

Why Property Rights Matter

How Government Regulations Threaten America

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Plundering for Control by Law
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John Adams once said, “Property is surely a right of mankind as real as liberty....The moment that the idea is admitted into society that *property is not as sacred as the laws of god*, and that there is not a force of law and public justice to protect it, *anarchy and tyranny commence. Property must be sacred or liberty cannot exist.*”¹ (Italics added for emphasis) James Madison insisted that the proper role of government was to protect private property rights:

Government is instituted to protect property of every sort; as well as that which lies in the various rights of individuals.... this being the end of government, that alone is a just government, which impartially secures, to every man, whatever is his own.”²

To most urbanites and suburbanites in America today this kind of extreme reasoning by our founders seems archaic at best. It is completely at odds with the reality of relatively high density cities where zoning to prevent radically conflicting uses is essential to protect property value. So they view the founders’ version of property rights outmoded by modern-day realities. Or, is something else influencing their perceptions? Perhaps our founders knew something that is no longer taught in our schools and therefore poorly understood in our modern day culture.

The War of World Views

How we view property rights is greatly influenced by how we view reality and the role of government in our lives. We are no longer taught foundational U.S. Constitutional history and the principles that are derived from it in our public education system. Consequently, we have become a nation of two world views and many of us cannot recognize that we are undermining the very form of government that made America the greatest nation on earth.

Two World views

Although the two world views can be traced back to Aristotle (384-322 B.C.) and Plato (428-347 B.C.), America is now engaged in a war between two philosophies that have been struggling for supremacy for the past 250 years; those of John Locke and Jean Jacques Rousseau. America’s Constitution is rooted in the thought of John Locke (1632-1704) who’s *Two Treatises on Government* (1689) provided a framework for England’s Glorious Revolution of 1688 and the American Revolution of 1776. This political philosophy, with its basis in individual rights and embodiment in limited constitutional government, has been under attack for nearly two centuries by the ideas of Jean-Jacques Rousseau (1712-1778) and his Social Contract (1762) which focuses on the abstract “general will” of the people.³ Today it is expressed as the “public good” and forms the heart of socialism. It depends on a “statist” approach to government whereby the state is superior to the individual and all individual rights are derived from the state.

Locke demonstrated that the foundation of a progressive civilization, as outlined in his

Second Treatise of Government, begins with natural rights — rights to what Locke terms “life, liberty and estate.”⁴ These rights do not derive from government, according to Locke, but are God-given natural rights inherent to all men. Thus, these rights have existed before government. Sir William Blackstone (1723-1780) and others refined these ideas until Thomas Jefferson made them the cornerstone of the Declaration of Independence, which, Jefferson claimed, is based entirely on the “Laws of Nature and of Nature’s God.”

The underlying principle of this enlightenment was simple. Civilization is governed by certain natural laws. Violating these laws does not break nature’s physical laws, but only results in man eventually breaking himself. Blackstone claimed that this natural law is “superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity if contrary to this.... no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture.”⁵

The purpose of government, according to Locke, is to join with others to “unite, for the mutual preservation of their lives, liberties and estate, which I call by the general name, property. The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property.”⁶ Therefore, when Jefferson penned the Declaration of Independence, he forevermore established this now famous fundamental principle, “That to secure these Rights, [of life, liberty and the pursuit of happiness] Governments are instituted among Men, deriving their just Powers from the Consent of the Governed.”

Except for a very few instances, such as the government of the Anglo Saxons, the American form of governance based on property rights and individual sovereignty within a constitutional republic has stood alone in history. In contrast, various forms of the statist approach have dominated the governments of almost every nation for millennia. Rousseau provided the foundational philosophy that spawned the bloody French Revolution and inspired the writings of Immanuel Kant, Georg W. F. Hegel and Karl Marx⁷ and many others, thereby planting the seeds for the European model of socialism and Russian communism. Rousseau attacked the Lockean model in the name of the wholeness of man, arguing that it divides man by focusing on self-interest, individual rights, and property. Rousseau sees “man as a malleable creature” to be molded by an enlightened government. He “favors primitive man, the noble savage who lives in simple equality with his fellow man, with few needs, a limited appetite, over man in civilized society.”⁸

Rousseau seeks to achieve this equality through a vague socialist metaphysical concept called the “general will.” To overcome the tension between individual interests and the community, Rousseau argues for the creation of the common good as embodied through an abstract, objective public will; a will that is supposedly free from our subjective selves and personal interests. It is the enlightened state which determines the general will, or common good of the people.⁹ Rousseau likewise places strict social control on private property to prevent the inequalities that he believes will lead to social division and private interest. In the *Social Contract*, Rousseau acknowledges the great force of the state by admitting that raw force can be used to bring consent to the general will; “That whoever refuses to obey the general will shall be constrained to do so by the entire body.... In this lies the key to the working of the political machine; this alone legitimizes civil undertakings.”¹⁰ In doing so, Rousseau states in *The Social Contract* the individual will supposedly “be forced to be free” from his own selfishness.

Rousseau wrote this before the French Revolution, when feudalism still ruled France and only a few wealthy noblemen were allowed to own property — at the expense of the serfs who were forced to work the land for a pittance. Thus, Rousseau saw private property as an evil that repressed man. So much was Rousseau against property rights that he stated that no one should

own anything; “You are lost if you forget that the fruits of the earth belong to all and the earth to no one!”¹¹ Property rights, claimed Rousseau, were designed by the rich to place:

new fetters on the poor, and gave new powers to the rich; which irretrievably destroyed natural liberty, eternally fixed the law of property and inequality, converted clever usurpation into unalterable right, and, for the advantage of a few ambitious individuals, subjected all mankind to perpetual labour, slavery and wretchedness.¹²

Rousseau believed property rights were evil because of the feudalistic manner in which they were being applied in France at the time of his writing. It will never be known what he might have thought of private property rights if *all* people had access to them. Regardless, because Rousseau believed private property rights were evil, the state had to be supreme over its citizens: “The state, in relation to its members, is master of all their goods through the social contract, which, within the state, is the basis of all rights.”¹³ In the generations following Rousseau, the feudal context in which he believed private property rights were evil has been lost. The message his words (and those of his followers) convey, however, has become the central core for anti-property rights activists across America and throughout the Western world.

The shift to Rousseau socialist ideas is relatively new. The United States Constitution and culture built upon the Lockean model of sovereignty of citizens over the state were initially deeply entrenched in early America; hence Rousseau’s philosophies could not initially take root. They gradually began to be introduced into the American education system and by the mid-1900s were becoming dominant over those of Locke. Rousseau’s model began to be subtly introduced culturally and politically through the labor and civil rights movements, but it was not until the counterculture and environmental movements in the 1960s that Rousseau ideals began to overwhelm the Lockean foundation upon which the United States was established:

It was the New Age Counterculture Movement exploding into the American scene in the 1960s and 1970s that propelled the fledgling environmental movement to dizzying new heights of god/nature worship, mysticism, and radical antimodernism. This movement is proving to have a far greater impact on America than anything else since the civil war.¹⁴

The sudden realization that man was fouling his own bed in the late-1960s and early 1970s created the perfect catalyst for Rousseau’s “wholeness” beliefs and his “*Social Contract*” to fully grip American politics. While Rousseau never considered religion a major part of his model, religion proved to be the catalyst needed for the new environmental activists to fully embrace it. Many environmentalists, particularly environmental leadership, view reality through the lenses of Eastern and Western mystic beliefs, in which all things of earth are “one” and that no person really can own any part of it. Therefore, many environmentalists blindly accept Rousseau’s ideas of suppressing the individual self to blend with the greater good found in the communal self and an all-powerful government.¹⁵ Rousseau’s concept of the ‘general will’ had found a home in the environmental movement.

The goal of environmental governance is to strongly control individual human behavior and activities within a society directed by social and environmental justice. Barry Commoner, one of the founding fathers of the modern green movement, and an individual still highly respected in the movement, has said “the environmental crisis signals that the U.S. economic system can best be remedied by reorganizing it along socialist lines.”¹⁶ Indeed, as in Rousseau’s model, the

environmental model of the late 20th Century and early 21st Century is based on the idealism that environmental law must apply equally to all. There can be no exploitation by individuals or groups, only submission of all to the communal will as determined, according to Rousseau, by the enlightened and enforced by the immense powers of government.

The philosophies of Rousseau, Hegel, Marx and others of like mind now prevail in most, if not all liberal arts schools of universities in the U.S. and Europe. Most middle-aged Americans have been unknowingly taught the Rousseau worldview and no longer truly understand the Lockean principles upon which America is based. The effort to convert the Locke model of freedom, free enterprise and private property rights to that of Rousseau's state supremacy over the individual through controlled markets and property rights has reached a zenith in the myriad of environmental and public interest laws. In turn, these laws are slowly strangling the very heart that has made America the strongest nation in the world.

