

# Rachel's Environment & Health News

## #698 - Labor Organizing and Freedom of Association--Part 2

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[Because large economic inequalities create serious public health problems and give rise to social instability, and because labor unions help reduce economic inequalities, we are publishing this illuminating series on U.S. history from a labor perspective. --P.M.]

by Peter Kellman\*

As we saw last week (REHW #697), American men of property in 1776 wanted to be free from English taxation and control. They wanted to be free to exploit the resources of America and not share the wealth with the English ruling class.

The American Revolution was promoted primarily by two groups of people. The members of these two groups had three things in common: (1) they owned property; (2) they were white, and (3) they were men. The first group consisted of speculators, large landowners, plantation owners and those that had large commercial interests. In the second group were shopkeepers and skilled artisans, the small business people of their day. These two groups made up at most 10% of the population. They organized the revolution and ran the state governments that took power when the 13 colonies declared independence in 1776. They formed the Republic of the United States.

However, most of the population was excluded from participating in the Republic. Those on the outside looking in included people who were the outright property of other people. Some of these people were African slaves and their American descendants who represented 20% of the population. Another group was indentured servants, people who were the outright property of other people for a set period of years. Indentured servants made up about 10% of the population. All women, native people and freemen without much property were denied the right to vote. In South Carolina in 1787, for example, "every free white man of the age of 21... and has a freehold of fifty acres" was eligible to register to vote.[1] But to be Governor of South Carolina the bar was raised even higher: one had to be worth 10,000 pounds.[2]

The U.S. Constitution

In 1776, the 13 colonies declared their independence from the British Crown and in 1781 the former colonies, now states, ratified a set of rules called the Articles of Confederation which determined their relationship to each other. In 1787 the state legislatures sent delegates to a meeting to discuss amending the Articles of Confederation. This meeting is now known as the Constitutional Convention of 1787. It was a closed meeting, the minutes of which were made public 53 years later.[3]

Much had happened between 1781 and 1787 that caused the class of people who fomented the revolution to be concerned about their future. Divisions within the propertied class surfaced in the state legislatures and conflict between classes manifested itself in armed insurrections against the authority of state governments.

In the state legislatures, the interests of the small business owners and artisans clashed with those of the large commercial organizations. The small businessmen wanted high state tariffs to protect their small concerns, while those with large commercial interests demanded so-called "free trade" between the states. Meanwhile, the people who were clearing the land wanted to own it, and armed insurrection against state authority broke out in many places. For example, the rebellion of Vermont's Green Mountain Boys against their New York landlords eventually led to the establishment of Vermont as the 14th State in 1777. But it was Shays Rebellion, the armed insurrection of western Massachusetts farmers against the policies of the commercial class in Boston in 1786-1787, that weighed most heavily on the large property owners who sat down in 1787 to write the Constitution of the United States. Those who wanted free trade between the states saw the need to have a strong federal government and federal army that would always be available to put down rebellions that could not be

suppressed by state militias.

The men who assembled in Philadelphia in 1787 to write the constitution were all men of property. The noted historian Charles Beard states that James Madison, primary author of the Constitution,... "in more than one speech pointed out that the conflict of interests was inescapable. He told the convention that the greatest conflict of all in the country was between those who had property and those who had none." Beard goes on to say that, "Leaders among the framers wanted, among other things, first to hold the Union together; second, to set up a government that would protect, regulate, and promote types of economic enterprise; third, to put brakes on the state legislatures which had been attacking the interests of protected classes." [4]

Here is some of what the founding fathers came up with:

The Commerce Clause - The First NAFTA

The Commerce Clause of the Constitution, Article 1 Sec. 8(3), was written "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" and was created to straighten out the conflict of interest between the small and large property owners. After the Constitution was ratified, independent state legislatures were no longer able to erect protective tariffs that "hindered" the flow of goods between the states. The big commercial interests of the day had triumphed over the small enterprises trying to "grow" local businesses.

Recently a similar event took place when the large transnational corporate interests triumphed over national business interests and labor with the passage of the North American Free Trade Agreement (NAFTA). The Commerce Clause was the first "free trade" agreement in North America, and like NAFTA, it was negotiated at a closed meeting.[5]

The Contracts Clause

The Contracts Clause of the Constitution, Article 1 Sec. 10(1), says in part that, "No State shall... pass any... Law impairing the Obligation of contracts." Legal theory holds that contracts are agreements made between equals, and therefore the state should not meddle.[6] If a state were to pass a PUBLIC law that, for example, set the maximum hours an employer could require people to work, it would be seen by the courts as IMPAIRING the right of individual citizens to negotiate contracts free from outside interference. Contracts are PRIVATE laws. And thus most labor laws passed by state legislatures and Congress prior to 1937 were ruled unconstitutional by the U.S. Supreme Court because they violated the Contracts Clause. They were PUBLIC LAWS that violated PRIVATE LAWS. The meaning is clear. The obligation of the government, as stated in the preamble to the Constitution, to promote the "general Welfare," is secondary to the PRIVATE law, the law of contracts.

