

**A Publication of the PROGRAM ON CORPORATIONS, LAW & DEMOCRACY** By What Authority, the name of our publication, is English for *quo warranto*. *Quo warranto* is the sovereign's command to halt continuing exercise of illegitimate privileges and authority. Evolved over the last millennium by people organizing to perfect a fair and just common law tradition, the spirit of By What Authority animates people's movements today. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. As a result, a minority directing giant corporations privileged by illegitimate authority and backed by police, courts and the military, define the public good, deny people our human and constitutional rights, dictate to our communities, and govern the Earth. **By What Authority** is an unabashed assertion of the right of the sovereign people to govern themselves.

### **RUMORS OF USA DEMOCRACY DISCOVERED TO BE COUNTERFEIT**

*DISBELIEF AND SADNESS SWEEP THE NATION... LAND OF PLENTY RUN BY AND FOR A FEW...*

*By Greg Coleridge, Richard Grossman, and Mary Zepernick*

How many people would be shocked to read these headlines in the morning newspaper? How many would cancel their subscription in outrage? Scratch their heads and think? Perhaps even be relieved to find they aren't crazy after all? Along with Santa Claus, the Easter Bunny and the Tooth Fairy, an enduring myth of our society is the belief that the United States is a democracy. We learn it in school and hear it all the time in our popular culture, especially during this and every election year. While it is true that people have significantly expanded justice, equality and opportunity since the nation's founding, most such gains actually came about only as a result of great popular movements. At every step, these movements confronted a Constitution and government institutions arrayed against them, as do organizers for justice today. For six years, we in POCLAD have been talking and writing about the relentless corporate seizure of the people's authority to govern. Over the past year we have focused on the undemocratic nature of the Constitutional Convention, the Constitution itself, and the subsequent denial of the people's governing authority by federal courts and legislatures. It may be painful to say "Uncle Sam has no clothes!" Yet all the digging and grappling, the discussing and analyzing, point in this direction. For example, in many gatherings we have asked participants to identify and share a "democratic experience." Just a handful of people among scores came up with examples having to do with governing institutions and processes. It has been in family meetings, civic groups or volunteer projects in which people said they have participated fully in discussions and decisions. Clearly, elections do not a democracy make. A protest sign outside the Republican convention warned: "The most serious threat to democracy is the notion that it has already been achieved." Let's face it, for many the cat has long been out of the bag.

### **A STOLEN BIRTHRIGHT**

C. Douglas Lummis has noted, "Democracy was once a word of the people, a critical word, a revolutionary word. It has been stolen by those who would rule over the people, to add legitimacy to their rule." 1 However defined, democracy surely is a process whereby decisions that shape life, work, community and the Earth are public decisions, framed, debated and made by diverse human persons in open forums not dominated and warped by wealth; whereby all institutions that shape ideas or make governing decisions are public in nature. How does the U.S. of A. stack up? This nation was born in revolution against authoritarian absentee rule. Its first and second constitutions set up very different governments. The first--the league established by the Articles of Confederation--did not create a strong central government, and left ultimate authority in state legislatures rather than courts. Although far from perfect, it was good enough to enable 13 loosely-knit colonies to defeat the greatest global power of the day. Yet it has been cavalierly dismissed by historians, politicians and corporate apologists as cumbersome and inappropriate. George Washington revealed something about his values when he observed that "We probably had too good an opinion of human nature in forming our confederation. Experience has taught us that men will not adopt and carry into execution measures the best calculated for their own good, without the intervention of a coercive power." 2 The second government--established by the Constitution of 1787--reflects Washington's perspective. Celebrated in fable and song, its founding rhetoric extols liberty, equality and justice. However, much of its language made the United States government complicit in denying the rights of millions of people and hedging the power of the electorate. The presidency and Senate were not directly elected. The separation of powers and checks and balances kept the House of Representatives, the unit of government closest to the people, weak. The federal judiciary was insulated by presidential lifetime appointment and Senate confirmation. Constitutional amendment was made difficult, and there was no provision for national referendum or initiative. Not surprisingly, constitutional provisions like the Commerce and Contract clauses have been used to magnify corporate power, deny human rights and community authority, and generally stack the deck in favor of privilege. The Bill of Rights, added to the Constitution by anti-Federalists as the price of ratification, was intended to safeguard citizens from government abuses of power. However limited this protection has been in reality (thanks to the Supreme Court), it never

