[Note: This is second of two articles that explore strategies for going beyond the usual calls for "corporate accountability." (Part I appeared in REHW #488.) The author is part of a movement, already taking root in over a dozen states, that advocates retaking the historic right of the sovereign people to determine and direct corporate action.]

In view of the historic provisions that used to govern corporations (see REHW #488), their representatives must be pleased that at least in this country, boycotts and divestment strategies are considered radical, and "dialoging" is the preferred mode of interaction. The rest of this paper is an exploration of ways to restructure today's corporation so that citizen activist efforts to eliminate corporate wrongs can amount to more than just a few hard-won needles in a corporate haystack.

As we saw last week, corporations are a special form of business entity given a state charter and certain privileges in exchange for being subject to the will of the sovereign people as expressed through state legislatures.

Over the last half a dozen generations, corporation representatives have managed to set up barriers to insulate the corporation from citizen influence. Several trends have made it more difficult to direct the corporation towards serving the public interest it was created to serve. Among them: ** Under cover of the U.S. Constitution's "commerce" clause[2] as interpreted by the U.S. Supreme Court, federal regulatory agencies have usurped many of the powers once exercised regularly by state legislatures. Today's corporations are ideally suited to wage battles on the regulatory front, because it is so difficult for citizens' groups to match their resources.[3] (In many ways, the late 19th century ascendancy of the "commerce" argument is an eerie foreshadowing of today's NAFTA and GATT controversies.)**

** Through a series of leveraged expansions of the "diversity clause" of the U.S. Constitution[4] (allowing "citizens" from two different states to be heard in federal court instead of the presumably more biased courts of either's home state), the U.S. Supreme Court "deemed" corporations "citizens" and thus gave them nearly unrestricted access to federal courts.[5] This saved corporations the trouble of defending themselves in the courts of the state where they actually cause the harms. ** In 1886 the U.S. Supreme Court decreed that corporations are "persons" under the 14th amendment, thus granting them protection under the Bill of Rights.[6] Such guarantees of free speech, due process, and equal protection under the law were long considered to apply to human persons. This ruling gave corporations unprecedented "rights" to question almost any law applied to them, and frustrated the ability of the people to direct corporate action in service of the public good.

** Stockholders, who used to really run corporations, have seen their power dramatically reduced. Today the powerful corporate manager class is insulated from stockholder influence by a variety of stock voting tricks and governance structures that they themselves set up. They are protected from most liability by state corporation codes and lax laws and enforcement. And they write their own paychecks.[7]**

In order to have a world that we would not be ashamed to bequeath to the Seventh Generation, we must make two major changes in the governance of the corporation. First, we must remove obstacles to citizen control of the corporation. Second, we must restate provisions such as those (enumerated in REHW #488) once governing corporations, and add others that are particularly suited to our times.

"Model" provisions can become part of 1) state constitutions, 2) state corporation codes and/or 3) the actual corporate "charters," which are the documents states give to corporations to formally bring them into existence. A program to institute such changes would include areas such as the following.

1. We the people can demand that state legislatures, the most direct expression of the people's will, use their "reserved power" to revoke the charters of errant domestic corporations. (A domestic corporation is one chartered in that state.) The people of Delaware and a few other states with "easy" chartering policies would have a more exciting time than the rest of us here, since the overwhelming majority of offending (U.S) multinational corporations are chartered there.

2. In other states, citizens can demand that their attorneys general (or whatever agent is specified in their state laws and constitutions) revoke the permission of errant foreign corporations to do business in their state. (A foreign corporation is one chartered in another state in the U.S. Those chartered in other countries are called alien corporations.) Such actions have already been initiated against Weyerhaeuser, WMX (formerly Waste Management, Inc.), and CSX corporations.[8] (See REHW #455.)

