

RALPH NADER RADIO HOUR EP 232 TRANSCRIPT

Steve Skrovan: Welcome to the Ralph Nader Radio Hour. My name is Steve Skrovan along with my trusty co-host David Feldman. Hello trusty co-host.

David Feldman: Hello. I guess we're gonna learn about the rule of law today.

Steve Skrovan: I guess so, yeah. We also have the man of the hour, Ralph Nader. Hello Ralph.

Ralph Nader: Hello everybody. This is another unique program.

Steve Skrovan: It is, but before we get to it, I want to announce that we are doing transcripts again. Thanks to loyal listener Elisabeth Solomon who volunteered to be our proofreader. We are starting once again to provide transcripts of the Ralph Nader Radio Hour. Starting back with the show from a couple of weeks ago featuring Dr. Andrew Weil. Thank you, Elisabeth for stepping into the void and helping us provide text-based access to the Radio Hour. But let's get to today's show where we're gonna be exploring two very important themes that we've touched on in various different ways over the course of the last few years. That is, number one, the corporate elite, and number two, the U.S. Constitution. Our first guest is history professor Jack Luzkow who has written a book entitled *Monopoly Restored: How the Super-Rich Have Robbed Main Street*.

In this book, Professor Luzkow zeros in on how financial deregulation, tax evasion, repression of unions, wage theft, undeserved patents, for-profit health care and government subsidies have contributed to the wealth of a tiny fraction, the one-tenth of one percent at the expense of the rest of us. And we're gonna ask him what can be done about that. That's the first half of the show. In the second half we're gonna welcome Professor Corey Brettschneider who teaches Constitutional Law at Brown University. He has written a book entitled *The Oath and the Office: A Guide to the Constitution for Future Presidents*. Most of us would have thought the president should know this. After all they swear to uphold and defend when they are inaugurated. We always see these congress people proudly whip out their pocket-sized Constitutions. But are they really reading it? It doesn't seem like it. Maybe the print is too small. I don't know. Maybe that's the problem. But Professor Brettschneider is gonna tell us why he felt the need to offer this handy-dandy guide to future presidents. And it's something we voters should be aware of, too. Somewhere in the middle we will step aside for a minute and hear from our corporate crime reporter Russell Mohkiber. But first, let's find out exactly how the super-rich robbed Main Street. David?

David Feldman: Jack Luzkow is a Professor of History at Fontbonne University in St. Louis, Missouri. Among a number of publications, he is the author of *The Great Forgetting: The Past, Present and Future of Social Democracy and the Welfare State*. And the book we are gonna talk about today is entitled *Monopoly Restored: How the Super-Rich Robbed Main Street*. Welcome to the Ralph Nader Radio Hour Professor Jack Luzkow.

Jack Luzkow: Thank you very much. I'm glad to be here. I'm very happy.

Ralph Nader: Yeah welcome indeed. The unique aspect of this book listeners, is that it will raise your expectations about what you deserve, what you have been taken away from, and if it translates into civic action, I think Professor Luzkow will be very pleased. There are a lot of books on how people get ripped off, you know, basic consumer rip offs, tax rip offs--all kinds of muckraking books. The reason why I invited Professor Luzkow on the program is because he shows how systematically the super wealthy and the giant corporations have developed system after system to deprive people of what they have earned, of what should be coming to them both in terms of wages, salaries, savings and taxes. He starts out in his book with a quote by a German historian, Philipp Ther, who stated the problem with clarity. In Professor Luzkow's words, and here's the quote, "Blind belief in the market as an adjudicator in almost all human affairs, irrational reliance on the rationality of market participants, disdain for the state as expressed in the myth of big government, and the uniform application of the economic recipes of the Washington consensus". What does he mean by that?

Jack Luzkow: Well he means that the market should not be mother market. It simply can't be the final adjudicator of anything in terms of both economic rationalities, in terms of fairness, in terms of efficiency. That however has been the sort of the dominant ideology, I guess you could say, even of many economists, and particularly the Chicago school, many of whom have gone on to get all sorts of Nobel Prize honors and so on. But we've had a tendency to let ourselves be fooled by this, and to simply follow the advice of economists who say that the government should stay out of it; the government should stay out of the way of the market; the market will take care of itself.

Well we heard that certainly well before the time when the market totally collapsed; the financial collapse, the housing bubble 2007, 2008. That should have been definitive proof that the market could not be trusted as the final adjudicator. In fact, that was an unbelievable collapse. That should have told us something right then and there.

Ralph Nader: What's interesting about your book is that you repeat yourself again and again in different ways. And, I say that as a compliment, because it's gonna take a while to sink in. The overwhelming number of people in our country grew up corporate. They have been exposed to thousands of ads from when they were little children. The school system reflects commercial corporate values. They are vocationalized. Everywhere people go the corporate view of our political economy—including many of

the myths, one of them being that there's really a competitive market system, for most goods and services in this country—are jammed into people's consciousness.

And what your book does is liberate them. They can start saying, you know I got a lot coming back to me. I have been cheated on my wages. I have been cheated on my credit card. Students have been cheated on their student loans. And we're gonna get to what can be done about all this, which is your last chapter. But I'm gonna do something, Jack Luzkow, that interviewers are not supposed to do on radio. But I want to do it by reading page 4. The introduction of your book is so comprehensive that it really is a shortcut to reading your book for people who don't want to go through even more fascinating details like the politics of taxes, the decline of Main Street and the middle class, the ascendancy of the corporate elite, the rise of Wall Street in the City of London, which is the way they call their Wall Street, the business of health care, and for farmers big and bigger agribusiness--farm to table. So I'm gonna read and then I'm gonna let you comment on all this. This is the most important single page in your book. And I'm quoting you: "The super-rich, the 1% or 0.1% in current lingo, have gotten immensely rich, not through sheer ingenuity or inordinate intellectual ability, but by extracting wealth from the real economy where most of us live and work. Historically, much of the wealth of the ultra-wealthy has been based on inheritance, tax evasion, political influence or just plain theft. In the last four decades however, the menu has expanded. The owners of wealth—whether financial, intellectual or physical—have largely succeeded in destroying competitive markets and deregulating large parts of the economy, creating large rents for themselves. ("Rents" that's jargon for profits.)

