

Rachel's Environment & Health News

#699 - Freedom of Association--Part 3

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[In this series, we are exploring "freedom of association," which is still denied to working people in the U.S. even though it is identified as a fundamental human right in the Universal Declaration of Human Rights, which the U.S. signed in 1948. Last week we saw that the framers of the Constitution in 1787 inserted the "commerce clause" and the "contracts clause" into the Constitution to consolidate the power of the property-owning class in the young republic. This week we begin to see how these features of the Constitution today consolidate the power of the corporation.--P.M.]

by Peter Kellman*

The First Amendment

In order to get the Constitution ratified by the states, the framers promised that they would support amending the Constitution to mollify the many complaints voiced against it. The passage of the First Amendment in 1791, guaranteeing freedom of speech and assembly, was heralded as a great step forward for democracy. Workers today are still waiting for the fulfillment of its promise.

The First Amendment is commonly believed to guarantee us freedom of the press, speech and assembly. As we know, freedom of the press (today's media) only applies to those who own the press. As for freedom of speech and assembly, what the Constitution actually guarantees is, "Congress shall make no law... abridging the freedom of speech, or the press; or the right of the people peaceably to assemble." Let us be clear here. The Constitution says that, "Congress shall make no law." That is, there will be no PUBLIC law denying people free speech. But what about the PRIVATE law? The Constitution does not say that employers cannot deny workers freedom of speech and assembly. The Constitution speaks to what the CONGRESS will not do; it does not speak to what PEOPLE WHO OWN PROPERTY will not do. In other words, if we want freedom of speech, assembly and association, we need to amend the First Amendment to say: "Congress shall guarantee the people's right to freedom of religion, the press, speech, assembly and association. These rights and the government's responsibility to promote the General Welfare and Human Rights shall take precedence over all other matters." So labor got the shaft but how did corporations, the agency of today's propertied class, get constitutional protection and support?

Part 3: Expanding the Constitution

Corporations are not mentioned in the Constitution. How did they get in? In 1816 a class of small property owners and skilled artisans who believed in Thomas Jefferson's vision that the United States should have a republican form of government were elected in such numbers that they held the majority in the New Hampshire legislature and also elected one of their own as governor.

Jeffersonian republicanism envisioned a society primarily composed of small farmers. An important component of republican philosophy was that it required educated people to insure a republican form of government. Republicans wanted to know that a college education would be available for their children, thus insuring a republican form of government continuing into the future.

However, colleges during that period were mainly private schools like Yale, Harvard and Dartmouth, holdovers from the colonial days. These schools were linked to the past by class and religion. They were, by design, not republican in nature. Their original purpose was to spread the word of Christianity in support of the British Empire and to educate the children of the elite.

Dartmouth College was chartered by the King of England in 1769 as an Indian Charity School "with a view to spreading the knowledge of the great Redeemer among their savage tribes." [1,pg.171] It soon evolved into a school "to promote learning among the English, and be a means to supply a great number of churches.... with a learned and orthodox ministry." [1,pg.173] The college was a cog in the

colonial machinery of the British Empire.

Led by Jeffersonian republicans, a national movement developed after the revolution to turn the colonial colleges into public or publicly responsible schools. In New Hampshire the movement took the form of "An Act To Amend The Charter And Enlarge And Improve The Corporation of Dartmouth College." The text of the law, passed in 1816, begins, "Whereas knowledge and learning generally diffused through a Community are essential to the preservation of free Government, and extending the opportunities and advantages of education is highly conducive to promote this end," the legislature made PRIVATE Dartmouth College into PUBLIC Dartmouth University and ordered it to set up colleges around the state. New Hampshire Governor William Plumer promoted the change arguing that the original provisions of Dartmouth College "emanated from royalty and contained principles... hostile to the spirit and genius of free government."

The trustees of Dartmouth objected to the charter change and took the state to court. The state supreme court ruled in favor of the legislature arguing that the legislature had the right to change the charter of the college "... because it is a matter of too great moment, too intimately connected with the public welfare and prosperity, to be thus entrusted in the hands of a few. The education of the rising generation is a matter of the highest public concerns, and is worthy of the best attention of every legislature." The decision was appealed to the U.S. Supreme Court which reversed the state court AND GAVE THE CORPORATE FORM A CONSTITUTIONAL LIFE.

The U.S. Supreme Court was not interested in education. The Court was set up to be the final protector of a propertied class, and they delivered, arguing that a corporation is a private contract, not a public law. The Court decreed that although the state created the corporation when it issued the charter, it is not SOVEREIGN over that charter but is simply a PARTY to the contract.[2] All of which means that the corporation is protected from state interference by the Contracts Clause of the Constitution. And Dartmouth University, a public school, once again became a private college.

