Enron debacle, as that corporation spun off almost nine hundred separate companies based in tax-free countries to shelter income and hide transactions. Through this device the company paid no income taxes whatsoever in four of its last five years and received $382 million in tax rebates from Uncle Sam.[24]

Generally, when a human person changes citizenship, he is also required to change his residence—he has to move to and participate in the country where he is a citizen. But Bermuda and most other tax havens have no such requirement. All you need do is be a corporate person instead of a human person, pay some fees (it cost Ingersoll-Rand $27,653), and, as Ingersoll-Rand's chief financial officer told the *New York Times*, "We just pay a service organization" to be a mail drop for the company.[25]

Ironically, the Bush administration justified rounding up human people and holding them incommunicado in jails without normal due process after September 11 because as "nonpersons" they lacked the full protections of citizens under the U.S. Constitution. (Over the weekend of Christmas 2009, the Obama administration successfully argued the same logic, allowing it to constitutionally render persons as "nonpersons" simply by having the president declare them "enemy combatants.")

Similarly, if you or I were to open a post office box in Bermuda and then claim that we no longer had to pay U.S. income taxes, we could go to jail. Corporate persons, however, keep their rights intact when they decide to change citizenship—and save a pile in taxes. And, notes the *New York Times*, "There is no official estimate of how much the Bermuda moves are costing the government in tax revenues, and the Bush administration is not trying to come up with one."

Corporations are taxed because they use public services and are therefore expected to help pay for them.

Corporations make use of a workforce educated in public schools paid for with tax dollars. They use roads and highways paid for with tax dollars. They use water, sewer, power, and communications rights-of-way paid for and maintained with taxes. They demand the same protection from fire and police departments as everybody else, and they enjoy the benefits of national sovereignty and the stability provided by the military and institutions like NATO and the United Nations, the same as all residents of democratic nations.

In fact, corporations are *heavier* users of taxpayer-provided services and institutions than are average citizens. Taxes pay for our court systems—the biggest users of which are corporations, to enforce contracts. Taxes pay for our Treasury Department and other government institutions that maintain a stable currency essential to corporate activity. Taxes pay for our regulation of corporate activity, from ensuring safety in the workplace, to a pure food and drug supply, to limiting toxic emissions.

Taxes also pay (hugely) for our military, which is far more involved in keeping shipping lanes open and trade routes safe for our corporations than protecting you and me from an invasion by Canada or Mexico (our closest neighbors, with whom we've fought wars in the past). It's very difficult to calculate because government doesn't keep track of it, but it's not hard to see that corporate use of our commons—what is funded with our taxes—is well over half of worker use.

Yet, as professor of political economics Gar Alperovitz points out, "In the Eisenhower era, corporations paid an average 25 percent of the federal tax bill; they paid only 10 percent in 2000 and [following the first Bush tax cuts only] 7 percent in 2001."[26]

In a Democracy...

One of the foundational principles of democracy is that all people are treated equally in regard to issues of the law, citizenship, and their access to the commons. As Lawrence Mitchell, a John Theodore Fey research professor of law at the George Washington Law School and author of *Corporate Irresponsibility,* said, "The function of corporations in light of their constitutional personhood is effectively to foreclose access to the commons for most citizens. The entire proposition that a corporation is a person is ridiculous."[27]

CHAPTER 19

Unequal Wealth

I care not how affluent some may be, provided that none be miserable in consequence of it.

—Thomas Paine, 1796

IN THE ABSENCE OF THE CONTROLS RECOMMENDED BY THE FOUNDERS AND early state regulation, corporations have continued to grow in size and power without limit. But they haven't done it just by creating new wealth in the economy. Much of it, instead, has been accomplished by increasingly consolidating existing wealth, moving it out of the hands of the middle class and into the hands of the top few percent of Americans economically. Of course, some new wealth has been generated, but nowhere near enough to explain the observable facts.* The past thirty years has, in fact, seen the largest transfer of wealth from working people to the rich and very rich in the history of both this nation and any nation on earth.

