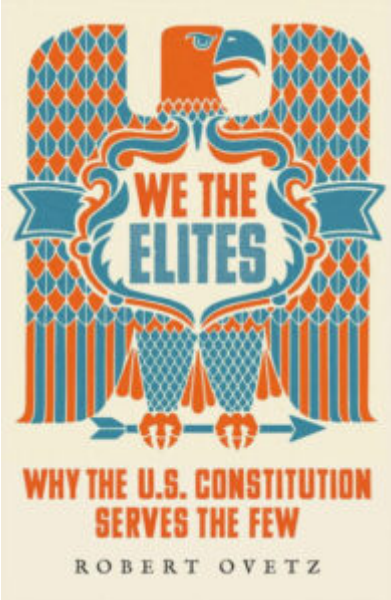
Constitutions Are the Problem

written by Robert Ovetz | April 15, 2023



Excerpted from We the Elites: Why the US Constitution Serves the Few (Pluto Press, 2022). The footnotes can be found in the book which can purchased at plutobooks.com.

Constitutional Dead Ends

The right and left are torn over whether the Constitution prevents or allows for change. Conservatives approach the Constitution as realists, using its myriad minority checks as weapons to prevent, dilute, or undo reforms that oppose their interests. As its base of support shrinks, conservatives, backed by a growing far right in the streets, have turned to creating new obstacles to voting, participation, and even the basic functions of governing. Their tenuous ally, the fast-growing far right, uses constitutional myths to justify violently smashing those who want change. This conservative/far-right alliance now presents a very real risk of corporate-backed fascism based on a romanticization of the Constitution's granting of supremacy to property.

Liberals and social democrats are united in their repeated futile attempts to salvage what is good in the Constitution for the short term. This electoral center left has been captured by the myth of constitutional change through voting, protest, and majority rule, and is unwilling to acknowledge the minority checks that impede them every time. With each new election cycle those demanding systemic change repeatedly embrace "progressive" and leftist candidates who promise to take over the Democratic Party and implement change.

They expend immense energy toiling to elect these candidates, help elite foundation-backed advocacy groups to push for new laws, influence a friendly administration, and win in the courts. With each election cycle voters send these candidates to office only to see their promises blocked or altered beyond recognition by the need to "compromise" the best features of their proposals just to get them passed, approved, or protected in court. Each new defeat emboldens the center left to push on, temper their ambitions for systemic change, and continue channeling their efforts into a dead end.

Despite the long historical record of reform efforts running aground on the shoals of innumerable minority checks, these missionaries of change continue their push. Their efforts are renewed each election cycle like a political melodrama with the same predictable outcome. They lack the irresistible force of mass movements, insurrections, uprisings, armed struggles, mass strikes, and civil wars that provide the necessary leverage to give them the upper hand.

Year after year, generation after generation, these insider progressives are unable to turn the impossible into the plausible, toiling away with little to show for their efforts. After achieving the smallest reforms, activists shift gears to become advocates, consolidate their resources, and harden their base to defend a hard-won fragment of their demands from the inevitable ravages of reaction.

Advocates seek funding, stage media events, and lobby, thereby investing the system with the legitimacy needed to protect their minuscule gains. In this process, the organizer, insurgent, or revolutionary becomes an advocate, "stakeholder," executive in a non-profit interest group, or a candidate for office. And in an instant, the activist for change is subtly transformed into a vigorous defender of the very system that gave rise to their movement, continues to block systemic change, and never delivers on its promises.

Despite the long series of defeats and failures, many on the center left still cling to the mistaken idea of the Constitution as a tabula rasa, a blank slate, onto which we can pour our strivings for change no matter how remote. We continue to cleave to the disempowering myth that the Constitution is changeable despite the mounting evidence to the contrary.

