



Looking Toward the Year 2000: Post-Takings Debate

A RATIONALE TO AMEND THE U.S. CONSTITUTION

Here in the Midwest, Minnesota is weakening its wetlands laws and Wisconsin will relook at its own "takings" legislation. The recisions bill in the U.S. Congress is gutting the Endangered Species Act on National Forest Lands. Other bills are before the Senate and more are expected to follow. This apparent pendulum swing unfortunately endangers more than the laws; it threatens the future of our wildlife and their support systems.

This legislative activity focuses on protecting the market value of private property. The issue is whether environmental laws, such as the Endangered Species Act, unfairly devalues private property. Those concerned want private property owners to be compensated for this market loss, or even more extremely, to remove certain aspects of the environmental laws.

Fifth Amendment Protections for Private Property

Fortunately, these proponents have found protection in the 5th Amendment to the Constitution: "... nor shall private property be taken for public use without just compensation." The above language is clear and it would be difficult to argue against its intent.

Unfortunately, in this latest rush to shore up private property rights, we may be throwing the baby out with the bath water. The solution for one problem creates an even greater one.

Common Property Needs Equal Protection

A fairer solution is to provide protections for all property. Currently, common property is without protection - that property which, by its nature, cannot be owned by an individual. Yet, common property, such as water and air, is the building blocks for our other rights and freedoms also articulated in the Constitution.

Laws which protect common property has ambiguous constitutional authority. Some argue that they have none; that they are all reactionary, albeit necessary for the common good. As effluents go beyond the fenceline or smokestack, neighbors complain and rules are promulgated. Necessary, but reactionary nonetheless.

When these rules are pitted against the 5th Amendment protections they surely will fail. Yet, the effluents and their impacts on health and habitat are real. How then can we protect both, rather than get rid of one at the expense of the other?

By broadening the definition of property we also broaden the concept of "takings," the term used in the private property debate. We must also understand who is injured if one or the other type of property is unfairly taken or damaged. This includes not only those of us today, but all future generations. What's needed is Constitutional balance, not reactionary laws.

Posterity Means All Future Generations

Common sense tells us that common property exists, is being undermined, and needs protection, just as private property has protection. Taking of common property through abuse of private property use should be as illegal as the opposite. And as the

Preamble states these rights belong also to the future: "*We the People of the United States . . . secure the Blessings of the Liberty to ourselves and our Posterity.*"

This posterity clause is the key toward balanced property protection. The framers clearly intended that rights were also guaranteed for all future generations. History suggests that this was not a typographical error nor a superfluous filler. We must enliven the meaning of posterity to assure this dual protection.

In doing so, we look at these rights not just for us today, but we become constitutionally obligated to look at them for all future generations. This different vision will enable us to see the consequences of our actions differently. By protecting rights for ourselves and posterity we provide for the baby while changing the bath water.

Planning for the 7th Generation

In a PBS interview Iroquois Chief Oren Lyons said that a young Ben Franklin turned to the Iroquois among others in trying to shape a better form of government. Apparently he listened and included elements of Iroquois governance including the concept of posterity.

Franklin's posterity was the Iroquois concept of providing for the 7th generation. Lyon's said that as the Iroquois leaders contemplate policy they must always factor in how today's decision will affect the 7th generation into the future. He said that unless we consider them first, there may not be a future for them to inherit.

A Proactive Response

By attempting reform with only what is available today, we remain in a stagnated "jobs vs environment" polarization. In these difficult times we must be creative, proactive and accommodate all of our interests and rights, including for those yet to come.

Below is the first draft of language which we think overcomes this dilemma. Our solution is called the 7th Generation Amendment to the U.S. Constitution. We have formed a group which seeks to engage citizens in the debate and in helping find solutions. We encourage your participation.

Our goal is to have a national debate beginning on Earth Day 1996, to have a bill before Congress on Earth Day 1997, and to get the necessary state ratifications by Earth Day 2000 - which by the way is when our youth members and their generation turn 18 and are promising that they will vote.

For more information write The 7th Generation Steering Committee, 1200 Ellis Avenue, Ashland WI 54806 or contact committee members listed on the back of this newsletter.

The 7TH GENERATION CONSTITUTIONAL AMENDMENT

The right of the people to use and enjoy air, water, sunlight, and other renewable resources determined by Congress to be common property, shall not be impaired, nor shall such use impair their availability for the future generations.

7th Generation Constitutional Amendment (draft language):

“The rights of the people to use and enjoy: clean air and water, soil fertility, traditional seeds, access to sun and wind energies, determined by Congress to be common property, shall not be impaired, nor shall such use impair their availability for the future generations.”

Preamble to the U.S. Constitution:

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

The Sacred Sites Run 2006-2010:

“The Sacred Sites Run supports the protection of Native American sacred places and supports sustainable living choices, as a way to honor the ancestors and to preserve the common good for future generations. Therefore, we support renewing the initiative for a Seventh Generation Constitutional Amendment.” Ben Yahola (Muscogee)

We encourage teachers in every setting to do Runs for Sacred Places and to discuss and organize for the Seven Generations. Possible questions for a 7th Generation Amendment research project with students:

- What is a Constitutional amendment and how is it passed?
- What are the most famous Constitutional Amendments?
- What are the most famous, failed amendments to the Constitution?
- What Iroquois Confederacy ideas influenced the U.S. Constitution?
- Why did Chippewa activists Walt Bresette and Winona LaDuke take up the Iroquois' idea of the 7th Generation for a Constitutional amendment?
- Who enclosed (destroyed) the “commons” of Europe and why?
- Why do environmentalists today talk about planetary commons being threatened—the ocean fisheries, tillable soil, the rain forests, clean water and air, and even global temperature stabilization?

For more information on Walt Bresette and the 7th Generation Constitutional Amendment, and to let us know what you are doing for the 7th Generation, contact [as of 2014]: Tongues of Green Fire Press, 3443 N. 77th St., Milwaukee, WI 53222.