They have forged virtual monopolies in telecommunications and energy, producing outside profits for them. They have insisted that banks retain the right to speculate on derivatives, ensure the credit card companies not be bothered by pesky usury laws, expanded the shadow banking system so that hedge funds and private-equity firms remain unregulated and virtually invisible. Their credit-card companies have suppressed usury laws limiting interest rates. They have successfully resisted more efficient, less expensive, and fairer single-payer health care systems in the U.S.A., while defending for-profit health insurance that is unaffordable and inequitable for many millions, producing vast profits for their health insurance companies.

The super-rich have been granted patents on drugs, even when their drugs are no better than those that are already on the market. They have won undeserved subsidies for themselves in agribusiness. Their seed companies have established near monopolies over the genetically modified seed market, using political leverage to limit or to eliminate competition. The super-rich, who control corporations, have practiced wage theft, fought minimum-wage laws, weakened unions, outsourced jobs, resorted to temps and contract labor, and preached free trade so the commodities they produce in China and elsewhere can be brought to U.S.A. with minimal duties. The super-rich have lowered or escaped inheritance taxes, shifting much of their income to lower-tax capital gains. They've created tax havens abroad where trillions of dollars remain untaxed and invisible. And multinational corporations have transferred profits of their intellectual and financial property to subsidiaries and low-tax regimes where they can often remain permanently untaxed."

Alright listeners, this ought to get you pretty angry. This ought to open up a much demanding expectation level on your politicians and your corporate rulers. Let me just ask you Jack Luzkow, how should our listeners react to this?

Jack Luzkow: Well, probably the same way that I have, which is why I wrote the book. I won't go through all these points, but when you take almost any one of them, that should make you angry enough. Let me just put a couple of figures and some numbers on some of these items, for example, wage theft. And wage theft is practiced extremely widely from large corporations all the way down to restaurants. But it is a major problem, and it is something you've never seen in the media at all. But the best estimate of that per year is something like 50 billion dollars in wage theft. That's for the people working and they don't get paid for their labor. That is the result of misclassification of people and so on and so forth. That's the result of corporations avoiding benefits, which people should be entitled to.

Let me take health care, because I constantly hear, and we all hear from the health care industry, that we have the best health care system in the world, et cetera. The truth is we don't. And if you look at, for example, Commonwealth Fund just a couple of years ago came out with a ranking of health care systems. Of the 11 countries that they've ranked, the United States came in last except in one thing, and that was cost. Why is that? The reason hides in for-profit health care insurance that's costing us roughly, according to the experts who are medical economists/health care economists, something in the neighborhood of 400 billion dollars a year, just to subsidize private for-profit health care insurance. That's something that European countries don't have so they avoid that expense altogether.

We are told that we're the best, but we're also the most expensive and the reason for that is because we're subsidizing the for-profits. And we do that for the pharma, the big pharma as well, because we don't limit the cost. We don't really have a law which limits what the pharmaceutical companies can charge. Therefore, we are always reading about how something...so for example Lipitor, which used to be on the market until its patent wore out. Lipitor used to sell for \$6 per month in New Zealand and in this country, because I was on this myself, I was paying about \$130 for that and that was pretty normal. Prices are extremely inflated in this country simply because we don't regulate the pharmaceutical industry the way we should. In fact, I would say, basically we don't regulate it at all.

Ralph Nader: If I may interject, also tens of thousands of Americans die every year because they can't afford health insurance to get diagnosed and treated in time. And there's 350 billion dollars in computer billing fraud and abuse, according to Professor Malcom Sparrow (who has been on this show) at Harvard University. Where's all that coming from? People are paying the bill. What are your students reacting to what you're saying. I mean, I find college students today clueless. They have no idea of factual reality of how the country is exploited by these tiny number of giant corporations and the super wealthy.

Jack Luzkow: I don't really believe that we do a very good job of informing our students on this. Maybe to some extent, students, the argument is that students are indifferent. I don't know that they are indifferent. I think that they need to be exposed more to this kind of message. That's the kind of thing I certainly try to do. I'm sure that others do it as well. But even when you come to universities nowadays, more than half of the classes are being taught by adjuncts. You have this sort of the same thing going on in universities that you might have indistinguishable word_____. Nothing against adjuncts by the way. Many of them are very good. But it is much more difficult to do the kind of thing you just suggested, when so many people are teaching part time.

Ralph Nader: Tell us what they're paid.

Jack Luzkow: Yes, that's right, they're paid very little. And adjuncts have to teach generally at more than one college and so the kind of message that I'm talking about is not going to get out very well. And then the other thing is, the huge stress of course on vocational training or professional training, you might say. A lot of our curriculum is controlled by the business interests themselves. They've even tried to get more and more into high schools, and unfortunately, I think our high school students are subjected to exactly the same kind of message that you were just talking about. Advertising of course, is another way that, I didn't talk too much about advertising in my book, but advertising can be put down also as a huge rent, you might say, because it gets out messages, basically to sell things. One of the big tech companies that we all know and love so well is Apple.