Consolidation: Mergers, Acquisitions, and Interlocking Boards

If you were to define and rank nations according to their gross domestic product, fifty-two of the world's one hundred largest "nations" are actually corporations. Tracking the growth of the largest companies can be problematic because they're constantly merging with or buying other companies. This trend has accelerated in the decreased regulatory environment of the 1980–2010

*Many of the statistics in this chapter (unless cited as otherwise) are from Jeff Gates in various sources. Jeff is president of the Shared Capitalism Institute and author of numerous books and articles, all of which I strongly recommend. His Web site is www.sharedcapitalism.org.

period—just a few generations after Americans busted the trusts during the Populist Movement of Teddy Roosevelt and William Jennings Bryan.

One-third of 1980's Fortune 500 companies no longer existed in 1990—not because they failed but because they had been merged or acquired. This accelerated in the 1990s: two-fifths of the Fortune 500 vanished in the five years from 1990 to 1995. They're still there and still powerful; it's just that now they're even more powerful and wealthy, and they have less competition.[1] Statistics since 1995 are nearly impossible to find because the Clinton administration stopped the tracking of this sort of information and corporations don't publish it. (And conservative think tanks have, over the past decade, systematically employed a small army of Libertarian true-believers to scrub the Internet and rewrite thousands of Wikipedia and other pages.)

The combined GDP of the world's two hundred largest corporations is greater than all but nine nations, and just as the European royal families are interrelated, so too are the boards of directors of most of the world's largest corporations.

Corporate observer Robert A. G. Monks reports that today 86 percent of billion-dollar company boards contain at least one CEO of another company, while 65 percent of outside directors serve on two or more boards. He documents how 89 percent of inside directors are outside directors on other companies' boards, and 20 percent of all directors serve on four or more company boards.[2] Ralph Nader has testified about this extensively before Congress, suggesting that these interlocking boards violate antitrust statutes, and there are entire Web sites devoted to it, such as www.theyrule.net.

For example, the following is a 2002 snapshot showing how interconnected these companies are in that each has at least one board member who's also a board member on another, creating a continuous daisy-chain:[3]

- IBM shares a board member with Coca-Cola
- Which shares a board member with AT&T
- Which shares a board member with Citigroup
- Which shares a board member with Lucent Technologies
- Which shares a board member with Chevron
- Which shares a board member with Hewlett-Packard
- Which shares a board member with Boeing

- Which shares a board member with Sara Lee
- Which shares a board member with Bank One Corporation
- Which shares a board member with Cardinal Health
- Which shares a board member with Freddie Mac
- Which shares a board member with Lehman Brothers Holdings
- Which shares a board member with PepsiCo
- Which shares a board member with Bank of America
- Which shares a board member with Motorola
- Which shares a board member with J. P. Morgan Chase
- Which shares a board member with ExxonMobil
- Which shares a board member with SBC Communications (owns Ameritech, PacBell, and Southwestern Bell, among others)
- Which shares a board member with PG&E Corporation
- Which shares a board member with Home Depot
- Which shares a board member with General Electric
- Which shares a board member with Delphi Automotive Systems
- Which shares a board member with Goldman Sachs Group
- Which shares a board member with Ford Motor Company
- Which shares a board member with Sprint
- Which shares a board member with Allstate
- Which shares a board member with AMR (owns American Airlines)
- Which shares a board member with Aetna
- Which shares a board member with Dell Computer
- Which shares a board member with Prudential Insurance
- Which shares a board member with Dow Chemical
- Which shares a board member with Met Life
- Which shares a board member with Verizon
- Which shares a board member with USX (formerly U.S. Steel)

- Which shares a board member with Lockheed Martin
- Which shares a board member with Enron
- Which at this writing shares board member Ken Lay with Compaq
- Which shares a board member with Dynergy
- Which shares a board member with CVS/Pharmacy
- Which shares a board member with Fannie Mae
- Which shares a board member with Conoco
- Which shares a board member with E. I. du Pont de Nemours
- Which shares a board member with IBM
- Which shares a board member with Coca-Cola (which is where we started)

There is strong evidence that this much concentration of wealth and power is not healthy, and prior to the last century it was considered criminal behavior in many states, as interlocking boards were banned and most states had specific caps on how big a corporation could be.