The Importance of Property Rights

John Locke and our founding fathers understood that private property rights are the basis of individual freedom and economic security. Without private property rights there is no way to check the power of the state over the individual. When the state gains control over private property rights the ability to create wealth stagnates or even declines, thereby creating poverty and misery rather than freedom and wealth. History is full of examples of how *unnecessary* state control of property rights produces poverty and misery. In their defense, Rousseau adherents will be quick to point out that unconstrained private property rights can also result in the types of abuse vilified by Rousseau. They would be correct — to a point.

Contrary to the Rousseau model of governance, which condemns individualism and self-interest, the Locke model *depends* on private property rights and self-interest. Self-interest motivate individuals to do something a better way, or create a new product or service that serves a human need. Self-interest can indeed be destructive if not channeled constructively by the rule of law. The recent Enron and WorldCom scandals are in-your-face evidence of this. Neither Locke nor our founders held that private property rights be totally unconstrained by the state. To prevent abuse, both Locke and our founders held that private property rights must have some limits. In the Locke approach, however, the legislature designs only those laws needed prevent the use of property in ways that cause real harm to other people or to their property, not to achieve some altruistic social goal. The golden rule prevails; 'do unto others as you would have them do unto you.'

Property Rights and Freedom

In their book, *Property Rights*, Constitutional attorneys Nancie and Roger Marzulla explain, "The Constitution places such a strong emphasis on protecting private property rights because the right to own and use property was historically understood to be critical to the maintenance of a free society."¹⁷ The Marzullas continue by explaining that property is more than just land. It includes buildings, contracts, money, retirement funds, savings accounts, machines and even ideas. "In short," say the Marzullas, "property is the fruit of one's labor. The ability to use, enjoy, and exclusively possess the fruits of one's own labor is the basis for a society in which individuals are free from oppression."¹⁸ The U.S. Supreme Court agrees. In *Lynch v Household Finance Corporation* (1972):

[T]he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a ‘personal’ right, whether the ‘property’ in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.¹⁹

Whether one acre or twenty-thousand acres of land, a home, the money earned in wages, a car, or royalties from a book, the form of property is irrelevant. According to the Constitution it has equal protection. It is the basis of the “pursuit of happiness” portion of “life, liberty and the pursuit of happiness” in the Declaration of Independence. Perhaps Noah Webster says it best:

On reviewing the English history, we observe a progress similar to that in Rome — an incessant struggle for liberty from the date of Magna Charta, in John's reign, to the revolution. The struggle has been successful, by abridging the enormous power of the nobility. But we observe that the power of the people has increased in an exact proportion to their acquisitions of property.... *Let the people have property, and they will have power* — a power that will for ever be exerted to prevent a restriction of the press, and abolition of trial by jury, or the abridgement of any other privilege.... Wherever we cast our eyes, we see this truth, that *property* is the basis of *power*; and this, being established as a cardinal point, directs us to the means of preserving our freedom.”²⁰ (Italics added)

Without the right of private, unencumbered property, a person cannot have liberty. It has been argued that there can be no true freedom for anyone if people are dependent upon the state for water, food, shelter, and other basic needs. When the fruits of the citizens’ labors are owned by the state and not individuals, nothing is safe from being taken by *either* a democratic majority or a tyrant. “Ultimately, as government dependents, these individuals are powerless to oppose any infringement on their rights...due to the absolute government control over the fruits of their labor.”²¹ Nowhere is this more apparent than in the old Soviet Union, where all property belonged to the state. No one could speak out against the government for fear of their family being evicted, or their job taken away, by the local communist commissar.

Another problem arises from state ownership of land. While environmentalists and socialists blame greed and the self-interest of private property owners for the environmental destruction, that is not accurate. Ironically, it was because no one *owned* our air, or waterways that they were polluted. It was the natural consequence of the law of the commons, in which no one owns anything. Theoretically, everything was owned in common. But since there was no pride of ownership, there was no motivation to care for, or optimize property that was held in common with the millions of other citizens. There was no reward for doing a better job or being more creative, so there was no incentive to do a better job. Everyone sinks to the lowest common denominator, the economic structure stagnates, and the infrastructure collapses.

Such common ownership is called the tragedy of the commons and explains to a large degree why Communism and Marxism, both a product of Rousseau ideology, have been such dismal failures.²² There was no motivation whatsoever to protect the environment, as was evidenced by the environmental devastation found in Eastern Europe and Russia when the Iron Curtain and the Soviet Union collapsed in the early 1990s. America’s waterways and air, like Eastern Europe and

the former Soviet Union, are not under the Lockean model of property rights, and they too suffered the fate of the tragedy of the commons in the twentieth century. Rather than admitting the failure of Rousseau's model, however, environmentalists and policymakers in the late 1960s and 1970s blamed property rights and capitalism for the pollution. Their solution was Rousseau's "forced compliance" through the imposition of strong governmental controls and denial of just compensation to property owners for the government's regulatory takings of the value of their private property.

As the government gains unfettered regulatory control over private property, the ability of a person to control their own destiny is diminished. A person's creative ability to 'do it a better way' or create a new product or service is diminished because the myriad of regulations discourages it and may not even permit it. A person's willingness to take a risk in starting a new business or trying a new way is diminished as increasing uncertainty over whether constantly changing regulations will deny them the fruits of their investment. Gradually, the people slip from having a government that serves them, to one where they now serve government.

While property rights creates incentives for individuals to be creative and take risk in finding a better way or product, Rousseau socialism does just the opposite. Rousseau socialism places control in the hands of unaccountable, unelected government bureaucrats whose primary incentive is to make their regulatory jobs easier and more efficient so they can build bigger empires at the people's expense. Unless there is strong oversight of bureaucrats, there is no accountability to keep them from administering laws in an arbitrary and capricious manner leading to corruption. While socialism does not destroy property rights as effectively as totalitarianism or communism, it nonetheless places a stranglehold on it and reduces economic and personal freedom in proportion to the amount of regulation imposed.

Property Rights in Wealth Creation

During the last quarter of the twentieth century the western world tried to use capitalism to help the developing nations and the former Soviet Union join the global marketplace and increase the wealth of their citizens. For the most part this venture into capitalism has failed miserably — giving capitalism a very bad name. To many in these nations capitalism is now associated with greed and corruption.

The reason for this dismal failure lies in private property rights. Every aspect of capitalism was employed in these efforts, *except* private property rights. Because private property rights were excluded, capitalism failed.

To socialist and totalitarian nations, private property rights are diametrically opposed to their fundamental belief that all property rights should either be controlled or owned by the state. Hence, private property rights were never allowed in the great capitalistic venture of the twentieth century. In his compelling book *The Mystery of Capital*, Hernando de Soto accurately identifies private property rights as the key to reducing poverty and producing wealth. Those in the Western world take them for granted. In the West every parcel of land, every building, every piece of equipment, or store of inventory is documented in some form as property. Since people hold legal title to this land and property that has real asset value, it represents a vast hidden value that connects all these assets to the rest of the economy. It can be used as equity to raise capital to start a business or buy stock in another business. Not so for people living in developing nations. People in developing nations may actually own property which is recognized by the local community, but it is not registered with a clear title by the state — so it has no legal value for collateral or wealth building.

As president of the Institute of Liberty and Democracy in Peru, de Soto led an intensive study

of why capitalism failed in developing nations around the world. The common denominator was the lack of legal private property rights. Citizens of Western nations have a well-defined bundle of property rights that ensure that property owners can use their land in the way that they desire as long as it does not harm their neighbors or their property. Property is bought and sold quickly, titles being transferred in a matter of days. Not so in the developing nations. Exchanges of property titles can take not days, not months, not even years. They often take *decades*. Therefore, most property is never registered and has no legal asset value.

