

A (Very) Brief History of "Dillon's Rule"

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Under today's system of federal government in the United States, community self-government can fairly be said not to exist. After the American Revolution, a gradual legal redefinition of local government was begun that eventually consigned citizens living in their communities to the status of tenants within non-sovereign municipal corporations.

Not all American towns were originally incorporated, but those that were modeled their corporate nature on English Boroughs that had been chartered "from the Normans through the Stuarts" where "commerce was the organizing principle of the municipality's government, and its offices, suffrage requirements, ordinances, and pageantry all reflected the economic practicalities underlying its existence."¹

Charters for municipal corporations originated in grants of special privileges issued to the merchant class by the English king. Municipal charters served the interests of the kingdom, and then the empire, within England's hierarchical society as it extended its global reach. The accompanying privileges were viewed as sacrosanct among the industrial and commercial aristocracy, but those privileges and rights did not devolve to the lower classes of society living within incorporated towns.

Only possession or control of property gave entry to the rising merchant class, and the privileges that went with that status were attached not to the person, as was the case for inherited privileges of nobility. Rather, privileges conveyed by charter were attached to property itself and passed to the owner while the owner maintained possession. This abstraction of privilege, this imbuing of discarnate rights into things of value that could themselves be in possession of and bestow privilege upon those who took possession of them, I will refer to as the *Rights of Property*. It is a term quite separate and distinct from "rights of ownership" under personal property rights.

Prior to the American Revolution, when the British Lords of Trade temporarily succeeded in having colonial assemblies outlawed, replacing them with royal edicts to which the community was expected to submit, they fanned the embers of rebellion among the people. A new generation of Americans had modeled their local legislatures on an idealized version of the English House of Commons, thinking themselves equal to their counterparts in the "homeland." The rising merchant class in the colonies felt up to the task of challenging their aristocratic lords for local control.

The imposition of centralized rule on the Massachusetts Bay Company and other corporate colonies led to a spirit of rebellion and a willingness to confront the most powerful empire on earth, on the basis of the denial of fundamental rights of people. The usurpation by the Crown of community self-governance in towns and boroughs that had tasted and in fact established local liberty was met by rebellion. In 1774, with passage of the Massachusetts Government Act

¹ Teaford, Jon C., *The Municipal Revolution in America: Origins of Modern Urban Government, 1650-1825*, The University of Chicago Press, 1975, p. 4

by Parliament, a revolt that seemed to have its epicenter in Boston spilled over into the countryside.

After 1775 and until the first two decades following the jettisoning of the Articles of Confederation in favor of the current federal Constitution, English traditions regarding local government and municipal corporations were publicly debated, regularly debunked and gratefully discarded by a generation of people who believed they had established self-governance and a new sovereignty embodied by the People themselves.

Opposition by Federalists to direct citizen legislation was strong. James Madison, primary author of the U.S. Constitution and a critic of town meetings and local self-government, wrote *in The Federalist Number 55*, "In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the scepter from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob."

Thus it was that those of aristocratic temperament who refused to accept that the American Revolution had done away with such oppressive traditions sought to distort republican governance by endowing property with the power of conveying extra rights (privileges) to property holders. While he refused to allow his Notes on the Debates in the Federal Convention of 1787 to be published until after the death of the last delegate to attend,² Madison himself remarked:

"The landed interest, at present, is prevalent, but in the process of time...when the number of landholders shall be comparatively small...will not the landed interests be overbalanced in future elections? And, unless wisely provided against, what will become of our government? In England, at this day, if elections were open to all classes of people, the property of landed proprietors would be insecure. Our government ought to secure the permanent interests of the country against innovation. Landholders ought to have a share in the government, to support these valuable interests, and to balance and check the other. They ought to be so constituted as to protect the minority of the opulent against the majority."³

Corporations are today's institutionalized embodiment of propertied privilege. For this reason, we need to understand that the emasculated governing authority of *municipal* corporations is equally important to the preservation and expansion of propertied privilege as are the judicially granted constitutional protections bestowed on *private* corporations (see CELDF's *Model Brief to Eliminate Corporate Rights* on our web site).

It took a Civil War to end the abomination of an American economy based on slavery, and an American legal structure that allowed ownership of human "property" by a privileged class of men. But not long after the Civil War, with the end of the American Slave State, came the rise

² Madison, James, *Notes on the Debates in the Federal Convention of 1787*, intro, Adrienne Koch, Ohio University Press, 1966, p. ix

³ Parrington, Vernon Louis *Main Currents in American Thought: An Interpretation of American Literature From The Beginnings to 1920, Volume One, 1620-1800*. Harcourt, Brace Company, 1927

of the American Corporate State. Its proponents, like those of the slavocracy, were no respecters of men.

Iowa Supreme Court Justice John Dillon ably Americanized the English hierarchical tradition of condescension toward community self-governance. Dillon was a dilettante of English aristocratic law⁴ as well as one of America's first corporate lawyers. Before taking his place on the state bench, and later on the U.S. circuit court, he represented railroad interests against the claims of municipalities through which the corporations laid their rails.

