

Rachel's Environment & Health News

#582 - One Fundamental Problem

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The history of environmental contamination in the U.S. is basically the history of a power struggle between a few hundred large publicly-held corporations, on the one hand, and governmental public health authorities on the other. (For example, see REHW #539, #540 --the history of tetraethyl lead in gasoline.) During the past 100 years, the large corporations have generally prevailed handily. Unfortunately, in prevailing, transnational corporations have created an industrial system that even their managers now acknowledge is unsustainable.[1]

Importantly, corporations have established the principle that chemicals and other new technologies will be considered safe until proven harmful. Thus the burden of proof lies with the public to show that harm is occurring before controls can be considered. (Only in the pharmaceutical industry is the burden of proof reversed. Before new drugs can be marketed, they must be shown to be both reasonably safe AND effective. And even with this restriction, pharmaceutical preparations kill an estimated 140,000 (!) Americans each year.[2])

The transnational corporation is the principle institution of our era, and this has been true for roughly the last 100 years. This institution is as important today as the Christian church was in Europe during the 15th century, determining and shaping most of reality for most people.

As we think about establishing an industrial system based on principles of sustainability in the 21st century, we would be remiss if we did not examine the nature of this legal entity, the corporation. As things stand today, the corporation --and not government --is the legal entity that will determine whether a sustainable industrial system is possible.

The nature of the large publicly-traded corporation

** In the U.S., corporations were initially created as artificial, subordinate entities, chartered by state legislatures, with no rights of their own. Up until 1886 corporations could only serve the public purposes that they were specifically established to serve: build a canal, manage a toll road, finance and construct a bridge, and so forth. Their capitalization was fixed by law; they could not own other corporations; often their board of directors were required to live in the state where they were incorporated, to make them locally accountable. In these early years, a corporation's lifetime was finite, often 20 years.

For example, the Pennsylvania legislature declared in 1834: "A corporation in law is just what the incorporation act makes it. It is the creature of the law and may be moulded to any shape or for any purpose that the Legislature may deem most conducive for the common good."[3]

The constitution of the state of California in 1879 contained this clause (Article XII, section 8): "The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State."[3]

After 1886 the situation changed. In an 1886 decision by the U.S. Supreme Court, corporations were given the status of "persons" under the U.S. Constitution, protected by the Bill of Rights. After that, corporations could do anything that any other "person" could do, so long as it was legal. Armed with the Constitutional protections of individuals, but having none of the limitations of individuals, corporations soon ceased to be subordinate entities. Today many corporations are larger than countries. For example, Mitsubishi is larger than Indonesia. General Motors is larger than Denmark. Ford Motor is larger than South Africa and larger than

Saudi Arabia. Toyota Motor is larger than Portugal. Wal-Mart Stores is larger than Israel, larger than Greece.[4]

** For the most part, corporations are staffed by intelligent, well-meaning people. But the personal motivations of those individuals are not what motivate the corporation. A large publicly-traded corporation is driven by its own internal logic.

** A corporation has an internal drive that is comparable to a human's "will to live." Once a corporation is publicly traded, it:

** Must return a profit to investors;

** Must grow;

** Must externalize costs to the extent feasible.

These are essential characteristics of the corporate form. If a corporation fails to provide a decent return for investors, those investors can (and do) sue for breach of fiduciary trust. This requirement --to turn a profit --narrowly limits what corporations can do. In general, what is unprofitable cannot be pursued. This means that individuals must sometimes put aside their consciences when they make decisions for a corporation. The most well-meaning people in the world are not free to act on their personal philosophies when they are acting on behalf of a publicly-held corporation. They must do what is profitable, which is not necessarily what is right.

Corporations must grow for a variety of reasons. In general, larger size brings stability. It also tends to bring greater market share. It also brings a measure of political power, which allows corporate managers to manipulate the political environment within which the corporation must operate. Size also brings with it the power to create and control the demand for goods and services, through mass-market advertising. A corporation that stops growing is thought to be in trouble, and may therefore lose investors.

Corporations must externalize their costs to the extent feasible. Faced with a sick worker, a corporation will tend to let the public health apparatus pay the costs of bringing the worker back to health, rather than burden the corporation with the worker's medical bills. Faced with the option of treating hazardous waste at \$100 per ton, or dumping it free into a river, the corporation will tend to dump wastes into the river. Of course this externalizing behavior is not absolute --it varies from situation to situation --but in general, corporations have a powerful drive to externalize their costs to the extent feasible.

Corporations have other traits that are important:

** They are hierarchical and authoritarian in the extreme. Workers at the bottom take orders from bosses above them, and workers (and middle managers) can be fired at any time for any reason. Corporations are simply not democratic. Indeed, many corporations are not only UNdemocratic, they are also aggressively ANTI-democratic, seeking to undermine efforts to expand democratic decision-making within the U.S. and in many countries overseas.

** Corporations have proven to be marvelously efficient at consolidating wealth and power into the hands of a few people, to the detriment of democratic decision-making in the larger society.