In the Philippines, for instance, to transfer title to property required 168 bureaucratic steps through 58 widely divergent agencies and 13-25 years!²³ To obtain legal title for a piece of land in Peru took 728 steps going through 52 government offices. But that was merely the first step. To obtain legal authorization to build a home on that piece of land required going through an additional 207 steps through the same 52 government offices.²⁴ In Haiti legally buying land requires 166 bureaucratic steps and 19 years.²⁵ The lack of easily obtainable property rights is the common denominator among developing nations. Most people in these nations are forced to opt out of the legal system. They have neither the time nor the finances for weaving their way through the oppressive regulatory maze. They do buy and sell property, but only in the underground market. Says de Soto:

The poor inhabitants of these nations — five-sixths of humanity — do have things, but they lack the process to represent their property and create capital. They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation. It is the unavailability of these essential representations that explains why people who have adapted every other Western invention, from the paper clip to the nuclear reactor, have not been able to produce sufficient capital to make their domestic capitalism work.²⁶

Property that has no legal asset value cannot be used to secure investment loans for impoverished entrepreneurs. As a result their potential businesses are never born or they limp along for lack of capital. The bloated and corrupt bureaucracies and overbearing regulatory systems keep the poor from ever getting out of poverty. Extensive research by the Institute of Liberty and Democracy in Peru has shown that the total value of property held, but not legally owned, by the poor of the developing nations and former communist countries is at least \$9.3 trillion!²⁷

De Soto notes that 9.3 trillion dollars is about twice as much as the total circulating U.S. money supply. It is very nearly as much as the total value of all the companies listed on the main stock exchanges of the world's twenty most developed countries. It is more than twenty times the total direct foreign investment into all Third World and former communist countries in the ten years after 1989 and forty-six times as much as all the World Bank loans of the past three decades. Finally, it is ninety-three times as much as all development assistance to the developing nations from all advanced countries during the same period.²⁸

In other words, the value of the property "owned" by the poor in these nations is far greater than anything the developed nations could possibly give them in foreign aid. In reviewing de Soto's work, the World Bank notes that:

While the concept seems simple, very few property owners actually hold official government-licensed titles outside the United States, Canada, Australia, Western Europe, and Japan. De Soto estimates that nearly five billion people are legally and economically

disenfranchised by their own governments. Since these people do not have access to a comprehensive legal property system, they cannot leverage their assets to produce additional wealth. They are left with what De Soto calls "dead capital".²⁹

If this "dead capital" was legalized, it could be used as collateral for investment loans, just like it is in the West. This would allow the economy of these nations to build real wealth that would stay in their pockets, not leave the country in the coffers of multinational corporations. This is apparent even in the U.S. when comparing the relative wealth of homeowners' verses renters. The Heritage Foundation reports that, "Home equity represents a major source of wealth for the nation's middle income families, with the average net worth of homeowner households being more than 30 times that of renters (\$132,100 v. \$4,200 in 1998)."³⁰

Wealth-building is dependent on property rights that are fully transferable and secured by a legal system that is free of corruption and over-regulation. This is the only way hard working citizens can preserve, build upon and bequeath the fruits of their labors; utilize their wealth and property and intellectual creativity as collateral for loans; and give them other incentives to build, create and innovate. Unnecessary regulation kills the asset value of property as effectively as a lack of title, deed or contract.

Protecting the environment also requires wealth. Impoverished people cannot afford the luxury of concern for the environment when they cannot provide even the bare necessities for their families. As a result, only wealthy nations can afford to protect their environment. While it is important to correct real environmental problems, it is both tragic and ironic that the oft arbitrary and capricious environmental regulatory system in the world, and particularly the U.S., is strangling private property rights — the very thing that provides the ability to protect the environment. In other words, in the zeal of protecting people and the environment we are destroying the very mechanism that makes it possible.

In summary, capital, education, economic/political stability, property rights and economic freedom are all keys to economic growth. The John Locke model of free markets and property rights, not the Jean Jacques Rousseau model of government controlled markets and property rights, is the *only* approach that will simultaneously lift people from their poverty and help them to protect their environment. It must be continuously emphasized that overzealous regulation, no matter how noble it may appear, destabilizes and progressively limits private property rights, strangling wealth creation and ultimately the ability to achieve the original social goal. In the name of helping people from the supposed greed from others, Rousseau socialism effectively kills the very mechanism that will actually create the wealth they need to help people!

The Urban-Rural Schism

Nowhere is the Rousseau concept of state control of property rights more evident in America than in rural communities and counties. There is a growing realization that rural citizens have been plundered by their urban-suburban brethren for decades in a way not unlike the plundering of the colonialists by King George in the 1700s. And now, in the twenty-first century, those who desire to establish Rousseau socialism in America are even plundering urbanites and suburbanites.

The Plundering of Rural America

The plundering of rural America has gotten so bad that a *Wall Street Journal* (WSJ) editorial

on July 26, 2001, called it “rural cleansing”, a phrase coined by Ron Arnold in his book *Undue Influence*³¹ which defines the well organized attack on rural America. The *WSJ* cites the case in which the federal court forced the Bureau of Reclamation to cut off irrigation water in April 2001 that undeniably belonged to 1400 farmers in the Klamath Basin Irrigation Project, a watershed straddling the California and Oregon border. The action turned their once lush green farmland to swirling dust reminiscent of the Oklahoma dust bowl days of the 1930s Great Depression. The crises had been brewing since 1988 when two sucker fish were listed as “endangered” under the Endangered Species Act of 1973. The Coho salmon was later added as a threatened species.

Citing the US Endangered Species Act, Oregon U.S. District Judge Ann Aiken ruled in Federal Court on April 6, 2001, to give *all* the water to the endangered species. The decision was the result of a lawsuit brought by the Oregon Natural Resources Council (ONRC), the “pit bull of Oregon’s environmental groups,” other environmental groups and local Indian tribes. The farmers got nothing — even though they had iron-clad rights to the water from the federal government dating back to 1907, and even though the lake from which the irrigation water originated was at record highs. In issuing the order, Judge Aiken claimed, “Given the high priority the law places on species threatened with extinction, I cannot find that the balance of hardship [to the farmers and residents in the county] tips sharply in the [their] favor.”³²

The farmers were stunned and outraged. The hardship to the farmers from the ruling did not outweigh the legal rights of the fish? With the water shut off, the Klamath farmland instantly became worthless as land values dropped from as much as \$2,500 to less than \$50 per acre. Not only did the farmers lose \$250 million in annual farm income, the agriculture support industry and the tax base dried up as well, threatening the very existence of the City of Klamath Falls. The total impact was over \$750 million! Thousands of people lost their jobs. The *WSJ* claimed that this was the intent of the environmentalists, “The goal of many environmental groups—from the Sierra Club to the...ONRC — is no longer to protect nature. It is to expunge humans from the countryside.”³³ Just as in the Klamath basin example the *WSJ* has determined that:

The strategy of these environmental groups is almost always the same: to sue or lobby the government into declaring rural areas off-limits to people who live and work there. The tools for doing this are the Endangered Species Act and local preservation laws, most of which are so loosely crafted as to allow a wide leeway in their implementation. In some cases the owners lose their property outright. More often the environmentalists’ goal is to have restrictions placed on the land that either render it unusable or persuade owners to leave of their own accord.³⁴

True to form, the ONRC asked the federal government to buy out the farmers for \$4,000 an acre, nearly twice what it was worth before the court ruling. Since they were either bankrupt, or on their way to certain bankruptcy, the farmers essentially had no other choice but to take the offer. Even so, the offer in no way compensated the families for their lost livelihoods and the loss of their children’s future.

Unlike thousands of other similar stories, however, this story has a positive ending. Just when the farmers thought things were blackest, a National Academy of Sciences (NAS) panel requested by Interior Secretary Gail Norton issued preliminary findings on February 4, 2002. As suspected, the NAS determined that the U.S. Fish and Wildlife’s determination that all the water should go to the fish was based on distorted science. The NAS panel said there was “no clear evidence, despite a monitoring record of substantial length, for connection between lake levels and the welfare of the

two sucker species in Upper Klamath Lake.”³⁵ A month later the Department of Interior rescinded the requirement giving all the water to the fish.

The question remains, however, why do many environmentalists want to destroy or at least control rural citizens? Why don't urbanites care? The reason lies in the fact that foundational U.S. Constitutional history and principles are no longer being taught in our public education system. We are a nation split by the two diametrically opposed world views of John Locke and Jean Jacques Rousseau. Therefore, many urbanites cannot recognize that we are undermining the very form of government that made America the greatest nation on earth. Nowhere was this more clearly shown than in the 2000 presidential race when George Bush won an overwhelming 2,436 rural counties compared with 676 primarily urban or those with heavy federal influence for Gore.³⁶ In pure land area, Bush won in 2.4 million square miles of land area, while Gore won in only 0.6 million.

Many reading this paper have difficulty in accepting the premise that property rights tend to protect the environment while Rousseau socialism tends to harm it because they unknowingly are indoctrinated in Rousseau socialist teaching. This is *always* the case unless the state determines that environmental protection is to be the “general will” of the people. After all, if a person or a company “owns” a finite resource (property) upon which their lives depend, they have a very strong reason to manage it in a way that ensures continuance in perpetuity. Only when the resource is abundant or unclaimed will a property owner tend to use it destructively, knowing there is plenty more over the next hill. The multitude of public housing projects that are run into the ground and made unsafe to inhabit decades before the end of their planned useful life bears testimony to this fundamental truth. John Adams was right when he said that, “Property must be sacred or liberty cannot exist.” With that understanding, whether a person is a rancher in Nevada, a dairy farmer in Wisconsin, an assembly line worker in Detroit or a high powered attorney in New York, it is the same. All use property to pursue their happiness and well-being.

