

QUAKER ECO-BULLETIN

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Asking the “Rights” Question: Human Beings, Corporations, and Self-governance

Greg Coleridge

The first thing to understand is the difference between the natural person and the fictitious person called a corporation. They differ in the purpose for which they are created, in the strength which they possess, and in the restraints under which they act.

Man is the handiwork of God and was placed upon earth to carry out a Divine purpose; the corporation is the handiwork of man and created to carry out a money-making policy.

There is comparatively little difference in the strength of men; a corporation may be one hundred, one thousand, or even one million times stronger than the average man. Man acts under the restraints of conscience, and is influenced also by a belief in a future life. A corporation has no soul and cares nothing about the hereafter.

—William Jennings Bryan, 1912 Ohio Constitutional Convention

William Jennings Bryan in 1912, many other people before him and an increasing number since, have pointed out a dilemma in human society: the reality that a certain category of defined “persons” is not human, but is increasingly treated by society as such. These are not aliens from outer space or artificial intelligence computers. They’re corporations.

Cosmologist Thomas Berry says:

“The deepest crises experienced by any society are those moments of change when the story becomes inadequate for meeting the survival demands of the present situation.”¹

It’s not being an alarmist today to assert that our society, all societies, the human species itself, as well as thousands of other species are in severe crisis. Our current story of how we got here, who and what we are, and what our place is in the world, provides us with little help.

Berry lays out the complete story, both old and new, in his book, *Dream of the Earth*. What follows is, in part, another story—a more modest one.

Self-governance for “We the People”

Our story is well known. It’s the one we all grew up hearing and internalizing; the one that is written about around July 4th and during elections; the one that politicians and candidates of both major political parties at every level of government proclaim. Its major features are:

- The American Revolution was all about establishing a people’s government.
- The Constitution is the most democratic document ever devised and remains so and is worth defending to the death.
- We live in a government that is the most democratic in the world.
- Our government represents the interests of the people and policies serve their/our best interests.
- Corporations help people and governments—bring good things to life.

A few parts of this story are partially true, many are not. Inspired by the democratic vision and ideals of the Declaration of Independence, the American Revolution was in part about establishing a government where people were sovereign, or in charge, rather than a King or monarch. Colonists had experienced oppression under the King of England, his military and his crown corporations. These were chartered or licensed entities like the Massachusetts Bay Company, Carolina Company, Baltimore Company, and others. Their powers transcended mere economic matters to include the powers to tax, fine, imprison, draft, and make laws. While still ultimately subordinate or beholden to the King of England they nevertheless possessed governing powers. The American Revolution changed that. Governance now resided with “we the people,” not corporations or kings.

Highjacking Self-governance

But the propertied and the slave-owning founders did not want to simply be a few among the many—all equal. They wanted to be more equal. They wanted to substitute monarch and crown corporate control with their own. So they crafted a constitution that recognized themselves, white male property owners, as complete persons. Everyone else, women, slaves, native people, indentured servants, white males without property, were either only partial persons (3/5ths persons in some cases) or not even written into the original document.

The US Constitution was a perversion of the democratic ideals of the Declaration of Independence by men of property. Provisions such as the Contracts and Commerce clauses (Article I, Sections 8 and 10 respectively) protected their property privileges from the people. Other provisions—no direct election of the President or Senate, appointed Supreme Court Justices for life, the extremely onerous amendment process—protected their political privileges.

The first ten Amendments, the *Bill of Rights*, were only added when it became clear that many state legislatures, with enormous popular pressure from below, would not ratify a document that centralized power and authority at the federal level. However, the all-important task of controlling corporations, entities feared by many people from all economic and political persuasions, was left to the states.

¹Thomas Berry, *Dream of the Earth*, p. xi (Sierra Club, 1988)

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QNL promotes government and corporate policies to help restore and protect Earth's biological integrity. It works within and through the Religious Society of Friends for policies that enable human communities to relate in mutually enhancing ways to the ecosystems of which they are a part. This witness seeks to be guided by the Spirit and grounded in reverence for God's creation.

QEB's purpose is to advance Friends' witness on government and corporate policy as it relates to the ecosystems that sustain us. Each issue is an article about timely legislative or corporate policy issues affecting our society's relationship to the earth.