Apple of course, at least recently, had something north of \$250 billion that it was holding abroad in various tax havens, or simply holding abroad because as long as earnings are held abroad, as you know they're not subject to taxation. The last tax law that was passed by our current President and Congress, basically allows them to bring that cash back home at a rate of 15.5%. The corporate rate of course has been reduced recently as well through something like 20 or 21%. In any case, Apple and many other corporations have done everything they can to keep their income, or keep their earnings out of the way of taxes so they can bring it home either on tax holiday, or what they do is well known, they establish subsidiaries, as Apple has done also. And these subsidiaries, for example, capture all the earnings from intellectual property rights, and can also be channeled into countries which have very low corporate tax rates.

I'm thinking particularly where Apple established one of its subsidiaries in Ireland. And Ireland had a corporate tax rate of 12% at the time. But Apple worked out a deal with them, which essentially lowered their corporate rates there to .005. In fact they got so low, that the EU had to step in and fine Apple for doing that because it was evading taxes. Taxes are another way in which rents are extracted, in which great wealth is extracted. Because when corporations don't pay taxes that means that somebody else will be paying them. Otherwise, the government has to be shut down. So whether you're talking about taxes... Taxing inheritance is another thing. Inheritance will be struck down. There will be no inheritance taxes in the United States after 2024. That's simply another illustration of how wealth has transferred gain to the super wealthy, in this case those who inherit their wealth.

Ralph Nader: Now let me put it to our listeners, why is it that most people in this country, either don't know how they're being ripped off, or they think that they're holding on to what they already have and they don't want to make waves, they're afraid, or there's no citizen organization in congressional districts that they can join to fight back, to get what they have been denied, that they legitimately earned, you know. We hear all these questions, yeah. It is really the consumer's dollar that Apple is spending. A hundred billion dollars in little over a year to buy back the stock increase, the metrics for executive compensation. You hear, "It's the shareholders' money. Why isn't it coming back to the

shareholders? Why are the bosses keeping it? You know it is not the bank's money, it is the depositor's money."

If it is our money, why are people so uninterested and why do they give up? You know, of course through our educational system, starting in grade school, what are these kids learning? They're learning how to obey. They're learning how to believe. They're learning how to endure. They're learning how to be exploited. We're talking with Professor Jack Luzkow, who has a new book, *Monopoly Restored: How the Super-Rich Robbed Main Street*, ought to generate marches, pickets. Picket your congressional office. Picket the buildings of these giant corporations. They often underpay their own property tax. They don't even support the schools as a result. You know I think what it comes down to, I think in all of human history, Jack, there has never been this kind of intensive, relentless greed.

Jack Luzkow: Yeah, we've certainly never seen this kind of super concentration of wealth, not to mention income, in the hands of 1%. In fact I can say really, in the hands of the .01%, or the .1%. It is astonishing when one percent of the population can control almost 50% of the wealth. It's astonishing when 1% of the population controls approximately 24, 25% of the income. It's astonishing when the average CEO of the big corporations makes 350 times more than the median income of the median earnings of the employees of the company.

Ralph Nader: Just a few days ago, the Securities & Exchange Commission, under required law, released the comparisons between CEO pay, and the medium wages in their companies. CEO pay is going up 17% in one year, while tens of millions of American's wages are stagnant. 17%! That means, you know Walmart's CEO would be making 12, 13, \$14,000 an hour--an hour while millions of workers in Walmart have made less than \$10 an hour, eight, nine dollars. Now they're averaging a little over 10. They gave them a little raise. They're close to 11; still making less than what Walmart workers made in 1968, adjusted for inflation. So let's get to what can be done about this. I'm interested to see how strategic you are.

When your mind is so full of these facts, these systems, how they're rigged, stacking the deck, enormous detail globally, nationally, locally and to get away with it with their propaganda about well, "It is just the free market. You know, we're just obeying the market verdicts. That's why we're legitimate." They say, "Well, we obey all the laws." Of course they write the laws with so many loopholes, but they don't obey all the laws, as all the fraud in the health care system demonstrates. What's your strategy here? Would you say Congress is the first institution that can start turning this around? Let's say you're in front of ten million people in the most gigantic stadium in world history. They want to have you tell them what to do.

Jack Luzkow: Well what should be done and how to do it of course are two different things. One of the things that's been talked about—it's certainly not going to solve everything and it has been talked about for centuries—is basic income. That simply means that we have to put a floor, at least a floor. That's not going to change our institutions, I know. But we have to put a floor under what people make. Because if we're gonna get to a point where machines are gonna replace all of us, and none of us are gonna have

jobs... well I'm not saying we're going to get to that point. But in any case, we have to do something about guaranteeing an income for every single person so that people can actually be free, so they don't have to worry about whether they're gonna have jobs risk, or housing risk, or education risk.

Ralph Nader: That's called basic income and there are liberals and conservatives in the past decade supporting it, right? The Basic Income Movement--want to explain that?

Jack Luskow: Yeah, the reason I mentioned that, because to most people it would sound like something which is absolutely hopeless, but in the early 1970's, Milton Freeman—who was a neoliberal and therefore somebody who said the market should determine everything (he even wanted to get rid of things like Medicare; he wanted to privatize the post office)—Milton Freeman, of all people, was the one who suggested the Negative Income Tax. Negative Income Tax may not be quite the same as a Basic Income Tax, but it is essentially saying that if somebody falls below an income level, either through joblessness, or because a job doesn't pay very well, then that person should be entitled to a Negative Income Tax, where the government would pay that person, let's say, some sort of income.

