

The Old and New of Corporate Rule

May Day Program Cleveland

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It's an honor to be able to speak before this impressive audience on this important topic at this crucial time.

The expansion of free trade under the rules of the Free Trade Agreement of Americas is both a brand new ballgame and the same old story. If passed, the FTAA (which is simply an expansion of NAFTA) would result in totally new assaults on our abilities as citizens and human beings throughout the Americas to individually and collectively define ourselves according to rules, laws and values that we deem important. Yet at the very same time, the FTAA, like the WTO, is entirely consistent and predictable. It's part of a 150 year old pattern in this nation of private power looking to escape any and all forms of external control.

To understand how the FTAA, WTO and NAFTA is new and different, we need to first understand how they are the same.

History of global corporations

Many people think that the existence today of global corporations is a new development. It isn't. The British monarchy alone chartered numerous corporations as long ago as the 16th century, including the Russia Company and Africa Company in 1553; the Spanish Company in 1577; the Eastland Company in 1578; the Venice Company in 1592 and the East India Company in 1600.

Such corporations had no inherent rights of their own. They were artificial creations, chartered by the monarchy to define people and things. They existed for the benefit and at the pleasure of the King.

The purpose of these chartered corporations was for the most part to carry out the King's business at home and around the world. Corporations were given governing powers to raise money (tax), control trade routes and limit competition, make laws, impose fines, punish, imprison, draft people in army, tell people what to grow, what to pay, what to make. As Thomas Hobbs said, these corporations were "a chip off the old block of sovereignty."

Similar chartering occurred in the American Colonies. Many of the American "crown colonies" were, in fact, corporations. They later became states. The Massachusetts Bay Company and Plymouth Company became the Commonwealth of Massachusetts. The Virginia Co. and London Co. later became the Commonwealth of Virginia. The Hudson Bay Co. became NY. The Carolina Company's charter was written by John Locke, who wrote sea charters.

Their purposes of economic exploitation for the benefit of the monarchy was the same as other chartered corporations elsewhere.

Seen through this prism, the American Revolution was not simply a revolution against a tax on tea. It was the East India Company after all which provided refreshments for the Boston Tea Party. Nor was the American Revolution simply a revolution against the King. It was a revolution in part against corporations. Adam Smith, in fact, made specific mention of corporations twelve times in the Wealth of Nations, which was written in 1776. Not once does he attribute any favorable quality to them.

The colonists vowed to put corporations under democratic control. They didn't believe that corporations were inevitable or always appropriate. And they didn't give the authority to charter corporations to judges, generals, congressmen, presidents or governors. The U.S. Constitution, for example, makes no mention of corporations. The colonists entrusted this essential task of corporate rule to the one group of people who were closest to the people -- state legislatures.

Ohioans define corporations

The early history of Ohio is of citizens clearly defining and closely controlling corporate behavior.

When Ohio became a state in 1803, popular control over the corporate form took place in three ways. First, the state legislature acting on behalf of the public used their power to create and define corporations through the

issuance of charters, which were licenses to exist and operate. Early Ohio acts creating corporations one at a time stipulated rigid conditions. These privileges, not rights, included:

- limited duration of charter or certificate of incorporation,
- limitation on amount of land ownership,
- limitation of amount of capitalization, or total investment of owners,
- limitations of charter for a specific purpose (to amend its charter, a new corporation had to be formed),
- the state reserved the right to amend the charters or to revoke them.
- corporations could not lobby or contribute money to politicians.

Legislatures also rejected the corporate shield to protect directors and shareholders from debts and harms caused by their corporations. Ohio law, like in other states, made stockholders liable over and above the stock they actually owned.

A second way people exerted power and control over corporations through the Ohio legislature was by repealing entire or portions of corporate charters that violated terms of their incorporation. In the mid 1800's, 19 states, including Ohio, amended their constitutions to make corporate charters subject to alternation or revocation by legislatures. The legal mechanism used was what was called *quo warranto*, Latin for "by what authority." State legislatures determined that when subordinate entities like corporations acted *ultra virus*, or beyond their authority, they were guilty of rebellion and were terminated.

From 1839-1849 the Ohio legislature effectively dissolved several enterprises. Turnpike corporations and banks were the most common targets; others included silk and insurance corporations.

The third way power was exerted at the state level over corporations came from courts. From the 1830's through the 1912 Constitutional Convention, the Ohio Supreme Court and various lower courts ruled on hundreds of cases that affirmed the sovereign rights of people and their elected representatives to define corporations and their actions. Cases ranged from sweeping decisions on corporations in general; to more specific decisions on an entire category of corporations (like railroads or banks); to very specific decisions addressing a particular corporation. Many decisions reinforced previously passed state laws or provisions of state constitutions.

