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**Degenerate Democracy:  
The Neoliberal and Corporate Capture of America's Agenda**

**Richard W. Behan\***

A paper addressing the historic role of private entities on our public lands, presented by Richard W. Behan at the 26<sup>th</sup> Annual Public Land Law Conference, sponsored by the University of Montana School of Law's Public Lands & Resources Law Review and the Center for the Rocky Mountain West; Missoula, Montana, March 15, 2003.

I. FOREWORD

After the Revolutionary War, the crown lands in the U.S. became the "original public domain," and from that the status of "federal lands" was derived. This is accurate history, but not complete, because it ignores the prior occupancy of the land by Native Americans.

Initially by indifference and eventually by force, Native Americans and their land institutions were overridden and displaced. Patricia Limerick has correctly described this not as settlement, but as conquest in her text, *The Legacy of Conquest: The Unbroken Past of the American West*. We have federal lands today because the lands were taken in violence. This much can be said about such regrettable history: we cannot ignore it, and we must not forget it.

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\* "[The Author] . . . has spent his adult life immersed in the subject matter of . . . [public lands], by virtue of his vocational and leisure-time choices. After 6 years of service in Alaska's national forests, he earned a Ph.D. in Wildland Resource Science at the University of California, Berkeley, and for 12 years taught natural resource policy at the University of Montana. During that time, he served on the faculty committee appointed by Dean Arnold W. Bolle to investigate, at the request of Senator Lee Metcalf of Montana, the controversial forest management practices on the Bitterroot National Forest. The committee's work, known quickly and widely as the Bolle Report, was sharply critical of Forest Service practices and was instrumental in stimulating the passage of the National Forest Management Act. Behan left the University of Montana to join the faculty of the School of Forestry at Northern Arizona University, and was appointed Dean of the School several years later. He served on the boards of directors of the Forest History Society, the American Forestry Association, and the Council of Forestry School Executives, traveling frequently to Washington DC and experiencing the maelstrom of influence-politics there. He served as a consultant at various times to the U.S. Forest Service, the National Park Service, the Bureau of Land Management, the Soil Conservation Service, the Army Corps of Engineers, and the Congressional Research Service, and published nearly 100 articles and papers in the literature of public land management, economics, and politics . . ." Richard W. Behan, *Plundered Promise: Capitalism, Politics, and the Fate of the Federal Lands* (Island Press 2001).

## II. INTRODUCTION

In a span of less than three decades, the Champion International Corporation came to Montana, captured huge private gains from the public lands, and then left. On arrival, they bought about a million forested acres, virtually all of which had once been federal public lands. Then they bought most of the milling capacity west of the Continental Divide, and proceeded to strip the timber from their lands and from most of several national forests as well. Finally, they put their cutover lands and their mills on the market, found buyers, and vanished. The blasted landscapes left behind will take a lifetime to recover, and Montana is still struggling with the externalized social costs of the company's behavior.

Measured in terms of the economy, that behavior was no less than stellar. Champion took the proceeds from liquidating their assets in Montana, built a new paper mill in Michigan, and went on its profit-seeking way. Its stockholders were delighted.

Measured in terms of civic responsibility, that behavior was appalling, and no other nation on Earth would tolerate such a stark contrast in measured outcomes. The United States is unique in the world in the degree to which the public good is sacrificed for the private. The reasons for this are many and complex, but not mysterious.

In summary and in sequence:

- (1) The U.S. Constitution heavily favored the interests of individualized citizens over society at large.
- (2) American corporations became legal citizens in 1887, and exercised their Constitutional rights in an economic and social rampage at the end of the century.
- (3) These corporations were eventually regulated by a consensual progressivism in American politics, which survived until the final quarter of the twentieth century.
- (4) The messianic ideology of neoliberalism then arose to challenge the progressive consensus and defeat it.
- (5) And that's why Champion International could do what it did.

Innocently and understandably, the U.S. Constitution sought preeminently and almost exclusively to maximize the liberty of individual citizens, and presumed the common good would flow from that. For most of a century, the presumption proved to be prescient: both individual citizens and society at large prospered as never before in world history. By the closing decades of the nineteenth century, though, a serious number of individuals enjoying maximized liberty were not human citizens, but corporations.

