

Free Trade vs Democracy

by Cliff DuRand

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An understanding of the interconnectedness of all humans is a cardinal principle of Unitarian Universalism. In light of that one might think globalization would be looked on favorably by UUers. Aren't we all coming closer together in a global world?

But another cardinal UU principle also comes into play here, viz democracy. We believe in democracy not only as a procedure, but also in the sense that we should be governed by rules that reflect the popular will. Democracy is about popular sovereignty.

It is on this second score that actually existing globalization conflicts with our commitment to democratic ideals. While globalization may have brought the world's people closer together in some ways, it has placed us increasingly under the control of transnational corporations. It has made our world less democratic and our nations less sovereign.

Perhaps nowhere can this conflict be seen more clearly than in so-called "free trade" agreements, beginning with NAFTA and coming on down to the recently concluded TransPacific Partnership that will be coming before Congress next month for approval. I put "trade" in quotes because they are about much more than trade in the sense of movement of goods and services across borders. Tariffs and quotas are a minor part of what they cover. TPP for example has only 6 of its 30 chapters on trade. It is mostly rules harmonizing domestic regulations and protecting foreign investment. And it is in conflict with democracy in two ways. TPP was negotiated in secret among 12 countries of the Pacific rim without input from or even knowledge of Congress, the public or the press, i.e. without democratic input. But hundreds of transnational corporations did have input, shaping the rules in their favor. They were inside the room making the rules for themselves. A cynic might point out that will save them lots of money in the future since they will no longer have to hire lobbyists to influence legislation and regulations. They have already made the rules to their liking behind the backs of our legislators.

Secondly, it is undemocratic in that it sets up a supernational mechanism for resolving any disputes between a corporation and a nation. This is called investor-state dispute settlement or ISDS. Under TPP this allows a foreign corporation to directly sue a government when it feels its profits have been affected by government actions even when those laws or regulations are in the public interest. Thus public actions to protect health, safety, the environment, etc. can bring on a suit if they reduce a corporation's profits. It does not forbid public interest laws, it just makes the public pay dearly when it seeks to protect itself. It prioritizes property rights over human rights. And these suits are not heard in national courts. They are heard by international arbitration panels made up of corporate lawyers and trade experts who meet in secret and have the power to impose unlimited penalties on a country's taxpayers – and their decisions are not open to appeal. They can require a country to pay for not only lost present profits, both also expected

future profits. In effect, they can guarantee a corporation's profits into the future, thereby abandoning the familiar rationale that profits are a reward for risk.

And by the way, this procedure does not provide for governments or the public to sue corporations. It is totally a one way process to protect the interests of investors.

ISDS is a surrendering of a measure of national sovereignty. It allows an unaccountable corporate friendly body to override the democratic will of a nation's citizens as expressed through the normal legislative process. It enshrines a corporate governance structure above nation-states. It makes an end run around democracy, making us pay for "buy local" and "buy American" procurement policies. It makes us pay for consumer protection regulations. It makes us pay to protect our environment. And on and on.

In arguing for TPP President Obama has dismissed these criticisms, saying the critics are just "making this stuff up....No trade agreement is going to force us to change our laws." But let's look at a current example. One of the most important victories of the environmental movement was the success of the popular protests against the XL Keystone pipeline when President Obama decided to not approve the project. This was a major step in arresting further climate change due to extraction of the Alberta tar sands. Obama touted his rejection as global leadership in fighting climate change.

But now, just last week the TransCanada corporation filed a \$15 billion suit under NAFTA against the US for that decision. The pipeline itself is only a \$3 billion project. The rest of the \$15 billion TransCanada demands from US taxpayers is for loss of expected future profits. Sure, we can still make our own laws, but we will have to pay dearly for them to the benefit of large corporations. I'm not just "making this stuff up."

Up to now the US has seen very few ISDS suits against it even though the investor-state regime is part of some 50 agreements, but these are mainly with countries we do little trade with. Now TPP will extend this system to 11 other countries, representing 40% of world trade. And it strengthens corporation's rights, extending them to some 900 foreign companies doing business in the US. The US government is also currently negotiating a TransAtlantic Trade and Investment Partnership or TTIP with the European Union that contains the same ISDS provisions. Then there are Bilateral Investment Treaties or BITs with the same extra judicial, extra national provisions. There is also a Trade in Services Agreement or TISA in the works that covers the financial and health sectors of 50 countries. In the near future we can expect to see many more corporate raids on the pocketbooks of the taxpayer.

It was just one month ago that Congress removed the requirement that meat sold in grocery stores have a country-of-origin label. This change was in response to a World Trade Organization ruling that such a regulation discriminated against meat of foreign origin. Our government just rolled over and gave up the right to make its own rules on this.

While the US has the financial and technical resources to defend itself against ISDS suits when it has the will to do so, poor countries are at a decided disadvantage. The average cost of a defense is \$8 million and some have cost as much as \$30 million.

The ideology that under girds these so-called “free trade” agreements is neoliberalism or market fundamentalism as it is sometimes called. This is the view that sees us as fragmented self-interested individuals linked together by economic relations rather than an interconnected political community, democratically self-governing. Neoliberalism sees society as best directed by the invisible hand of the market rather than by government. It is a resurrection of the *laissez faire* ideology of the 19th century. Except the corporations that dominate the market today do call on government to set the rules in their favor. That is what TPP represents, using this agreement between states as a stepping stone toward a global governance structure that will no longer depend on nation-states. It is free trade in the sense that it frees corporations from public accountability.