From the 1840 through the end of the century,, states revoked corporate charters regularly through *quo warranto* proceedings. In Ohio, banks lost charters for frequently committing serious violations which were likely to leave them in an insolvent or financially unsound condition.

In one case, the Ohio Supreme Court stated,

The corporation has received vitality from the state; it continues during its existence to be the creature of the state; must live subservient to its laws, and has such powers and franchises as those laws have bestowed upon it, and none others. As the state was not bound to create it in the first place, it is not bound to maintain it after having done so, if it violates the laws or public policy of the state, or misuses its franchises to oppress the citizens thereof.

None of these actions took place in a citizen vacuum. During much of the 19th century, the public acted like sovereign people regarding corporations and alternatives. They understood that they had a social responsibility not to create artificial legal entities which could harm and control them. They also understood that they did not elect public officials to sell off their sovereignty. The peak of citizen activism was in the 1870-90's during the Populist era -- when several million people, mostly rural southerners and westerners, educated and organized to maintain their sovereignty and struggled against corporate control. It was this era, that the *Locofocos*, grassroot farmers and immigrants, were active in Northwest and Southwest Ohio against banking and insurance corporations.

Corporations didn't take all this citizen self-governance and revocation business sitting down. The Civil War brought incredible corporate wealth and profits as well as the creation of corporate conglomerates. Little by little, they translated their increasing financial wealth into political power -- bribing state legislators, then announcing that the lawmakers were corrupt, then pushing for reduced legislative powers to charter and control corporations.

In Ohio, laws and court cases favorable to corporations were passed and decided over a period of decades. If

corporations couldn't get favorable treatment by the legislature, they focused their energies on the state courts where they felt they had a greater chance for success. When state courts were too affirming to citizens and state legislators, corporations would seek to pass legislation in the federal Congress or to have cases heard at the federal district or Supreme Court levels.

Promoted by "Progressives," corporations were also willing to accept the creation of regulatory agencies. Such agencies did not have the goal of defining corporate natures, only to regulate corporate behaviors -- to make them a little less harmful. Corporations were willing, on the whole, to accept many regulatory agencies, (a) because they shielded corporations from the public, (b) on condition that decisions by these agencies could be appealed in courts, especially federal courts, and (c) it was cheaper to buy influence from a few regulators than an entire legislature.

The corporate counter attack to citizen aspirations and values for self-governance achieved a significant victory in 1886. That year the U.S. Supreme Court (including three Ohioans) ruled in *Santa Clara County v. Southern Pacific Railroad Corp.* that a corporation was a natural person under the U.S. Constitution, protected by the 14th Amendment. It was the 14th Amendment, passed in 1868, which provided freed slaves rights of due process and equal protection under the law -- rights of persons. As historian Howard Zinn has noted, between 1890 and 1910, the Supreme Court employed the 14th Amendment in 19 race cases, as contrasted with 288 corporate cases

Even seeming victories to reassert citizen authority over corporations were, upon closer inspection, not real victories. The Sherman Anti-Trust Act of 1890 is a good case in point.

Trusts were outlawed by the Sherman Anti-Trust Act of 1890 (named after John Sherman, then Senator from Ohio). By 1890, 21 states and territories, most of them in the South and West, had already provisions against restraints of trade in their constitutions or statutes. This included Ohio.

Sherman urged Congressional action against trusts because the people "are feeling the power and grasp of these combinations, and are demanding of every [State] Legislature and of Congress a remedy for this evil, only grown into huge proportions in recent times... You must heed their appeal, or be ready for the socialist, the communist and the nihilist." "Society is now disturbed by forces never felt before. The popular mind is agitated with problems that may disturb social order." His bill was meant to regulate, not abolish, harms of large corporations or prevent their further development.

Five point plan for corporate governance

From this abbreviated Ohio history of the struggle between corporations and citizens dedicated to democracy, a five point corporate strategic plan for increasing corporate power becomes clear:

1. Buy, rent, lease, bribe and corrupt legislators
 2. Shift decision making from local and state level to national level
 3. Shift decision making to control or define corporations from legislative to judicial branch
 4. Shift authority to regulatory agencies
 5. Redefine yourself legally as a "person" with due process, equal protection, first amendment and other "rights"
- Bill of protections to permit independence.

Now take this five point corporate strategic blueprint for increasing corporate power and apply it to modern times and schemes like NAFTA, FTAA and WTO make absolutely perfect sense. They are entirely predictable, totally consistent, and have been and will continue to be diabolically effective unless we stop them.

1. Huge corporations are certainly buying, renting, leasing, bribing and corrupting elected officials in this country and around the world in favor of these corporate trade deals and in support of "fast track" (or whatever the heck they're calling it now) trade authority -- forcing a singular up or down vote.

