

The Trans-Pacific Partnership (TPP) is a Brand New, Same Old Story

by the **POCLAD**

Many citizens were stunned and outraged when the U.S. Supreme Court ruled in the now infamous 2010 *Citizens United v Federal Communication (FEC)* case that corporate entities could donate (more like invest) unlimited sums of cash to electoral causes. This was based on corporate entities possessing First Amendment free speech “rights” combined with money spent in elections being constitutionally protected “free speech.”

Many people learning of *Citizens United* assumed the five-member Court majority supporting the decision had engaged in never-before judicial activism with a “shock and awe” invasion of constitutional rights previously held exclusively by natural persons. They weren’t aware that the U.S. Supremes simply expanded upon earlier rulings equating corporate entities with legal “personhood” and money with “free speech.” *Citizens United* was simply the latest and most visible in a long series of egregious Court cases that carved up the Bill of Rights and other Amendments to the liking of plutocrats and corporate agents.

Citizens United was just a brand new, same old story.

There’s a similar tale in the 6000-page Trans-Pacific Partnership (TPP), to be signed by President Obama in February and then presented to Congress for ratification:

1. The TPP is very like previous so-called “trade” agreements between the U.S. and one or more nations, the difference being chiefly of scale.
2. The second way the TPP is more old than new is its anti-democratic similarity to our Constitution and Supreme Court – the wording of the former and many decisions of the latter that have squelched self-governance all along the way.

Yes, we must educate and organize against ratification of the TPP and other such deals waiting in the wings, but not to the exclusion of doing the same against the nation’s founding document and its highest court that deny self-governance to the people and needed protections for communities and earth.

1. Similar to previous trade agreements -- with a few exceptions

The U.S. is party to more than a

dozen Free Trade Agreements and is in various stages of negotiation on nearly 20 others, mostly bilateral. The most (in)famous is the North American Free Trade Agreement (NAFTA) between the U.S., Canada and Mexico, in effect since 1994.

The other relatively well-known “trade” entity is the World Trade Organization (WTO) composed of 100 member nations including the U.S. Remember the 1999 “Battle in Seattle” that disrupted the “Millennium Round” of WTO negotiations?

We’ve heard all the pro TPP arguments before. It will reduce cumbersome barriers, set common standards for selling American goods and services abroad, grow the economy, provide middle class jobs, reduce the nation’s trade deficit, and strengthen economic interdependence between the U.S. and other member nations, 11 Pacific Rim countries, comprising 40% of the global economy.

President Obama said the agreement “reflects American values,” and “levels the playing field for American workers and businesses.” He further asserted,

“We can’t let countries like China write the rules of the global economy. We should write those rules, opening new markets to American products while setting high standards for protecting workers and preserving our environment.”

Who in their right mind could oppose this? But with such compelling content, why were negotiations kept secret from our public officials for nearly four years while more than 600 transnational corporate advisors occupied all the seats at the table?

The regurgitated TPP rhetoric and promises begin with the framing of the agreement as predominately involving “trade.” As with NAFTA and other previous agreements, this is deceiving.

Of the 30 sections or “Chapters” of the proposed deal, only six address traditional trade issues – the buying and selling of stuff. The remaining 24 address such issues as market access, investment, telecommunications, intellectual property, competitiveness and business facilitation, state-owned enterprises, labor, the environment, and dispute settlement. NAFTA and other international agreements also determine much more than “trade.”

A fundamental goal of the TPP is to remove “trade barriers” to the free flow of goods and services among participant nations. These “barriers” involve other than mere tariffs, quotas and onerous custom procedures. We’re talking about laws and regulations passed by national and sub-national governments (states in the U.S.) that protect workers, consumers, communities and the environment. But “impediments” to multinational corporations entering foreign markets are “protections”

to local people, enabling their quality of life and right to self-determination.