But that was then and this is now. Today the world's largest two hundred corporations, which employ fewer than 0.8 percent of the world's workforce, account for more than 27 percent of the world's total economic activity, more than all nations in the world combined except the top ten.[4]

The corporations of Samuel Adams's day, like the East India Company, were the bald economic instruments of monarchy and imperial power, but during and after the American Revolution they were put firmly under the control of state legislatures and local municipalities. Today, empowered with human rights, they roam free, with few checks on their power or growth; and they have, in fact, reversed the old East India Company model by becoming the agents that more directly control democracies than do their individual citizens.

- The United Nations reports that "about two-thirds of all world trade" is in the hands of transnational corporations, which "increasingly shape trade patterns" of the planet.[5]
- Corporations reaching out from their home countries and into other countries have become "the main force in international economic integration," according to the U.N.'s Trade and Development Conference.[6]

- Sales of the two hundred largest corporations in the world equal 27.5 percent of the world's economic activity.[7]
- If you added together the sales of every nation in the world except the top ten, the total would be less than the combined sales of the world's two hundred largest corporations.[8]
- The 1999 sales of General Motors were greater than the GDP of 182 nations. The same is true of Wal-Mart, ExxonMobil, Ford Motor, and DaimlerChrysler.[9]
- The eighty-two largest American corporations contributed $33,045,832 to political action committees in the year-2000 election cycle (and that doesn't include "soft money," for which statistics are unavailable), outspending labor unions by 15 to 1. This was apparently useful to candidates: in 94 percent of U.S. House of Representatives races, the candidate who spent the most money won.[10] By the 2008 election it had become much more difficult to track corporate money or that coming from wealthy individuals, particularly when that money was used to fund nonprofit (we pay their share of taxes) astroturf groups that spring up and seem to be grassroots advocacy efforts. A good guess, though, is that the numbers have increased about tenfold.

As this shift in income has happened, along with it came a shift in who owns pretty much everything.

- In 1976 the richest 10 percent of America's population owned 50 percent of American wealth. By 1997 they owned 73 percent. (In other words, 23 percent of America's total wealth shifted from the poor and middle class to the very wealthy in twenty-one years.)[11]
- This was not just because the economic pie got bigger: 44 percent more people work multiple jobs than did in 1970, and American workers are putting in, on average, a full month more at work than they did twenty years ago. And hourly earnings of America's nonsupervisory workers, in 1998 dollars, have fallen by 9 percent since 1973, from $14.09 to $12.77.[12]
- Looking at the same numbers from "the other end of the telescope," in 1976 the lower 90 percent of the population owned half the wealth. By 1997 their share was down to 27 percent.[13]

- In 2000 the top 1 percent of American households had financial wealth greater than that of the bottom 95 percent combined.[14]
- In 1998 the net worth of just one American, Bill Gates, at $46 billion, was greater than the bottom 45 percent of all American households combined.[15]
- It's not just an American phenomenon anymore. Worldwide, according to the United Nations Development Program, the difference between the richest and poorest nations in the world was 1 to 3 in 1820, 1 to 35 in 1950, and 1 to 72 in 1992. The gap has continued to grow since then.[16]

How can this be? What's happening?

Spengler's *The Decline of the West*

In his book *The Decline of the West,* first published in German in 1918 and then in English in 1926, Oswald Spengler suggested that what we call Western civilization was then beginning to enter a "hardening" or "classical" phase in which all the nurturing and supportive structures of culture would become, instead, instruments of the exploitation of a growing peasant class to feed the wealth of a new and growing aristocracy.