Corporations in the late nineteenth century, armed with the capacity to accumulate capital without limit, endowed with immortality, and enjoying unprecedented prosperity and power, trampled the public good to such an

extent they induced a sizeable and effective public outcry. A political and sometimes violent reaction to corporate excesses soon put in place a system of regulatory laws, among other things prohibiting the employment of children, assuring pure food and drugs, and retaining in public federal ownership, eventually, one-third of the nation's land surface. The "Age of Reform," as historian Richard Hofstadter called it, sought to prevent the Constitution's emphasis on individual liberty from becoming mere corporate license. The reform process and its products lasted for roughly three generations. Other notable accomplishments were the anti-trust laws, the graduated income tax, the prohibition of corporate contributions to political campaigns, the franchise for women, labor laws, compulsory public education, the civil rights laws, and the various environmental protection statutes. All these laws sought equity in the nation's affairs, and they were successful: the public welfare was proximately well served, with minimal impact on liberty, either personal or corporate.

We found over a period of six or seven decades, the private good could be pursued without compromising the public. Neither need be sacrificed to the other, and many studies suggest that the 1950s and 60s may have been the zenith of a just and decent public life in the U.S. We had come to agree on a progressive public agenda.

In the 1960s, however, a small group of very wealthy, very conservative, but very capable people looked critically at the progressive agenda, and found its ancestry suspect and its continuity threatening. They looked back with longing and nostalgia to the Constitution's emphasis on individual liberty, and resuscitated a century-old argument: liberty is maximized in free markets, and oppressed by governments.

They undertook a competent and concerted campaign to undermine not only the accumulation of progressive public policy, but also the progressive institutions they saw as largely responsible: the media, academia, the political parties, the legislative and executive branches, and the judiciary. Spending millions of exquisitely focused dollars, they succeeded in mounting a frontal attack on the nation's progressive agenda with the election of Ronald Reagan in 1980. If government was oppressive, privatize what can be privatized and minimize what can't. If markets promote individual liberty, deregulate them. The movement came to be known as neoliberalism, but critics see absurdity in its argument and sobering hazards in its success.

### III. LIBERTY

The tension between self and society is eternal. If social domination is taken to the limit, we get some sort of idealized commune, where the self is abjectly subordinated. At the limit of self-domination we encounter anarchy, or the law of the jungle, where society is subordinated. So we exist at some fragile, vulnerable point on a continuum between untenable extremes.

At one of those points there can indeed be an oppressive government. The American Revolutionaries thought they saw one in the British Crown, so after the war, they wrote a Constitution tilting heavily toward the self-domination end of the spectrum to maximize individual liberty. The Founding Fathers were neither indifferent to, nor unaware of, the need to assure the greater public welfare. To do so, as Daniel Kemmis points out in *Community and the Politics of Place*, they invoked in their thinking a convenient political counterpart of Adam Smith's "invisible hand." The good of the nation would flow automatically, in political as well as economic terms, from the pursuit of self-interest. Community would emerge from liberty.

Thinking carefully about the Constitution, however, we discover that the Founding Fathers made a careful distinction between two sorts of liberty. They provided generously for economic liberty—citizens could pursue their material, physical welfare without an oppressive government restraining them. But political liberty—the right to participate fully in democratic self-governance—was something else again, and here the Founding Fathers were parsimonious indeed. With deliberation, with ingenuity, and with almost impregnable success, they made democracy impossible.

Consensus is everywhere and always unlikely to be achieved, so most democratic societies settle for rule by majority: they seek to do what is best for most of their citizens. For this to happen, two conditions must be met: a majority must be mobilized and recognized, and it must be given a voice. The majority must be visible, and we need to know what it wants. Only then can we know that public policy serves the majority will.

Many nations meet these conditions. They display a single source of political power that is subject to "capture" by a majority. And their strong political parties, mobilizing and giving voice to prospective majorities, contest with one another to affect the capture. The parliamentary government of Great Britain is such a system. As head of the successful party, the Prime Minister controls the legislative branch and is simultaneously the chief executive. There is no separation of powers, and British courts cannot nullify an act of Parliament. Thus, the office of Prime Minister represents an enormous concentration of political power, and the partisan contest to capture it is lively. The parties each write a "programme" of prospective public policy, hoping to attract a majority of voters. After the election, the majority is visible, and what it wants is provided in the immediate adoption of the winning party's "programme."