** Annul "rights" given corporations by judge-made law. We can work for state constitutional amendments that underlie corporations' status as subservient to the people and the legislatures, and assert that corporations are not legal constitutional "persons" and thus are not protected by the Bill of Rights of the U.S. Constitution.

** Re-open corporate affairs to legislative scrutiny. At one time, all corporate records and affairs were open to legislatures or other designated state officials so that state governments, on behalf of the people, could monitor and evaluate corporate actions. We can reinstate such provisions in state corporation codes.

** Reinstate stockholder/owner control over corporate management and policy. For decades, concerned stockholders have attempted to curb some of the worst excesses of corporate policies, only to find their efforts thwarted by corporate management. We can modify states' corporation codes to return a modicum of control to corporations to their putative owners, the stockholders. Some basic provisions might include a) a one stockholder, one vote policy, b) prohibitions against issuing non-voting stock, c) removal of obstacles to stockholders' access to information, initiation of policies, and removal of unsatisfactory corporate management.

** Give state courts clear authority to hear all corporation cases. State courts, more sensitive to local needs and conditions and more accessible to citizens, once heard most corporation cases. During the last years of the nineteenth century, numerous unsuccessful attempts were made at the federal level to reinstate this practice. Both federal legislation and federal constitutional amendments were proposed. Either one would do the trick.

** Reinflate historic limits on corporations. State corporation codes and/or corporate charters can be amended to include provisions such as the following: a) Require corporations to have a specific purpose, with a penalty of charter revocation if said purpose is either not fulfilled or is exceeded. This would include a prohibition on the kind of "look how ethical we are!" advertising that currently dissipates stockholders' dollars and discombobulates public perceptions. b) Require a percentage of stockholders to live within the chartering state. c) Prohibit corporations from owning stock in other corporations. d) Issue corporate charters for only a specific term of existence, perhaps ten or twenty years. e) Limit real estate owner control over corporate management and policy. For decades, concerned stockholders have attempted to curb some of the worst excesses of corporate policies, only to find their efforts thwarted by corporate management. We can modify states' corporation codes to return a modicum of control to corporations to their putative owners, the stockholders. Some basic provisions might include a) a one stockholder, one vote policy, b) prohibitions against issuing non-voting stock, c) removal of obstacles to stockholders' access to information, initiation of policies, and removal of unsatisfactory corporate management.

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People's power over corporations.

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a) Forbid corporations from doing business under pseudonyms or alternative names.

b) Require corporations to use earth-friendly materials in all stages of operations, and to list all ingredients.

c) Prohibit corporations from buying up patents for the purpose of preventing others from exploiting them.

d) Require every corporate document to be signed by a human being who thereby takes responsibility for the veracity of statements and the soundness of judgments therein.

e) Require a corporation to pay for periodic health, safety, and environmental audits by independent experts selected by workers and affected communities.

f) Require that in the event of bankruptcy, corporate management pay and perks be withheld until all other debts and creditors are paid, starting with workers and small businesses.

g) Require 95% recycling.

h) Prohibit corporations from seeking or accepting "incentive" packages from any government entity.

i) Establish a maximum ratio (like 1:5) between compensation of the lowest-paid worker and the highest-paid executive.

j) Establish a process similar to "recall" procedures for elected officials, so that citizens can initiate revocation referendums for corporate charters (in the case of domestic corporations) and for certificates of authority (that allow foreign corporations to do business in one's state).

k) Require uniformity of health benefits within each corporation for all corporation employees (from CEOs to wage-laborers).

This is just a sampling of some of the options open to us. Priorities might include working to revoke corporate charters, to end the privileges granted corporations under the judicial "corporate personhood" doctrine, and to prohibit political contributions. Most of the obstacles we face are in the arena of judge-made law, but historic legislation and constitutional provisions offer us a solid body of favorable precedents. Much debate lies ahead. But it is high time we shifted the controversy from whether we control corporations to how we do so.

The sky's the limit. What are we waiting for?

by Jane Anne Morris[1]

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