

# Rachel's Environment & Health News

## #610 - Can Corporations Be Accountable? Part 2

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In the late 19th century, the Supreme Court of Georgia, in *RAILROAD CO. V. COLLINS*, wrote:

"All experience has shown that large accumulations of property in hands likely to keep it intact for a long period are dangerous to the public weal. Having perpetual succession, any kind of corporation has peculiar facilities for such accumulations, and most governments have found it necessary to exercise caution in their grants of corporate charters. Even religious corporations, professing and in the main, truly, nothing but the general good, have proven obnoxious to this objection, so that in England it was long ago found necessary to restrict them in their powers of acquiring real estate. Freed, as such bodies are, from the sure bounds--the grave--to the schemes of individuals they are able to add field to field, and power to power, until they become entirely too strong for that society which is made of up those whose plans are limited by a single life." [1]

Justices White, Brennan and Marshall, dissenting in a 1978 case, *FIRST NATIONAL BANK OF BOSTON V. BELOTTI*:

"It has long been recognized, however, that the special status of corporations has placed them in a position to control vast amount of economic power which may, if not regulated, dominate not only the economy but also the very heart of our democracy, the electoral process... The State need not permit its own creation to consume it." [2]

Chief Justice Rehnquist, dissenting in the same case:

"...the blessing of potentially perpetual life and limited liability... so beneficial [sic--R.G.] in the economic sphere, poses special dangers in the political sphere." [3]

A great achievement of corporations, as they set out towards the end of the 19th century to transform the law and recreate themselves, was to replace basic tools of sovereign people--chartering, defining incorporation laws, "by what authority" proceedings and charter revocation--with regulatory and administrative law, new legal doctrines and fines as corporate punishment. Many people of that time understood that these changes amounted to a counterrevolution, and so they resisted with great passion and energy.

Farmers and workers were not willing to concede that the corporate form would define work and money and progress and efficiency and productivity and unions and justice and ethical conduct and sustainability and food and harmful and reasonable behaviour. They were not willing to concede that corporations should have the rights and privileges of persons.

So they organized, educated, resisted. They were crushed by giant corporations' ability to use state and federal government to take rights away from people and bestow them upon corporations.

Over time, corporations were able to claim for themselves rights and privileges taken from the sovereign people via violence with favorable decisions by federal judges. Corporations were conceded personhood, and a long list of civil and political rights such as free speech, and property rights such as the right to define and control investment, production, and the organization of work.

By the beginning of the 20th century, corporations had become sovereign and they had turned people into consumers, or workers, or whatever the corporation of the moment chose to define humans as.

Without a clear understanding of history, most citizen efforts against corporations in this century have been struggles against the symptoms of corporate domination which we have waged in regulatory and administrative law arenas.

But these are NOT arenas of sovereignty. These are stacked-deck proceedings, where people, communities and nature are fundamentally disadvantaged to the constitutional rights of corporations. Here, we cannot demand "by what authority" has corporation X engaged in a pattern of behavior which constitutes an assault upon the sovereign people? Here, we cannot declare a corporation *ULTRA VIRES*, or "beyond its authority." To the contrary, regulatory and administrative law only enables us to question specific corporate behaviors, one at a time, usually after the harm has been done... over and over and over again.

In these regulatory and administrative proceedings, both the law and the culture concede to the corporation rights, privileges and powers, which earlier generations knew were illegitimate for corporations to possess. In addition, in these proceedings, the corporation has the rights of natural persons: a human and a corporation meet head on, in a "fair fight."

Today, our law and culture bestow our sovereignty on corporations. So do most of our own citizen organizations dedicated to justice and environmental protection and worker rights and human rights. Consequently, our organizations use their energy and resources to study each corporation as if it were unique, and to contest corporate acts one at a time, as if that could change the nature of corporations.

Folks relentlessly tally corporate assaults, study the regulatory agencies and try to strengthen them. We try to make corporate toxic chemicals and corporate radiation and corporate energy and corporate banking and corporate agriculture and corporate transportation, corporate buying of elections, and corporate writing of legislation, and corporate education of our judges and corporate distorting of our schools, a little less bad.

Isn't it an old story? People create what looks to be a nifty machine, a robot, called the corporation. Over time the robots get together and overpower the people. They redesign themselves and reconstruct law and culture so that people fail to remember they created the robots in the first place, that the robots are machines and not alive. For a century, the robots propagandize and indoctrinate each generation of people so they grow up believing that robots are people too, gifts of God and Mother Nature; that they are inevitable and the source of all that is good. How odd that we have been so gullible, so docile, so obedient.

