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US Supreme Court Rules for Agribusiness Giant Monsanto, Destruction of the Family Farm

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A series of pro-business decisions announced by the US Supreme Court in recent weeks marks a continuation of the judicial branch's steady movement to the right. The rulings further enshrine the power of corporate behemoths to exploit workers, defraud consumers, and damage the environment with legal impunity. The decisions also serve as an indictment of the right-wing character of the court's liberal wing.

Last Monday, the court in *Bowman v. Monsanto* forced Vernon Bowman, a 75 year-old small farmer, to pay over $84,000 in damages to the Monsanto Company, the agribusiness giant with assets totaling $19.8 billion.

In a unanimous decision delivered by Obama appointee Elena Kagan, the court expanded the scope of Monsanto's patent on genetically modified Roundup Ready soybeans, which account for 90 percent of soybeans planted in the US. The court ruled that farmers who purchase Roundup Ready seeds, plant them, and harvest them for use in future crop seasons are liable for having violated Monsanto's product patent and can be sued even if their patent agreement had been exhausted.

The ruling shows more than the pro-corporate unanimity of the members of the court. It also reveals the irrationality of the for-profit system of production. Despite a global crisis of food scarcity which has left hundreds of millions malnourished and starving, to protect a multi-billion-dollar corporation's profit margin the Supreme Court has ruled illegal a millennia-old farming practice of using seed yield to produce the next season's crop.

In April, the Supreme Court in *Kiobel v. Royal Dutch Shell* also ruled unanimously that Nigerian citizens could not bring suit in the US against Royal Dutch Shell for the company's role in killing, torturing, and terrorizing peaceful activists protesting against Shell's oil development plans in the Ogonia Niger River Delta. In its ruling, the court erased decades of jurisprudence and employed the pseudo-legal argument that Shell was immune to suits brought against it in the US under the Alien Tort Statute because the mega-corporation's ties with the US were not sufficient enough for the ATS to apply.

The court also decided in *Comcast v. Behrend* last month that 2 million NBC/Comcast subscribers in Pennsylvania were not eligible to sue the telecommunications monopoly for $875 million in damages for violation of federal anti-trust law. On a hollow technicality, the court ruled that the 2 million co-plaintiffs to the action would be forced to sue individually because they could not show that they had enough in common with one another to win

class certification. Because of the cost of bringing suit individually, almost none of those seeking damages will be able to afford to bring suit and the company will see little or no loss.

A similar decision was reached in the 2011 case *Pliva Inc. v. Mensing*, in which the court ruled that individuals harmed by unsafe generic drugs cannot sue manufacturers for failure to issue health-related warnings.

The *Behrend* decision is the latest in a string of cases where the court has restricted class action suits in order to protect corporate parties from paying damages to those they have injured. Class action lawsuits give large groups of injured individuals the right to sue as a single party without each person being required to pay for expensive legal representation.

However, the Supreme Court has made it extremely difficult for groups of injured persons to win class action status.

In *Wal-Mart v. Dukes*, for example, the court in 2011 invented a similar technicality in order to prevent over 1.6 million female Wal-Mart employees from suing the company for well-documented discriminatory hiring, payment, and promotion policies. That same year, in *AT&T Mobility v. Concepcion*, the Supreme Court gave corporations the right to force customers to sign arbitration agreements that prevent them from bringing class action suits at any time in the future.

The rightward trend is in no way limited to class actions, the Alien Tort Statute, or corporate patents. In fact, these issues are relevant insofar as they relate to a general shift to the right—one that is gaining recognition amongst the bourgeois legal community.

A study published last month in the University of Minnesota Law Review found the present Supreme Court is the most pro-corporate court in nearly 70 years, and this by a significant margin. The study, which analyzed 2,000 Supreme Court decisions since 1946, ranked all Supreme Court justices from that period and found that five current justices rank in the top ten most business-friendly justices of the post-war period. Chief Justice John Roberts and Justice Samuel Alito are the first and second most pro-corporate justices during the period covered by the study, respectively.

Also telling is a list published recently on SCOTUS Blog noting that the most active filer of *amicus curiae*, or "friend of the court," briefs, is the US Chamber of Commerce. The Supreme Court agreed to hear a remarkable 32 percent of the cases for which the Chamber of Commerce filed an *amicus* brief from 2009 to 2012. Not a single liberal organization appeared on the list of the 16 most active *amicus curiae* filers.

The *New York Times* noted the recent studies in an article titled "Corporations Find a Friend in the Supreme Court." Erwin Chemerinsky, dean of the University of California, Irvine law school, was quoted in the *Times* article as saying, "The Roberts court is the most pro-business court since the mid 1930s."

It is significant that these comparisons are being drawn, but there are important distinctions between the Roberts court and the Taft and Hughes courts of the 1920s and 1930s.

In that earlier period of ascendant American industrialism, and when the lessons of 1917 were fresh in the memories of the ruling class, a segment of the liberal elite responded to

the growing militancy of the working class by adopting a reform agenda.

The arch-reaction, represented by then-chief justice and former president William Taft, hoped to stamp out “the leviathan, the People” in order to “prevent the Bolsheviki from getting control.” Those like him, including Justice Edward Sanford, feared that “a single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration.”

But at that time and at that stage of the development of American capitalism, the prominent liberal members of the court like Oliver Wendell Holmes and Louis Brandeis believed that private property could best be protected by placing limits on the reaction.

When Brandeis and Holmes dissented in the 1927 case *Whitney v. California*, where the Taft court upheld California’s criminal syndicalism statute that made the Communist Party illegal, Brandeis wrote: “Only an emergency can justify repression. Those who won our independence by revolution were not cowards … they did not fear political change. They did not exalt order at the cost of liberty…”

Today, no such words will be found in the rare dissents from the liberals appointed by Bill Clinton and Barack Obama to the Supreme Court. Absent from the liberals of the Supreme Court is any principled opposition to the unprecedented abrogation of democratic rights being carried out under the auspices of the “global war on terror.”

The liberals are silent on the illegal assassination programs, the torture of prisoners, the National Defense Authorization Act, and the expansion of the national security apparatus. Today, the liberals are leading the attack on the social rights and living conditions of the working class. Hand in hand with the conservatives, they are drawing the court rightward at a pace unmet since before the Second World War.

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