Friends are invited to contact us about writing an article for **QEB**. Submissions are subject to editing and should:

- Explain why the issue is a Friends' concern.
- Provide accurate, documented background information that reflects the complexity of the issue and is respectful toward other points of view.
- Relate the issue to legislation or corporate policy.
- List what Friends can do.
- Provide references and sources for additional information.

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Now corporations exert governing roles via their control of production, technology, jobs, capital, trade, and property. Investment and production decisions that shape our communities and rule our lives are made in boardrooms, regulatory agencies, and courtrooms. In the public realm, corporations dominate elections, write and pass laws, educate our judges in jurisprudence, and mold public policy debate. They exert influence on law schools, professors and students, on our educational system, and on our very culture.

Ohio: Experiment in Self-governance

Ohio was a political experiment by Jeffersonian democrats. It was frontier land where indentured servants, frontiersmen, religiously persecuted and revolutionary veterans came to stake their claim, create their paradise, work in community with others or just be left alone. Thus, the Ohio Constitution, Article 1, Section 2 laid the general self-governance principle out clearly: "All political power is inherent in the people."

The Ohio General Assembly, similar to other state legislatures, took the business of human sovereignty over corporations seriously. They used the chartering process as a democratic tool. Corporations were chartered one at a time for a specific purpose and time period. Land ownership was limited. Directors had to live in the state. Companies couldn't own other companies. Books were open. Managers were liable. Virtually all forms of political and economic governance were prohibited. Investment and production decisions were kept local and democratic.

Corporations were subservient. They had no rights. No authority. No power that was not authorized through the charter. They had only privileges bestowed by the state legislature. Human rights took precedence over property rights. Corporations that acted beyond their granted authority frequently had their charter revoked or dissolved with their assets dispersed to shareholders, communities or victims. The rulings of the Ohio state courts enforced the provisions made by the legislature.

One charter revocation was the *State v Hazelton & L.R. Co* (1884):

Where a railroad for 5 years fails to construct the line provided in its charter, ... and constructs a road wholly unsuited to the wants of the public, and for the benefit only of mines owned by the principal stockholders of the road, it is a misuse of its corporate powers, for which it may be dissolved.²

Corporations Gain and Increase their Rights

The Civil War was a turning point. That war, like many wars, enriched companies. Corporations sought to translate their new economic wealth into political power. Richard Grossman of the Program on Corporations, Law and Democracy (POCLAD) wrote,

After the Civil War the men setting out to industrialize this land with machines and workers without rights made the corporation their ruling institution. As men of property had wrapped the Constitution around themselves in 1787, men of the Gilded Age enlisted judges and legislators to wrap the nation's sacred text around their new financial and industrial conglomerates.³

In the 1886 *Santa Clara v Southern Pacific* decision, artificial legal fictions, corporations, were given due process and equal protection rights of biological human beings for the first time.

Following the *Santa Clara* decision, hundreds of state and consumer laws were overturned as "unconstitutional." A handful of 19th century judges subsequently bestowed more rights onto corporations than onto people.

A corporation is defined today as a legal "person" apart from the human persons that are connected to it. A corporation possesses many of the same rights that human

²State v Hazelton & L.R. Co. (1884) 40, OS, 504.

³Richard Grossman, "A Few Thoughts on the Speech by Bill Moyers, 'This is your story... The Progressive Story of America. Pass it on'" (Letter to Bill Moyers, June 24, 2003).

Corporate Constitutional Rights

- 1st amendment protections of free speech have permitted corporations to infect our body politic through lobbying, political campaign donations, and investments.
- 4th amendment protections against search and seizure have permitted corporations to deny OSHA and EPA inspectors access to their properties.
- 5th amendment rights against self incrimination and double jeopardy have allowed corporations to avoid taking responsibility for their actions.
- Expanded 14th amendment rights to equal protection under the law have prevented local communities from “discriminating” against corporations in favor of small, local businesses.
- 6th and 7th Amendment rights to jury trials have been granted to corporations.

beings hold sacred, rights which the government and military protect with armed force, and rights to govern which prevent us from exercising our rights as human beings to govern ourselves.

