

● Rights and Wrongs

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To the Editor, *Arizona Daily Star* (24 April 1995):

The *Star* is correct in relating the Graham County's bulldozing an endangered fish habitat to the similarly flagrant violation of federal law by a Nye Co., Nevada official who bulldozed a road into protected public lands ("Graham County bulldozes rare fish's habitat," *Arizona Daily Star*, April 23). These actions are also part and parcel of the sick mentality that has led to the bombing in Oklahoma City and is sweeping the West masquerading as a call for a "return to old-fashioned family values." Among other recent events, a bomb was also recently exploded in a US Forest Service office in Nevada, a sheriff in Idaho joined a mob of ranchers and others in Idaho to stop federal Fish and Wildlife officers from investigating violations of federal law, and latter-day cowboy types in Elfrida, Arizona, warned Cochise County planners that if they tried to come back to town the good citizens would meet them with guns.

Whipped up by hate radio, aided and abetted by big corporation funding, encouraged by an out-of-control Congress and sympathizers in state legislatures, and operating under cover of slogans like "get government off our backs" and "private property rights," pushing through so-called "takings" laws and busily deregulating business, these members of the self-styled "wise use movement" are in fact trying to take us back to a "good old days" that was characterized by the rule of ruthless men with guns. That's why law came to the West in the first place.

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Not printed.

Fast forward to 2016 armed occupation of Malheur National Wildlife Refuge, Oregon, led by a God-inspired Arizona rancher, and subsequent not guilty verdict by jury of twelve good men and women.

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For most people, courts, legislatures and bureaucratic divisions are an institutional jungle of rules, regulations, statutes, legalities and judgments controlled largely for their own benefit by people who feel at home in such environments. Best avoided.

Similarly, most people in the US feel no need to question the ethical and environmental or spiritual legitimacy of private property *per se*. Most have little patience with arguments that there is no such thing as absolute private ownership but only a *holding* granted by social contract under

conditions of collective will. At the same time, most people have no argument with the ancient common law doctrine of the “public trust,” of properties held in common by the people and managed then by themselves now on their behalf by government. It’s not surprising that the United States, a country (like many) established on genocide and slavery, known worldwide as the country most given to the most rigid ideologies of individualism and dog-eat-dog capitalism, while at the same time a country that advertises itself as the most free, generous and welcoming of countries, should also be a country most troubled with moral, ethical and political tensions regarding questions of public/private rights, including rights of use and ownership.

Our environmental laws are largely brain-children of the 60s and 70s, enacted under Nixon (sometimes over his veto by a Democratic Congress), put into effect through regulations and rules promulgated under Carter, subjected to deliberate disabling by a variety of means under Reagan and threatened with everything from dismemberment to repeal by succeeding administrations. Many of us in those days when our major environmental laws and regulations were being written found it difficult to make anything like traditional distinctions between civil rights, human rights, environmental rights and non-human rights; between justice and equity; caste and class; class war, race war and culture wars. Like the equality/liberty tension inherent in the Great Experiment, rights of private citizens and those of the public at large, rights of private corporations and of individuals, of republic and democracy, are dichotomies that inform a wide array of heated issues, such as (on the one side) the Sagebrush Rebellion and Property Rights/Wise Use movements, and (on the other) the environmental, animal rights, rights of nature and Occupy movements.

Some of the most difficult of these polarities were put into play by the 1886 Supreme Court decision in *Santa Clara County v. Southern Pacific Railroad*, arguably the Court’s most environmentally-destructive ruling up until that time. In effect, *Santa Clara* established corporations as entities having many of the legal rights guaranteed to human citizens under the Fourteenth Amendment. In an era of concern about civil, human and environmental rights, the idea of the corporation as a person has a sci-fi ring to it; coupled with exaggerated expressions of individualism itself, it can become a frightening figure, a legal fiction that has produced a great many anti-environmental results, including the permitting (*sic*) of toxic substances into the environment based on the assumption that such substances, as products of corporations, are innocent until proved guilty—especially disastrous in a world where the economic gap between corporate bodies and individual citizens is enormous, as was the Bush Court’s 2010 ruling in *Citizens United v. Federal Election Commission* that corporations are also protected as citizens under the First Amendment, meaning their financial contributions to election campaigns can swamp the necessarily more meager contributions from individuals (i.e., the corporations could now in effect legally buy elections: plutocracy institutionalized).

The corporate grip tightened persistently from President Eisenhower’s warning about the military-industrial complex, to the slew of prison sentences for Reagan’s upper-level appointees, to former President Jimmy Carter’s saying in response to *Citizens United*, “the United States is now an oligarchy. . .with unlimited political bribery.” The increasing pressure has had telling effect on the environmental movement—from corporation lobbyists dominating the legislative, regulatory and judicial processes (often simply clogging them up with pettifogging and

filibuster); to corporate “slap suits” (threatening individual activists with relentless and expensive legal battles in which “the little guy” (i.e., the real person) doesn’t have much of a chance); to corporation executives on the boards of directors of environmental organizations; to corporate blatantly anti-environmental billionaires in executive branch seats in Washington.