If you wanted to prevent democracy, as the aristocratic Founding Fathers conspicuously did, you would make it impossible for political power—the government—to be "captured" by any conceivable means. You might scatter political power through both space and time. You could separate the executive branch from a bicameral legislature, and you could anticipate a Supreme Court with the power of judicial review. No political party would find it easy to capture all four pieces. If you thought it might, you could put time barriers in the way: elect representatives at two year intervals, the

president at four, and senators at six, with Supreme Court justices serving for life. Still wary, you could disperse the mechanisms of choice; only the Representatives would be chosen by popular election, senators would be picked by state legislators, the president by an electoral college, and the Supreme Court staffed by presidential appointment. Then you could emasculate the political parties. Parties were clearly in evidence before, and during, the Constitutional Convention, but they were paid the ultimate insult of indifference: parties are nowhere even mentioned in the document. And finally, the Founding Fathers could take comfort in a telling statistic: for 97.5% of the American people at the time, voting was illegal.

It took seven generations to rectify all the elements of that statistic, until the voting rights acts of the 1960s. Those who were not white, or yet twenty-one, those without property, and those who were not male, eventually were granted the right to cast a ballot. In a critically important respect, however, their victories were hollow, and those who always voted are no better off. For voting and representative democracy are not simple equivalents. Nor is voting even necessary: the archetypal democracy of ancient Greece chose its governing representatives by lottery. Voting simply identifies and empowers the peoples' agents or proxies. For representative democracy to function legitimately, those agents—collectively, “the government”—must be always and directly accountable to the voters. On this score, the U.S. Constitution fails miserably.

Because the Constitution balkanized both political power and the American electorate, the totality of the federal government is accountable to no one. A representative is accountable to his or her district, and there are 435 representatives. A senator is accountable to his or her state, and there are 100 senators. Only the president has a national constituency, so the president at least is accountable to the nation. But the president, in stark contrast to most prime ministers, does not characterize, “the government” (it is commonplace to speak of “the Blair Government” in Britain, or the “Chretien Government” in Canada). No, the U.S. “government” includes those other 535 people, not a single one of whom is accountable to the nation. We can no more expect a comprehensive “accountability” from our federal government than we can identify a majority that empowered it: indeed, we are looking at two faces of a single coin here.

Serious scrutiny has only recently addressed this problem. First in time was Daniel Lazare's book, *The Frozen Republic: How the Constitution is Paralyzing Democracy*, appearing in 1996. In 2001, political scientist Robert Dahl asked in the title of his book, *How Democratic is the American Constitution?* Dahl answers: not very.

Consider again the contrast: the Blair Government in Britain is directly accountable to the majority that elected it, and stands in constant jeopardy of being “toppled” if it strays too far from what the majority wants. Our Constitutional government never has been and cannot be “toppled” this way because it escapes, in its totality, any measure of electorate accountability.

This is not to say that the disparate elements of the U.S. government cannot be captured at all, nor to deny a derelict form of accountability. In an age of hugely expensive political campaigns, candidates are susceptible to capture by prominent contributors, and accountability follows as surely as night succeeds day. We will revisit this difficulty.

The Constitution is the genesis of America's propensity to sacrifice the public good in favor of private gain. It encouraged and provided liberty in the economic realm, while obliterating it in the political realm. It is scarcely surprising that citizens devoted their energies and ingenuity to the pursuit of private wealth.

#### IV. PROSPERITY

As the nineteenth century progressed, you could have written an equation: free land + free markets + free men = unprecedented prosperity, individually and collectively. Westward lay a continent of breathtaking natural wealth and limitless opportunity, except for one unfortunate reality: it was fully occupied by sophisticated people with a trade and transportation infrastructure hemispheric in reach, with cities larger than London or Paris, and with eighteen centuries of demonstrated success in sustainable existence.

What these people didn't have was the institution of private property rights in land. But Thomas Jefferson did, which led him to do two things. First, he articulated his vision for the fledgling nation: liberty would be sustained in a country of rugged individual and independent farmers, "secure in their property." Second, he pursued his vision in public policy by executing the Louisiana Purchase, to assure sufficient land for a growing population of agrarian yeomen.

If private property was alien to the continent's original inhabitants, so were gunpowder, the wheel, and smallpox. The combination of all three in the hands of the U.S. military was devastating. Tribal lands across the continent were taken in violence and became the "original public domain" of the immigrant Americans. This domain would not remain "public" for long. The public good flowed from private prosperity, so government land shifted into private ownership as rapidly as orderly development (and speculation, fraud and theft) would allow.

Most of the enterprises undertaken in this period—family farms, pick and shovel mining operations, sawmills, and livestock ranches—could be handled as proprietorships. The call for capital investment could be met with the savings and available credit of the individual entrepreneurs.