Culture would become a parody of itself, people's expectations would decline while their wants would grow, and a new peasantry would emerge, which would cause the culture to stabilize in a "classic form" that, while Spengler doesn't use the term, seems very much like feudalism—the medieval system in which the lord owned the land and everyone else was a vassal (a tenant who owed loyalty to the landlord).

Spengler, considering himself an aristocrat, didn't see this as a bad thing. In 1926 he prophesied that once the boom of the Roaring Twenties was over, a great bust would wash over the Western world. While this bust had the potential to create chaos, its most likely outcome would be a return to the classic, stable form of social organization, what Spengler calls "high culture" and I call neofeudalism.

He wrote:

> In all high Cultures, therefore, there is a *peasantry,* which is breed stock, in the broad sense (and thus to a certain extent nature herself), and a *society* which is assertively and emphatically "in form." It is a set of classes or Estates, and no doubt artificial and transitory. But the history of these classes and estates is *world history at highest potential.* It is only in relation to it that the peasant is seen as historyless. [All italics are Spengler's from the original text.][17]

More-recent cultural observers, ranging from billionaire George Soros in his book *The Crisis of Global Capitalism,*[18] to professor Noreena Hertz in *The Silent Takeover: Global Capitalism and the Death of Democracy,*[19] have pointed to deep cracks in the foundational structure of Western civilization, traceable to the current legal status of corporations versus humans. The extent of the problems within our structures is laid bare with startling and sometimes frightening clarity by a wide variety of books.*

The origin of many of modern global society's problems are clearly laid out in *The Trap* by now-deceased billionaire speculator Sir James Goldsmith,[20] and it appears that perhaps that "crazy old coot" (as the media would have us believe) Ross Perot—with his charts and graphs and warnings about corporate money in the political process, GATT, and NAFTA—was right in many regards, at least from a nationalistic American point of view.

The summary version of these and dozens of other books documenting Spengler's decline of the West is this: We're entering a new and unknown but hauntingly familiar era. It's new because it represents a virtual abandonment of the egalitarian archetypes the Founders of the United States put into place in our Constitution and Bill of Rights. And it's hauntingly familiar because it resembles in many ways one of the most stable and long-term of all social structures to have ever established itself in the modern history of Europe—feudalism.

Boston Tea Party participant George R. T. Hewes mentioned the idea that the situation then was beginning to resemble feudalism, and there are those today who have made the same comparison.

The New Feudalism

Feudalism doesn't refer to a point in time or history when streets were filled with mud and people lived as peasants (although that was sometimes the case).

*See Sharon Beder, *Global Spin: The Corporate Assault on Environmentalism* (White River Junction, VT: Chelsea Green, 2002); David Helvarg, *The War against the Greens: The "Wise-use" Movement, the New Right, and Anti-environmental Violence* (San Francisco: Sierra Club Books, 1997); Marshall Barron Clinard, *Corporate Corruption: The Abuse of Power* (Westport, CT: Praeger, 1990); and Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (Champaign: University of Illinois Press, 1999).

Instead it refers to an economic and political system, just like democracy or communism or socialism or theocracy. The biggest difference is that instead of power being held by the people, the government, or the church, power is held by those who own property and the other necessities of life. At its essential core, feudalism could be defined as "of, by, and for the rich."

Marc Bloch is one of the great twentieth-century scholars of the feudal history of Europe. In his book *Feudal Society,* he points out that feudalism is a fracturing of one authoritarian hierarchical structure into another: the state disintegrates as local power brokers take over.

In almost every case, both with European feudalism and feudalism in China, South America, and Japan, "feudalism coincided with a profound weakening of the State, particularly in its protective capacity."[21] Given most accepted definitions of feudalism, feudal societies don't emerge in civilizations with a strong social safety net and a proactive government.