Preventing versus Regulating

Resistance to concentrated corporate power came from the Populists, the largest democratic mass movement in the history of this nation. Populists were farmers, workers and supportive intellectuals who fundamentally challenged the highjacking of democracy by modern men of corporate property. They sought to end special privilege, create democratic structures, build cooperatives, transform private monopolies into municipally owned entities, and control not only labor, but the money system and other institutions necessary for self governance. They realized that to be successful, they would have to take on undemocratic elements of the US Constitution that men of corporate property hid behind. Two colorful populists in Ohio were William Likens, President of the Ohio Farmer’s Alliance and Tom Johnson, Mayor of Cleveland.

*Hand in hand, and side by side we see unlawful combinations, unjust corporations, soulless monopolies, steals, swindles with plots and schemes of the deepest dyes, all seeking to fasten upon the body politic, and like heinous vampires, to drain the life blood of the nation.*⁴

*I believe in the municipal ownership of all public service monopolies... for if you do not own them they will, in time, own you. They will rule your politics, corrupt your institutions, and finally, destroy your liberties.*⁵

The populists were crushed in 1896 when Ohioan William McKinley defeated William Jennings Bryan. Populists were replaced by so-called “Progressives” who sought—beginning in 1900 right

up to the present day—to regulate corporate harms, mediate the worst elements of private corporate governance, disclose problems for citizens and consumers to see and know, and temper corporate excesses and abuses.

Populists weren’t interested in tinkering with increasing corporate governance and personhood but abolishing it. Progressives threw in the self-governance towel.

While Progressives worked at regulating, mediating, disclosing, and tempering, men of corporate property expanded their personhood rights. While Progressives perfected regulatory and administrative laws and created scores of regulatory agencies (many with the blessing of corporations) to oversee limited reforms, corporate concentration increased, wars for resources and political power increased, assaults on the rights of people—especially people of color—increased.

The New Deal came next, adapted from the Progressive, not the Populist, agenda. Then came the Fair Deal, the New Frontier and the Great Society—all of which helped many people, but they left the story and constitutional protections of minority rule and corporate governance rock solid. We are left without the knowledge needed to challenge the greatest concentration of power and wealth of all time—in this country and the world. On the foreign policy front, progressives and liberals limited their visions to making corporate capitalism plus global imperialism a little less bad.

*Time and again people have come together to oppose corporate plans. They have declared, ‘Not In Our Names. Not Here. Not There. Not Anywhere.’ This civic work has been vital -- to save life and land, to lift the human spirit, to teach children. But while people were resisting corporate assaults and working for sane investments and technologies, corporate operatives were making the rules for governing the nation.*⁶

The corporate crowd now uses laws and constitutions to prevent the majority from exercising their fundamental right to govern—and enforces these injustices with the power of the police and militaries. Millions of people in this country and around the world are left divided and disempowered.

Globalization: Loss of Self-governance Globally

Now we have corporate globalization. Governments have become mere pitchmen promoting transnational corporations, which are the engines and planners of the global economy. Rules of international corporate alliances like the WTO and NAFTA supercede national laws. The fundamental issue is not about trade (be it free or fair) but about governance: Who will be in charge of determining rights, rules, laws and policies? Will democratically determined rules stand or fall as trade impediments to the global free flow of goods and services? Will local, state and federal governments have any meaningful input on what kind of company, products or pollution comes their way or will decision-making be

⁴William Likens (1890) as quoted in Michael Pierce Cain, *The Plow and the Hammer: Farmers, Organized Labor and the People’s Party in Ohio* (Doctoral Dissertation, Ohio State University, 1999) p. 39.

⁵Tom Johnson (1900) *My Story* (B.W. Huebsch, 1911).

⁶Richard Grossman and Ward Morehouse from the Foreword to *The Elite Consensus: When Corporations Wield the Constitution* by George Draffan (POCLAD and Apex Press, 2003).

left to unelected dispute-resolution panels? Can local people protect their economies, sovereignty and culture in the face of structural adjustment programs forced on them by the corporate friendly IMF and World Bank?