A few of the proposals contained in the TPP would:

- delay the introduction of low-cost generic medicines, imposing higher costs to people in all 12 nations;
- add to climate change by expanding trade in dirty energy products such as tar sands oil, fracked natural gas, and coal – justified as in the public interest;
- weaken existing food safety standards, food inspections and protections for small farms;
- force Internet Service Providers to be “copyright cops” by taking down websites in response to mere claims from corporations or governments that posted material is copyrighted;
- prohibit financial capital controls (which led to the 2008 financial implosion) and limits on bank size, prohibit “firewalls” between investment and consumer banks and national efforts to control or reject bizarre financial products like derivatives;
- deny protections from labor abuse, such as poverty wages and poor working conditions,
- facilitating a further “race to the bottom.”

The many specific problems of the TPP are connected by another fundamental assault against people’s sovereignty -- the Investor State Dispute Settlement (ISDS) provision in Chapter 28. The TPP establishes three-person “Panels” to rule on “investor-state” suits against governments on any of the above issues.

While ISDSs exist in other trade deals, the TPP is unique in allowing challenges to be brought against a nation directly by one or more corporations. Multinationals no longer have to rely on surrogate governments to

do their bidding.

The TPP ISDS Panels can meet in secret. Their decisions are final. There are no appeals. Panel members are unelected and unaccountable trade attorneys, most having relationships with major corporations. They may act as prosecutors or defenders for governments or corporations on different issues at different times. Of course, we are to assume this raises no conflicts of interest!

Panels have a sole responsibility: decide if an existing national law or regulation, even when enacted democratically, threatens expected future corporate profits. If so, the nation must rescind or change that legislation to comply with the TPP or provide taxpayer compensation for lost future profits.

This isn’t simply theory, it’s real. The WTO ruled in December against the United States’ wanting to know the source of meats in the butcher case. This “country of origin” labeling law put Canadian and Mexican meat producers at a disadvantage. The WTO dispute resolution panel ruled that \$1 billion in fines from U.S. taxpayers would be levied unless the law was revoked, which Congress dutifully did as a rider to the year-end spending bill. Never mind that consumers overwhelmingly support wanting to know where their food comes from.

The mere threat of suits under TPP, if ratified, will deter legislators from enacting laws that don’t jibe with this pro-corporate agreement. So much for national sovereignty! So much for believing it will make any real difference who is elected to office. So much for organizing pro-worker, consumer or environmental citizen initiatives that might threaten expected corporate profits. The public

interest will be subordinated to the corporate-serving TPP manifesto. Elected officials will be reduced to deciding the date of the annual fruit festival, whether to change the official state bird and other trivial matters. The important issues will find federal and state officials deciding whether existing laws must be gutted to avoid millions or billions in compensatory payments to corporations.

The TPP is not about “trade,” be it free or fair. It’s about corporate governance – increasing the power and authority of corporations of all types, sizes and national-origins to override the laws, regulations and court rulings of nation states.

2. Similar to the U.S. Constitution and Supreme Court

It’s not only whether the TPP is akin to NAFTA and previous corporate governance agreements but also how much it can be likened to a “child,” even a “great, great grandchild” of our own U.S. Constitution. This may rub people the wrong way, believing as many do that the Constitution is a most democratic document.

While there are elements of the Constitution worth keeping, it has disturbingly similar anti-democratic features as the TPP that favor giant business interests and serve those of extreme wealth and privilege.

Here are a few examples:

1. Like the TPP, those who attended the Constitutional Convention in 1787 did so under the major premise of liberalizing “trade” and commerce. The Constitution’s Framers had come

together to amend the Articles of Confederation, the nation’s original founding document, which had rejected free trade by allowing states to ban imports and exports as they saw fit. This was unacceptable to the rising merchant class. The goal of the Convention was to create a more efficient and powerful central government that would call all the shots on matters of commerce. The new Constitution would declare it so.

2. The Constitutional Convention’s attendees met in secret, not unlike the authors of the TPP. Its Secretary, James Madison, made none of the proceedings public after the convention.

3. Delegates to the Convention were elite men of property – northern merchants and southern planters. Workers, women, people of color, and men without property had no seat at the table.