Free trade is about more than trade. It is about favoring corporations over the democratic rights of citizens and the sovereignty of nations. As the former Director-General of the WTO, Renato Ruggiero, said in 1995, “We are no longer writing the rules of interaction among separate national economies. We are writing the constitution of a single global economy.” What is being created is a global governance order in which corporations are the citizens, not flesh and blood humans like you and me. With free trade, corporations are making an end run around democracy, around our political process and our court system. Not only are we faced with what some call a plutocracy in the US. We are seeing the emergence of a global plutocracy as a ruling class above nation-states.

Now two decades after the forming of the WTO, TPP is offered as an omnibus keystone in this process of building a global corporate governance structure. It is intended as a template for future agreements like TTIP. This is what our Congress will be asked to approve in coming days under an expedited procedure called “fast track.” This means there will be very limited time for debate, there can be no amendments, and there will be a simple up or down vote in both the House and the Senate. And because it is not considered to be a treaty, only a simple majority, not a 2/3 vote, is needed for passage.

Will it pass? Actually there is a good chance it can be defeated. There is strong opposition to it from across the political spectrum. The President’s party is very divided and even the Republican party, normally even more supportive of big business, is also divided. Spanning ideological differences from progressives on the left to Tea Party types on the right and everywhere in between there is opposition to TPP. Polls show overwhelming opposition to free trade as a destroyer of jobs. TPP not only hampers environmental regulations and efforts to curb climate change, it also threatens workers rights, consumer protections, access to affordable pharmaceuticals, the internet, banking regulation, and a host of other areas of our lives, capping it all by the curtailment of the possibility of democratic control over our collective affairs. As a comprehensive agreement bringing together all the different areas of the global economy, TPP has made possible a fusion politics opposing it.

Our core values as Unitarian Universalists call on us to become active in defense of democracy. This may be our last best chance to turn our country and the world away from a corporatocracy and toward global justice.

BIBLIOGRAPHY ON TransPacific Partnership

You can see the full text of TPP at <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/TPP-Full-Text>

Initial Analyses of Key TPP Chapters <http://www.citizen.org/documents/analysis-tpp-text-november-2015.pdf>

SOME USEFUL WEBSITES:

Public Citizen's -- Global Trade Watch www.tradewatch.org
www.citizenstrade.org
www.flushtheTPP.org
www.popularresistance.org

ARTICLES:

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Steven Gorelick, "Current trade treaties: 'a revolution against law'" October 22, 2015
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"Table of Foreign Investor-State Cases and Claims Under NAFTA and Other U.S. 'Trade' Deals" Public Citizen, 2014 <http://www.citizen.org/documents/investor-state-chart1.pdf>

When song writer Dave Lippman visited San Miguel in 2013 he wrote the following song for our local Occupy Wall Street group. See him perform it at <http://www.youtube.com/watch?v=L40SKME13Ng&feature=youtu.be>

Words by Dave Lippman

Tune: Imagine

You may remember NAFTA
Enemigo del maiz
The Trans-Pacific Partnership
Won't make us mas feliz
Attacking labor standards
Food safety and health care rights
You may say I'm no redeemer
But I've seen this all before
If we all work together
Dictadura corporativa will be no more

The TPP will trick you
Esta no olvides
This global bankers' wet dream
Es NAFTA en esteroides
All local laws suspended
Environment, who cares?
You may say I'm a screamer
But before these guys are done
They'll give our world to Wall Street
Agroindustria will have won

Trust the transnacionales
They have your back for sure
For healthy food and families
Monsanto is the cure
Imagine all the countries
Obeying Uncle Sam
You may say they're all schemers
But they're not the only ones
I hope today we'll all join up
For the good of daughters and of sons

Imagine trade agreements
Good for earth, water, and air
Instead of corporate bullying
An economy that's fair
Imagine all the people
With good food y buen salud
You may es imposible
Corporations own the earth
But if we work juntamente
Un mundo justo will be in birth

A couple years ago I wrote to UUA about its position on TPP. Here is the response I received:

11 Oct 2013

Hi Cliff,

Thank you for being in touch.

In February 2013, the UUA signed on to a letter referencing transparency and economic justice in the TransPacific Partnership (see pg. 5 - http://www.uua.org/documents/washingtonoffice/signons/2013/2013_uua.pdf).

The First Unitarian Church of Portland's Economic Justice Action Group (EJAG) has developed some resources around this issue, and note that an Oregon senator is seeking support on it: <http://ejag.org/resources/>; <http://ejag.org/subgroups/fair-trade/demand-transparency-in-transpacific-partnership/>. Unfortunately, there's no date on the entry, so I cannot say if that senator is still working on the issue.

These may be a few years old, but the UUA's Ethical Eating initiative produced a few resources on fair trade, for example: http://www.uua.org/documents/washingtonoffice/ethicaleating/consumer_choices.pdf; <http://ethicaleating.uua.org/fair-trade>

Other than that, it doesn't appear that the UUA has spoken specifically about the TPP. You may want to keep an eye on the International Office's website for new developments (<http://www.uua.org/international/>).

Hope that's helpful!

Take care,

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