There is a slight debate, in that some scholars like Benjamin Guérard say that feudalism must be land-based, whereas Jacques Flach and others suggest that the structure of power and obligation is the key. But the consensus is that when the wealthiest in a society take over government and then weaken it so that it can no longer represent the interests of the people, the transition has begun into a new era of feudalism. "European feudalism should therefore be seen as the outcome of the violent dissolution of older societies," Bloch says.

Whether the power and wealth agent that takes the place of government is a local baron, lord, king, or corporation, if it has greater power in the lives of individuals than does a representative government, the culture has dissolved into feudalism. Bluntly, Bloch states, "The feudal system meant the rigorous economic subjection of a host of humble folk to a few powerful men."

This doesn't mean the end of government but instead the subordination of government to the interests of the feudal lords. Interestingly, even in feudal Europe, Bloch points out, "The concept of the State never absolutely disappeared, and where it retained the most vitality men continued to call themselves 'free'..."

The transition from a governmental society to a feudal one is marked by the rapid accumulation of power and wealth in a few hands, with a corresponding reduction in the power and the responsibilities of government. Once the rich and powerful gain control of the government, they turn it upon itself, usually first eliminating its taxation process as it applies to themselves. Says Bloch, "Nobles need not pay *taille* [taxes]."

Bringing this to today, consider that in 1982, just before the Reagan-Bush "supply side" tax cut, the average wealth of the Forbes 400 was $200 million. Just four years later, their average wealth was $500 million each, aided by massive tax cuts. Today those four hundred people own wealth equivalent to one-eighth of the entire GDP of the United States.[22]

Extreme Concentrations Are Destabilizing

Too much concentration of anything makes it vulnerable to toppling. Most historians and economists recognize that a root cause of the Great Depression was a severe economic imbalance. The sharp increase in concentration of wealth described in this chapter also has much in common with the statistics of the 1920s.

This is also the history of civilizations. As wealth and power accumulate into fewer and fewer hands, the rest of the populace loses its sense that there's any point in trying to keep up. Whether on a national or a worldwide stage, revolutions and terrorism result when enough people perceive too great a gap between the most rich and the average poor.

In the 1980s the Reagan and Bush administrations effectively ceased enforcement of the Sherman Antitrust Act, just as the Coolidge administration had done in the 1920s. This led to a mania for mergers, acquisitions, and neotrusts, just as happened in the Roaring Twenties, and with a similar reconsolidation of power and wealth and rise in the stock market. In the 2002 edition of this book, the sentence that followed the previous one said: "Hopefully, the same cycle will not play itself out: If we act promptly, we can set in motion forces that will change the direction of the current trend." Unfortunately, we did not act, as the Great Crash of 2008 showed.

The End of the American Dream?

Martin Luther King Jr., in his "I have a dream" speech, referred to how the people who wrote the Declaration of Independence and the U.S. Constitution "were signing a promissory note to which every American was to fall heir." The contents of that note King referred to were identified by Jefferson when he wrote, "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, that among these are Life, Liberty and the pursuit of Happiness."

The American Dream is something every schoolchild understands. It's the heart and soul of democracy. It means opportunity and freedom, the ability to raise a family or pursue one's own dreams. It means the strong participate in the protection of the weak, lest they lose their own rights if they become oppressors.

In the Federalist Papers (No. 51), Alexander Hamilton wrote, "In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign"; and under such circumstances, eventually, even "the more powerful factions or parties will be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful."[23]

Are we approaching that time Hamilton mentioned?