However, not so for the transcontinental railroads. Here was a classic need to accumulate capital into far larger pools. Here was a need for the corporate form of enterprise. Corporations were not unknown even in colonial times. They were often chartered to build transportation facilities, such as a barge canal or a toll road, and they were strictly limited and constantly scrutinized. The corporations were project-specific and subject to finite life

spans, typically twenty years. Stockholders were liable for corporate misdeeds, and the charters were revocable for behavior deemed to violate the public interest. Not a few were so revoked. The early corporations were clearly subordinate to, and in the service of, the society that created them. But even so, they were early and often stigmatized for their potential social mischief. Thomas Jefferson worried in detail and in print about the malign potential of the “moneyed corporations.” So did James Madison, Abraham Lincoln and a long line of other public figures.

These concerns were well placed. As the century wore on, corporations sought, primarily through the courts, to loosen these social constraints. Charters became generalized, not specific to a particular project or enterprise. Corporations came to be chartered “in perpetuity.” Stockholders’ liability was eventually limited to the value of their holdings. Charter revocations became ever more difficult.

The dominant corporations in the nineteenth century were the great railroad companies. As early as mid-century, they identified and pursued a legal accommodation of stupendous benefit. Long identified as “fictitious persons” the railroads sought to be deemed *legal* persons, with all the rights and privileges enjoyed by human, sentient citizens, including full constitutional protection under the Bill of Rights.

By taking one trivial lawsuit after another all the way to the Supreme Court, they were eventually successful. Today, corporate campaign contributions are considered a form of free speech. Corporate lobbying is an exercise of the right to petition. Corporations have avoided site inspections by regulatory agencies on the grounds of privacy-invasion. By virtue of “corporate personhood” and the accompanying constitutional rights, corporations today have escaped any meaningful social oversight and containment. Mergers and acquisitions were once prohibited (by a law later found unconstitutional), but corporations now grow ever larger, more powerful, and transnational, rampaging the world. They are institutions of economic and political power unprecedented in human history.

Among the law schools addressing this matter, and in countless history books, corporate personhood is said to have been granted in a Supreme Court decision in 1886. The schools and books are all in serious error. The case was *Santa Clara County v. Southern Pacific Railroad*, 118 U.S. 394 (1886). This was one of those trivial lawsuits; it had to do with the taxation of fences. In the written decision of that case, however, there is not a single word about corporate personhood, or the Fourteenth Amendment, which the railroad attorneys hoped to have applied in the case. Nothing. The Supreme Court decided the case in favor of the Southern Pacific, as it turned out, on entirely different grounds.

Two years later, in *Missouri Pacific Railway Company v. Mackey*, 127 U.S. 205 (1888), the Supreme Court “conceded” corporate personhood, citing *Santa Clara County*. Early the next year, in *Minneapolis & St. Louis Railway Company v. Beckwith*, 129 U.S. 26 (1889), the Court said corpo-



rate personhood had been “so held” in *Santa Clara County*. By 1898, the Supreme Court had cited *Santa Clara County* in eight cases. A sizeable body of case law was developing to give the nineteenth century railroads—and all corporations thereafter—legal personhood; but it was built on a void. The written decision in *Santa Clara County* did not address the issue at all.

What happened in *Santa Clara County*? In a verbal discussion before reading the formal decision, Chief Justice Waite said the Court had not wanted to hear arguments that the Fourteenth Amendment applied to corporations. “We are all of the opinion that it does,” he said, but the Court in fact had decided the case on other grounds. In the headnote to the case, the court reporter dutifully noted Waite’s spoken words, “we are all of the opinion that it does.” And that, apparently, is what subsequent Court decisions cited. But headnotes establish no precedent. Only formal court decisions do that. Corporate personhood has no legitimate legal basis.

That didn’t matter much in the late 1800s, when corporations undertook their first unrestrained rampage of exploitation through the landscapes, natural resources, and social institutions of the country. The Constitution’s encouragement of private gain was manifested as corporate gain, and if the courts failed to see the difference between corporate citizens and human citizens, others did not. A great popular and political uprising challenged the corporate savaging of labor (think children), the environment (think cut out and get out), and markets (think monopolies). Real and effective reforms followed.