Under such pressure, financially-strapped individuals may exhibit signs of high stress which may, in a relatively democratic society, present as perverted notions and intense negative attitudinizing about the nature of the private property/public property issue. At some indeterminate stage above the lowest rungs of the socio-economic ladder (e.g., at the level sociologists call the rising middle class), the blame for failure to ascend further may be put not (as it was to great extent by the populist movements of the late 19th C) on the controlling elite the climbers want to join, but at what they now see (in this being more like their 19th C forebears) as the stagnating noxious mass left below—minorities, the urban working class, immigrants.

I’m not a social scientist or psychologist or a philosopher, but I believe there’s a lot worth thinking about in the many studies of the past 100 years that (exhaustingly if not exhaustively) explore psycho-social entanglements of our hyper-acquisitive culture and which recognize that alienated individualism may “naturally” lead to paranoid-type survivalist attitudes, and that notions of guilt intrinsic to aggressions of the “jungle” of competitive individualism may “naturally” engender demands for purgation or expiation, which in turn may find one of their “natural” outlets in scapegoatism—e.g., putting the blame both for one’s own personal lack of success and for the economic situation at large either on conventional victims (immigrants, Jews, people of color, domestic partners, et al); or on impersonal constructs like “the government” or the “evil empire”; or on foreign powers; or on even more abstract, perpetual, ultimately unconquerable boogeymen like “the system,” or “terror”, or “evil” per se.

Ideas about private property rights and individual rights behind much of our society’s environmental degradation are based, like corporate demands for deregulation, on the 18th C ideology economics textbooks call “classical economic liberalism” (*liberal* in the etymological sense of “free from,” in this case free from government control), and is now known mostly in the variant called “neoliberalism”, as effectively instituted by Ronald Reagan and Margaret Thatcher and characterized (and caricatured) by privatization agendas meant to divest government of public assets and services in favor of control by private parties devoted to private profits; or, in contemporary shorthand, Finance Capitalism + globalization. (The difference between “classical” and “neo-” liberalism can perhaps be seen by comparing Adam Smith’s Enlightenment humanism in his *The Wealth of Nations* (1776) and F.A. Hayek’s condemnation of the welfare state in his *The Constitution of Liberty* (1960).

As its history shows, if unchecked by the powers of social restraints vested in government, liberal economics (classical and neo-) leads not to the “greatest good for the greatest number” (one of its earliest utilitarian slogans), or to the more equitable goal of basic fundamental well-being of all (i.e., *economic democracy*, the point at which liberal *economic theory* meets liberal *social theory*, in the sense that neoliberals apply the term *liberal* to their social-democrat opponents), but directly to the horrors of the 19th C milltowns and sweatshops, the reign of the robber barons etc.

In this century it has led to an authoritarian society in which the most powerful legal, political, educational, productive, pedagogical and informational institutions are owned by the super-rich, a situation which exacerbates cultural conflicts (political and legal equality vs economic inequality; mass equality vs personal liberty; justice vs fairness; care vs compassion), a situation in which economic conditions are created which bring into question the rights of traditional minorities vs rights of the hyper-rich (generally white male) minority; the right of individuals not to be poisoned for someone else's economic benefit, etc.

As Carter noted, it is a condition of society of a type long ago described by Aristotle, a condition that can devolve fairly easily into what the Greeks called tyranny. It is a condition in which, in our times, the movement of predominantly western ranchers in the 40s and 50s (dubbed the Sagebrush Rebellion by Bernard DeVoto) has morphed into a plethora of ostensibly populist associations and confrontations in which rural smallholders, predominantly white western cattlemen—easily parodied (and frequently self-parodied) with images of rugged individualism—demand private control of public property (in the name of ethno-racial nationalism, fundamentalist Christianity, fundamentalist economics and all that is right) while being prompted and sometimes clandestinely supported financially by mega-corporations that have their own designs on the public lands—whose long-standing desire (a right, say some) is to log, mine, pump and graze those lands without the interference of government regulations. It's hardly an accident that the 19th C agrarian populist call for regulation of the banks has devolved into the post-New Deal demand of banks and other financial corporations that business, especially financial businesses, be deregulated.