Isn't it odd that we don't remember who We the People are? How sovereign people should regard ourselves, how sovereign people should act? We need to realize what power and authority we possess, and how we can use it TO DEFINE THE NATURE OF CORPORATIONS, so that we do not have to mobilize around each and every corporate decision that affects our communities, our lives, the planet.

In the face of what we experience about corporations, of what we know to be true, why are so many people so obedient? Why do we hang on to the hope that the corporation can be made socially responsible? Isn't this an absurd notion? After all, organizations cannot be responsible. This is just not a relevant concept, because a principal purpose of corporations is to protect the managers, directors and stockholders from responsibility for what their corporations do.

But only people can be responsible. How? By defining ourselves as sovereign people so that we then can define all the corporate bodies that we create (governmental, business, educational, charitable, and civic).

We the People are the ones who must be accountable. We are not accountable when we create monster robots which run rampant in our communities and which, in our names, sally forth the across the world to wreak havoc upon other places and upon other people's self-governance.

We are not being socially responsible or civically accountable when we don't act like sovereign people.

We are not being socially responsible or civically accountable when we play in corporate arenas by corporate rules.

We are not being socially responsible or civically accountable when we permit our agents in government to bestow our sovereignty upon machines.

We are not being socially responsible or civically accountable when we organize our communities and then go to corporate executives and to the hacks who run corporate front groups and ask them to please cause a little less harm; or when we offer them even more rewards for being a little less dominating.

Sovereign people do not beg of, or negotiate with, subordinate entities which we created. Sovereign people INSTRUCT subordinate entities. Sovereign people DEFINE all entities we create. And when a subordinate entity violates the terms of its creation, and undermines our ability to govern ourselves, we are required to move in swiftly and accountably to cut this cancer out of the body politic.

With such deeds do we honor the millions of people who struggled before us to wrest power from tyrants, to define themselves in the face of terror and violence. And we make all struggles for justice and democracy easier by weakening the ability of corporations to make the rules, and to rule over us.

Some might say this is not a practical way to think and act. Why? Because corporations will take away our jobs? Our food? Our toilet paper? Our hospitals? Because we don't know how to run our towns and cities and nation without global corporations? Because they will run away to another state, to another country? Because the Supreme Court has spoken? Because philanthropic corporations won't give us money? Because it's scary? Because it's too late to learn to act as sovereign people?

Because in 1997 it is not realistic for people across the nation and around the world to take away the civil and political rights of all corporations, to take the property rights and real property corporations have seized from human being and from the Earth?

Yeah, and it IS realistic to keep conceding sovereign powers to corporations, to keep fighting industrial corporations and banking corporations and telemedia corporations and resource extraction corporations and public relations corporations and transportation corporations and educational corporations and insurance corporations and agribusiness corporations and energy corporations and stock market corporations, one at a time forever and ever?

On January 10, 1997, President William Jefferson Clinton sent a letter to the mayor of Toledo, Ohio. The mayor had asked the President for help in getting the Chrysler Corporation to build a new Jeep factory within Toledo city limits to replace the ancient one which Chrysler Corporation was closing. The President of the United States, leader of the most powerful nation the world has ever known, elected head of a government always eager to celebrate the uniqueness of its democracy to the point of forcing it upon other nations, wrote:

"...As I am sure you know, my Administration cannot endorse any potential location for the new production site. My Intergovernmental Affairs staff will be happy to work with you once the Chrysler Board of Directors has made its decision..."[4]

Our President may not have a clue, but We the People did not grant away our sovereignty when we made Chrysler into a corporation. When we gave the Chrysler Corporation authority to manufacture

automobiles, we made the people of Toledo not its subjects, nor Chrysler Corporation their supreme authority.

How long shall We the People, the sovereign people, stand hat in hand outside corporate boardrooms waiting to be told our fate? How long until we instruct our representatives to do their constitutional duty? How long until WE become responsible...until WE become accountable, to our forebears, to ourselves, to our children, to other peoples and species and to the Earth?

--by Richard Grossman\*

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\* Richard Grossman is co-director of the Program on Corporations, Law and Democracy (POCLAD), P.O. Box 246, South Yarmouth, MA 02664-0246. Phone (508) 398-1145; E-mail: people@poclad.org. For \$25.00, POCLAD offers a "contact kit" including bibliography, articles, a resource list, and a one-year subscription to their new quarterly journal.

[1] RAILROAD CO. V. COLLINS, 40 GA 582.

[2] FIRST NATIONAL BANK OF BOSTON V. BELOTTI 435 US 765 (1978).

[3] The same source as Note 2, above.

[4] Letter from Bill Clinton to the Honorable Carleton S. Finkbiner, January 10, 1997, printed in the TOLEDO BLADE, 25 January 1997.

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