- At the same time that the concentration of wealth has taken place over the past three decades, the entry-level wage of an American male high school graduate has declined 28 percent (in real dollars).[24]

- Twenty percent of American workers now earn income below the official poverty rate defined by the U.S. government—and that doesn't include the unemployed.[25]

- The top 20 percent of American families have seen their income go up by 97 percent in the past two decades. Meanwhile, the bottom 20 percent fell 44 percent in their real income, although most were working harder and working longer hours and many carried multiple jobs.[26]

Oswald Spengler noted that cycles of growth and collapse are built into the culture, and at a certain point it "hardens" and then becomes feudal or "classical." The warning signs, he says, are easily seen: replacement of human and spiritual values with slogans and self-indulgence, concentration of wealth into the hands of a few as poverty increases exponentially, citizens who are politically disengaged and ignorant, and a culture that becomes a parody of itself as it obsesses on its slogans and symbols but ceases to live out its ideals.

The fall of the Roman Empire is a classic example, and we may be another.

- In a 1998 survey of American teens, 2.2 percent could name the then-chief justice of the Supreme Court (William Rehnquist), but 59.2 percent could name Curly, Larry, and Moe as the fictional Three Stooges.

- An impressive 74.3 percent of teens knew that Bart Simpson lives in Springfield, Massachusetts, but only 12.2 percent recognized that Abraham Lincoln lived most of his life in Springfield, Illinois.

- Only 21.1 percent knew that there are one hundred U.S. senators, 1.8 percent could identify James Madison as a father of the Constitution, and a thin 25 percent knew what human right the Fifth Amendment protects. But 98.7 percent knew that Leonardo DiCaprio starred in the hit movie *Titanic,* and 75.2 percent knew the ZIP code associated with the popular television show *Beverly Hills 90210.*[27]

Ironically, and probably unknown to the National Constitution Center at the time they designed their poll, the Three Stooges, Bart Simpson, the movie *Titanic,* and the television show *Beverly Hills 90210* were all owned by the same multinational corporation. Such single-corporation influence over popular culture would not have been the case two hundred years ago or even fifty years ago.

To blame all or even most of this on the *Santa Clara* "decision" would be overreaching: Wealth was concentrating and moving around the world well before the modern corporation came along. Rome had concentrations of wealth, as did Sumer and Greece. Medieval Europe and Japan were cultures of extreme wealth and poverty, as was India with its multimillennia caste system. Even Victorian England, not so very long ago, was a hellhole for all but the well born and the industrialists, as Charles Dickens reminds us in graphic, tragic prose. "This is nothing new," some would say.

But there is. The difference between then and now is twofold:

- The wealth in those days had a face and a name. Without corporations to blur who does what, the warlords and nobles and the high caste were identifiable. We know who the kings and queens of old were, from Gilgamesh six thousand years ago in Sumer to the King of France before the revolutionaries executed him and his family. Because that wealth had a face, saying things like "Let them eat cake" could be dangerous for one's survival.

- More important, those governments never claimed to be democratic. In the past six thousand years of modern worldwide agriculture-driven civilization, there were only two governments—Athens for about two centuries, and the United States for a century or so—that rose out of a dominator culture and claimed that they were truly democratic, truly government by the people, even the poorest of the people. Since the American experiment, almost a hundred countries have joined the club in various forms, but it's still very much a new experiment worldwide, one that was tried only once before in all these millennia—Athens, 300 BCE—and they were conquered and thrown back into oppression by the concentrated wealth and power of the warlord who called himself Alexander the Great.

In a Democracy...

The "great experiment" of a democratic republic is at a critical crossroads. Can it recover the "government of, by, and for the people" ideal that it held so recently and implement it again in the halls of governments in America and across the world?

Or has de Tocqueville's worried vision come to pass? Have we become anesthetized and helpless as humans in the presence of a mighty machine that puts on a good face but, when push comes to shove, takes no prisoners and destroys its competitors without a second's thought?

The answer will depend, in some part, on whether the doctrine of corporate personhood is allowed to stand. Will the people take back their government and assert democratic controls over the misdeeds of the fabulously powerful corporations among them?

To some extent, that will depend on whether We the People demand that our elected officials return to the time-tested principles of national trade policy and fair trade instead of the "free for multinationals trade" that has been so aggressively peddled to the world in the past two decades.