You could say the public was finding its political voice, to define and pursue the public good, and finally an astonishing transformation in public land policy was achieved. For 100 years the public land had been privatized, always and everywhere. Then by conscious political choice, first in Yellowstone National Park and then in the nation’s public forest lands, privatization was stopped. The value of *publicness* gained traction in the body politic.

## V. EQUITY

The Constitution made democracy impossible—it provided what might charitably be called a benevolent plutocracy—but the American people wouldn’t take “no” for an answer. First we tried working through political parties. At the time of ratification, there were two. Washington, Adams, and Hamilton represented the Federalist Party, which, in a sense, stood in the terms we’ve been using here, for “publicness.” If there was to be a single nation, then there had to be a strong, centralized government. Such a government was also necessary to protect and promote commercial, financial, manufacturing, and trade interests of the new nation—the *business* interests of the country—and thus the Republican Party was born.

On the other side of the aisle stood Jefferson and Madison, leaders of the party already known as the Republicans (the semantic confusion would be straightened out later). These Republicans felt strongly about “privateness,” that individual liberty had been oppressed by the British Crown and it might be again by a strong centralized federal government. “That government is best,” Jefferson is alleged to have written, “which governs least.” Clearly that’s a tilt toward anarchy. The Republicans championed the common citizen, the farmers and mechanics, the small independent shopkeepers, the workers of the nation, and thus the Democratic Party was born. By the time Jefferson read his inaugural address, he listed himself as a “Democratic Republican,” so the shift in nomenclature was halfway completed.

As the parties grew and developed in the country, they had to confront an unyielding structure: the U.S. Constitution. Balkanized government and a balkanized electorate prevented (and still do) the parties from mobilizing a majority and giving it a voice. Yes, they could hold national conventions and yes, they could write and adopt party “platforms” of prospective public policy. But there was no disciplined way for them to transform a party platform into law, even if their party claimed the White House and both chambers of Congress simultaneously. The President might be looking to the nation at large, but everyone else was focused on his constituency back home. The parties, in short, had (and still have) essentially no capacity to shape public policy.

So the parties pursue what they can do: recruit and campaign the *dramatis personae* of government. It’s a personnel management function. We could call it “people politics.” The party system granted to the American people at least some access to their government. They could choose the political actors, anyway. But the people still had no access to the process of formulating and forming public policy. The Constitution had the last laugh; democracy seemed indeed to have found the Constitution almost impregnable.

So we tried another end run, inventing the peculiar American institution of the political interest group. As early as 1825, Alexis de Tocqueville marveled at our propensity for “associations” and their use in the political process. Initially defensive in nature—protesting something Congress had done—interest groups soon learned to play offense, and by the end of the nineteenth century they were adept at submitting policy proposals of their own. They also became adept at seeing them enacted. We call that “lobbying,” and for most of its history, lobbying has been an honorable, just, and decent way for American people to participate in the public policy process.

The system of countervailing interest groups could be called “policy politics,” and in 1965 Professor Charles Lindblom explained how it works in a book called, *The Intelligence of Democracy*. Interest groups, acting in their own best interest, engage in “partisan mutual adjustment,” interacting and compromising to construct public policy that can, and normally does, serve the broad public interest. James Madison would have been tickled to

read Lindblom's book. It confirmed what Madison had asserted: in the political realm, if people are free to act in their own best interest, the social optimum will be achieved.

In the years arbitrarily from 1890 until say, 1975, America found not only its political voice but also its political muscle, and cracked the Constitution's defenses against democracy. Yes, there was still a great deal of private use of the public lands, but it was regulated and overseen by professional and largely non political land managing agencies. "Environmental" groups and "commodity" groups engaged in Lindblom's partisan mutual adjustment, to produce such notable and well-balanced laws as the Wilderness Act of 1964.

These sanguine times and civil behavior were made possible by a visible consensus on progressive public policy. A specific and focused example was a statement by Richard Nixon: "we're all Keynesians now." The public interest did count, but it was neither absolute nor oppressive. Individual welfare was important, but it should not trump the well being of society at large. We were a plural society of strong minds, yes, but also of open minds and even of fairly big hearts. We would become what one observer has called a "society of sharp elbows."

## VI. ABSURDITY

The progressive consensus could be challenged and overcome by determined opponents, given three conditions: they had to have an alternative ideology that was coherent and marketable, they had to be patient, and they would need a lot of money. Milton Friedman brought the ideology into focus with his book in 1962, *Capitalism and Freedom*. He dusted off an old argument—the "liberal" argument of the late 1800s—that "liberty" is provided only in free, capitalistic markets, and governments are oppressive. It rested on Adam Smith's vision of 200 years ago: willing buyers and willing sellers bargaining in free markets, and with only their self interest in mind, would collectively generate a socially optimum state of affairs, "as if by an invisible hand." That was an appealing argument, and Friedman's rendition was too, at least in some quarters.