"Dillon's Rule," not a law but an opinion that bears its inventor's name, has come to define the legal relationship between American municipal and state governments. It is derived from one of the judge's decisions (*Clinton v. Cedar Rapids and Missouri River R. R.*, 24 Iowa 455), handed down in 1868, and expanded upon in his 1872 book *A Treatise on the Law of Municipal Corporations*. (The book, which lays out the fundamental arguments for usurpation of community self-government by the Corporate State, is today all but unavailable to the public).

Dillon's Rule maintains that each county, city, borough, town, and all political subdivisions of a state are connected to the state as a child is connected to a parent. Under this usurping concept, community governments are administrative extensions of the state and not elective bodies representing the right of the people to local self-governance. The Rule was fully adopted for nationwide application to local governments by the U.S. Supreme Court, by reference to Dillon's book, in *Hunter v. Pittsburgh*, 207 U.S. 161 (1907), which upheld the power of Pennsylvania to consolidate two cities against the wishes of the majority of the residents into one.

The *rights of property* form the invisible link between the British crown's claim of supremacy over the people living in American communities, and the US Supreme Court's eventual claim that state legislatures maintain supremacy over the people living in American communities. John Dillon's 1868 dictum, which would become known as "Dillon's Rule," claimed, "Authority denies...any inherent right of local self-government." The eventual embrace of this notion by the US Supreme Court in 1907 finalized the American counter-revolution by asserting that in the states the legislatures are sovereign, and not the People.

For the People to create the legislature and then subordinate themselves to it contradicts the principle espoused in the Declaration of Independence which says "to secure...Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed." It would be the height of folly for people to establish governments that deprive rights. But according to Dillon's Rule, unless the state expressly confers the authority for a community to exercise a right to self-governance, we are to believe that the right does not exist. State legislatures and courts have routinely denied a right to local self-government, thereby codifying a ludicrous tyranny as "well settled law." Lawmakers and judges have employed a similar reversal of logic in subordinating communities of people to the corporate creations of state legislatures.

⁴ Dillon, John Forrest, *The laws and jurisprudence of England and America: being a series of lectures delivered before Yale University*, Little, Brown, 1894

A modern American municipal corporation is not simply an epiphenomenon of English colonial governance. It is also a corruption of American Revolutionary principles. Municipal corporations, unlike private corporations, have not been granted Constitutional Rights by the courts. Municipal corporations, unlike private corporations, are subject to the dictates of state legislatures and hence lobbyists for private corporate interests. The courts have declared that charters forming private corporations amount to inviolable contracts between the state and the people forming the corporation. But the courts have also declared that charters forming municipal corporations are not contracts because the people living in municipalities have no rights as "incorporators," and therefore the terms of the charter and local laws governing the people living there can be altered or violated at any time by the state.

In American communities today, the use of corporate law to wield minority-governing power over community majorities has many parallels to the use of titles of nobility during the English empire's rule over American colonies. Class titles, like corporate charters, were once used to guarantee that the privileges of opulence would rule over the rights of the People. Although the instrument of domination and tyranny has been altered, the dominance of the few over the many remains.

In America, where once the U.S. Constitution protected the privileges of slaveholders over slaves, we now have a Corporate State that doles out privilege based on those same *rights of property*. Today in our communities, a similar property-based structure of law subjugates our inalienable rights. Our authority to self-govern is usurped by a Corporate State whose aspects are to be discovered, if examined objectively, in almost every nuance of local government.

The ramifications of the engineered superiority of private corporations over public municipal ones for local democracy cannot be overstated. By 1907, J Allen Smith could write, "The powerful corporate interests engaged in the exploitation of municipal franchises are securely entrenched behind a series of constitutional and legal checks on the majority which makes it extremely difficult for public opinion to exercise any effective control over them."⁵ It was the same year the U.S. Supreme Court nationalized Dillon's Rule.

A central project of the American Revolution was to subordinate private corporations and minority privilege to the sovereignty of the People. One of the lessons learned by the people, as they watched the sovereign crown eliminate local assemblies, was that in the aftermath of the Revolution they would have to safeguard their assemblies as organs of community self-governance. Instead, we see that community self-governance has been subordinated to the whims of powerful minorities hiding behind limited liability protections of corporate charters and the privilege of Constitutional protections bestowed on property itself by the courts. These minorities are taking advantage of the counter-revolution against self-governing communities when they exercise illegitimately claimed constitutional privileges bestowed on private corporations. Supposedly self-governing people in their communities are forbidden from directly governing the behavior of wealthy minorities using private corporations to change our communities in ways not desired by the majority. Anti-democratic minorities use "Dillon's Rule" to support this legacy of oppression.

⁵ Smith, J. Allen, *The Spirit of American Government*, The Macmillan Company, 1907, p. 289