So in Milton Freeman's work, he actually convinced Richard Nixon to support it. Richard Nixon actually did support it. And ironically, the democrats didn't think that it was going to do enough, and so they actually opposed it. There have been serious considerations of this idea. There have been experiments that have been conducted in Canada, in India, several in Africa, one in California now, and almost invariably, they show that people do much better when they don't have to feel like everything is at risk in present future and so on, so that at least they have some cash income that they can count on. I worked in welfare several times, in Detroit and in St. Louis and I saw what happened when people really were... the government was telling them everything, all sorts of stipulations, treating them really very, very badly and the only beneficiaries of the welfare system that we had then were actually the people running it, because they had jobs and they had income. So basic income is a start. We have to have universal health care. If we don't have that, we will continue to flounder the way we have. We're paying possibly as much, certainly half a million dollars in the insurance/private for-profit insurance that I mentioned. But we're also paying hundreds of billions of dollars more per year in pharmaceutical costs that we shouldn't have at all, because we don't regulate pharmaceuticals at all. We should also be getting royalties from many of the pharmaceutical companies because much of the research that they've used to develop their own products, has actually been based on research that was generated by the National Institutes of Health or by other government-funded research projects. Originally, the government was supposed to be given royalties in that case. But for some reason that slipped by. It's now ignored and probably legislation has sort of gotten rid of it anyway.

But in any case, initially, that was supposed to be part of the commons. The research was done by the government. That was supposed to be part of the commons. There was supposed to be royalties. That never happened. So universal health care absolutely should be a right that everybody has. It should be, of course. We simply have to take the profit...we have to take business out of health.

Ralph Nader: And the living wage.

Jack Luzkow: Well, \$7.25 an hour in real terms is less than the minimum wage of some 50, 60 years ago. A real living wage is something that can happen. There's some states that actually have a much higher minimum wage. There are some countries, like Australia for example, where the minimum wage now is, I believe it is 15 and a half, 16 dollars... in American dollars. It has actually worked quite well. It was opposed initially by McDonalds there and other companies. But it has actually worked quite well and I think they're happy about it. When you pay people more, they can spend more. This is elementary. This is economics 101. And when they can pay more, that generates more in the economy, and that's what creates jobs and so forth and so on. We must have a government which stands behind people.

The main function of government should be to help people find employment, and not to punish them when they become unemployed for reasons which have nothing to do with their ability. And I think we have to stop lying to people and telling them that if they get a college education, that's the key to getting a good job, because the truth is that we're approaching a high percentage of college graduates who are working in jobs for which they weren't trained or for which they never studied.

Ralph Nader: Not to mention they get ripped off in these for-profit universities mercilessly, and end up in huge debt. And these for-profit universities are massively subsidized by Washington, by the U.S. taxpayer. You know, in terms of people getting what they deserve, your book goes all the way back to Tom Payne, the great pamphleteer of the American Revolution. And he wasn't just a pamphleteer for the American Revolution. He had all kinds of sophisticated, economic proposals. Why don't you describe that? That's on page 369 of your book and it's very good. It's under the title, "What Can be Done." How did Thomas Payne tell us?

Jack Luzkow: Well, Thomas Paine is recognized as one of the earliest people to actually propose a basic income. And so he really—I don't think he was absolutely the first, but he was certainly one of the first Americans that I know of, actually British, but American as well. And his idea was similar to the idea of putting a floor under... so that everybody would actually have a guaranteed income, guaranteed by the government itself. And that has been something, which has been, as we've said already, the idea that has come back and forth. The question of course with criticism is how do you actually fund that? Where does money come from to actually pay for a basic income? And that's one of the things that I labored to discuss and define in my book, because when you add up all of the rents that we pay to the 1% or to the .1%; when you add up all the money that they extract from us; when you add up all of the patents that they get; when you add up all the subsidies that they get; when you add up all that tax evasion—when you remember that—something like American Corporation is probably holding anywhere from eight/ten trillion dollars abroad out of the way of taxation—when you squeeze all the rents that go to the 1% now, and bring them back, there's where your basic income comes from. That's an idea I don't think Thomas Payne quite framed it like that. But that is what we know, I think is looking at the modern economy. That is how you do it. That is how you do it. You know, we were in France. My wife had an accident there. She was tended to by the French health care system. Nobody ever mentioned money at all. Nobody was concerned about money. We're not French. In the end, after she had surgery and everything, she was charged \$1,000 for pre-op, operation, post-op. The point is, they

have a totally different system than ours where literally millions of dollars are simply stolen from all of us, and then we don't get very good health care to begin with when you compare it to other countries. So that's how you pay for basic income. That's how you pay for universal health care. That's how you pay, I'm going to say, and this will sound like I'm repeating Bernie Sanders here, but, you know, we can offer free education through grade 12. We can also do it at the university level. Some countries already do that.

Ralph Nader: Well first of all, we just bring back our soldiers from Western Europe who've been there for over 60 years after World War II. That alone would not only pay all the tuition for all the students in public universities and colleges, public universities and colleges, but it would pay for their tuition, too for the soldiers coming back home. Don't let anybody tell you there isn't any money. The money is wasted in the military budget and corporate welfare. You have a very nice description of how workers are treated in Germany, compared to the U.S. We're running out of time, but can you quickly describe that?

Jack Luzkow: Yes I can. Germany has a totally different system than us. First of all, they value their workers. First of all they have a different educational system that they provide for them, too. And of course, students there don't have to worry about tuition like ours do here. The corporate structure is very different there in Germany because the boards are democratized. That is to say half of the boards of the big corporations are actually composed of workers, people who work there. Yes it leads to serious contention. But, German corporations are extremely efficient as a result. They have work councils in Germany as do many... actually all the European countries. And that means that workers, whether there are any unions or not, collaborate with the corporations, collaborate with the executives, and strategy... corporate strategy, including even hiring and so on and so forth. What you have is a much more collaborative system.