On the center left are many who agree with historian Howard Zinn that, "the Constitution is of minor importance compared with the actions citizens take, especially when those actions are joined in social movements." While Zinn is correct that "liberties have not been given; they have been taken," this process can and has been reversed. Zinn rightly saw that the power of organized people is the only source of all fundamental and lasting change in the USA, but he was mistaken to say that the Constitution doesn't matter as much as we think because pluralist groups can organize, make demands, and force elites to concede to demands for change.

It turns out that the Constitution matters a whole lot. It was designed to constrain the ability of self-organized struggles to enshrine into law and the Constitution the changes conceded in struggle. Most importantly, it preemptively declares all attempts to fundamentally alter the rule of property to be criminal and subject to prohibition and severe penalty, including detention, military force, and death.

Zinn is hardly alone in underestimating just how much the Constitution matters. He has been joined by many unions, every third party, and many radical social movements in US history. For advocates and organizers for change, the assumption is that, if only enough force could be applied, the system will change. Nothing expresses this more than the chant, "when we fight, we win," the slogan of my own union.

That most fights result in defeat is obvious enough, but that many "victories" are ultimately defeated by co-optation, institutionalization, or death by a thousand cuts is not. The constitutional system almost never moves more than what is minimally required to restore control, and then finds a new equilibrium when the threat is gone.

On the other side stand those who, like the Framers, fear change. A substantial portion of the non-elite population is comforted by the inability to change things quickly or at all. Such comfort is rooted in the same distrust in humanity that shaped the thinking of the Framers, who feared the

consequences of putting political power into the hands of the majority.

The difference is that the Framers feared the consequences for their property and their rule if the economic majority used its power to "level" society by seizing and redistributing their property to all.

Non-elites who seek safe harbor in the Constitution are undermining their own majority interests to retain the limited privileges of their subjugated alliance with the elites.

Constitutions Are the Problem

If we are to ensure the future survival of humanity and the rest of the ecosystem to which we belong, we need to quickly sever property from its constitutional foundation. The objective is not to replace it with another system of rule but to organize society for direct democratic self-rule and a shared commons protected in trust for all.

Even writing a new constitution is problematic because the logic of governance is one of domination. Our system is rooted in the theft of the commons, exploitation of human labor, racial supremacy, gender and sex domination, and the supremacy of property above people and other non-human life. This cannot be undone with a new piece of paper. Delegating political power to "representatives" leaves the governed in a state of permanent subjugation. Representative systems can only work by suppressing political autonomy and economic self-determination and transferring power to a select few individuals.

Economic and political democracy cannot be realized through a set of rules but through a set of daily lived practice of collaborative and cooperative self-governance of all life as part of the commons that belongs to all beings.

Representative democracy is a historically specific governance system for capitalism that must be transcended. Because representative democracy emerged as inseparable from property, we must dismantle both the constitutional and property systems at the same time. The political economy of the Constitution cannot be reformed away. Moving past the Constitution will be a necessary step in removing the impediments to change around the world that are enforced by the US empire.

We have been ruled long enough. It is time to govern ourselves. If we are to get past the Constitution and all systems based on constitutions, we need to move past the nation state as the means by which we are governed from above.

To do that we need to understand that the nation state arose alongside the capitalist economy. Modern nation states, and the ideology of nationalism, were founded nearly 375 years ago at the 1648 Treaty of Westphalia which fixed state boundaries apart from the church.

The nation state facilitated the transition from monarchy and feudalism to democracy and capitalism by first dividing power between the king, the aristocracy, and the merchant class. In the past several hundred years we have transitioned from an authoritarian system in which the monarch had absolute rule, owned everything in the realm, and ruled by fiat to an authoritarian system in which property rules.

The modern nation state was formed during this transition as the administrative body responsible for setting up, managing, and defending the capitalist economy by interpreting and executing the law while adjudicating disputes. The nation state is a product of the historical political economic development of the first half-millennium of capitalism. It belongs to the era of global capitalism

because the nation state was designed to establish, manage, and protect that economic system.