Once again, the theory of contracts is based on the assumption that the contracting parties are equals. The founding fathers would have us believe that an indentured servant negotiating a contract with his master was somehow equal to the master at the negotiating table. The situation is similar to a small local union with 200 members negotiating a contract with a large employer who brings to the table enough resources to move the plant. In practice this can hardly be called a contract negotiated between equals. But this is the legal fiction, and the courts, congress, national guard, army and police uphold this distortion of common sense.

The LOCHNER V. NEW YORK case of 1905 is a classic example of how the Contracts Clause suppressed the democratic legislative activities of working class people. As a result of popular agitation, the New York State Legislature passed a law limiting the hours of work for people employed in bakeries to no more than 10 per day and 60 per week. The U.S. Supreme Court ruled, "Under such

circumstances the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution." Do you know of any state or federal law today that limits the number of hours an employer can require an adult to work?

Dominance of the PRIVATE law over the PUBLIC law in our Constitution has made it very hard for working people to use the political process to better their conditions. This is true because the Constitution restricts our collective activity primarily to contractual relationships with employers, and the National Labor Relations Act limits our activity even further. So much for "We the People" forming a Government to "promote the general Welfare" that the Preamble to the Constitution promises. The question is: Who defines the "general Welfare." So far it has been the lawyers of the elite, who become Supreme Court justices, not shop stewards, teachers or home makers. When the constitutionality of a law is questioned it is five Supreme Court justices who decide for the rest of us issues like: Is a maximum 40 hour week constitutional? Do workers have free speech at work? Do employers have free speech rights in union certification elections?

#### The Return Servants Clause

Human rights didn't seem to be high on the agenda of the constitutional fathers, but labor did make it into the Constitution.

Article IV Sec. 2(3) says, "No person held in Service or Labour in one State, under the laws thereof, escaping into another, shall, in Consequence of any regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

Men like James Madison and George Washington wanted their human property, slaves and indentured servants, to know that if they escaped into another state the Constitution of the United States guaranteed their return. James Madison, fourth President of the United States and "master builder of the Constitution," had a great financial interest in protecting his property. He "told a British visitor shortly after the American Revolution that he could make \$257 on every Negro in a year, and spend only \$12 or \$13 on his keep." [7] At one time James Madison enslaved 116 human beings. Based on his statement, Madison would have made a yearly profit of \$28,304 on slave labor and the slaves would have realized nothing but the inhumanity of being a slave. If you were a slave or indentured servant how would you feel about this "master builder of the Constitution" writing YOUR constitution?

[To be continued.]

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[1] *Minor v. Happersett*, 88 U.S. 162 (1875), 172-173.

[2] Francis N. Thorpe, *THE STORY OF THE CONSTITUTION OF THE UNITED STATES* (N.Y.: Chautauqua Press, 1891), pg. 48.

[3] Jerry Fresia, *TOWARD AN AMERICAN REVOLUTION* (Boston: South End Press, 1988), pg. 47.

[4] Charles Beard, *THE REPUBLIC -- CONVERSATIONS ON FUNDAMENTALS* (New York: Viking Press, 1943), pg. 285.

[5] "Free trade" is the international equivalent of "right to work." A

"right to work" law is a state law that prohibits union membership as a condition of employment, even though everyone in a place of employment receives all the benefits that the union wins under a collective bargaining agreement. As labor people know, "right to work" means the right to work for less. The reality of free trade is that workers in one country are forced to work for less to compete with workers in another country. "Free trade" = right to work for less.

[6] A contract is an agreement between two or more parties, a private law enforceable through court action. When a union negotiates a contract with a private employer, the contract is not voted on by the state legislature. Yet if one party to a contract reneges, the aggrieved party will go to court to force the offending party to live up to the "private law."

[7] Howard Zinn, *A PEOPLE'S HISTORY OF THE UNITED STATES, 1492-PRESENT* (N.Y.: Harper Perennial, 1995), pg. 33.

Descriptor terms: u.s. history; labor; organizing; nafta; slavery; indentured servitude; contract law; u.s. constitution; constitution; commerce clause; contracts clause;