

Freedom Matters

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Dane County, Wisconsin

Preserving Property Rights

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Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

The Consent of the Governed

by Bob Bowman

The last issue of *Freedom Matters* (#15) was titled in part with the words "government socialist planning." All governments plan, so what is the distinguishing meaning of *socialist planning*, that it deserved specifically naming it? In a word, what did the title intend to say?

For me, government engages in socialism when it treats private property as government property. Government has my consent, and is **not** practicing socialism, when it regulates to protect public health and safety, as in preventing undue harm to, or inordinate private use of, the air and water passing over or through private property. Conversely, government does **not** have my consent when, **without just compensation**, it says "wildlife" is public property, then allows wildlife to trespass **freely** on private land, or when it denies the landowner the free use of his/her land in order to preserve "wildlife."

If the preservation of "wildlife" as a commons has merit, it is done in order to promote the common good. As such, it **must** be paid for by everyone. It is **not** to be paid for by confiscating even one penny of the private worth of private land. Government, being composed of citizens, derives its rights from the rights of each and every citizen, and if we maintain that one citizen has no right to steal from another, then a government of citizens likewise has no right to steal from any citizen.

That principle was built into the Bill of Rights of the federal constitution, in the fifth amendment, which says that the federal government can take no private property for public use without just compensation. It is built even deeper into the Bill of Rights, in Amendments III, IV and XIII, the latter prohibiting slavery. Theft of the fruits of labor (property) is the very essence of slavery.

What does this have to do with the consent of the governed? The founders of our nation said it well when they labeled the rights in the Bill of Rights as "**unalienable**" rights (or in its more modern spelling, "inalienable" rights). Unalienable, or inalienable, means that such rights **cannot be taken away**. They can be suspended, when necessary to restrain certain persons in order to ensure public protection, as under martial law, or by due process of law, but **cannot be taken away**. That was the social contract written into the federal constitution, and in our various state constitutions.

Therefore, can we allow a "priesthood" of judges to exist who claim an extraordinary insight by which they can bamboozle ordinary folk, and thus act to overturn the common sense social contract comprising our federal and state constitutions? Thomas Jefferson early on gave this question the most sensible of answers:

"Laws are made for men of ordinary understanding and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing at pleasure."

One can access on the internet a range of articles which cite various convoluted arguments by which the original meanings have been judicially "interpreted" out of our constitution. The very courts designed to protect the constitution have instead thereby acted to violate it. They have amended it by an **illegitimate** process; i.e., by one **not** put into it by the consent of the governed.

My opinion, just above, finds support in an anecdote told by James DeLong, in his book *Property Matters*, 1997, page 77. There, DeLong cites Samuel Beer, Professor of Government at Harvard University. Beer, in his lectures, told how Henry II became King of England. For 20 years, rivals to the English throne had fought to a stalemate, and law and order had broken down. Enter Henry Plantagenet, in 1154 A.D, from his home in France. Henry's claim to be King was good but not perfect, via the rules of feudal inheritance. Yet, within the year, the baronial wars stopped, unlicensed castles were razed, and royal proclamations and peace prevailed.

Why? asks Beer. Henry was but 20 years old, untried and unknown. Why did England come to order under him? His power, Beer says, was that everyone saw him as having the **right to rule**. He had **legitimacy**, for which an overwhelming majority accepted him as King.

Fast forward to the USA today. As the presidential election of 2000 demonstrated, our courts had the **legitimacy** to settle a disputed election. The losers didn't like it, and haven't let us forget it, but they accepted it. Yet, the courts are not our only repository of legitimacy. The **constitution** still outranks them. As proof of that, the courts claim their legitimacy by claiming that they are the arbiters of the **constitution**.

So how does the constitution get legitimacy? The Declaration of Independence says how: **by the consent of the governed**. Therein is the ultimate foundation on which the **legitimacy** of our government stands.

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