

Corporate Personhood and Democracy

Talk presented to First Unitarian-Universalist Church, Columbus, Ohio on July 13, 2003 by Greg Coleridge, Director, Economic Justice & Empowerment Program - Northeast Ohio American Friends Service Committee

Like Friends or Quakers, Unitarian-Universalists have a strong commitment to the inherent worth and dignity of every single human being. This is a basic tenant of Quaker testimony to themselves and to the world. It is also one of the UUsers “7 guiding principles of faith.”

No doubt we would all agree the purpose of any institution or society should be to maximize this principle or tenant – to bring it to life through its politics, economics and culture.

The dignity and worth of biological human beings and, in fact, the biological planet are however, under incredible assault today. Crises abound all around – from the local to the global, from foreign policies to domestic, from health care to warfare, from too little public education funding to too much private election funding, from the stock market to the food market, from job loss to pension loss, from the rapid concentration of media conglomerates to the rapid breakdown of human community, from extracting too many nonrenewable resources from the planet to dumping too much toxic waste into the planet, and from growing gaps between rich and poor both within this country and between countries to growing ties between political, economic and cultural elites throughout the world.

Cosmologist Thomas Berry says: “The deepest crises experienced by any society are those moments of change when the story becomes inadequate for meeting the survival demands of the present situation.”

It’s not being much of an alarmist today to assert that our society, all societies, the human species itself, as well as 1000s of other species are in severe crises. Our current story of how we got here, who and what we are, and what our place is in the world provides us with little help.

Berry lays out the complete story – both old and new – in his work *Dream of the Earth*. In the context of the topic this morning, the story I lay out is a more modest one – the story of democracy.

You know it. It’s the one we all grew up hearing and internationalizing. The one that is written about on July 4. The one that politicians and candidates of both major political parties at every level of government proclaim. It’s major features are:

- the American Revolution was all about establishing a people’s government
- the Constitution is the most democratic document ever devised and remains so and is worth defending to the death
- we live in a government that is the most democratic in the world
- popular struggle and social changes are proof that democracy works as intended
- our government represents the interests of the people and policies serve their/our best interests
- corporations help people and governments – bring good things to life.

A few parts of this story are partially true, most are totally false.

Inspired by the democratic vision and ideals of the Declaration of Independence, the American Revolution was in part about establishing a government where people were sovereign, or in

charge, rather than a King or monarch. Colonists had experienced oppression under the King of England, his military and his crown corporations. These were chartered or licensed entities like the Massachusetts Bay Company, Carolina Company, Baltimore Company, and others. Their powers transcended mere economic matters to include the powers to tax, fine, imprison, draft, and make laws. While still ultimately subordinate or beholden to the King of England they nevertheless possessed governing powers.

The American Revolution changed that. Governance now resided with the people, not corporations or kings. But the propertied and the slave owning founders, did not want to simply be a few among the many – all equal. They wanted to be more equal. They wanted to substitute monarch and crown corporate control with their own.

So they crafted a Constitution that recognized themselves, white male property owners, as complete persons. Everyone else, women, slaves, native people, indentured servants, white males without property, were either only partial persons or not written at all into the original document. The US Constitution was a perversion of the democratic ideals of the Declaration of Independence by men of property. Provisions such as the contracts and commerce clauses and property rights protected their economic privileges from the people. Other provisions – no direct election of the President or Senate, appointed Supreme Court Justices for life, the extremely onerous amendment process -- protected their political privileges

The first 10 Amendments, the Bill of Rights, were only added when it became clear that many state legislatures, with enormous popular pressure from below, would not ratify a document that centralized power and authority at the federal level. However, the all-important task of controlling corporations, feared originally by people of all economic and political persuasions, were left to the states.

The Ohio original story in self governance, including controlling corporations, was a bit more democratic than most. Ohio was a political experiment by Jeffersonian democrats, becoming a state exactly 200 years ago this year. It was frontier land where indentured servants, frontiersmen, religiously persecuted and revolutionary veterans came to stake their claim, create their paradise, work in community with others or just be left alone . Thus, the Ohio Constitution, Article 1, Section 2 laid the general democratic principle out clearly : “All political power is inherent in the people.”

The Ohio General Assembly, similar to other state legislatures, took the business of human sovereignty over corporations seriously -- which we've learned through our legal research into corporate history in Ohio. They used the chartering process as a democratic tool. Corporations were chartered one at a time for a specific purpose and time period. Land ownership was limited. Directors had to live in the state. Companies couldn't own other companies. Books were open. Managers were liable. Any and all forms of governance was prohibited.