The problem humanity faces is not just with the US Constitution, it is with all constitutions. Constitutions imply a power separate from the people that governs on behalf of and in place of the people.

Constitutions are based on an expression of government authority and rule over a defined territory with borders, rules, and sanctions for disobedience. This persists even as borders are eroded and eclipsed by the global elites who manage and own the global capitalist economy.

Constitutions are written by the elites to set the rules by which everyone within its border must operate while deciding what the constitution means. When disputes and conflicts emerge, rights are abused, or powers exceeded, elites sit in judgment, decide what to permit or sanction, and write new rules. In this way a constitution is a top-down instrument for imposing the rule of elites in the form of the state. Because the myriad crises we face are the result of decisions made by elites from above, changing this instrument of state power without altering the balance of power will not solve our problems.

Constitutions disempower people from being able to act, cooperate, self-organize, and self-govern. They allow the few to rule, through passive compliance, consent by inaction, or coercive violence using guns, prisons, and pain. Humanity's dire situation today is the direct result of decisions made by the few who made the rule of property the supreme law of the land while locking out the many from having any say.

Beyond Constitutional Government: The One Gives Way to the Many

What are our options beyond constitutions, the nation state, and representative democracy? Direct democracy, modeled after the Beyond the Constitution systems established by ancient Athens, Iceland, the shura councils during the life of Mohammed, and in Rojava in Syrian Kurdistan, are inspiring but ultimately insufficient for the task because they mistakenly separate political from economic self-governance.

Survival means all of our communities need to become schools of self-governance by determining the basic needs of the community and how they are fulfilled through direct democratic decision making.

This is a project of not merely shifting our thinking from a paradigm of growth to degrowth, or from production for accumulation to reproduction for care, but shifting our thinking from governing to the self-organized meeting of collective needs. When the economy is democratically governed, our community is democratically governed.

The opposite has proven untrue.

Murray Bookchin's idea of "libertarian municipalism," in which local self-governing communities collaborate with one another in horizontal alliances and confederations, is a promising model for transcending constitutional governance. Because Bookchin's concept shares the same word as current free market economic "libertarianism," and the word municipalism is close to the word for local "municipal" governments, it might better be called autonomous localism.

Libertarian municipalism is based on self-organized autonomous local communities using direct democracy to decide what to make, how to make it, who makes it, and how to distribute it. But how exactly can we get there from here? For Bookchin, it was a matter of using local voting in the same

system he wanted to replace, to form what he called “dual power” in which a confederation of local communities would gradually displace government. Unfortunately, Bookchin never explains how that could happen using the rules of the very system he wanted to replace.

Most significantly, Bookchin didn’t say much about how to organize for power over work. Without the leverage to bring this transition about, his strategy amounted to electing friendly local politicians who would establish community assemblies and confederal councils with authority over the economy. Without democratic control of the economy, the community assemblies and confederal councils function more like non-profit advocacy groups. Bookchin’s strategy mistakenly separates the economic from the political.

Another strategy is needed. During the next global economic crisis, workers at critical global choke points are already well situated to shut down, take over, and democratically run the operations. Once management is removed and access is secured, the workers can decide how and what to decommission, dismantle, or transition over to non-polluting uses, while deciding with local communities what to replace it with. During this first phase, strategically situated workers

can spread the effort to every critical sector by supporting strikes at critical choke points that shut down key sectors of the global economy, wrench control over the workplace, and put it under the democratic control of those who do the work and rely on what is produced. While this is happening, community groups could also begin to take over community resources and democratically reorganize them to serve community needs.

Workers and community members can now begin to discuss what they can do to operate the facilities differently in order to serve immediate human needs in a non-destructive manner. Workplace and community occupations could be run by joint community assemblies in which all local residents take turns participating for short periods with instant recall. These assemblies could facilitate guided discussions and democratic decision making about the capacity, desires, needs, vulnerabilities, and wishes of the community.

