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#309 - New Strategy Focuses On Corporations
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Whenever we fight for clean drinking water, or clean air, or a safe workplace, we are likely to find a corporation on the other side of the issue. The goal of a corporation is, first, to survive, and, second, to return a profit to its shareholders (its legal owners) and if the air has to be fouled to accomplish these goals, then the air will be fouled. The Business Council for Sustainable Development (a private group made up of the heads of major corporations such as DuPont and Dow Chemical) acknowledges that this is so: "Today, for instance, the earth's atmosphere is providing the valuable service of acting as a dump for pollutants; those enjoying this service rarely pay a reasonable price for it," they say.[1] This is an example of corporations "externalizing" their costs. By using the air as a free dump, a corporation passes the costs of waste disposal along to the public while the profits from dumping fill the corporate treasury. This is standard business practice.

During the last 200 years, corporations have evolved into huge organizations wielding trillions of dollars to achieve their goals. In theory, corporations are held in check by the marketplace. If they do something bad, they will incur penalties that hurt their profits. However in practice, society has found no effective way of imposing penalties on corporations, so society today has lost control of corporate behavior. Instead of effective control, we have the concept of regulation.

In their 1991 book, POWER AND ACCOUNTABILITY, Robert Monks and Nell Minow [M&M], argue that corporations thrive under regulation: "The ultimate commercial accomplishment is to achieve regulation under law that is purported to be comprehensive and preempting and is administered by an agency that is in fact captive to the industry," they say.[2] In other words corporations WANT regulation. Regulation limits their liability and in many cases shields them from competition. Notice how tobacco companies claim that the warning label on cigarettes absolves them of liability for lung cancers. Corporate polluters WANT a permit system that regulates their emissions; such a system LEGALIZES the dumping of poisons into air, land and water. The large waste haulers FAVOR regulations that require double liners and leachate collection systems in landfills; such regulations drive the small waste hauler out of business, thus limiting competition. From a corporate point of view, the best regulations are those that appear to cover everything, can't be set aside or undercut by other regulations, and are administered by an agency that is captive to the corporate community.

It is not difficult for corporations to capture a regulatory agency. (See RHWN #210, #289.) Who will staff the agency? Often an "expert" from the regulated community. Even the most vigorous opponent of an industry soon becomes coopted; perhaps he or she wants to expand the agency's jurisdiction or budget, for which industry support is needed. Perhaps he or she wants a job with industry when the administration ends. Perhaps all the information coming into the agency is prepared by industry itself.

As Robert Monks says, "When Nell and I worked with the Presidential Task Force on Regulatory Relief, during the Reagan Administration, we found that business representatives continually sought more rather than less regulation, particularly when it would limit their liability or protect them from competition." [M&M pg. 131.] Regulation was supposed to make corporations accountable, but corporations have turned regulation into a shield against accountability.

It is this ability to mold the environment to its own purposes that causes Monks and Minow to say, "Despite attempts to provide balance and accountability, the corporation as an entity became so powerful that it quickly outstripped the limitations of accountability and became something of an externalizing machine, in the same way that a shark is a killing machine--no malevolence, no intentional harm, just something designed with sublime efficiency for self-preservation, which it accomplishes without any capacity to factor in the consequences to others." [M&M pg. 24.]

Several things happened during the past decade to make a bad situation worse.

When Michael Milken and his associates discovered that "junk bonds" could raise enormous amounts of money easily and quickly, this paved the way for "hostile takeovers" by "corporate raiders." As Monks and Minow describe it, "Corporations are ideally suited for self- preservation, which is the definition of the externalizing machine. When they saw what Milken was doing, corporate management proceeded to do whatever was necessary to protect their capacity to direct enterprises, and they found that protecting themselves from raiders meant protecting themselves from shareholders and squeezing any semblance of accountability out of the system." [M&M pg. 47.] Since corporate raiders gained control by buying shares, corporate management protected its turf by taking control away from shareholders. This protected corporations against hostile takeovers, but it also insulated management from accountability to shareholders.

With their new-found control over everything, corporate managers began to pay themselves higher and higher salaries. Between 1973 and 1975, CEOs' [chief executive officers'] after-tax pay averaged 24 times that of the average manufacturing worker. By 1987 to 1989, the differential was 157 times the average manufacturing worker. But taxes for CEOs declined from 50 percent to 28 percent, while worker taxes increased from 20 percent to 21 percent." [M&M pg. 166.]

