Deconstructing "Reform"

In a world where "corporations" can break laws, they can also get permits. Most corporate harms to democracy (like other corporate harms -- to human rights, the environment, and so on) are perfectly legal, because corporations have "permits" to conceal, oppress, and pollute, all courtesy of our supposedly democratic government. This is because many corporate powers, privileges, and even "rights" rode into town as drivers and stowaways on the "reform" bandwagon. Often, the "reform" is just another chip off the block of people's sovereignty. For instance, the biggest boost to corporate campaign contributions ever got came from the so-called campaign reform bills of the post-Nixon era, which invented and legalized political action committees (PACs). This legalization of corporate interference with democracy replaced laws like this 1905 Wisconsin law:

"No corporation doing business in this state shall pay or contribute, or offer, consent or agree to pay or contribute, directly or indirectly, any money, property, free service of its officers or employees or thing of value to any political party, organization, committee or individual for any political purpose whatsoever, or for the purpose of influencing legislation of any kind, or to promote or defeat the candidacy of any person for nomination, appointment or election to any political office."

State legislators in Wisconsin, under constant pressure from corporate lawyers, weakened this law, and then national legislators preempted it by legalizing PACs. Yet, when in the 1970s legislators tossed this shovelful of sovereignty onto the corporate slag heap, the event was commemorated in the democracy theme park's "Reform" gallery.

Regulatory agencies have always been part of the corporate elite's "War on Democracy," masquerading as reform. State legislatures were never models for direct democracy, but for a long time they remembered that corporations were only their creations, to remain subordinate and follow precise operating instructions.[1] If corporate officers disobeyed, state legislatures simply voted to eject the corporation (if it was from another state) or dismantle it and take over the assets (if it was from the home state). Historically, regulatory agencies were designed by corporate lawyers to protect large corporations against public uproar, upstart competitors, and too-democratic state legislatures. They still do all that, plus provide years of character-building experience for those entrapped in their procedural mazes. After more than a century of failing to "rein in" corporations, they are still among the biggest attractions in the democracy theme park.

Antitrust laws provide another example of the "reforms" that shelved indirect democratic control of corporations and replaced it with feeble regulations. Until the 1880s, all states prohibited "corporations" from owning stock in other corporations. Most discussions of antitrust are superfluous and unnecessary when such prohibitions are in place. Under pressure from powerful corporate executives, state legislators removed these laws from the books, so that by the early twentieth century none remained.

Demanding transparency from government and its agencies is basic to self-governing. If you don't know what your government is doing, you don't live in a democracy. Current law requires corporate officers to reveal very little about their operations to the public, despite the fact that corporations are brought into existence through corporate charters granted by state legislatures. Disclosure laws that fall short of transparency are not "reforms," they are obfuscations. From its first year of statehood, Wisconsin required that all vaults, books, safes, books, and documents that pertained to a corporation's affairs and condition be open for inspection by the state that created it. Laws like this were typical and stayed on the books well into the twentieth century when people started believing that the abstract legal fiction of the corporation had "rights." Today, no proposed "reform" comes even close to the degree of disclosure once taken for granted.

The idea that a corporation can be "bad" leads quickly to the "reform" idea that it must be "punished." The mirage that corporations can be punished works against democracy by deflecting sanctions away from a controlling elite. The recent tobacco settlement is a case in point. For decades tobacco corporation executives and their predecessors made billions of dollars in profits by knowingly marketing an addictive carcinogen as a fashion accessory. Not a penny of the over $200 billion in fines will be paid by corporate executives, the decision makers of the corporation. Instead, that money will come from the usual places: workers (through lower wages and benefits), stockholders (lower dividends and stock prices), the general public (through health care and other externalized costs) and consumers -- people still purchasing "nicotine delivery systems." Tobacco corporations even got legal immunity from some future liability in the agreement. The executives admitted no wrongdoing. Taking the product off the market is nowhere in sight. Life is good for corporation executives. They got a little bad publicity for a while, but nothing that a few name changes, some shifting of assets among corporate parents and subsidiaries, and slick advertisements can't fix.