Even so, it is very difficult for an upscale urbanite or suburbanite to see why their country cousins get so uptight about land-use zoning of rural countryside. After spending weeks or months in a noisy, crowded, polluted city, it is almost a spiritual experience for them to drive through rural countryside and see the cows lowing, quaint farmhouses, communities without walls, and a skyline untouched by those ever-present golden arches. Urbanites would like to keep it that way forever for their personal enjoyment and are easily convinced to support legislation that does just that. They perceive that America is being taken over by houses and smoke-belching factories, and it is up to them to stop the onslaught before it is too late.

Perception, however, is not reality. Contrary to conventional wisdom, less than 5 percent of the United States is urban,³⁷ but urban areas comprise 77.2 percent of the population.³⁸ In spite of

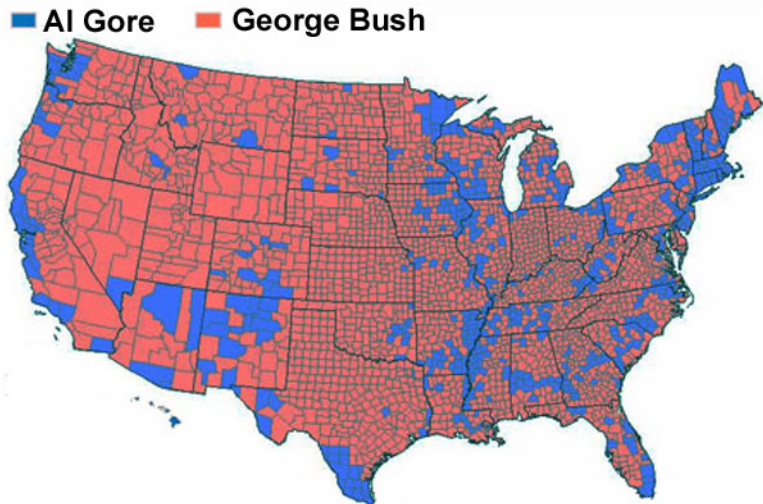


Figure 1. County by county map of the 2000 presidential election clearly showing that rural America voted solidly for Bush (red) while Gore (blue) tended to win urban and suburban counties as well as those having heavy federal investment.

the belief of overcrowding by urbanites, the population density in the U.S. is only 77.7 people per square mile, compared to Great Britain which is 629.4. By 2030 it is expected that the percentage of Americans living in urban areas will increase to 84.5, leaving the U.S. with only 15 percent of the population to produce much of our food, minerals (including oil), and wood products. These changing demographics in America have led to increasing political power in our urban and sub-

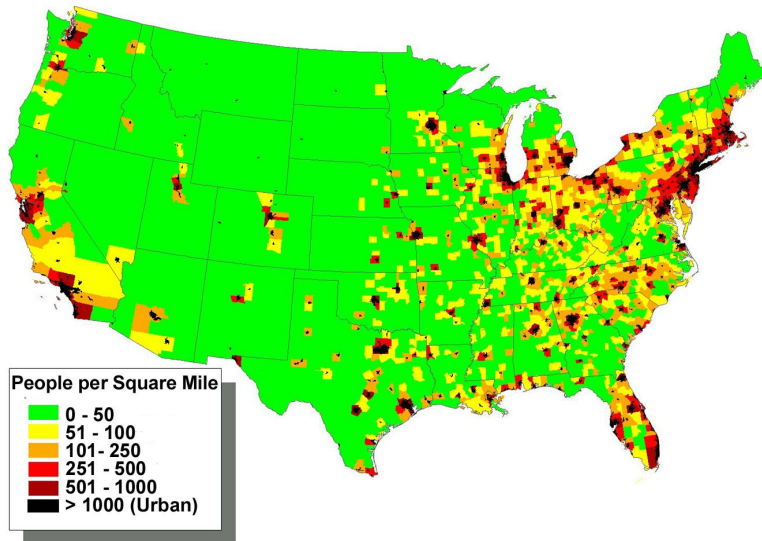


Figure 2. Less than 5 percent of the U.S. is classified as urban by the U.S. Bureau of Census Yet, 77 percent of all U.S. citizens live in them. Urban areas shown as black. The vast majority (The U.S. Bureau of Census defines an urban area as being over 1,000 people per square mile).

the largely uninformed urban masses into believing all kinds of terrible things are happening that can only be solved with big government control.

Urbanites are easy victims to the constant barrage of misinformation. The media reports that pesticides used in agriculture cause cancer, cattle are destroying the sensitive ecosystems in Western states, humans are responsible for deforestation and the destruction of rural habitats, and that rural Americans are committing a host of other environmental evils which supposedly result in the extinction of species. The politically powerful urbanites and suburbanites are more than willing to enforce the Endangered Species Act, various federal wetlands regulations and a host of other land use and environmental laws to protect what little rural land they perceive is left in America.

These well funded, powerful special interest lobbies have convinced the urban/suburban majority and congress to create an interlocking web of Rousseau-based laws and regulations that usurp local and state jurisdictions and bestow enormous powers on federal bureaucrats who implement one-size fits all regulations, yet have little to no accountability to those they govern.³⁹ This not only violates the protections guaranteed by the Ninth and Tenth Amendments to the Constitution, but also warring factions are now established in America just as predicted by John Locke, James Madison and Thomas Jefferson. These factions develop as rural citizens attempt to defend themselves against what they see as a misled, heavily propagandized urban-suburban majority who is dictating to them policies that not only are harmful to the rural resident, but ultimately harm the environment they are supposed to protect.

urban cities never envisioned by Jefferson and our other founders.

Citizens living in large cities usually are disconnected from the realities of rural life and resource utilization. They have no idea what it takes to grow wheat for our bread, livestock for our meat, trees for our paper or mine minerals for our computers. While they may technically know milk comes from cows, they *think* and *act* as if it comes from their local supermarket. This increasing power by the urban - suburbanites within Congress and the various state legislatures is a gold mine for the Rousseau-oriented environmental and public interest lobbies. These well-funded special interest lobbies have easily been able to manipulate

The Role of Foundations

In 1972, the Rockefeller Brothers Fund sponsored a task force that published a report providing a road map to overcome property rights entitled *Use of Land: A Citizen's Policy Guide to Urban Growth*. The task force was led by Laurance Rockefeller of the powerful John D. Rockefeller family. The report was edited by William Reilly in 1973, a who's-who in the environmental community. Reilly was rewarded by being named president of the brand new Rockefeller-created Conservation Foundation in 1973. He later went on to become the administrator of the EPA under President George Bush, Senior. In true Rousseau ideology, the thrust of the *Use of Land* report supported the premise that development rights of private property should be at the discretion of the government for the good of society. Environmental protection areas would be protected "not by purchase but through the police power of the federal government."⁴⁰

Rockefeller's *Use of Land* report paved the way for tax-exempt foundations to lay the groundwork through a host of new anti-property rights laws. It is not by accident. Ron Arnold in his book *Undue Influence*, warns that "a number of private foundations have become prescriptive rather than responsive"⁴¹ to demonstrated needs. In other words, like foundation grants made to colleges and universities to inoculate socialism into America's educational system, many of these same foundations "design the programs, select the funding recipients and direct grant-driven projects for a substantial number of environmental organizations."⁴²

Arnold goes on to inform the readers "It is even less well known that foundation board members occupy seats on the board of directors of a large number of environmental organizations."⁴³ In addition, because we have heavily propagandized our education system towards socialist environmentalism, we as citizens do not have the knowledge to even recognize what they are doing. Indeed, most Americans are convinced they are doing the right thing!

The Iron Triangle — foundations, environmentalists and federal bureaucrats

Foundations have played the deciding role in the environmental movement since the *Use of Land* was published. Testifying on the U.S. Forest Service's Roadless Initiative before the House Resources Subcommittee on Forests and Forest Health on February 15, 2000, lead witness Arnold gave an example of the extent of foundation control. In his statement, Arnold claimed, "there is evidence that the Pew Charitable Trusts planned an end-run around Congress and arranged the Clinton administration's new policy to eliminate access to almost 60 million acres of federal land."⁴⁴ They did it by an initiative they called the 'Heritage Forest Campaign'." Arnold explained how the environmental movement consists of:

...a three-cornered structure beginning with tax-exempt foundations which devise multimillion dollar environmental programs to eliminate resource extraction industries and private property rights. The foundations direct their funds to the second leg of the triangle, environmental groups with insider access to the third leg, executive branch agencies. This *powerful 'iron triangle' unfairly influences federal policy to devastate local economies and private property.* (Italics added)⁴⁵

In his congressional testimony Arnold also gave evidence of a swinging door policy between environmental organizations and federal bureaucracies, where key environmental leadership

freely moved into key federal agency positions and visa-versa during the Clinton administration. Most of these are so thoroughly entrenched that they continue their ideological war against property rights even during the G. W. Bush administration. "Audubon was able to produce this controversial result because its new director of public policy is Dan Beard who came straight from the Clinton administration, where he served as head of the Bureau of Reclamation," said Arnold. Arnold's assessment is backed by the minutes of the National Audubon Society's board meeting of Sept. 17-18, 1999, where John Flicker commented, "This grant came to us because of Dan Beard's reputation and good name."