Corporations were subservient. They had no rights. No authority. No power that was not authorized through the charter. They had only privileges bestowed by the state legislature. Corporations that acted beyond there granted authority frequently had their charter revoked or dissolved with their assets dispersed to communities or victims. State courts acted in much the same way.

One such charter revocation was the State v Hazelton & L.R. Co (1884):

Where a railroad for 5 years fails to construct the line provided in its charter, ... and constructs a

road wholly unsuited to the wants of the public, and for the benefit only of mines owned by the principal stockholders of the road, it is a misuse of its corporate powers, for which it may be dissolved.

The Civil War was a turning point. . The Civil War, like all wars, enriched companies. Corporations sought to translate their new economic wealth into political power. Or as Richard Grossman and Ward Morehouse of the Program on Corporations, Law & Democracy and the later being a UUser and profiled in the recent UU World magazine on corporate personhood, says,

After the Civil War the men setting out to industrialize this land with machines and workers without rights made the corporation their ruling institution. As men of property had wrapped the Constitution around themselves in 1787, men of the Gilded Age enlisted judges and legislators to wrap the nation's sacred text around their new financial and industrial conglomerates.

Men of corporate property exploited undemocratic provisions in the original Constitution – like the contracts and commerce clauses and property protections. And they perverted human rights provisions either already a part of the Bill of Rights or added later – beginning first with the 14th amendment granting freed slaves due process and equal protection rights. In 1868. This perversion took the form of the 1886 Santa Clara v Southern Pacific decision, in which for the first time artificial legal fictions, corporations, were given due process and equal protection rights of biological human beings. Three Ohioans were on the Supreme Court then, including Chief Justice Morrison Waite. Here was a Constitutional Amendment meant to at long last add slaves into the Constitution but instead aided and abetted corporations being added to the Constitution instead. In fact, between 1890 and 1910 alone, the Supreme Court employed the 14th Amendment in 19 race cases as contrasted with 288 corporate cases.

Following the Santa Clara perversion, corporations, now anointed as people, overturned 100s of state labor and consumer laws as “unconstitutional.” Many of those laws were in Ohio.

Resistance to concentrated corporate power came from the Populists, the largest democratic mass movement in the history of this nation. Populists were farmers, workers and supportive intellectuals who fundamentally challenged the democratic high-jacking by modern men of corporate property. They sought to end special privilege, create democratic structures, build cooperatives, transform private monopolies into municipally owned entities, and control not only labor but the money system and other institutions necessary for self governance. They realized that to be successfully, they would have to take on undemocratic elements of the US Constitution that men of corporate property hid behind.

Two colorful populists of Ohio were William Likens and Tom Johnson.

Likens, President of the Ohio Farmer's Alliance in 1890 said:

Hand in hand, and side by side we see unlawful combinations, unjust corporations, soulless monopolies, steals, swindles with plots and schemes of the deepest dyes, all seeking to fasten upon the body politic, and like heinous vampires, to drain the life blood of the nation.

Johnson, Mayor of Cleveland in 1900 said:

I believe in the municipal ownership of all public service monopolies... for if you do not own them they will, in time, own you. They will rule your politics, corrupt your institutions, and finally, destroy your liberties.

The populists were crushed in 1896 when Ohioan William McKinley defeated William Jennings Bryan. Populists were replaced by so-called "Progressives" who sought, beginning in 1900 right up to the present day to regulate corporate harms, mediate the worst elements of private corporate governance, disclose problems for citizens and consumers to see and know, and temper corporate excesses and abuses.

Populists weren't interested in tinkering with increasing corporate governance and personhood but abolishing it. Progressives threw in the democratic towel.

While Progressives worked at regulating, mediating, disclosing, and tempering, men of corporate property expanded their personhood rights to include:

- 4th amendment protections against search and seizure, meaning they can deny OSHA and EPA inspectors access to their properties
- 5th amendment rights against self incrimination and double jeopardy
- 1st amendment protections of free speech. The later has permitted corporations to infect our body politic through lobbying and political campaign donations, of investments depending on one's view, and
- Expanded their 14th amendments rights to equal protection under the law and can thus prevent local communities from " discriminating " against them in favour of small, local businesses.

While Progressives perfected regulatory and administrative laws and creating a gazillion regulatory agencies (most with the blessing of corporations) to oversee limited reforms, individual power and corporate concentration increased, wars for resources and political power increased, assaults on the rights of people – especially people of color – increased.