One consequence of high salaries in business is that smart, aggressive people are drawn into the corporate world, rather than into government or education, thus further consolidating the power of corporations. When the education system deteriorates, corporations educate workers and potential workers for their own purposes; this may provide loyal workers but it seems unlikely to produce well-rounded citizens ready to question the proper role of corporations in a free society.

Directors of corporations have never provided an effective check on the behavior of management. Directors are selected by management, paid by management, and informed by management. As compensation expert Graef Crystal says, boards are typically "ten friends of management, a woman and a black." [M&M pg. 77.] Generally speaking, boards of directors are captives of management. They provide little or no accountability.

Corporations now dominate our political life. There are 40,000 registered lobbyists in Washington--75 lobbyists for each senator and representative. A run for federal office costs anywhere from $10 million to $150 million, and most of this money comes from corporate PACs (political action committees). So every politician who gets elected is beholden to corporate interests from day one. As Senator Barry Goldwater has said, "PACs set the country's political agenda and control nearly every candidate's position on the important issues of the day. [M&M, pg. 124.]

Corporate crime is rampant. One study of America's largest 500 corporations in 1982 revealed that 23 percent of them had been convicted of a major crime or had paid more than $50,000 in penalties for serious misbehavior during the previous decade. And of course those statistics merely describe the ones who got caught.

"Why do corporations engage in criminal behavior? It has to be because, at some level, they find that the benefits outweigh the costs. Or, more likely, management finds that the benefits accrue to the corporation, while the costs are borne elsewhere--the externalizing machine at work," say Monks and Minow. [M&M pg. 133.]

Corporate greed and abuse of power seem to have worsened during the 1980s, but it has been obvious to some people for a long time that corporations exert an unhealthy influence over many aspects of American society. As W.H. Ferry said in 1959, "As the most important single factor in the lives of most Americans, the corporation should be required to make affirmative contributions to freedom and justice as our distinguishing values."[3]

Yet control of corporations has never been the focus of the environmental movement, the women's movement, or even of the labor movement. Activists have focused their attention everywhere but on the corporation, the key institution of modern life.

As Richard Grossman and Frank T. Adams say,[4] "What passes for political debate today is not about control, sovereignty, or the economic democracy which many Americans thought they were fighting to secure.

"Too many organizing campaigns accept the corporation's rules, and wrangle on corporate turf. We lobby congress for limited laws. We have no faith in regulatory agencies, but we turn to them for relief....

"How much more strength, time and hope will be invest in such dead ends?" they ask.

To gain control over corporations, examine the corporate charter, Grossman and Adams argue (see RHWN #308). The corporate charter is granted by state legislatures; without a charter, a corporation ceases to exist. The charter says a corporation must obey the law, serve the public good, and do no harm. Corporations that fail to comply can lose their right to do business.

Grossman and Adams suggest a wide range of controls that might be exerted through the corporate charter, among them:

--corporate owners and officers must be liable for harms they cause;

--charters must be reviewed annually and corporate officers show that all corporate harm has ceased;

--the corporation is an artificial creation and must not enjoy the protections of the bill of rights;

--no corporation should exist forever.

It is a curious fact of history that the environmental movement has never focused its attention on the corporate charter as a means of controlling corporate behavior. Now that seems likely to change.

--Peter Montague

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[1] Stephen Schmidheiny and others, CHANGING COURSE (Cambridge, Mass.: MIT Press, 1992), pg. 9.

[2] Robert A.G. Monks and Nell Minow, POWER AND ACCOUNTABILITY (N.Y.: HarperCollins, 1991), pg. 131. Hereafter cited as M&M.

[3] W.H. Ferry, THE CORPORATION AND THE ECONOMY (Santa Barbara, Calif.: Center for Study of Democratic Institutions, [1959),] pg. 7. Single copies available from us for $6.00.

[4] Richard Grossman and Frank T. Adams, TAKING CARE OF BUSINESS; CITIZENSHIP AND THE CHARTER OF INCORPORATION (Cambridge, Mass.: Charter, Inc., 1992). For a copy, send $4.00 plus a self-addressed, stamped envelope containing 52 cents postage to: Charter, Inc., P.O. Box 806, Cambridge, MA [22140.]22140.

Descriptor terms: corporations; business council for sustainable development; corporate charters;