According to Arnold, the Pew Charitable Trusts created the Heritage Forest Campaign in order to stop all resource extraction on 60 million acres of federal land. Audubon has received \$3.5 million from the Philadelphia-based Pew Charitable Trusts from September 1998 to December 1999 in order "to organize the Heritage Forests Campaign, a coalition whose sole purpose appears to be lobbying the Clinton-Gore administration on the roadless initiative." To do this "Audubon funneled the money to 12 other environmental groups under its supervision."⁴⁶

Rep. Helen Chenoweth-Hage (R-ID), chair of the subcommittee at that time, said in a statement that the Heritage Forests Campaign raises several potential problems "with foundation-financed environmental policy advocacy — namely, the lack of fair, broad-based representation and the absence of accountability." Chenoweth-Hage explained, "The grantees are accountable to the foundations that fund them," and not to anyone else. "Foundations have no voters, no customers, no investors. The people who run big foundations are part of an elite, insulated group. They are typically located hundreds or even thousands of miles from the communities affected by policies they advocate."⁴⁷

Rural Cleansing

The same urbanites who believe rural areas are disappearing also demand more "public land," especially in the Western United States. Again, lack of understanding prevails. One third of the United States is already 'owned' by the federal government. Another 8 percent is owned by state and local governments. Most Americans, including politicians, have no idea that government *already* owns over forty percent of America! Again, since these lands are claimed to be the "people's land" federal agencies act through public pressure, often applied by the big environmental groups flush with foundation money.

Federal agencies often act like feudal landlords. Communities within or adjacent to federally owned land are often dependent on the government land for mining, grazing and logging. The withdrawal of these natural resources has tremendous repercussions on the community as people lose jobs and have to move to find employment elsewhere. Once prosperous communities have become ghost towns as activists and bureaucrats thousands of miles away, who have nothing to lose, make decisions that destroy the lives of rural citizens. It is called rural cleansing. There is no way a citizen or community opposing

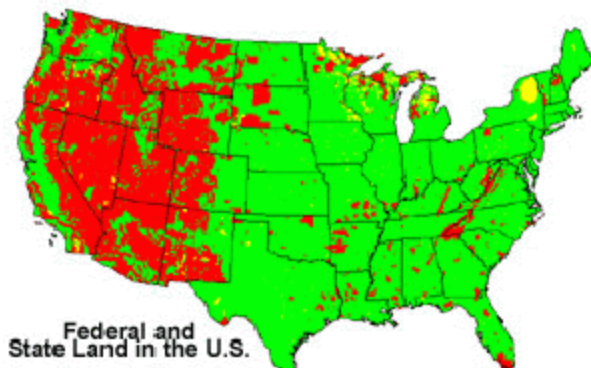


Figure 3. The federal government (red) owns 33 percent of the United States, most of it in the Western states. Other government (yellow) owns over 8 percent for a total government ownership of over 40 percent.

these decisions can fight such a well-financed agenda. And, in spite of the illusion that mining and other natural resource companies spend big bucks to lobby for their position, it is no where near the level of the hundreds of millions of dollars provided by these foundations.

Anti-property rights activists use the “perceived good result” to attack the basis for constitutional property rights. Since 1970 Ron Arnold has provided detailed evidence that foundations and federal agencies have spent *billions* of dollars attacking property rights by controlling the activities of big environmental organizations through their funding.⁴⁸ In a dazzling display of raw power, foundations with interlocking directorates funded the Nature Conservancy in 1996 to the tune of \$203,886,056, or 60 percent of its annual revenue.⁴⁹

Initially the foundations banded together under the name Environmental Grantmakers Affinity Group of the Council on Foundations. Under the umbrella of Rockefeller Family Fund 136 foundations formed the Environmental Grantmakers Association (EGA) in 1987 which has grown to over 200 by the end of the twentieth century.⁵⁰ Congressman Richard Pombo (R-CA) claimed in 1999 that there are “3,400 full time employees, including leaders who often make \$150,000 or more, as well as a small army of outside contractors such as scientists, lobbyists, lawyers, and public affairs specialists” in Washington DC. Citing a 1999 *Boston Globe* article, Congressman Pombo said:

...foundations invest at least \$400 million a year in environmental advocacy and research. The largest environmental grant-maker, Pew Charitable Trusts, gives more than \$35 million annually to environmental groups.... Federal policies implemented as a result of environmental advocacy financed by private foundations are trampling on property rights. They are shutting down the timber industry, the mining industry and the oil and gas industry. These policies are creating misery in rural areas dependent on resource production. Small communities and families in rural areas are reeling, while environmental groups are collecting rewards of six figure grants from rich, private foundations.⁵¹

Indeed, the EGA funds hundreds of millions of dollars of environmental activism annually.⁵² When the additional 2,300 foundations that donate to environmental activism are considered, plus the billion dollars or so contracted to environmental organizations by various agencies of the federal government, the *Boston Globe* estimates the total funding for environmental activism to be around four *billion* dollars annually!⁵³ Most Americans are totally unaware that environmentalists are not the underdogs fighting for the public interest, but a very well financed and powerful set of special interest groups and power hungry bureaucrats that have brought radical changes to the American legal system and culture.

Surprisingly, many of these nation-breaking foundations originated from huge fortunes made by early industrialists and inherited by their wives and children after they died. However, led by the globalist foundations like the Rockefeller foundations, and run by Rousseau oriented staff, they act in concert to knowingly or unknowingly advance a world-wide agenda to abolish property rights.

One of these is the W. Alton Jones Foundation. During the 1992 annual fall meeting of the EGA, Debra Callahan, then the grassroots coordinator for the W. Alton Jones Foundation (now the head of the League of Conservation Voters), made it clear that regulation was the tool of choice for bringing about their economic and social transformation to the Rousseau model. In a tape recorded speech to the audience of senior foundation, environmental, and government leaders, she claimed:

“It’s about individualism verses the Federal government, it’s Federalism — the *right* to regulate.”⁵⁴ (Italics added)

True to Rousseau’s model, Callahan went on to explain how to overcome property rights by using the public good to convince people that it is the right thing to do. To make regulations seem more palatable, Callahan suggested that the constitutional principle of “takings” expressly forbidden by the Fifth Amendment be changed in the public’s mind to “givings, where in fact environmental regulations protect the public interest.”⁵⁵ The ideology of “givings,” of course, is at the heart of the concept of sustainable development. Although sustainable development cannot be defined or measured, the application of the concept follows the Rousseau model by taking away the right of development or use by some, so the “whole” can be sustained. According to Callahan, it is the privilege of these property owners to happily give the development rights of their land to the federal government for the public good so the community can be sustained.

Until it metamorphosed into three foundations in 2002, the W. Alton Jones mission was “to protect the Earth’s life-support systems from environmental harm and to eliminate the possibility of nuclear war.” In 2000 it gave \$29.14 million in grants from assets of \$402.2 million.⁵⁶ From 1992 through 2000, the foundation gave the Natural Resources Defense Council over \$6 million, the Environmental Working Group nearly \$1.7 million, the Environmental Media Services nearly \$500 thousand, Greenpeace, \$220 thousand and so forth.⁵⁷ You might remember that it was the Natural Resources Defense Council who contrived the deceitful Alar scare campaign in 1989 that panicked millions of moms into believing their children were eating poisonous apples. The scare campaign destroyed the lives and families of many apple farmers.

In 1997 the W. Alton Jones Foundation gave over \$11.5 million to their main environmental initiative, the Sustainable World Program. It also funded dozens of environmental organizations with over \$2.5 million for specific environmental actions.⁵⁸ One of the smaller organizations funded by W. Alton Jones was the Blue Mountains Biodiversity Project which received \$11,410 in 1994, \$13,140 in 1995, and \$18,000 in both 1996 and 1997. During this funding period Michael Christensen, AKA, Mr. Asanté Riverwind, was convicted for federal violations involving blocking a U.S. Forest Service road on March 21, 1996, with an overturned pickup truck and dispersed logs. The purpose for blocking the road was to cut off access to the Reed Fire Salvage Timber Sale, which was being actively harvested to remove fire-killed trees. It cost \$15,886 to clean up Riverwind’s mess, and Christensen was fined \$300.⁵⁹ Did Alton Jones pay Riverwind to do this? Probably not. But they “were well aware that he had a previous arrest record” for similar disturbances and knew he was capable of taking extreme action to fulfill whatever he deemed his mission to be.”⁶⁰

These few examples of Alton Jones represent hundreds of similar examples. Many such authentic examples can be found at activistcash.com. Ron Arnold, in his shocking book, *Ecoterror*, also provides well-documented cases where damage costing millions of dollars has been done by other environmental activists:⁶¹

Mainstream environmentalists incite underground violence to save nature by promoting hate against industrial civilization rather than offering respect for its benefits and practical solutions for its problems. Big-money foundations give millions to smear anyone who stands up to expose ecoterrorists and the moral bankruptcy of big eco-groups.⁶²

How could foundations support terrorism? In another session of the 1992 EGA meeting,

Donald Ross, head and creator of the EGA in the Rockefeller Family Fund, provides an idea of how cold-blooded these elitists really are. Ross said that it was futile for environmental leaders to even try to take a pro-job position for the enormous unemployment they are creating in rural America. “How are we,” he asked, “who have no experience of ever running a business, managing a business, or starting a business, gonna go in and advise loggers who have no high school education and are making \$40,000 a year to convert to some other kind of economy in the middle of the woods that is gonna produce \$15,000 a year at best, and expect they’re gonna embrace it.”⁶³ Picking up on this theme, another EGA participant said, “If it means shutting a plant down or it means stopping a pulp mill in Sitka or what have you, that’s what has to happen.... There are local communities that are going to go over the abyss in the short run. It’s gonna be either a different kind of economy or it’s not gonna be there.”⁶⁴ They did not just talk about it. They did it. Within three years the mill in Sitka was shut down because of lack of available pulpwood due to forest lawsuits and closures caused by foundation funded activist groups.