4. The proposed Constitution was a property-rights document granting powers to those who owned property, slaves included.

5. Those assembled in Philadelphia added a Bill of Rights similar to that in many state constitutions because several state legislatures refused to ratify the federal Constitution without it. The Bill of Rights served the same purpose as a “side agreement” today. It ensured passage of the Constitution just as tagalong labor and environmental provisions assist the passage of “trade” treaties.

6. The power to regulate commerce and trade was shifted from the states under the Articles of Confederation to the federal government. Article 1, Section 8 of the Constitution was called the Commerce Clause: “The Congress shall have power...to regulate

Commerce with foreign Nations... and among the several States, and with the Indian Tribes.” The Commerce Clause has been the Supreme Court’s anti-democratic weapon of choice to strike down hundreds of local and state laws protecting people, communities and the environment on grounds that they interfere with interstate commerce.

7. Article III of the Constitution established a Supreme Court, members of which are nominated by a President and confirmed by the Senate. There are no term or age limits, unlike other nations. Impeachment is a virtual impossibility. They serve with little accountability or responsibility to anyone or anything else.

The High Court is the final arbiter of what is deemed “constitutional” among federal and state laws. Its powers are vast and were greatly strengthened by Supreme Court decisions. A prime example is *Marbury v. Madison* (1806), establishing the doctrine of Judicial Review. This gave the Supremes even more power to overturn federal, state and local laws, regulations and lower court decisions.

Legal historian Lawrence Friedman said, “The [U.S. Supreme] Court, in short, guaranteed to business that there was and would be a giant free trade area within this country. It made the country safe for big business.”

8. Like the TPP’s ISDS Panels, Supreme Court decisions can’t be appealed. Supreme Court decisions can be overturned via Constitutional Amendment but the process is far more difficult in the U.S. than in other nations. Supreme Court decisions defending slavery and political disenfranchisement of women

were upended by passage of Constitutional Amendments requiring the organization of mass social movements.

Two-track strategy required

"Commerce defies every wind, overrides every tempest, invades every zone."

- Quote chiseled into granite above a US Department of Commerce building entrance, Washington, DC

A free trade zone is a forced trade zone – against the will of a people or a government. There is no room for democracy. This is an economic invasion with implications for self-governance. The invasion is both foreign and domestic. The invaders are corporations and oligarchs using “trade” deals like the TPP when they invade abroad and provisions of the U.S. Constitution and Supreme Court rulings when they invade on the home front.

Because these two tracks are connected, our democratic strategy must be two-fold:

1. Defeating the TPP through education, advocacy and organizing in all conventional and creative forms. It means engaging our friends and family in face to face conversation, using mainstream, independent and social media. It means advocating for the defeat of this trade deal when it comes to a vote in Congress later this year.

2. Addressing the impediments to real democracy in our Constitution. Just as reversing *Citizens United* in itself will not abolish corporate “personhood” or money equated with free speech, stopping the TPP in itself cannot ensure self-governance. The Constitutional roadblocks must be removed – those that have allowed a propertied elite and the corporation to assert illegitimate authority over the democratic rights of the majority.

In some respects, this is the more difficult assignment. The Constitution has been covered in a blanket of reverence and the myth of a democratic republic that offers freedom and justice for all. We have failed to examine our Constitution objectively, unemotionally and in comparison with the models of other nations.

This is our collective challenge. If we fail to meet it we’ll continue to face brand new, same old stories.



Read more: “Gaveling Down the Rabble: How ‘Free Trade’ Is Stealing Our Democracy” by Jane Anne Morris.

<https://rowman.com/isbn/9781891843396>

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By What Authority (ISSN: 524-1106) is published by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation and plunder the earth. **By What Authority** reflects an unabashed assertion of the right of the sovereign people to govern themselves.

POCLAD is a group of 10 people instigating democratic conversations and actions that contest the authority of corporations to govern. Our analysis evolves through historical and legal research, writing, public speaking and working with organizations to develop new strategies that assert people’s rights over property interests.

BWA is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions and suggestions.

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