The Corporate Social Responsibility (CSR) concept was invented by corporate executives in the 1930s to offer up as a "reform" to head off calls for democratic control. It has enabled corporate executives to frame the public debate around a few voluntary, temporary pacification measures instead of fundamental democratic change. The recent Enron Corporation collapse and subsequent high-profile accounting scandals inspired many prominent CEOs to go on tour
ululating over the joys of "corporate citizenship." Even the CEO of CEOs, President G.W. Bush, stood in front of "Corporate Responsibility" wallpaper and positively swooned about corporate ethics. Democratic control of corporations is not mentioned in these performances. Voluntary codes of conduct -- a subset of CSR -- mirror the Panopticon system, with citizens in the cell blocks. Corporate executives who have persistently failed to follow mandatory codes of conduct (i.e., laws) promise to try to follow voluntary standards. Shielded by the guard tower (the legal fiction of the corporation), their actions are disclosed only when they choose. Voluntary codes of conduct are like laws, but without enforceable disclosure, monitoring, or performance provisions. As with other CSR measures, any corporate costs are tax deductible, either as business expenses or as donations.

While reducing the corporation's tax bill (if there is one) and the government's tax revenues, CSR bypasses the public process that in a democracy would determine how taxes are spent. CSR gives "the corporation" a good reputation, garners praise from communities, reduces corporate taxes, depletes the government's resources, bypasses the democratic process, and puts a handful of corporate executives in the position of making what are essentially policy decisions for the general public. After every labor struggle, depression, and social upheaval (like the "chain store wars" of the 1930s), there's an injection of "corporate social responsibility." At the end of the twentieth century, the brouhaha surrounding the World Trade Organization (WTO) precipitated another round of CSR pronouncements. Each of these "reforms" made society less democratic and moved the locus of control further away from the people. Corporate lawyers working on behalf of The Corporation use human constitutional rights to frustrate the people's will and further degrade our democracy. In a nutshell, the fruits of people's struggles are used by corporate lawyers to protect corporations against the will of the people. What better staging area from which to direct a "War on Democracy" than the hallowed grounds of the U.S. Constitution? Just as the "War on Drugs" camouflages the corporate resource grab in Colombia, the rhetoric of "rights" masks the corporate takeover of the Constitution. Abolitionists struggled to end slavery and pass the Fourteenth Amendment, including the equal protection clause. But since 1886, corporate lawyers have successfully claimed -- through "corporate personhood" -- that laws that "discriminate" against their corporations are unconstitutional under this clause. Laws specifically intended to discriminate against harms (toxic garbage, sweatshop-made clothing) are routinely declared unconstitutional. Historically, the equal protection clause has mostly been used to protect corporations against laws, not to protect human beings against discrimination. At best, African Americans and women have benefited from equal protection "lite," while corporations continue to reap the benefits of the full-strength version.

Corporate lawyers use the due process clause of the Fourteenth Amendment on behalf of "corporate persons" to support numerous appeals of laws and regulations. Claiming that a corporation's due process rights have been abridged, they demand appeals and rehearings and other procedures that were intended to protect the human and civil rights of human beings. Fourteenth Amendment "personhood" has functioned as a constitutional gateway for the granting of other "rights" to corporate persons. The Civil Rights Act of 1964, passed after much struggle and loss of life, was used by a transnational telecommunications corporation to sue a local government for monetary damages after it denied the corporation a desired cell tower site. Corporate lawyers argued that government action had violated the corporation's civil rights. Yet instances of racial profiling, police brutality, DWB ("Driving While Black") and other forms of discrimination provide daily reminders that civil rights for human beings are far from guaranteed.

The First Amendment doesn't work so well for human beings wanting to exercise free speech rights to talk about unions at their workplaces, or leaflet at a shopping mall. But it has worked very well for corporations seeking to escape product labeling laws (like the Vermont rBGH case) and evade already weak campaign finance laws. Fourth Amendment protections against unreasonable searches and seizures often fail to keep the authorities out of your apartment, your car, or your personal records. But corporate lawyers have used that same Fourth Amendment on behalf of corporate "persons" to keep OSHA (the Occupational Safety and Health Administration) and the EPA (the Environmental Protection Agency) from making meaningful inspections of corporate facilities, and to prevent other government agencies from seeing corporate records. This betrayal of centuries of people's struggles is woven deep in the fabric of U.S. law. It constitutes the ground rules.