The Center for Responsive Politics and others have documented the major corporate donations to federal elected officials who were and are prominent backers of corporate globalization. Public officials have been all too willing to give up their own authority in exchange for corporate bucks in their political coffers.

2. Corporations seek to shift basic corporate decision-making upwards -- this time from the national level to the

international level. NAFTA, FTAA, and the WTO all seek to make national governments about as important politically as the Queen of England -- nothing more than figureheads -- where candidates in nation states are elected and national politicians vote but the voting levers aren't connected to anything. The real power lies in corporate dominated international forums that are centralized, exclusive and about as democratic as corporations.

Under the FTAA, for example, basic economic, social and institutional relations would be locked into a set of legally binding international rules. State subsidized public services (like education, health care, water, sewer systems, and other municipal services) would be opened up to international bidding. Who bids? One guess. The large corporations would take over. Anchored in international law, the agreement would annul or invalidate national, state and municipal laws. The FTAA would make national, regional and municipal governments as important as colonial governments -- unable to pass any ordinances or laws with any teeth.

3. Corporations want decisions shifted from the legislative to the judicial arena. Judges are few in number, easily controlled and beyond accountability (just look at our own nation).

For example, NAFTA and the proposed FTAA allow corporations to sue national governments in secret arbitration tribunals if they feel that a government rule or law affecting their investment is in conflict with their so-called "rights." Such cases are litigated in special judicial bodies of the World Bank and the United Nations that are closed to public participation, observation and input. A three-person panel of professional arbitrators (with no doubt ties to corporations -- just like federal judges in our own nation) listens to arguments in the case, with powers to award an unlimited amount of taxpayer dollars to corporations whose investor privileges and rights they judge to have been impacted.

4. The creation of international "regulatory" agencies hasn't happened --- yet. However, with many large labor and environmental organizations around the world pushing for labor and environmental "side agreements" (instead of a flat out rejection of these undemocratic and dangerous agreements) and increasing global opposition to corporate globalization, it's only a matter of time before the corporate desperadoes figure out that they need to co-opt the growing movement and provide a few token concessions on labor and environment. Overseeing such "side agreements" will likely be international regulatory regimes with all the trimmings of US regulatory agencies - including providing a shield for corporations to hide behind and with no power to define corporate actions, just limiting corporate harms.

5. Corporations claim FTAA and WTO are needed to protect their "inherent rights" -- namely rights to do what they want, when they want and where they want.

The FTAA for example, would grant a "charter of rights" to corporations, which would not only override national laws but would also enable private companies to sue national governments, demand the annulment of national laws and receive compensation for potential lost profits from government regulations. These rights would internationalize what corporations having been trying to enact without success in this country -- calling government laws and rules a "taking" equal to an expropriation and receiving full compensation. Thus, protecting clean water, air and land or protecting workers are potential lost corporate profits by not being able to exploit and, therefore, requiring compensation. Many of these so-called corporate "rights" are already contained in NAFTA's investment section (Chapter 11) that the corporate elite and their compliant politicians want to extend to the FTAA.

What can we do?

So what do we do? What can we do? Can we do anything? Or should we, like we often hear from the elites, simply applaud these inevitable and irreversible steps of progress and wealth for all?

Forget it. Instead, we need our own five point blueprint for change -- a Peoples' Strategic Plan for Justice, Peace and Sustainability which addresses the issues of democracy, corporate globalization, trade and hope.

Peoples' Plan for Justice, Peace and Sustainability

1. We must examine our own minds -- our own mindsets in how we think and act toward corporations.

On one level it's how we personify these artificial legal fictions, calling them by their nicknames, GE, Ford,

Monsanto, Philip Morris, instead of using the word corporation -- the General Electric Corporation, the Philip Morris Corporations, etc. We also often refer to corporations as good or bad "citizens" or that they "feel" good or bad, or that they are or are not socially responsible. These are our creations. They aren't citizens. They have no feelings. We can direct, order, instruct our own creations.