Citizens (Re)Assert Authority to Govern

Some environmentalists and others are coming to see that regulation and oversight of corporations do not work. They are decolonizing their minds and beginning to realize that any single issue, whether it's stopping a toxic dump, saving a river, preventing a big box store, or opposing a weapons system, is simply defensive and will never succeed in protecting citizen health, safety and welfare, or be in harmony with the natural world if it is not placed in a "rights-based" context. They're focusing less on reducing corporate harms and more on increasing our own fundamental rights to govern ourselves, to define our own welfare.

Earlier activists knew this. Abolitionists didn't work to create a Slave Protection Agency. Women suffragists didn't ask men to treat them a little better. Civil rights workers didn't ask Jim Crow segregationists to sign voluntary codes of conduct. In each case, movement activists, who included many Friends, demanded that their rights be driven into the Constitution and into state laws. These movements changed the culture in order to support a legal strategy to change the governing rules and laws.

Today in Pennsylvania, California and elsewhere, a "rights-based" movement for basic self-governance is emerging. In Pennsylvania, the Community Environmental Legal Defense Fund (CELDF) is supporting dozens of townships in banning corporate hog farms and spreading toxic sludge on farmland. They've worked with township trustees to pass ordinances revoking corporate constitutional rights to override local decisions protecting health, safety, family farms and the natural world. They are drafting a "natural rights" ordinance and seeking to reframe suburban "sprawl" from a self-governance "rights-based" perspective.

In California, communities have prohibited further incursions from chain restaurants, the planting of genetically engineered crops, and are exploring ordinances revoking corporate constitutional rights in their local jurisdictions.

Elsewhere, the Sierra Club has established a committee to examine corporate rights. "Challenge Corporate Power, Assert the People's Rights" is the title of a national campaign of the Women's International League for Peace and Freedom (WILPF). The Unitarian Universalists are actively educating on corporate personhood. The Northeastern Ohio Office of the American Friends Service Committee has produced and distributed materials on the history and current manifestations of corporate power and democracy. POCLAD produces resources and sends speakers across the country on issues of self-governance and corporate power. The Daniel Pennock Democracy School, based in Pennsylvania, offers weekend retreats to help citizens reframe their thinking and work on basic issues of self-governance. These are just a few examples of groups that are asking the "rights" question.

The belief of Friends in the dignity and worth of all is based on the principle that there is that of God or good in every person. Friend's commitment to nonviolence, consensus, simplicity, and justice is rooted in the premise that every human being can and

should be talked to, worked with, helped, affirmed, enabled, and loved because of the innate presence of the Divine or good within each and every person.

Friends' belief in the dignity and worth of every person is a commitment to make society, and the institutions that compose society, reflect this tenet through its politics, economy, and culture.

It is time for Friends and others to begin to fundamentally ask the "rights" question.

Greg Coleridge is the Director of the Economic Justice and Empowerment Program of the Northeast Ohio American Friends Service Committee and a member of the collective of the Program on Corporations, Law & Democracy (POCLAD).

For Further Information

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- French, Kimberly, 2003. How Corporate Personhood Threatens Democracy. *UU World* XVII:3 (May/June 2003) <<http://www.uuworld.org/2003/03/feature1d.html>>
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- Program on Corporations, Law and Democracy (POCLAD) *By What Authority* (newsletter published three times/year) <www.poclad.org>
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- POCLAD and CELDF, *Model Legal Brief to Eliminate Corporate Personhood* <<http://www.poclad/ModelLegalBrief.cfm>>
- Sierra Club's Corporate Accountability Committee <www.sierraclub.org/cac>
- Women's International League for Peace and Freedom, 2005. *Abolish Corporate Personhood Organizing Packet* <wilpf.org/issues/ccp/default.htm>

What Friends Can Do

1. Obtain copies of the resources listed here and go to the listed websites for articles and other materials.
2. Read or watch the resources and become familiar with the contents.
3. Organize a group within your Meeting or elsewhere for study, reflection, and action.
4. Contact any of the groups mentioned here (including local branches of listed national groups) and explore joint educational and/or campaigns.
5. Encourage your Yearly Meeting, FGC, FUM and/or other Friends group to establish a committee to study this topic.