Workers, who have set up councils to run their workplaces, and community members involved in democratically reorganizing community assets for local needs, could collaborate in the assemblies to decide how the workplaces and community assets will be cared for, distributed, managed, produced, and shared.

The joint assemblies can set up councils responsible for continuing essential work and services, and appoint those who will run them to rotating positions with complete transparency and the possibility of immediate recall. Assemblies could decide which destructive and wasteful work and services to discontinue and which new operations should be launched to serve unmet local needs, sharing the responsibility required to produce essential goods and services. To the degree that they are capable, those attending the assemblies should be encouraged to rotate out of their council positions after a short period and into other councils, to learn different aspects of how to carry out the autonomous local projects.

In the next phase, assemblies can select rotating delegates to visit other nearby assemblies to provide updates on their own operations, bring back news of others’ efforts, and propose collaborations and cooperation. Efforts to share experiences, skills, goods, and services with the other assemblies for the purpose of mutual aid and solidarity can be pursued. Assemblies at close distances to one another can extend their reach even further by establishing a rotating council of delegates, with short terms of service and subject to immediate recall, to establish relations with individual assemblies or groups of assemblies elsewhere for the purposes of mutual aid.

Over time, these networks of assemblies can form themselves into confederations or leagues for collaboration, cooperation, and mutual security. The ultimate objective of this democratic cooperative self-organization of society is to reduce the amount of work while expanding free time for improving the well-being of all humanity and the rest of the ecosystem.

Today there are several existing models of self-organized communities.

The Zapatista autonomous municipalities and caracoles in the Mexican state of Chiapas, in which decision making and control of the economy lies in the hands of the community, and the Federation of Neighborhood Councils in El Alto, Bolivia, are informative models. According to Raúl Zibechi, the self-organized neighborhoods of El Alto do not need representative government because the community councils "lead by obeying" according to the logic of Aymara indigenous principles. The decentralized coordination of reciprocally cooperative councils demonstrates how "the one gives way to the multiple."

This short hypothetical scenario provides just one possible strategy for dismantling the nation state and transitioning past capitalism. The needs of local communities can be served by seizing and directly democratically deciding what should and should not be produced, and how it should be distributed and shared. This reintegrates democratic control of the economy with democratic control of society by returning property to the commons under the protection of and in the service of all.

This can be done immediately, without presenting demands or grievances to the government and then attempting to pressure it to act on our behalf. Organized direct action at both the site of production and consumption is hyper-democratic because it is carried out by the self-organized community and requires no government or rules governed by a constitutional system. Direct self-organization makes a constitutional system unnecessary while simultaneously dismantling the rule of property. Such urgently needed action can begin restoring control over our lives and reverse the course of certain widespread destruction of the ecosystem. It is possible because it does not rely on or attempt to use the rules of a system designed to protect property and prevent change. Direct action breaks our reliance on the very system that has caused global catastrophe so that we can begin to solve the problem ourselves.

This is one of several strategies needed in the immediate present if humanity and myriad other species are to survive. Urgently needed change has not and will not be forthcoming by using the rules of the system. Swedish climate organizer Greta Thunberg is correct in stating that our systems of government have utterly failed us and that we must carry out a global strike for the climate and for the future.

But such a strike must be much more than a symbolic walkout into the streets. It must harness and build our power where it lies in the economic system to take it over and reorganize it to meet the needs of humanity and the rest of the global ecosystem to survive.

This strategy will generate immediate and massive violent retaliation.

But by staying put and taking control, and doing it everywhere at once or in a staggered array which forces of repression cannot predict, we will be able to minimize the loss of life and increase the possibility of success. This is the "whack-a-mole" strategy, so that when any takeover is attacked two more pop up in other unexpected places, four more appear when those two are attacked, and so on, until the takeover irreversibly and unstoppably reverberates across many simultaneous locations and circulates globally.