Unions are protected there, unlike in United States where they are denigrated, where we have right-to-work states and so on and so forth. Neither party has done really even nearly enough I think in terms of protecting unions. And so Germany protects workers. It doesn't have a minimum-wage law, but it doesn't need one because German workers are paid much more, for example, than comparable workers in this country. So if you have a government, which collaborates with unions and with the corporate leadership, not a big surprise that you're going to have totally different kinds of corporate relationships. Not a big surprise that people are still able to work in the single industry, in a single job quite often.

Ralph Nader: Not only that, they get paid better. They have better pensions. They have universal health insurance. They have well kept-up parks in communities and Germany has a huge export surplus, compared to our massive trade deficit. So we've got to reduce our arrogance here, and we've got to start learning from other countries. If they can do it, we can do it. And I like the way you concluded. You said, "What is needed today is a profound moral transformation. We need to repudiate the kind of selfishness that is justified by orthodox neoliberalism. We need to bypass political parties that bow to the 1%, especially the 0.1%. We need to recover, our hijacked democracy. We need rebuild the commons and to remember that the sky, the rivers, the oceans, the minerals in the ground, the land and

earth itself once belonged to all of us. They can and should belong to us collectively again. We should reject monopolies. We should advance the public good over private greed. We should remember that public institutions—like library schools, museums and parks—serve us all as equals; that they are part of the commons.” and on and on. So this is a very important book listeners. Buy it for you teenagers. Buy it for you libraries. Buy it for your neighborhood. Buy it to send to your member Congress. Readers think/thinkers read. The book is Monopoly Restored: How the Super-Rich Robbed Main Street by Professor Jack Luzkow. Thank you very much Jack, and spread the word.

Jack Luzkow: Thank you very much. I really appreciate you having me on your show as a guest and it is a real honor to meet you in this way. Thank you again.

Ralph Nader: You're welcome.

Steve Skrovan: We have been speaking to Professor Jack Luzkow, author of Monopoly Restored: How the Super-Rich Robbed Main Street. We will link to that at ralphnaderradiohour.com. We're gonna take a short break. But when we come back, we're gonna talk about what every president, and probably more importantly, you should know about the Constitution of the United States. But first, let's check in with our Corporate Crime Reporter, Russell Mokhiber. You're listening to the Ralph Nader Radio Hour. Back after this.

Russell Mokhiber: From the National Press Building in Washington DC, this is your Corporate Crime Reporter "Morning Minute" for Friday, August 24, 2018, I'm Russell Mokhiber. A UPS worker should be allowed to use the company's name and logo in identifying themselves as a UPS employee while criticizing UPS's treatment of its employees. That's according to a lawsuit filed by Public Citizen in federal court in Atlanta. Carl Gregory, an employee of the Atlanta headquarters company has been dissatisfied with collective bargaining negotiations between UPS and the Teamsters Union, and for months has distributed materials critical of the company and the union at several UPS facilities in Florida and elsewhere. A proposed new contract will be the subject of a national ratification referendum in September. UPS demanded in early July that Gregory stop using a card displaying a photograph and himself in his company uniform, standing next to a UPS delivery truck. Public Citizen argues that the card does not violate any trademark laws, and is fair use. For the Corporate Crime Reporter, I'm Russell Mokhiber.

Steve Skrovan: Thank you Russell. Welcome back to the Ralph Nader Radio Hour. My name is Steve Skrovan along with David Feldman and Ralph. For our next guest, I'm gonna turn the radio over to you David, because you know this man very well.

David Feldman: Corey Brettschneider is a Professor of Political Science at Brown University where he teaches constitutional law and politics, as well as Visiting Professor of Law at Fordham Law School. He's written several text books on constitutional law. But his latest work is written for everyone, not just students. It's called *The Oath and the Office: A Guide to the Constitution for Future Presidents*, which Kirkus called required reading for all Americans. Professor Brettschneider has also devoted much of the past year fighting Trump's travel ban. Professor Brettschneider has a Masters in Philosophy from Cambridge, a Doctorate in Political Science from Princeton, and a law degree from Stanford. Welcome to the Ralph Nader Radio Hour Professor Corey Brettschneider.

Corey Brettschneider: Thank you. It is an honor and a pleasure to be here.

Ralph Nader: Yes indeed, this is a very readable book listeners. Don't be put off by, you know, a book on constitutional law. It's extremely readable. In fact, he has one chapter, "How to Stop a President", which we're gonna talk about. There's a lot going on in Washington with Trump and Mueller and criminal convictions and the Brett Kavanaugh Supreme Court nomination. The hearings are gonna start sometime early next month, by the Senate Judiciary Committee. So if you were testifying on the Brett Kavanaugh nomination, and I hope you ask to testify because if more and more people don't ask to testify on these nomination hearings, the Senate Judiciary Committee will continue its recent tradition of restricting the time for the hearings and restricting the number of witnesses. What would you ask Judge Kavanaugh if you were questioning him as a member of the Senate Judiciary Committee, what three or four questions?