A messianic conviction grew that the progressive consensus was wrong and dangerous. We had to turn back toward "free market solutions," in a word, *privatize* and reject government mechanisms of "command and control," in another word, *deregulate*. The conviction, the arguments to support it, and the movement to advance it we know today as "neoliberalism," a term historically accurate, but misleading. Neoliberalism is archconservative to the core, and it has taken on a quasi-religious cast that some have described as "market theology." It is a gargantuan absurdity.

The "free market" so cherished by neoliberals and so described by Adam Smith 200 years ago has long since vanished. Markets are no longer driven by the free bargaining of willing participants, but by policy. Sometimes it is

public policy, but always there is a corporate policy driving the markets, with administered prices, restricted supplies, and other powerful mechanisms. Only the truly devout or tragically deluded will deny the reality of corporate-dominated markets. But the truly devout have prevailed.

The neoliberal conviction is held so strongly by twelve right wing philanthropies that they set out in concert during the 1960s to overturn a century's accumulation of progressive policy. They are the Lynde and Harry Bradley Foundation, the Carthage Foundation, the Earhart Foundation, the Charles G. Koch, David H. Koch and Claude R. Lambe charitable foundations, the Phillip M. McKenna Foundation, the JM Foundation, the John M. Olin Foundation, the Henry Salvatori Foundation, the Sarah Scaife Foundation, and the Smith Richardson Foundation. In a well-orchestrated and coordinated program, these foundations have spent hundreds of millions to advance and emplace the neoliberal agenda. They had the money and they were patient. Let's call them the Diligent Dozen.

In *How Conservative Philanthropies and Think Tanks Transform U.S. Policy*, Sally Covington has written a telling expose of this campaign, and this is her observation:

Over the last [few] decades the [twelve] have mounted an impressively coherent and concerted effort to shape public policy by undermining and ultimately redirecting what they regard as the institutional strongholds of modern American liberalism: academia, Congress, the judiciary, executive branch agencies, major media, religious institutions and philanthropy itself.

Notable and conspicuous beneficiaries of this effort are the Heritage Foundation, the American Enterprise Institute, and the Cato Institute, all in the nation's capital, and all funded by the Diligent Dozen since 1985 alone, with more than \$88 million. The impact of these three think tanks is huge: they have influenced or crafted virtually the entire programs of both domestic and foreign policy for the George W. Bush Administration. President Bush's brother, Jeb, serves on the Board of Trustees of the Heritage Foundation. Vice President Cheney's wife, Lynn, is a senior staffer at the American Enterprise Institute, and twenty other AEI staffers now serve in the Bush Administration. Notable among them is Richard Perle, one of the chief architects of the radical new foreign policy of "preemption." President Bush boosted that policy and its first application, the invasion of Iraq, at AEI's Annual Dinner on February 28, 2003. The American Enterprise Institute was proud to have on its Board of Directors Mr. Kenneth Lay, the personal and corporate patron of first governor and then President George W. Bush, and sometimes CEO of the Enron Corporation.

Mr. Lay also has close links with the Cato Institute, the most conspicuous champion of privatizing Social Security. Both Mr. Lay and Enron have been generous supporters of the Mercatus Center at George Mason Univer-

sity, an organization devoted to neoliberal/libertarian thought. Dr. Wendy Gramm, the wife of former Texas Senator Phil Gramm, served on the staff there until early in 2003, and was a Director of the Enron Corporation simultaneously. The primary benefactor of Mercatus, however, is the Charles G. Koch Charitable Foundation, which provides about 37% of its budget, and over the years has contributed \$16 million. Charles Koch was also the co-founder of the Cato Institute, and his brother, David, is currently a member of Cato's Board of Directors. So closely allied in funding and thought are the two organizations that staffers at George Mason University refer to the "Mercato Institute," and not a few Ph.D.s from Mercatus went on to work at Cato.