In the corporate view, to ban chain stores is to deny corporate rights to equal protection before the law. To hold corporations to legislative standards is to deny them due process. To require labels on food is to violate corporate First Amendment rights. Meaningful inspection of factories is a violation of corporate Fourth Amendment rights. If all this is really unconstitutional, then we need to take another look at the Constitution. If it's judges bending over backwards to justify procorporate decisions, then we need to see about the judges. But either way, if it's unquestioned, it will continue to run the underground machinery behind the democracy theme park, while people outside wait in line for the rides. We don't hear much about any of this, in these terms, because news media corporations report it as "reform" and "defense of constitutional rights." Then it fits effortlessly into the democracy theme park. Every minute we don't challenge it, we reinforce it.

Try This at Home

I would like to invite Ambassador Patterson out from among the mummies in the renovated Panopticon to the rolling hills of Pennsylvania. We should invite Sally, too. In Pennsylvania, people decided to fight against the "War on Democracy" on their own turf by doing the most basic thing a self-governing people can do: protect their communities against poisons and assassins. People in a number of townships decided that corporate hog farms are a threat to their well-being and passed laws banning them. Working with Tom Linzey of CELDF (Community Environmental
Legal Defense Fund), they passed a series of ordinances that is driving corporate lawyers hog-wild. http://www.celdf.org

Walk into a roomful of lawyers and say you want to pass a law banning corporate hog farms, and before you draw your next breath they will have ticked off half a dozen reasons why that would be "unconstitutional." Current corporate ground rules, if followed, frustrate efforts at democratic local control. But instead of backing down when corporate lawyers say their laws are "unconstitutional," the Pennsylvanians are insisting on their democratic rights. They're basing their resistance on the earthshaking notion that they are a self-governing people, that corporations don't have the constitutional "right" to force them to allow their communities to be destroyed. By not backing down, by this seemingly simple act -- passing a local law that addresses a community concern -- these Pennsylvanians are challenging the whole pantheon of corporate law that the ground rules are based on. Any straightforward, commonsensical measure will have the same effect. Ban chain stores. Ban radioactive waste shipments. Require that all waste be recycled. Ban genetically modified organisms. All set up challenges to the same handful of ground rules that keep us from controlling the most basic aspects of our daily lives.

The sameness of these ground rules presents an opportunity. Once we get past the parts-per-million or cents-per-hour of our particular issues, we're up against the same lame corporate ground rules. If Sally fights the ground rules that she comes up against on her issues, and the Pennsylvanians fight the ground rules that corporate lawyers throw at them -- sooner or later it becomes apparent that, while each is working on local issues and corporations, we're all organizing to oppose the same half a dozen or so ground rules. Even without going to meetings, our efforts will be cumulative and synergistic. Ambassador Patterson's job description would change, too. Right now, our states are chartering the corporations that are pillaging Colombia. U.S. consumers are buying products that come from Colombia. U.S. taxpayers are paying for the military occupation of Colombia. The roots of corporate power outside of the United States, and the U.S. government's massive and often violent support of it, lie in the lack of direct local democracy at home. If we end the "War on Democracy" here in the United States, we won't be exporting it to our neighbors.

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The Berlin Wall was taken down in 1989 by ordinary people, not by a specialized task force. It did not come down because of fancy legal arguments or because people were yelling at it. It came down because no one at any position in the hierarchy on either side of the wall could take it seriously. It was the last ride in a theme park that no one believed in any more. It was taken apart with joy, by people who were suddenly asking themselves, why did we wait this long? When we feel that way about the democracy theme park and corporate power, and can all cackle together at the silliness of a "corporation" having constitutional rights, they will come down too.

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[1] Despite the high-minded rhetoric generated by some of the early colonists and "founders," the European occupation of North America has never had a "golden age," either of sustainability or of democracy. Still, there are many amazing examples (most from before the Civil War when a few privileged white males ran the show) where it is clear that "corporations" were regarded as subordinate entities clearly subservient to the government of the time.

I am not advocating going "back" to a nonexistent time when we supposedly had a democracy in the United States. But some of the laws passed by corrupt state legislatures, especially before the late nineteenth century, are downright bold and wildly democratic in comparison to what passes as "reform" today in the early-twenty-first century.