Corey Brettschneider: I think there are two really fundamental areas that he has to be asked about. One, I laid out in an opinion piece in the *New York Times* about three weeks ago about abortion. And what I said is that what was disgraceful on the last set of hearings, for now Justice Gorsuch, is that they allowed him to answer with this sort of trickery. So they would say, do you believe that as the Justice you would uphold *Roe versus Wade*. He would say, Senator, *Roe versus Wade* IS a fundamental precedent of the Supreme Court. And what he would do is he would give a sort of intro lesson on constitutional law using this term "IS", and sort of stating facts rather than answering the real question, which I think he really needs to answer, which is: Was *Roe*, correctly decided? And if you think it was not, would you uphold it as a matter of precedent? I think the tradition that says the so-called Ginsburg Rule is inappropriate is false. She certainly did give her views about *Roe* and about past cases, and about the role of precedent. So I think we have to get away from this really weak series of questions that the Judiciary Committees ask.

The other issue I think is executive power. This nominee's views are extremely worrying. He also flipped. I mean he was a member of the Starr team. The Starr team put together the best memo, really out there. I talked about it, as you know, in the book, about why a president can be indicted while in office, and actually even tried while in office, if the president commits a criminal offense. Now later on he backed off that in his scholarship and said that a president was too busy to be indicted. He even hinted/inferred with the idea that *U.S. v. Nixon* was wrong, and that subpoenas of a president might

violate the dignity of office and the schedule of the president. I find that appalling. Because it is suspicious, first of all, that the difference was that at one point he was prosecuting a president and at another point he was working for a president. That's not what we want in the Supreme Court Justice.

We don't want a sycophant. We want somebody with independent mind. Of course, the other reason why it matters is because right now this isn't a hypothetical. We have a president who is quite possibly, maybe even likely guilty of crimes, especially after what we saw yesterday. And this justice is gonna make the decision of whether or not, possibly a sitting President, Donald Trump, can be indicted and subject to trial while in office for a criminal offense.

Ralph Nader: Professor Brettschneider, let's ask this question, are presidents above the law in two parts. Are they above the law in military and foreign policy in theory/in doctrine? And are they above the law in fact?

Corey Brettschneider: I certainly don't think that they are. And I think the entire purpose of the Constitution, not just one provision, is about that idea that we were moving away from monarchy. It is certainly the idea that there was a prerogative of the king in all sorts of areas that did place him or her above the law and transitioning to a democratic republic where everyone would be subject to the rule of law. So part of the Constitution that talks about no royal titles, for instance, is about that. But then there are other areas, too. So in War Power, we've unfortunately factually, I mean, to get to the heart of the matter, transitioned to a point where presidents really think they can do whatever they want when it comes to initiating war. And the War powers Act, which was well intentioned, I think has empowered them to think that they can start wars as long as that decision is ratified ultimately by Congress.

Now I think that's very far from the original understanding, which is very clear that a president does not initiate. It's Congress that declares or initiates war, and the president can carry it out. Now what do we do about that? I profiled Jules Labelle who's had a series of lawsuits trying to call presidents into check. And unfortunately, they haven't worked. So I think we might need a new War Powers Act. It's not gonna be courts that enforce it. It is gonna be Congress. We need to restore that original balance. Now in other areas," for instance, I think there too our president has to be held to an account. Donald Trump said that he could shoot somebody, I think, on 5th Avenue, and get away with it. But the reality is that there is a constitutional debate about that. Some people say the president, while in office, is immune from prosecution. I think that's a mistake, that it betrays the meaning of the Constitution and our precedence, which suggests that a president isn't better than anyone else. And if a president violates the law, has to be accountable. Certainly, you did a lot, Ralph, during Watergate to make sure that was the case of Richard Nixon. I'd hate to see that repeated this time with a different lesson. Nixon wasn't above the law, despite the fact that he said when a president does it, it is not illegal. We need to make sure that's true going forward.

Ralph Nader: Well you know the courts are a problem here, because when you see the lawlessness of presidents under both parties, starting criminal wars of aggression that haven't been declared, pursuing

violations of federal statutes like the statute protecting people against search and seizure under the 4th Amendment, the FISA Act, all the kinds of things that we now read about, drones interfering with national sovereignties, blowing up people. And then, so people say “Well, let’s bring the president under the rule of law. Let’s file a lawsuit.” In the course of escape there were two doctrines. One, as you know is they say, “They don’t have a standing to sue.” No standing to sue; you don’t have a clear enough interest to pursue the case. That’s a medieval doctrine that should have been jettisoned long ago. The second copout by the courts is they say, well this is political question. It has got to be resolved between Congress and the Executive Branch. What do you think of those escape hatches?

Corey Brettschneider: I think in the case of War Powers, it’s been a disaster. I mean, that’s exactly what’s happened when Congress people for instance have tried to sue. There was a suit by Ron Dellums at one point and then another one by Republican members of Congress. This is a bipartisan problem, you know. Presidents and power, regardless of party, assert this sort of privilege. And even if they acknowledge, or people acknowledge the Constitution requires one thing the fact that the courts have just allowed them to copout, I think has been a disaster. In the book I call for legislation to restore the really original meaning of the War Power, which is that it is Congress that declares war. And I think part of that legislation should say that this is judicially enforceable. Constitutionally, maybe, there is a kind of long tradition of saying that courts aren’t gonna intervene on a constitutional issue. But I don’t see why congressional legislation can’t require a role for the courts. Yes, that’s what I’d like to see.

Ralph Nader: You know what’s interesting, what’s interesting, presidents are subject to the law, traditional criminal law. They can’t burglarize, for example. And they are subjected to tort law. Clinton was subjected to tort law in terms of his relations with women, sexual assault. On the ground, presidents are under the law. But on the really big, big issues, they have escaped. What has always troubled me is that you pay a higher penalty for violating a traffic ordinance in this country, than governments pay for violating your constitutional rights. They can keep you off the ballot with malicious arbitrary harassment, especially for third parties. There’s no penalty. No one is prosecuted. Nobody is fined even when they are discovered to have violated your constitutional rights to get on the ballot and express your first amendment rights of speech, assembly and petition. Has that ever really bothered you that violations of our Constitution come with almost no penalties—no fines, no imprisonment—as simple violations of the criminal law have incurred?

