

THE SODERQUIST CENTER

Feds Power Grab: Part II

Property, Contract Control Shakes Capitalism's Foundation

John D. Copeland J.D., LL.M., Ed.D

Editor's note: This is the second article on the federal government's efforts to control corporations.

Public anger over executive pay and bonuses gave the administration and Congress an excuse to interfere in corporate compensation decisions. The federal government, however, now seeks even more power over corporations. The government's power grabs strikes at capitalism's foundations.

Seizure of private property

In March, President Obama and Treasury Secretary Geithner proposed legislation empowering the federal government to seize any large financially trouble companies. Ben S. Bernanke, Chairperson of the Federal Reserve, supports the proposal.

Currently, only the Federal Deposit Insurance Corporation (FDIC) can take over a U.S. corporation. For instance, the FDIC immediately takes over a failed bank to protect bank deposits.

The proposed legislation allows the federal government to seize any large financially troubled company "systemically" important to the U. S. economy. However, the proposal leaves unanswered these important questions. Who decides whether a company is "systemically" important? What criteria determine whether a company is "systemically" important? What happens to the shareholders' investments if the government takes over a company?

The administration promises to sell its interest in any seized company when the company's financial condition improves. What happens if it breaks its promise? Through the bailout program the government already owns huge interests in some major financial institutions. It controls General Motors. Do we want the government to own or control even more U.S. companies?

Individuals own publicly traded corporations through stock shares. Private property is critical to capitalism and democracy. Private property ownership separates the U.S. from most other countries. Government seizure of private property threatens capitalism and democracy.

Violation of contract sanctity

Besides seizing financially troubled companies, the administration wants the power to rewrite employment contracts and other contracts, such as those with unionized workers and contracts governing retiree benefits.

The sanctity of contracts is critical to business success. Business depends on trust, and without honoring contracts, there is no trust.

Right now, only bankruptcy courts can void or modify existing contracts. Businesspeople understand bankruptcy court authority and accept it as a reasonable business risk. The administration's proposal usurps the authority of bankruptcy courts.

Capitalism depends on the sanctity of contracts. An entire body of law exists on making contracts, honoring contracts and contract enforcement. Breach of contract is a serious matter that exposes the breaching party to civil litigation and money damages. However, under the administration's proposal, the government could take over a company and rewrite, modify, or void any contract without legal exposure.

Many people accept the government's current meddling in business because the companies involved accepted bailout money. The administration, however, does not limit its proposals for more power over companies those taking bailout money. The administration wants the power to take control of any company it considers financially troubled and "systemically" important to the U.S. economy. Republican representative John A. Boehner correctly calls the administration's proposals an unprecedented power grab.