The Dartmouth decision of 1819 established the principle that corporations get constitutional protection because they are PRIVATE contracts. Then in 1886 the U.S. Supreme Court ruled --in SANTA CLARA V. SOUTHERN PACIFIC RAILROAD -- that corporations also have the constitutional shield of "equal protection" as PERSONS under the 14th Amendment. This means that corporations are recognized constitutionally and that corporate activity has 14th Amendment "equal protection." In other words corporations gain significant constitutional protections at a time, 1886, when most flesh and blood persons -- women, Native Americans and once again most African American men -- were still DENIED the right to vote, DENIED equal protection.

If there is any question in your mind about the role the courts have played in advancing the pre-eminence of the property rights of a propertied class over the human rights of the working class, consider these four facts.

1. The 14th Amendment states, "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 any PERSON within its jurisdiction the equal protection of the laws"(emphasis added). The 14th Amendment was added to the Constitution in 1868 to protect the rights of freed slaves, but as Supreme Court Justice Hugo Black pointed out in CONNECTICUT GENERAL CO. V. JOHNSON (1938), "Of the cases in this court in which the Fourteenth Amendment was applied during the first fifty years after its adoption, less than one-half of one percent invoked it in protection of the Negro race, and more than fifty percent asked that its benefits be extended to corporations."

2. In MINOR V. HAPPERSETT (1875) the women of Ohio argued

that, under the 14th Amendment, protection of due process, the U.S. Constitution established that their right to vote could not be denied by the state. The U.S. Supreme Court rejected that argument. Women received constitutional protection for the right to vote 48 years later in 1920 when the 19th Amendment to the Constitution established that the right to vote could not be denied on the basis of sex.

3. While the courts were extending "rights" to corporate persons and denying them to women, by 1920 the courts had struck down roughly 300 labor laws.[3]

4. More than 1,800 injunctions against strikes were issued between 1880 and 1931. Of the 118 labor injunctions heard in federal courts between 1901 and 1928, 70 of them were issued EX PARTE, i.e. without giving the defendants the opportunity to be heard because the defendants were not even notified of the hearing.[4] All the defendants in these cases were labor unions.

It appears that the Supreme Court has two sides to its brain. With one side it creates, protects and promotes "rights" for the institutions of the rich, and with the other side it suppresses human rights, like the right to vote and the right to associate.

Back to the Dartmouth College case. Following the logic of contracts, the U.S. Supreme Court also ruled that because the state is party to the contract the state can amend, abolish or change the contract at any time as long as there is a state law to that effect. So shortly after the Dartmouth decision, all the states passed laws, which are still in effect today, called the "reserve clause." The "reserve clause" retains the right of the state to change, abolish or alter corporate charters.[5] How would you like to be involved in a legislative struggle to revoke the charter of a corporation that permanently replaces strikers or moves factories and destroys communities?

Three People's Movements

One of the reasons the framers of the Constitution created a federal government was to protect themselves from those who also wanted to be included in "We the People." By the 1830s, movements to end slavery, advance the cause of labor and extend equal rights to women came to the fore. Slavery was ended after the Civil War with the passage of the 13th Amendment in 1865. Women's struggle to win the right to vote culminated with the passage of the 19th Amendment in 1920.

With the passage of these amendments and the continuing agitation by the people who put them in the Constitution, major changes have taken place in our society. The restrictions on voter registration relating to property, sex and race are now gone, the society has been desegregated and women and people of color WITH PROPERTY now have access to due process. And maybe the most important thing the movements for sexual and racial equality have done is to put the story of their struggles into school books and created departments at our universities dedicated to the study and promotion of the goals of the movements that created them. However, labor has yet to make it into the Constitution, because the one concession that a propertied class will fight the hardest is one that would lead to a redistribution of wealth.

[To be continued.]

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[1] Elsie W. Clews, EDUCATIONAL LEGISLATION AND ADMINISTRATION OF THE COLONIAL GOVERNMENTS (N.Y.: MacMillan, 1899).

[2] For more details about the Dartmouth case, send a request to POCLAD for Vol. 2, No. 2 and Vol. 2, No. 3 of their quarterly publication BY WHAT AUTHORITY. E-mail people@poclad.org, or phone (508) 398-1145.

[3] William B. Forbath, LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (Cambridge, Mass.: Harvard University Press, 1991), pg. 38.

[4] Leon Fink, IN SEARCH OF THE WORKING CLASS: ESSAYS IN AMERICAN LABOR HISTORY AND POLITICAL CULTURE (Urbana, Ill.: University of Illinois Press, 1994), pg. 251.

[5] All state and federal laws are included, embedded, in all private contracts. Therefore if a state passes a law reserving the right to unilaterally change a contract it can do so. These "reserve clause" rights are considered to be part of every corporate charter created by the state. Therefore when a corporation is chartered, the parties involved agree that the state has the right to change the corporate charter without the consent of the other parties.

Descriptor terms: labor; constitutional law; human rights; freedom of association; constitution; first amendment; fourteenth amendment; nineteenth amendment; dartmouth college case; contracts clause; corporations;