Corey Brettschneider: Yeah, I mean, I think you know, the rule of law requires courts. And so the more the courts step away from that fundamental duty, the worse. I mean you said that presidents are subject to the criminal law. I think there’s gonna be a question about that that we might see in the showdown in the Supreme Court. And when I was talking about Judge Kavanaugh earlier and his views, I worry about what a Supreme Court would say, if for instance, I mean, imagine that the Special Prosecutor brings criminal charges against Donald Trump, either in the case of the Russia investigation, or in the case of these campaign finance violations that Michael Cohen pleaded guilty to yesterday.

The president is gonna argue that although in the Clinton v. Jones case, that there was not immunity from civil suits. When it comes to criminal cases, there is immunity. And I think their argument is that a president is too busy. That's their first argument. The second is that the dignity of the office requires an immunity from prosecution—that he not be subject to the law while in office. And they'd say there's impeachment, and there's the possibility to try a president after he or she leaves office. But to me, the point that you're making is crucial when it comes to right now. If Trump is guilty of a crime, I think that there should be charges brought against him, either in the Southern District of New York, or by the Special Prosecutor.

Ralph Nader: It is interesting that criminal behavior affecting an election raises questions to whether the president can be indicted. And you know there are scholars on all sides of that while he is president. However, if he burglarized a store on Pennsylvania Avenue, or he was engaged in a raw street crime, nobody would say he is above the law, right? He would be indicted.

Corey Brettschneider: Yeah, by local prosecutors, you mean, right?

Ralph Nader: Right. Let's bring it down to the listeners' interest here. Coming up. On September 17th, as you know, it's Constitution Day. Thanks to Senator Robert Byrd who shepherded this bill through, people all over the country are gonna have an opportunity—community colleges, colleges and other places—to engage in Constitution Day. I certainly hope Brown University celebrates that.

Corey Brettschneider: Under threat of losing our federal funds.

Ralph Nader: Yeah, an expensive matter. So here's the message from James Madison over 200 years ago to you, listeners. Here's what he said, and he was the main writer of our Constitution and certainly wrote a lot about it after it was adopted by the states. Here's what he said, and it relates to you, "The people are the only legitimate fountain of power. And it is from them that the Constitutional Charter under which the several branches of government hold their power is derived." At the end of your book, you say about the people of this country, that "The Constitution does not just rest on the beliefs of our framers like Madison. It does not even rest only on today's public officials. It rests on you. Whether you are future president or citizen, it is your job, as it is all of ours, to preserve, protect and defend the values of the Constitution." That's your quote. What do you think people should do on Constitution Day? How do they find out what's going on?

Corey Brettschneider: Great question, and thanks for reading that quote out. I mean the first is, I think we have to reorient the way that we think about the presidency and the way that we think about elections of all public officials after the presidency of Donald Trump. And there has to be a sort of threshold before we get to other issues, which is, does this person understand the role? Do they

understand that the job is to uphold and defend the Constitution of the United States? So that might mean, War Powers as we were talking about--understanding it is Congress that declares war; understanding that a president certainly isn't above the law. We could go through the issues. But ultimately, people I think sometimes think about a Constitution as being sort of self-reinforcing, or enforced by courts, and they don't have to worry about it. That's the law. But what we're seeing is you have people in the country, the president, and unfortunately, a good number of his supporters, trying to undermine the basic values of the Constitution. They might succeed. I think that's a kind of threshold thing that we have to inject into our elections is basic understanding of the rule of law. A president that is, you know, outwardly bigoted, for instance, like Trump, should really be in the minds of voters, disqualified. But I think because that's not the orientation that a lot of electorate has, that threshold question hasn't been asked.

Ralph Nader: Let's get to Chapter 12, especially with Trump as President, and what he's been doing and not doing: how do we stop a president? What are the ways to stop a president that you outlined in your book?

Corey Brettschneider: One, I think kind of unique way that many people haven't thought about, is the role of the states. Federalism, or state's rights, as it's sometimes been called in American history, is usually seen as a reactive, a conservative view and certainly that was true leading up to the Civil War, and during the Civil Rights Movement when wrongly, states resisted federal power in order to subvert Civil Rights, and basic human rights in the case of slavery. But I think the states also now in the modern world, have the ability to protect Civil Rights, and they're doing so. The role of California, I profiled in particular a terrific lawyer, a former judge, Miguel Marquez in Santa Clara County who said, you know early on, in the sanctuary cities lawsuit that the Trump administration doesn't have the ability to threaten states or localities with the revocation of all their funds if they refuse to hold suspected undocumented people who are being held, for instance, for minor crimes, or not even crimes, but violations like parking violations or speeding.

That's a great example, I think, of where the states can say, that the federal government can't commandeer local agencies. This isn't an inherently conservative idea. The Marquez example shows how it can be used in the modern era, right now to vindicate civil rights. I talk about the case of indictment, which we've already touched on. But there is, I would say, the dominant view, unfortunately now, is that a president can't be indicted while in office. But I think that's wrong for reasons that we were saying that the rule of law not only allows it, but requires it and the dignity of office not only doesn't preclude it, but it requires it, and so I talk about that. And the third way, of course, the main way, with which I end the book is by talking about, what's required for it, and why it's important really in a way to be the ultimate check on the requirement of the oath of office. The requirement isn't that a criminal offense is being committed, but that a high crime and misdemeanour, that's not a criminal category, but really is about a blatant disregard of the oath of office.