Congressman Richard Pombo laments this heartless attack on America’s natural resource-based industries:

Federal policies implemented as a result of environmental advocacy financed by private foundations are trampling on property rights. They are shutting down the timber industry, the mining industry and the oil and gas industry. These policies are creating misery in rural areas dependent on resource production. Small communities and families in rural areas are reeling, while environmental groups are collecting rewards of six figure grants from rich, private foundations. Why is this sort of activity subsidized by the taxpayer?⁶⁵

Common Law and the Public Good

Need to Control the Court

Another way Rousseau socialists have attacked property rights is by influencing the appointment of federal judges, including U.S. Supreme Court justices, so that Rousseau oriented judges are confirmed with life-time appointments. The effort to stack the courts with Rousseau-oriented judges has been blatant. One little-known battle of the George W. Bush presidency is that by April 2002, the Democrat controlled U.S. Senate Judiciary Committee had blocked 57 percent of all Bush appointments. Led by ultra liberal, Rousseau-oriented, Patrick Leahy (D-VT) and Edward M. Kennedy (D-MA), this confirmation rate was the lowest for a new President’s first year in at least a quarter-century. Why? Because on May 9, 2001, Bush stated, “Every judge I appoint will be a person who clearly understands the role of a judge is to interpret the law, not to legislate from the bench.... [T]he courts exist to exercise not the will of men, but the judgment of law. My judicial nominees will know the difference.”⁶⁶

In other words, Bush was submitting non-Rousseau candidates for federal judgeships. They would *apply* the law, not *make* the law. This is more than just hard-ball politics. Rousseau-oriented judges actually change the law in a way that fundamentally weakens the civil liberties of all Americans. For the Rousseau-oriented Senators, “winning is more important than how the game is played. Since much of their political agenda fails when the people decide, the far-left must bypass the people so the judges decide instead.”⁶⁷ Clinton appointed 374 judges during his eight years. Fewer Bush appointments means more decisions by Clinton’s Rousseau-oriented judges, “now nearly 48 percent of all full-time judges.”⁶⁸

Rousseau Democrats are paranoid over controlling the judicial system of America and is perhaps the single greatest reason they tried every trick in the book to take the 2000 presidency away from Bush and give it to Gore and to keep control of the U.S. Senate in the 2002 elections. The miraculous upset in the 2002 Senate elections giving the Republicans control of the Senate resulted in a crybaby howl by the Democrats that they lost because the press was biased! So important is this issue that it may even explain why the four Rousseau oriented Supreme Court members remain so bitter over the Court's 5-4 decision to give the presidency to Bush in December 2001.

Corruption of the Court

Since the 1970s, the courts have been systematically ruling that the use of private property and "the rights of the individual" endanger the rights or the safety of the other people. If remotely possible, the activity can be limited by government regulation.⁶⁹ Even if no direct harm could be demonstrated, the activity could be classed as a nuisance. By the 1990s the definition of a nuisance had become so ambiguous that almost anything qualified. If the government could define the land use as a nuisance, then the "good of the many" legally prevails over property rights.⁷⁰ Over time the courts shifted the basis for reviewing a "taking" from one of "nuisance" to one of "public good, or public trust."⁷¹ This is identical to Rousseau's "general will." Once the concept of the public good prevailed, the government could regulate and restrict use on private property at will — and without paying for it:

The public trust doctrine is the perfect tool to avoid paying [for private land]. With no economic penalty to be borne for their actions, the environmental movement's incentive is strong to eliminate every last scrap of private property in America. Environmental lawyers have pressed literally hundreds of cases in recent years invoking the public trust doctrine for environmental protection, expanding the concept of "essential for public use" to encompass virtually all private property.⁷²

Regulatory restrictions have taken tens, perhaps hundreds of billions of dollars of property value in the last quarter of the Twentieth Century. It might be argued that some of these takings are necessary, but most were not. Even those that were necessary used the Rousseau model, not the Lockean model. More on this later.

During the period 1837-47 *Charles River Bridge v. Warren Bridge* and the License Cases of 1847 established the universal right of the state to justify increasing intrusive regulations on public health, safety and welfare. Chief Justice Taney gave the state police power succinct definition, "The power to *govern men and things* within the limits of its own dominion."⁷³ Even so, the original reason and intent for property rights in deciding takings cases of the Founding Fathers was only gradually eroded up to 1962. With the *Goldblatt v. Hempstead* decision in 1962,⁷⁴ the Court boldly moved away from the founding fathers' original intent by combining the concept of "nuisance" with that of "police power."⁷⁵ The concept was solidified in the *Penn Central Transportation Co. v. New York City* decision in 1978. Since then the "courts have deemed themselves free to engage in a balancing inquiry between their view of the intrusion's importance to the public and the burden the regulation places on individuals' property rights."⁷⁶

In regulatory cases, a Constitutional taking can be found only if the governmental action either "1) fails to substantially advance a legitimate governmental purpose or 2) fails to leave property owners with economically viable use of their property."⁷⁷ Of course, such a test invites arbitrary manipulation of the Court decision by merely attaching the right label to the

government's action, and then requiring the property owner to carry the financial burden of proving the federal or state government wrong.⁷⁸ In *San Diego Gas & Electric v. San Diego*, (1981) Supreme Court Justice J. Brennan, not a major champion of property rights, asserted the obvious in his dissenting opinion:

Police power regulations such as zoning ordinances and other land-use restrictions can destroy the use and enjoyment of property in order to promote the public good just as effectively as formal condemnation or physical invasion of property. From the property owners' point of view, it may matter little whether his land is condemned or flooded, or whether it is restricted by regulation to use in its natural state, if the effect in both cases is to deprive him of all beneficial use of it. From the government's point of view, the *benefits flowing to the public from preservation of open space through regulation may be equally great as from creating a wildlife refuge through formal condemnation or increasing electricity production through a dam project that floods private property.*⁷⁹ (Italics added)

The result of the Penn Central decision *has been to transfer individual property rights as envisioned by the Founding Fathers to the government and its right to promote the public good — Rousseau's "general will"*. But even Brennan supported the concept that as long as the landowner kept *some* economic value the Court would not consider the regulatory effect a "taking." In using the "all beneficial use" benchmark to determine whether a taking has occurred, Brennan and other Justices deny a larger truth. A partial devaluation is tantamount to legally expropriating a citizen's bank account of all but \$1 for some "public good" such as reducing the national debt or condemning all except one acre of a citizen's property for a road.

Such a basis for finding a "takings" has led to the interpretation that the landowner has no rights at all. In *Just v. Marinette County* (1972), the Wisconsin Supreme Court declared in classic Rousseau logic that the state could prevent the Justs from using their property to build a residence for themselves because the Justs had no right to deprive the public of its 'right' to have the Just's property preserved in the state in which nature had created it. In a footnote the court cited (with approval) the motto of the Jackson County Zoning and Sanitation Department: "the land belongs to the people...a little of it to those dead...some to those liv in g...but most of it belongs to those yet to be born."⁸⁰

Of course the Wisconsin Supreme Court did not answer why it was that the residents of the county who wanted "Just's property preserved in the state in which nature had created it" were allowed to have their homes, which was carved out of the same natural creation. Nor did the decision explain why the judges themselves should have the right to own a house in nature's creation when the Just's could not.

These decisions, of course, have nothing to do with either Constitutional intent or common law limitations imposed by "nuisance" and "harm" criteria. They do serve, however, to elevate government rights — in the name of the "public good" — above civil rights.⁸¹ It is a Rousseau characteristic shared by all police states. Further, whether appointed or elected, those chosen few charged with protecting the rights of "those yet born" find themselves endued with growing powers over people living today. This is a real danger in the recent push to make sustainable development the key determinant in all development decisions. Such decisions should put all Americans on notice that no civil right is safe when the Court can wander so far from the reason and intent of our civil rights.