While • there is a justifiable claim that one-man-one-vote politics in effect constitutes tyranny of the majority rule by urban electorates; and • there is a legitimate concern about court rulings that private property can be condemned and confiscated in order to build shopping centers and the like in the name of public good (*vide* the 2010 Supreme Court eminent domain decision in *Kelo v City of New London*, re Fifth Amendment "Takings Clause"); and while • country people, many of whose families have lived close to the land for generations in an economy based on use of natural resources, have a just claim against the rampant corporate takeover and depletion of those lands and resources, often in collusion with subservient government, and concomitant ruin of traditional rural communities (a process especially noticeable in the two decades at the end of the last millennium when US policy, in synch with the Big Finance shift from domestic to international investment, shifted emphasis from local to export markets)—leading people in many rural areas to resort to so-called "survival militias" based on extreme forms of individualism or individualism ideologies; • there is also a legitimate right of the public to lands that were never privatized but recognized as public domain and later designated as national parks, forests, rangelands and wildlife refuges. And while Native Americans from whom such lands were stolen certainly have a just claim to them, johnny-come-lately private enterprisers of the conquering European stock certainly do not.

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Many property rights and privatization advocates pay allegiance to rural "country" values that hark back to a traditional American mystique of individualism, yeoman self-sufficiency,

puritanism and nationalism in which conservatism and conservation are seen as two faces of the same coin. Many unabashedly express nostalgia for a life that never existed, or if it did, was an unsustainable aberration based on illusory faith in unlimited natural resources and a capitalist libertarian economic ideology (and quasi-feudal patriarchal family landholdings) that privileged the few while condemning the majority to various degrees of degradation). Images and narratives not at all in synch with the economies of scale operative in today's explosions of population, technology and information; of Marlboro cowboys and ranchers not on horseback but in ATVs and SUVs. A wild west in which claims of generational good stewardship are belied by overgrazed grasslands and dried-up waters. A world where the Enlightenment notion of a "right to private property" has been perverted into privatization rights of international corporations. A world where, as Kenneth Burke noted, the "enlightened" combination of corporate business and technology finds it easy to achieve its self-serving brands of freedom—"freedom to waste, freedom to pollute, freedom not to give a damn."

The combination of greed, technology and corporate business mentality wields great power. But while greed is in a sense "natural", an outgrowth of our basic survival instinct, it has long been recognized that it must be curtailed in a society based on cooperation. And while technology, like words, has a life of its own, driven by our "natural" desire to see our dreams realized, our conceptions and creations brought to their fullest completion (their "perfection" as Aristotle called it), it is today (since the "perfections" of the A-bomb, the H-bomb, the Neutron Bomb, Agent Orange, smog, climate change, etc.) also widely recognized that we need to place societal checks on technology and private ownership, and that the fatal combination of greed and technology we call business-as-usual is in particular need of supervision.

In these times when toxic pollution has been normalized, made to seem inevitable, almost natural and therefore unquestionable, when the carrying capacity of the environment—the ability of our natural life support system to maintain itself—is already stretched to, and in many cases beyond the point of recovery, when the best science shouts out to us that the climate emergency is upon us, our greatest threat is not efforts to protect the commons—whether air, water, wildlife or public lands—but explosive growth: both unchecked economic growth based on fossil fuels and growth of population, of billions of people hooked on petrochemicals, indoctrinated in the cult of unlimited economic growth, encouraged by the relentless ancillary growth of our high-tech military and paramilitary industries; the insistent subdividing of our land individual and corporate landowners, the urbanized consumerist corporate TV mentality fostered by our public and private institutions and bought into by many of even our most ardent would-be defenders of personal liberty and private property rights.

If we want to protect what little we have left of our natural heritage—of the open space and biodiversity, productivity and peace and quiet upon which the very concepts of our quintessentially American notions of freedom and liberty depend—if we want to pass that heritage on to our children and grandchildren, we must give up some of our outdated fantasies about rugged individualism, learn to curtail our inappropriate selfishness and our narrowly-conceived (often racist) definitions of person and community, to temper our "natural" drives of technological ability with rational and ethical restraint, to recognize that we are all in this global boat together, find ways to nurture a democratically-informed sense of individual dignity, and

begin to act with common sense for the common good of all.

how many in so long
the light alternating with shadows
on their faces recalling curtains
partly drawn against the sun
spectacles before their eyes
luminous with reflection
have become reluctant to scorn
any victim, no longer assuming
that since people get what they deserve
incompetence might account
for poverty as well as moral
inadequacy—biting their tongues
(wanting less to make a point
than a difference) when confronted
with ignorance and venality—
ready to give up the fiction
that institutions / practices /
mindsets are anything more substantial
than historically determined
vocabularies and grammars that lead us
to think in terms of universal
principles and divine truths,
encourage us to believe or hope,
the fiction that arguing over common sense
(intuitively plausible
platitudes or propositions
however logical they may be)
will bring us one whit closer
to knowing the nature of self and world
and relations between them—
in favor of seeing ourselves
participant in community
engaged in conversation
a dialectic tension on how
to increase individual freedom
while lessening cruelty and pain

from “Head Count”
Mr America Drives His Car