On another level there's tremendous fear in our own minds about how society would function without corporations. How will we have toilet paper, Furbees, Big Macs, the Shopping Network, SUVs without corporations? How can we possibly grow enough healthy and nutritious food without agricultural corporations? How will we get our insightful news without media corporations? Who will provide compassionate and efficient care of the sick without health maintenance corporations? Who will supply all our cheap, safe and plentiful electricity, gas and oil without energy corporations? Who will produce all the safe and biodegradable synthetic chemicals if not chemical corporations? How can we possibly employ tens of millions of people with good pay and excellent benefits and security without all business corporations? Well, who actually makes or provides these products and services? Working people. Farmers. Doctors. Chemists. Factory workers. Professionals. Laborers. Working people know how to do these things. We as a society as individuals or as municipalities at one time or in some case still do provide many of these products and services without a corporate form (ever hear of family farms, cooperatives, public power, self-employment?). Why do we need the protective liability shield of a corporation which only insulates a few from the many and, in numerous instances, creates a separate entity that operates out of the control of even its managers and directors? How can we as individuals or we as a public organize ourselves to produce efficiently, fairly and sustainability what we believe we need? This is our mental challenge first and foremost -- to believe that society will not implode without these legal, irresponsible behemoths and to believe that these entities should not have the authority to govern. Changing our mindsets is what's behind our People's Bicentennial Project which seeks to communicate the historical and current work of Ohioans at the grassroots level to create justice, peace and sustainability.

2. We must directly challenge international corporate plans. They aren't principally "trade" agreements. They only use the issue of trade as the front for usurping every value, principle and policy that we associate with a civil society -- a clean environment, self-determination, meaningful work, creativity, community, beauty, meeting basic needs, among others. These agreements make self-governance a mockery -- it's a throw back to the form of sovereignty of old in which the Kings, Queens and Princes ruled to one today in which the corporations and the capitalists behind them want to assume the throne with the rest of us forced to be mere subjects. We must call NAFTA, FTAA, WTO and Fast Track trade authority for what they are -- sovereignty sell-outs, democratic disasters, corporate consolidations.

3. We must examine, challenge and change the undemocratic nature and rules which provide corporations and the wealthy "rights" in our own nation. Even if NAFTA, the WTO and FTAA disappeared tomorrow, what would we still have left? We'd still have corporations able to do pretty much what they want, when they want and how they want it -- with legislatures, the courts, the constitution, the regulatory agencies, the FBI, CIA, police, and Army behind them. The Bill of Rights would still not apply on corporate property. Corporations would still have first amendment rights to speak freely, fourth amendment protections against search and seizure, 14th amendment due process and equal protections. They would still be classified as "persons" under the law. A corporate charter would still be treated under the law as a "contract". Limitations on corporate "commerce" would still be protected under Article 1, Section 8. Working people could still not freely associate on corporate property. Corporations could still pervert elections through political donations or investments. And why the heck should we allow 9 people who are appointed for life with no accountability and responsibility to anyone beyond themselves and who call themselves the Supreme Court have the final say-so on just about everything we do?

When I was in Seattle for the WTO festivities in November, 1999, I heard several speakers from outside the US say "The biggest help you Americans can give us is to reign in your own government." That's a tall order given that our government is a Plutocracy, a Corporatocracy. It's daunting, but we must roll up our sleeves and challenge the legal and constitutional protections of corporations and to reexamine some fundamental provisions of our Constitutions that fundamentally shield the privileged from the public. It took 70 years of struggle before women won the right to vote, nearly a century before African Americans were defined as "people" rather than property, decades for workers to win the basic rights to organize in the workplace, 50 years before separate but equal was overturned. Social movements forced what was once considered to be "constitutional" to become "unconstitutional". We need the same commitment, struggle and vision to take on corporate "rights" in our own

country.

4. We must promote alternatives. Alternatives to corporate free trade are such things as decentralized marketing of products (coffee, clothing, etc.) between indigenous people/groups in underdeveloped nations and communities and others. Alternatives also include promotion of public policies which codify basic social and economic justices (such as Living Wage Campaign). Alternatives also include making our own organizations as inclusive and democratic as possible. How can we hope to create democracy in our culture when our own organizations are not democratic? When decisions on projects, strategies, funding, staffing, etc. are made in a less than open setting by a very few people who are often hand picked by the staff or organizational leadership? We must change our own organizations. We must change our own policies.

5. Finally, we must understand where we've come from. What is the history of power and privilege, the history of resistance, of social movements, of alternatives, of movements in other countries and cultures?

This requires attributes that sometimes we as activists don't always value -- study, reflection, internal critical analysis of our own movements, knowledge and strategies.

This is a trait certainly shared by organizers of this gathering -- who have come together to pay homage to the several hundred thousand American workers, immigrants and anarchists who in 1886 marched into international labor history by demonstrating for the 8 hour day and who subsequent to that struggled, suffered, sacrificed and finally achieved success in changing laws and in affirming their own dignity and worth as human beings.

May Day represents just such an attempt to learn from the past, honor those whose legacies are now in our hands, challenge the corporate culture, promote alternatives, and build international solidarity. Celebrating May Day helps us all realize that while current threats may in some ways be brand new, in other ways they are the same old thing and require from us a combination of thinking and acting that both remembers and learns from yesterday and works like hell today.

Thank you.