** Corporations tend to be patriarchal (in general). They tend to reinforce and maintain a male chauvinist tradition.

** A modern corporation has unlimited lifetime (quite unlike a person). This gives a corporation the capacity to grow without limit, whereas the growth of an individual's wealth and power are strictly limited by the grave.

** As a result of unlimited longevity, among the world's 100 largest economies in 1995-96, 51 were corporations and only 49 were countries. [4]

** After they grow large, corporations cannot feel pain. For example, the Exxon Corporation was fined \$5 billion for the Exxon Valdez oil spill. On the day that enormous fine was announced, Exxon's stock price rose because investors realized that Exxon was invincible. No matter how odious its behavior, human institutions have no capacity to curb the excesses of a large transnational. Similarly, the day the government of India imposed an \$800 million fine on Union Carbide for its role of negligence in the Bhopal disaster, Carbide's stock rose.

** Investors and directors (and often managers as well) are shielded from liability, and therefore corporations tend toward antisocial behavior. Indeed, limiting liability was the reason the corporate form was invented in the first place. This --and the inability to feel pain --are crucial points. Pain is very important as we humans grow up from infancy. Pain serves to limit and guide our behavior. As infants, if we try to crawl through a solid door, we hit our forehead and are brought up short by painful reality. As toddlers, if we strike another person, we may be struck in return; thus we learn that violence is not necessarily the best policy. Eventually, external pain becomes internalized into a conscience and we become civilized adults. Under law, corporations are formally denied this civilizing impetus. As a result, corporations tend to behave like sociopaths. Widespread contamination and destruction of the natural environment provide evidence of this fact.

** In the U.S., fewer than two dozen of these extraordinary creatures own and operate 90% of the mass media --controlling almost all books, magazines, records, videos, TV and radio stations, newspapers, wire services, and photo agencies (Ben Bagdikian, MEDIA MONOPOLY, 4th edition. ISBN 0-8070-6157-3). Thus the number of people who set the terms of public discussion in the U.S. would easily fit into one small room. To the extent that they are visible at all, corporations use the mass media artfully to give themselves the appearance of benevolence. Think of Joe Camel.

In sum, the publicly-traded transnational corporation is a colossus, larger than most national governments, a smiling giant that must grow, cannot die, cannot feel pain, cannot take responsibility (liability) for its actions, must deposit its excreta in public places to the extent feasible (externalizing its costs), is unable to act upon the conscience and sense of morality its managers and directors personally have, is unable to care about place or community, is politically privileged by its size and wealth, and owns or controls all the relevant mass media, as needed.

This tends to be a sociopathic and politically-unstoppable creature indeed.

This is the creature that we are asking to curb its appetites on behalf of the "general welfare" (a phrase from the preamble to the U.S. Constitution). Unfortunately, this is not an entity with a conscience or a sense of social purpose (it is, after all, a paper invention and is not human). This entity is incapable of caring about the general welfare or unborn generations --no matter how good-hearted and well-meaning its employees, managers and directors may be.

If society wants these entities to behave differently, society will have to build different incentives and requirements into the legal foundations of the corporation by modifying the corporate charter --the piece of paper issued by state legislatures giving corporations the privilege of being.

In addition, in the U.S., corporations could be denied the privileges of personhood under the Constitution. Our rule of thumb could be, If it doesn't breathe, it isn't a person and therefore isn't protected by

the Bill of Rights. Thus publicly-traded transnational corporations could be brought back to the subordinate status that our grandparents and greatgrandparents clearly envisioned for these dangerous, unruly inventions.

--Peter Montague (National Writers Union, UAW Local 1981/AFL-CIO)

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[1] Stephan Schmidheiny and others, CHANGING COURSE; A GLOBAL BUSINESS PERSPECTIVE ON DEVELOPMENT AND THE ENVIRONMENT (Cambridge, Mass.: MIT Press, 1992). ISBN 0-262-69153-1. And see REHW #296. Those wishing to know more about the corporate form might read David C. Korten, WHEN CORPORATIONS RULE THE WORLD (San Francisco: Berret-Koehler Publishers, 1995). ISBN 1-887208-00-3.

[2] David C. Classen and others, "Adverse Drug Events in Hospitalized Patients," JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION (JAMA) Vol. 277, No. 4 (January 22/29, 1997), pgs. 301-306.

[3] Quoted in Richard Grossman, "Only the People Can Be Socially Responsible," in Trent Schroyer, editor, A WORLD THAT WORKS (New York: The Bootstrap Press, 1997), pgs. 171-181. ISBN 0-942850-38-6.

[4] Ward Morehouse, "Multinational Corporations and Crimes Against Humanity," in Trent Schroyer, editor, A WORLD THAT WORKS (New York: The Bootstrap Press, 1997), pg. 51. ISBN 0-942850-38-6. Morehouse attributes the data to these sources: corporation data from "Fortune's Global 500, The World's Largest Corporations," FORTUNE magazine August 7, 1995. Country information from: THE WORLD DEVELOPMENT REPORT (Washington, D.C.: World Bank, 1996).

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