Most businesses and property rights advocates have repeatedly stated they do not object to regulations or regulating bodies, merely regulation without representation. They have no representation when unelected judges change the law at will to suit their own prejudices. Land use regulation by federal and even state agencies that are not accountable to the community being regulated are a throwback to King George's taxation without representation of the colonialists. They are merely a variant of the Rousseau model of governance under the guise of the "public good" rather than Rousseau's general will.

It is easy for an urban-suburbanite majority to trample the rights of a minority to achieve, in the majority's estimate, a "public good." So easy is it to fall into this trap that the majority fails to recognize that the doctrine of the "public good" is a two-edged sword that can easily slay their own freedom. The so-called public good is both dynamic and relative, quickly changing with the whims of society. Chief Justice of the Supreme Court Warren Burger emphasized this point in *United Steelworkers v. Weber*, "[B]eware the 'good result,' achieved by judicially unauthorized or *intellectually dishonest means on the appealing notion that the desirable ends justify the improper judicial means*. For there is always the *danger that the seeds of precedent sown by good men for the best of motives will yield a rich harvest of unprincipled acts of others also aiming at "good ends."*⁸² (Italics added) Unless the rights of *every* citizen are protected *at all times*, freedom is an illusion. Today's majority could become tomorrow's minority. James Madison called it the "tyranny of the majority" and strongly warned of its consequences:

"In *all* cases where a majority are united by a common interest or passion, the rights of the minority are in danger."⁸³ [italics added] Madison continues, "[A] pure democracy ... can admit of no cure for the mischiefs of [the majority]... and there is nothing to check the inducements to sacrifice the weaker party. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal securities or the right of property; and have in general been as short in their lives as they have been violent in their deaths."⁸⁴

The tyranny of the majority is not new. It has long been understood by socialists as a means to manipulate the electorate in ways that keeps them in power by making themselves look like they are 'representing the people.' Instead, what they are really doing is legally plundering the rights and wealth of the minority to ingratiate the majority. In the process, the many warring special interest groups trying to carve out or protect their piece of the pie is tearing the very heart out of America — just as James Madison warned would happen hundreds of years ago.

Urban America Now Being Affected

While rural citizens have been subject to this type of tyranny for decades it is relatively unknown in urban-suburban areas. But, as noted above, the sword of the "public good" is two-edged. After all, when using the concept of the "public good", what is the difference between preventing a rural landowner from using his or her land because it has habitat that *could* be used by an endangered species, and a spare bedroom in a posh flat on Fifth Avenue in New York City that *could* be used by a "homeless" vagrant in order to get him off the street? Both result in a public good.

The Public Good v. Property Rights

This author used this tongue-in-cheek example for many years in talks given to different groups around the country. Never did I ever expect to see it actually happen. While technically possible, it was too absurd. However, in a surrealistic example of how far the Rousseau model had become entrenched in San Francisco, entrepreneurs who bought condemned small tourist hotels and tried to modernize them suddenly found that the city required they had to designate more than half of the rooms to the homeless. For instance, French immigrant Claude Lambert was told that only twenty-seven of the Cornell's room could be made available to tourists; the other thirty-one rooms had to be rented to long-term residents at below-market rates.⁸⁵

Over time Lambert had invested over a million dollars in the late 1970s renovating the Cornell, turning the six-story, sixty-eight room Victorian hotel into a charming authentic post-1906 earthquake inn with a French restaurant. But instead of showing gratitude to Lambert and other business people for staving off blight, city officials responded by punishing them for opening their doors to tourists rather than leaving the buildings as habitats for the homeless at a financial loss to the owners.

It all started in 1981 when city officials enacted an ordinance to discourage the conversion of small, rundown hotels into tourist facilities — after Lambert and numerous other proprietors had taken loans to finance restorations. Lambert offered to pay \$100,000 to get out from under the ordinance, but the city said no — Lambert would have to pay \$600,000 to avoid the ordinance. Forced to lease rooms to the homeless if he opened other rooms to tourists, he chose to keep many of his rooms vacant, which cost him less than renting them at below-market rates. In all, small hotel owners are keeping more than 5,000 rooms vacant in response to the city's ordinance.⁸⁶ These owners are not slumlords seeking to maximize their profits at the expense of the poor; they are entrepreneurs who saw a business opportunity to create something positive from a growing blight on the city.

The city's approach is absurdly counterproductive. The city could be reaping the benefits of enhanced tourism, higher property and tourist tax revenues, hundreds of new service jobs for San Francisco residents, and a reduced need for public safety and other city services. Instead, the city is actively discouraging the renovation of aging buildings, and deterring entrepreneurs from adding to the limited stock of moderately priced tourist accommodations. All in the name of a "public good". While the homeless problem in San Francisco is significant, it is a community problem and the responsibility of meeting this need should be shared by the public as a whole. It is neither fair nor Constitutional to foist the burden primarily onto the entrepreneurs who risked their personal finances to restore the city's small hotels.⁸⁷

To most Americans this is lunacy. To Rousseau socialists, however, it makes perfect sense. In a 4-3 decision, the California Supreme Court ruled on March 4, 2002, that the city had a perfect right to pass an ordinance in which small hotel owners should bear the cost of helping homeless people displaced by renovation.⁸⁸ If a private enterprise attempted a similar tactic on their fellow man, they would be charged with extortion. Such a decision is diametrically opposed to the John Locke model of self-government upon which the U.S. Constitution is based. It is nothing short of legalized plunder defined by Frederic Bastiat in his booklet, *The Law*.⁸⁹

What is so frustrating is that California ruled in this case in the face of recent Supreme Court decisions to the contrary, especially in *Nollan v California Coastal Commission* in 1987.⁹⁰ In this case, the Nollans had requested a permit to replace a small bungalow on their coastal property with a larger house. As grantor of the permit, the unelected, Rousseau-oriented California Coastal Commission assumed it had the power to impose any condition it chose on the basis that a grant of

permit was the grant of a governmental benefit. The Commission therefore argued that it was constitutional for the Commission to stipulate the condition that the Nollans allow the public an easement to pass *across* their beach.⁹¹ The Nollans, after all, had the freedom to reject the proposed condition and continue to use their deteriorating bungalow.

The primus upon which the California Coastal Commission had based its “grant of governmental benefit” assumption is the logical conclusion of a police state. In this reversion to Rousseau logic, the rights of citizens are inferior to the rights of the state. This argument was soundly rejected by the Supreme Court. The Court opined that not only was the condition imposed on Nollan not voluntary, but that it amounted to virtual extortion.⁹² In rendering the majority decision, Justice Scalia asserted:

To say that the appropriation of a public easement across a landowner’s premises does not constitute the taking of a property interest but rather “a mere restriction on its use,” is to use words in a manner that deprives them of all their ordinary meaning. Indeed, one of the principal uses of the eminent domain power is to assure that the government be able to require conveyance of just such interests, so long as it pays for them.... We have repeatedly held that, as to property reserved by its owner for private use, “the right to exclude [others is] one of the most essential sticks in the bundle of rights that are commonly characterized as property”.... Whatever may be the outer limits of “legitimate state interests” in the takings and land use context, this is not one of them. In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but “an out-and-out-plan of extortion.”⁹³

The *Nollan* decision began to turn the Court back to the original Constitutional *intent* on several key issues. Property rights constitutional lawyer Mark Pollot observed:

First, the Court held that to *build* on one’s property was a right that could not remotely be considered a governmental benefit or privilege, although it could be subjected to some reasonable regulation. This holding directly confronted two of the most pernicious doctrines to face property owners: (a) the notion that private property owners, whether of real or other property, were more caretakers of their property than owners and their use of property was, therefore, subject to the unlimited control of the public through its governmental agencies, and (b) the related doctrine that holds that property owners’ sole right is to use their property in its natural state. Equally important, the Court held that government could impose no condition at all if it could not have prohibited the use applied for without causing a taking.⁹⁴

While the Court affirmed “that land use regulation does not effect a taking if it ‘substantially advance[s] legitimate state interests’ and does not ‘den[y] an owner economically viable use of his land,’”⁹⁵ it also specifically rejected the underlying premise of *Goldblatt* that there exists a general police power exception in which government’s action is subjected to virtually meaningless judicial review process. The Court insists there must be a legitimate connection:

The evident constitutional propriety disappears, however, if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the

prohibition.... It is quite impossible to understand how a requirement that people already on the public beaches be able to walk across the Nollan's' property reduces any obstacles to viewing the beach created by the new house. It is also impossible to understand how it lowers any 'psychological barrier' to using the public beaches, or how it helps to remedy any additional congestion on them cause by construction of the Nollan's' new house.⁹⁶