Ralph Nader: Well, listeners, get ready for one hot fall season. You're gonna see widely televised, the tumultuous hearings of the Senate Judiciary Committee, questioning Judge Kavanaugh, a nominee by President Trump to become Associate Justice of the Supreme Court of the United States. And there's likely to be a constitutional crisis in the collision between the Mueller inquiry, an investigation, and Trump. Here's where presidential power comes in Professor Brettschneider. Trump can do the following, and really nobody can stop him. He can fire the Attorney General, the Deputy Attorney General, Special Council Mueller. He can put Giuliani in charge. He can go all over the country with huge enthusiastic crowds, shouting lock her up, and other epithets. He can laugh at the Congress because the republicans are cowardly, and they control the Congress, and they're worried about the November elections. They're not gonna initiate impeachment. He can flaunt his pardon power without limit, and he said that repeatedly. He could pardon Michael Cohen and he could pardon Paul Manafort both of whom have already been convicted of crimes in our courts. He can basically say to the country, "You can't stop me." What's your answer?

Corey Brettschneider: Yeah, I mean, the unfortunate reality as opposed to what should be, but what is, is that the presidency has grown so powerful and we've strayed so much from Constitutional norms that I think that's a real worry in all of these areas that yeah the pardon power—I think the framers thought of it as a "benign power" is what they called it, the "benign prerogative of the pardon power." But the prerogative part means unlimited, so can he use it to pardon his cronies? It looks like he likely can. No court has been able to stop it.

Ralph Nader: But beyond worrisome: how can the people stop it? Suppose there are mass rallies of millions of people demanding resignation—demanding, "Just leave!"

Corey Brettschneider: The framers, I think, their answer to a lot of this certainly was impeachment, you know. We have not had a successful impeachment removal of a president ever. We've certainly had the house vote for impeachment, then the senate failed to convict and remove. You need two thirds for that. But I think this president, if he refuses to step down, really pushes the boundaries in a way that, you know, it is not just about the crime that looks like Michael Cohen said that he is also guilty of committing, that we learned about yesterday. It is also about the travel ban, the disregard of the oath. It is up to Congress to make that call of what a high crime and misdemeanor is. I've seen enough, personally, certainly to think that when this next Congress is elected, part of what they should be running on is impeachment.

Ralph Nader: He's got one Trump card, to coin the phrase. When the heat really gets unbearable on him, he can start Wag the Dog. He can start a war. He can start a military conflict.

Corey Brettschneider: And that brings us exactly back to the fundamental problem that we're talking about, which there again, the courts have been so, what's the word for it – lame - disregarding their own

oaths to uphold the Constitution. That gives the president another out. Certainly, in times of war, that's when the courts get even more deferential to the president. Foreign policy general. I mean the disaster of an opinion in the travel ban case was all about the fact that if he tried something like that domestically, "Definitely not, but internationally, well, we need to defer to the power of the president." Maybe, thankfully they said, "Maybe not completely." And maybe even in that case we can go through the lower courts and stop it again.

Ralph Nader: Let me just remind people, September 17 is Constitution Day. It's a Monday. It is legislated by Congress. There are all kinds of events in your area, all over the country. Take advantage of it. Professor Brettschneider's book should be front and center to educate us about our constitutional duties, as citizens, which is the fundamental safeguard for our country's rule of law. Well we're out of time unfortunately, but the listeners are not out of time. They have until September 17th, Constitution Day, enacted by Congress to participate in events in their community. I hope that you have a great event at Brown University, and bring community college and high school students to the auditorium there. Universities are gonna have to wake up in the fall. This is something that is going to be very rare, we hope, in terms of constitutional crisis, and law professors, and law school deans have got to step up as well. I hope the undergraduates will have the rallies and the teach-ins that they had to fortify the Civil Rights Movement, the Anti-Vietnam War Movement, Women's Rights Movement, and Environmental Movements in the 60's and 70's. Young people of our country, it is time for you to stand tall, too.

Fortunately, you can stand on the shoulders of your predecessors who stood tall and changed things in our country for the better. Thank you very much Professor Corey Brettschneider, author of the very readable and important book called, *The Oath and the Office: A Guide to the Constitution for Future Presidents*. Thank you.

Corey Brettschneider: Thank you so much. Real honor to speak with you today.

Steve Skrovan: We have been speaking to Professor Corey Brettschneider, constitutional scholar and author of *The Oath and the Office: A Guide to the Constitution for Future Presidents*. We will link to that at ralphnaderradiohour.com. I want to thank our guests again today, Professor Jack Luzkow, and of course Corey Brettschneider. A transcript of this episode will be posted eventually, on ralphnaderradiohour.com. For those of you listening on the radio, that's our show. For you podcast listeners, stay tuned for a lot of bonus material we're gonna have with Professor Brettschneider in the wrap up.

David Feldman: For Ralph's Weekly Column, it is free. Got to nader.org. There's no pay wall. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: Visit the American Museum of Tort Law and got to tortmuseum.org and check out the Tort Museum book store for engrossing books and memorabilia.

David Feldman: The producers of the Ralph Nader Radio Hour, Jimmy Lee Wirt, Matthew Marran, our executive producer is Alan Minsky.

Steve Skrovan: Our theme music, Stand up, Rise up, was written and performed by Kemp Harris.

David Feldman: Join us next week when we welcome back Israeli Activist, Miko Peled. Thank you Ralph.

Ralph Nader: Thank you very much. And listeners, bring your friends, neighbors to some event on Constitution Day, September 17th. There's sure to be one in your vicinity.