The Kochs are co-owners of Koch Industries of Wichita, Kansas, a multibillion-dollar privately owned oil and gas company. Both Enron and Koch Industries have been heavy contributors to the Republican Party in general and to the gubernatorial and presidential campaigns of George W. Bush in particular. Enron, it might be charitably said, stubbed its toes in collecting on its political investment, but Koch Industries did not. A \$352 million lawsuit brought against the company by the Clinton Administration's Department of Justice, for environmental violations, was dropped just three months after George W. Bush took office. Koch industries agreed to a \$20 million settlement.

Across the country are hundreds of other neoliberal organizations, a comprehensive interlocking network funded by the Diligent Dozen, but neoliberalism hasn't achieved this prominence overnight, and it hasn't achieved it in isolation. Since the 1960s there has been a profound restructuring of American electoral politics in two major respects. First, it has become hugely expensive, because it has come to rely predominantly on network television, and must compete with every commercial advertising campaign on the airwaves. Money has never been so important.

The greatest concentrations of money in the country are found in the institutions designed to concentrate it. Today, U.S. corporations contribute about three quarters of all campaign financing, which, in the sanguine days of civil behavior, was illegal. The other structural change nullified that, by legitimizing and then encouraging the explosive growth of political action committees. This was done by the Federal Election Campaign Act of 1971 as amended in 1974.

Corporations were now free to contribute essentially without limit to candidates of their choice, and to say that a corporate campaign contribution has no effect on subsequent policy making is to elevate delusion to an art form. Direct correlations between contributions and favorable policies are child's play to document, and not a few of them relate to the corporate plunder of the federal lands. The infamous "Salvage Rider" was just one; the play went from Weyerhaeuser and Louisiana-Pacific, to Senator Slade Gorton and back again.

As the corporate money poured in, and as neoliberalism took hold, the two reinforced each other, and in 1980, the movement triumphed with the election of Ronald Reagan. Social programs were slashed on cue, the progressivity of the tax code was all but eliminated, the military-industrial complex was handed a ballooning budget for the Pentagon, and the savings and loan industry was deregulated, also according to script. The savings and loan experience in letting free markets work will have cost the American taxpayers \$1.5 trillion when all the bills are paid in 2029. The public benefits accruing to that expenditure, unfortunately, have been, are now, and will ever be, exactly zero.

Minimizing government, the other half of the neoliberal formula for social success, didn't work very well for President Reagan either. His administration borrowed from future generations of taxpayers, and then lavished on its corporate patrons, more money than all his predecessors combined, all the way back to George Washington. The national debt when President Reagan took office was \$900 billion and change. On his departure, it stood at \$2.6 trillion, nearly three times greater. The disasters wrought by neoliberalism and corporate campaign financing have intensified since then. The national debt has continued to grow relentlessly. It has more than doubled again since President Reagan's departure, standing now at about \$6.5 trillion. And all the claims about "budget surpluses" have been less than honest: since 1951, the debt has decreased from a previous year only once, in 2000.

Neoliberalism, promoted with exquisite success by the Diligent Dozen, has paved the way for the corporate capture of the federal government. Books by William Greider and Kevin Phillips, among many others, argue a compelling case that American Democracy today is degenerate.

Neoliberalism has given us crypto-fascism instead. Public policy is no longer fashioned by the bargaining of countervailing interest groups to advance the general welfare of the American people. Instead, it is rationalized and crafted in neoliberal think tanks, and then fashioned to serve corporate clients-to create, protect, or enhance the profit opportunities of campaign contributors.

Consider, for example, the American health care system. The industry is thriving, but the January 1999 issue of the *New England Journal of Medicine* describes the nation's health care structure as "...the most expensive and most inadequate health care system in the developed world." Forty-five million Americans have no health care coverage at all, while President Bush proposes to begin privatizing Medicare. The greater his success, the more a company known as the Hospital Corporation of America will benefit. HCA operates the largest chain of for-profit hospitals in the country, but can't make enough money when Medicare is public without resorting to fraud. The company has paid a total of \$1.7 billion in fines for overcharging Medicare and Medicaid, the largest fraud settlement in the nation's history. The company was formed by a Mr. Thomas Frist. One of his sons, Thomas

Jr., earned \$160 million a year as CEO. Another son, William, has a \$26 million interest in HCA, Inc., and he is the majority leader of the United States Senate. Health care corporations and PAC's have contributed more than \$2 million to William Frist's campaigns. It was Mr. Frist who engineered a provision in the Homeland Security Bill shielding the Eli Lilly drug company from liability lawsuits. Lilly contributed \$1.6 million to Senate election campaigns in the 2000 election cycle, 79% to Republicans. And so forth.