This interpretation reinforces the decision in *First English Evangelical Lutheran Church v. County of Los Angeles*. In this case the County of Los Angeles invoked a development moratorium that at least temporarily prevented a church camp from rebuilding camp buildings destroyed by a flood. First Church argued that the government must pay if it regulates to the point of causing a taking. The Court agreed:

[S]uch consequences necessarily flow from any decision upholding a claim of constitutional right; many of the provisions of the Constitution are designed to limit the flexibility and freedom of governmental authorities and the Just Compensation Clause of the Fifth Amendment is one of them. As Justice Holmes aptly noted more than 50 years ago, 'a strong desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.'⁹⁷

In making these decisions, the Supreme Court has raised the question as to why the Nollans or any small group of landowners should have to carry the entire burden for remedying a problem to which numerous others have contributed. Yet, as evidenced in the March, 2002, California Supreme Court 4-3 decision in San Francisco, the Rousseau-blinded judges ignored well established U.S. Supreme Court decisions. In trying to wiggle around these U.S. Supreme Court decisions, the California Supreme Court gave a convoluted ruling that "because the fee was imposed pursuant to a general legislative mandate, rather than through an ad hoc adjudicative proceeding, the heightened Nollan standard did not apply. Instead, the Court ruled, the fee had to be analyzed using a deferential 'reasonable relationship' standard and the fee did not effect a taking under that standard."⁹⁸ Of course, you, the reader, clearly understand this reasoning — don't you?

If the California twisted and contorted reasoning did not convince you, the debate between the majority and one of the Court's dissenters over the role of reciprocity of advantage shows the majority's true Rousseau oriented belief that a few small property owners can be singled out to bear the cost of large social problems that affect us all. One of the three dissenters (J. Brown) argued that a taking claim can only be avoided if the adverse effects of a regulation are fully offset by the reciprocal benefits to the property owner. The majority, in response, said, among other things:

[T]he necessary reciprocity of advantage lies not in a precise balance of burdens and benefits *accruing to property* from a single law, or in an *exact equality of burdens among all property owners*, but in the interlocking system of benefits, economic and noneconomic, *that all the participants in a democratic society may expect to receive, each also being called upon from time to time to sacrifice some advantage, economic or noneconomic, for the common good....*⁹⁹ (Italics added)

There you have it. The majority ruling in the California case was pure, unadulterated

Rousseau statist socialism, diametrically opposed to the foundation of freedom upon which our Lockean Constitution is based. No property — urban or rural, contract or copyright, paycheck or investment — is safe from the heavy hand of the state with such a Rousseau-dominated court system. Indeed, with this type of convoluted Rousseau logic, that New York City Park Avenue resident discussed earlier could be required to lease his spare bedroom to the homeless — at a rate the homeless person can afford. Such ludicrous judicial decisions undermine the very freedom and wealth generating capability of private property rights.

The California decision will likely be appealed to the Supreme Court. That decision aside, why should the last owners of wetlands, endangered species habitat, a beautiful rural viewshed or many other important environmental and social benefits, have to shoulder the entire cost of protection or provision? Most Americans would say that they shouldn't. It runs counter to America's well honed sense of fairness and justice.

Foundations, corrupt courts and politics are systematically destroying the Lockean foundation of our constitution and implementing legalized plunder through the destructive application of the public trust/public, good/general will doctrine inherent with the Rousseau model of governance. And because of our Rousseau-oriented education, and our Rousseau-oriented press, and our Rousseau-oriented environmental propaganda machine, most Americans are totally ignorant of what these activists are doing to our children's future.

Government Stonewalling of Property Rights

The Supreme Court has provided some hope, however. In the *City of Monterey v. Del Monte Dunes* the Court mandated that a property owner is entitled to a jury trial when a governmental entity makes a regulatory taking that strips the value from private land and leaves no recourse for the owner to receive just compensation. In this case, a landowner sought to develop a 37.6 acre ocean-front parcel in the City of Monterey, California. The property was zoned by the city for multifamily residential use which would have allowed up to 1,000 residential units. In 1981 the landowner developed a plan for 344 units.¹⁰⁰ When the owner attempted to secure the building permit from the unelected city planning commission he entered the twilight zone of the Rousseau socialism house of smoke and mirrors.

The owner was denied the permit, but was told that a proposal of 264 units would be favorably viewed by the planning commission. This tactic of dangling the carrot of hope that one more sacrifice will yield success and permission to build, is *the* standard practice for such Rousseau planning. It is used by countless agencies, boards and commissions across America. The only thing government entities have in common is that they are usually unelected. In this case, the landowner dutifully returned to the planning commission with exactly what they asked for, and was again denied. This time they said that 224 units would be looked at favorably. Recognizing the game of attrition he was playing with the planning commission, the landowner went to the city council, which said they would accept a proposal for 190 units. The owner complied, but was *again* turned down by the planning commission in 1984! This time the city council overruled the planning commission by approving the site plan with 'special conditions.'

After spending the next year continuously revising the proposal to meet a moving target of 'special conditions,' the final plan called for construction of residential units on only 5.1 of the 37.6 acres. The rest would be devoted to public open space to be enjoyed by *all* of the community — a Rousseau social benefit paid for by a single owner. In any other circumstance it would be extortion. In this case it was plunder for the 'public good.' In spite of the fact that the city had fleeced this landowner and got everything it demanded, the city council *still* said no to the plan —

and declined to tell the landowner what it would accept.

Quite correctly, the landowner decided the city was never going to give him a permit. He filed a lawsuit in the U.S. District Court under 42 U.S.C. 1983,¹⁰¹ charging that “denial of the final development proposal was a violation of the Due Process and Equal Protection provisions of the Fourteenth Amendment and an uncompensated, and so unconstitutional, regulatory taking”¹⁰² under the Fifth Amendment. Ironically, the District Court dismissed the claims, in part because the landowner did not seek compensation from the city for the takings. Upon appeal, however, the 9th Circuit Court reversed the lower court, saying the State of California had not provided “a compensatory remedy for temporary regulatory takings”¹⁰³ at the time the final denial was issued.

The case was then kicked back to the District Court. Much to the horror of the City of Monterey, the District Court decided to submit the claim to a jury. Not surprising, the jury found in favor of the landowner and awarded damages in the amount of \$1.45 million! The city appealed, but the 9th Circuit Court upheld the jury’s finding. It then went to the U.S. Supreme Court which upheld the Circuit Court on May 29, 1999. In rendering its decision the majority opinion stated that “After five years, five formal decisions, and 19 different site plans...respondent Del Monte Dunes decided the city would not permit development of the property under any circumstances.”¹⁰⁴ Indeed, the owner had met every request, first by the planning commission and then by the city council.

Whether knowingly or unknowingly, the City of Monterey’s unelected Planning Commission and its City Council had arrogantly attempted to plunder a landowner within the city for a Rousseau “public good” — and failed miserably. The City of Monterey even tried to defend itself by telling the court that they really intended to condemn the property and the landowner should have sought compensation. Citing *First English Evangelical Lutheran Church v. County of Los Angeles*¹⁰⁵ above, the Court reprimanded the city:

...when the government condemns property for public use, it provides the landowner a forum for seeking just compensation as is required by the Constitution.... In this case, however, *Del Monte Dunes was denied not only its property but also just compensation or even an adequate forum for seeking it.* In these circumstances, the original understanding of the Takings Clause and historical practice support the conclusion that the cause of action sounds in tort and is most analogous to the various actions that *lay at common law to recover damages for interference with property interests.* In such common-law actions, *there was a right to trial by jury....* The city's argument that because the Constitution allows the government to take property for public use, *a taking for that purpose cannot be tortious or unlawful,* is rejected.¹⁰⁶ (Italics added)

Had the City of Monterey announced its intention to condemn the land for public use, the landowner would have had the chance to seek just compensation. But the city chose the route of thousands of other government entities around the U.S. to plunder the land through regulatory takings in which the landowner had no recourse to just compensation. In other words, the city wanted to steal the land so they wouldn’t have to pay for it. They got caught, but thousands of other government entities are doing the same thing to hapless landowners and getting away with it because the landowner simply does not have the financial resources to suffer years of litigation as did Del Monte Dunes. Meanwhile, the abuse continues to increase in spite of the Supreme Court decision.

The Challenge Before Us

Government intrusion into the right to own and use property under the Trojan horse of the “public good” is beginning to cause great harm to American citizens, and is undermining the very foundation that has made America the greatest nation in human history. We can continue to blindly convert to the Jean Jacques Rousseau model of governance where the state is supreme and the taking of private property is by the whim of bureaucrats, or we can return to the model of John Locke where private property is *protected* by government through law. In the latter approach only those regulations that keep property owners from activities that clearly cause harm to their neighbors or their property are promulgated. It is clear from a myriad of examples that the Rousseau model will lead to corruption in government and a decline in the human condition while the Locke model leads to freedom, prosperity and environmental protection. Which one would you choose?

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