The New Deal came next, based not on the Populist perspective and agenda but the Progressive. Then came the Fair Deal, the New Frontier and the Great Society – all of which helped many many people. But they left the story and constitutional protections of minority rule and corporate governance rock solid. Nor did they provide us today with the knowledge or trials and errors needed to challenge the greatest concentration of power and wealth in this country and the world of all time. On the foreign policy front, progressives and liberals limited their visions to making corporate capitalism plus global imperialism a little less bad.

As Richard Grossman of POCLAD says,

Year after year, corporate operatives drove their wealth and power into the Constitution, into state corporation laws, into building corporate and government institutions of propaganda, persuasion and coercion. Year after year, they enriched a corporate class under color of law. Year after year, liberals and progressives poured their energies into resisting assaults one at a time over and over again...splintering into single issue groups easily channeled into one-struggle-at-a time, few of which were about "rights," and most of which promoted false histories, polluted language and glorified seriously-compromised victories. They have come together to assert: Not in Our Name. Not Here. Not There. Not Anywhere. But while this valiant work was taking place, corporate operatives were making the rules for governing the nation.

The corporate crowd now uses laws and constitutions to prevent the majority from their fundamental right to govern – and enforce these injustices with the power of the police and militaries. Millions of people in this country and around the world are left divided and disempowered.

Now we have corporate globalization. Governments have become mere pitchmen promoting transnational corporations, which are the engines and planners of the global economy. International corporate alliances like the WTO and NAFTA and their rules supercede national laws. The fundamental issue is not about trade (be it free or fair) but about governance: Who will be in charge of determining rights, rules, laws and policies? Will democratically determined rules stand or fall as trade impediments to the global free flow of goods and services? Will local, state and federal governments have any meaningful input on what kind of company, products or pollution comes their way or will decision-making be left to unelected dispute resolution panels? Can local people protect their economies, sovereignty and culture in the face of structural adjustment programs forced on them by the corporate friendly IMF and World Bank?

The collective result of all of this has been the political equivalent of a basic law of physics – 2 objects can't occupy the same space at the same time. In the case of a political democracy, citizens and corporations can't occupy the same democratic space at the same time. There may or may not be space in an economy for corporations in some form but not in a political democracy. When corporations exist in politics, citizens are crushed... and so is democracy.

WHAT DO WE DO

Former Speaker of the US House of Representatives Newt Gingrich may have the answer: "Don't try to reform the current system. It is hopeless. It is impossible."

We have to move beyond our one at a time strategy and the regulatory and administrative sink holes of time, energy and resource. Fining one corporate abuser, boycotting one corporate sweatshop, preventing one corporation from moving, limiting toxic emissions from one corporate polluter, better labeling on one corporate food product or limiting the increase in political contributions from one corporate lobbyist just isn't enough or just doesn't add up to an authentic democracy.

This Tuesday I spoke to students in Akron, Wednesday to environmentalists in Dayton, and Friday to the state central labor council of the Ohio AFL-CIO in Columbus. The messages I heard were the same: people are tired, frustrated, and open to a change in approach.

We must go back to our populist roots and do two things together – fundamentally challenge corporate governance and challenging undemocratic provisions of the US Constitution which shield men (and now a few women here and there) of corporate property.

How? Three suggestions:

1. We must expose the perversions of the slaveowning founders and corporate owning elites -- how they perverted the Declaration of Independence and Bill of Rights to blanket themselves and corporations in rights that we the people fought a revolution against. At the same time, we must lift up the democratic visions, strategies and people from our past – which we are trying to do with the release of our new documentary, CorpOrNation. We must create a new authentic democratic story.

2. We need to learn what others are doing elsewhere. The May-June issue of your UU World magazine is rich with examples – both successes or failures – of people taking on corporate governance.

3. We have to come together where we are to say no in ways which challenge corporate claims to constitutional authority, and which confront public officials who willing hand over our basic rights. Group resolutions and local initiatives and/or ordinances addressing these areas would be good starts:

- bill of rights protections on corporate property
- ban growing GE crops
- ban corporate factory farms
- ban out of state trash at landfills
- give preference for local/state businesses
- outlaw direct or indirect corporate political investments
- democratize Ohio's corporate code
- open defiance of nafta, wto, ftaa, (on corporate governance grounds)
- strip corporations of all personhood rights
- challenge undemocratic provisions of the US Constitution

This is a mighty challenge for all human beings dedicated to authentic democracy. I'm delighted that the Unitarian Universalists have come to see this problem not only as a political issue but a religious one... and are taking leadership. Democracy and self governance are absolutely essential to ensure not only good government but the fundamental dignity and respect of every single human person everywhere.

That's a story worth developing, living, and sharing.