The policy tools of neoliberalism serve corporate interests extremely well: marketizing and deregulating insert policy-drivers into various markets or open new ones, and privatizing almost invariably shifts public assets and values directly into corporate hands. In David Bollier's recent book, *Silent Theft: The Private Plunder of Our Common Wealth*, the author refers to this as "enclosing the commons," and details both the institutional mechanisms and dozens of empirical examples.

Among the interlocking national network of neoliberal organizations, two are located in Bozeman, Montana. One is the Foundation for Research in Economics and the Environment, whose notable acronym is FREE. Seven of the Diligent Dozen foundations support FREE—to the extent of more than \$2.5 million since 1987. FREE's major program illustrates the intelligence, care, sophistication, and precision of the Diligent Dozen campaign. FREE arranges and provides weeklong seminars advancing neoliberal thought, and the program is now entering its second decade. The seminars are staged at upscale resorts near Bozeman, with plenty of leisure time for trout fishing, trail rides, and cocktail hours. FREE invites the participants and their spouses, and pays all travel and lodging expenses. The participants are federal judges.

The Property & Environmental Research Center (PERC) in Bozeman is funded by nine of the Diligent Dozen foundations to the extent of more than \$4 million since 1987. The champion of "free market environmentalism," PERC aggressively advocates privatizing the federal lands for the bizarre and absurd reason that they "lose money." The receipts collected do indeed fall short of annual appropriations, as PERC claims. That can be seen as "losing money," however, only by assuming a profit objective for the federal lands, and then doing some Arthur Anderson bookkeeping (in this case, failing to account for externalized benefits). Since the first national park was created 131 years ago, the statutory objectives for federal lands have been exactly other than for profit, and for appropriations to be unmatched by income is fully anticipated in any public enterprise. By the reasoning of PERC, public libraries "lose money," and so does the Department of Defense.

Mr. Terry Anderson is the director of PERC, and an Adjunct Fellow at the Cato Institute. As an author of the privatization report, *How and Why to Privatize the Federal Lands*, he seems unable to comprehend the federal

lands as anything but profit-seeking enterprises. This is not simple myopia, and it is not peculiar to Mr. Anderson.

Discounting and disdaining public life is an insufferable and elitist characteristic of neoliberalism, but if a free and democratic society wishes to support a system of national parks, say, with public financing for public enjoyment, it can, should, and will do so. Attacking their success is to attack the free and democratic society, so only those fully confident in their religious convictions about markets will attempt it. Mr. Anderson is sufficiently confident in his convictions that he serves as a public lands advisor to the Bush Administration, where his privatizing argument is warmly appreciated.

Secretary of the Interior Gale Norton, who oversees the Parks Service, reads from the same neoliberal page as Mr. Anderson. She has undertaken what might be called an incremental privatization of the Agency, beginning with its personnel. Ms. Norton proposes to eliminate nearly three-fourths of the full time positions in the Parks Service, shifting them to the private sector. That's a start, but Mr. Anderson's colleague at PERC, Mr. Donald Leal, is candid about the neoliberal objective. In the PERC Policy Series, *Back to the Future to Save Our Parks*, he suggests cutting the National Park Service appropriations eventually to zero.

The neoliberal attack on publicness is indeed an attack on democracy, and the unhappy results are apparent. We have been pushed a long way across the self-and-society continuum toward the law of the institutional jungle, and the progressive social compact is dissolving. Slashing taxes repeatedly has guaranteed the deterioration of public services and the erosion in value of public assets. This simply encourages, in a vicious and seemingly deliberate circle, more and more calls to privatize.

And deregulation has turned loose not competition, but greed. Deregulated corporations—call them “neoliberalized”—savage their investors, their suppliers, their employees, and society at large while enriching their executives and their political patrons. Think Enron. Think about its campaign contributions to George W. Bush and more than half the members of Congress. Think Kenneth Lay as a director of the American Enterprise Institute.

America's health care system is pathetic, as we have seen. Public education languishes. The nation's highways and bridges are crumbling. Ten percent of American families are malnourished. The federal lands lay in bio-physical waste, and their public facilities are shameful. A space shuttle designed for one hundred flights disintegrates after fifty. Cynicism and indifference characterize the American voters, less than half of whom choose to vote. The yawning gap in the distribution of wealth and incomes intensifies, pitting the increasingly impoverished against the increasingly wealthy. Sharp elbows become more apparent every day.