purported to safeguard people from non-governmental power. What's more, the Bill of Rights has been hijacked by corporations to turn government against human persons, communities and the Earth. "To a large degree, the court was intended to enforce the lines of division set down in the Constitution, in order to ensure that the areas marked off from politics would not be subject to political revision. The boundaries set in the Constitution were thus to be unrevisable by electoral majorities--a safeguard that would buttress the other institutional checks." **3 The men who wrote the Constitution, and the men who refined it through the courts, have done a wonderful job of privatizing government -- until just about every decision of importance is considered beyond the authority of the people. And what does the law most zealously protect? The constant corporate usurpation of people's rights, the relentless corporate denial of people's authority to govern, the absolute corporate squashing of working people's First Amendment freedoms of speech and association.** We in POCLAD have not studied all this history simply as an academic exercise, but to help us provoke conversation and debate among activists about rethinking organizational goals and strategies. We have been doing this work because as pragmatists, we concluded that despite the successes that hard working people and civic groups have achieved, we the people still have not gained the promised authority to govern ourselves. Ask yourself: are the decisions which define our communities' energy, transportation, agriculture, health care, land use, education, work, money supply, etc., really made by "we the people"? Is foreign policy? Government spying? The production and sale of weapons of mass destruction? Do elections, lawmaking, legal proceedings, and education nurture vigorous public debate about history and the real choices the nation can make? Are institutions actually defined and controlled by the people? Do all people enjoy liberty--that is, freedom of speech, freedom of association, equal protection, due process of law? Who framed the issues in the recent presidential campaign? What do you conclude when the Democratic and Republican candidates for president and vice-president supported existing global trade agreements and fast track authority to create even more? When despite escalating popular protest the corporate press dismissed global corporatization as a campaign issue? Why do state laws make it so difficult for third, fourth, fifth political parties to get on the ballot? Do your congressional representative or senators take your views, or the views of your organizations, seriously? Do your state representatives? Do they treat you as they treat the CEO of the General Motors Corporation or the heads of the National Association of Broadcasters or the U.S. Chamber of Commerce?

#### **A DIFFERENT VISION**

POCLAD has been looking at two historical streams: one is about the decentralization of power, about public decision making and self-governance--about democracy. The other stream is about the concentration of power, private decision making, governance by the few, and the corporation as their governing institution. We have been looking for and piecing together people's histories, like a tapestry--in pieces, not necessarily chronological, with different threads and strands waiting to be uncovered and connected. Our hope is that a critical mass of people will develop a clearer sense of how previous generations have struggled--not to make rulers a little less destructive, a little kinder and gentler--but for democracy. We sense that more people are now tracing the tensions that have long raged between government by the many and government by the few, and asking fundamental questions about who's in charge. To foster this process, we think it is vital to understand that the nation's great popular movements--the American Revolution and the Abolition, Populist, Women's, Labor, Civil Rights, and Native people's struggles--were not simply defensive efforts. Again and again, whole classes of people, many originally defined as property by the Federalist founders, organized to gain basic human and constitutional rights. In so doing they put forth visions of this nation quite different from the visions of those propertied few who sought to keep power in their own hands. **Look at the Knights of Labor in the 1880's. They were clear that the "transportation of knowledge," meaning the new communications inventions, must be public. Similarly, the millions of late-19th Century Populists understood that all the "necessaries of life" belonged in the hands of the people. However, we know that knowledge--like land, money, food, health care, energy, and our very government--has from the beginning been controlled by a small number of people.** The propertied founders, Robber Barons and their descendants in today's corporate boardrooms and halls of government have consistently elevated property interests over human and species rights. The result is a global empire built on military force, expanding production and consumption without end--all cloaked in the myth of democracy.

#### **IMPLICATIONS FOR ACTIVISTS**

To those who have looked at U.S. history, it is evident that simply regulating the authority of propertied men and their corporations to dictate the rules diverts people from the age-old struggle for democracy. So it should come as no surprise to find that creating and running organizations to build democracy is quite different from creating organizations to pry better terms from those in charge. There are hidden histories of past organizations to uncover and there are people's organizations--formed in response to relentless assaults on life, liberty, property, and the Earth--which need to retool into strategic vehicles for forcing government to disperse power and foster democratic institutions. How can activists stop investing in hopes and strategies based on rules stacked against us? How do we evolve into a democracy movement,

whose participants make clear that it's not labor and environmental side agreements, or better judges, or a tougher National Labor Relations Act, or public financing of campaigns that are needed, but rather the authority as a people to make all the decisions required to govern ourselves? As a "By What Authority" reader recently asked, "What steps can the average citizen take to help in the process of securing and maintaining democracy....Divided as we are, how can this amorphous mass ever be defined as a sovereign people? Perhaps the first challenge is convincing ourselves that we are capable of self-governance. After all, the very Father of our Country chided himself and his compatriots on an overblown faith in human nature. Alexander Hamilton dubbed us the mob at the gate. Leaders throughout U.S. history have denigrated, denied and disregarded the aspirations and sovereignty of the people, all the while singing the praises of our counterfeit democracy. For that matter, all of us--ruler and ruled alike--are infected by a millennia-old patriarchal world view that defines power as something exercised over others. This paradigm assigns to human differences dominant and subordinate status and parcels out power and privilege accordingly. Ruling minorities in every era have capitalized on such differences to divide and conquer. In the United States, for instance, race was socially constructed to justify slavery and keep the disenfranchised from making common cause. Racism, along with other forms of oppression, perpetuates inequity and continues to divide those who struggle to change the status quo. No wonder we citizens harbor a colonized and oppressive self-image. So the USA is not a democracy--let's move on. After all, who among us collapsed when we learned there was no Santa Claus? **We can free ourselves, and our liberation will pick up steam as we stop talking about and structuring our organizations around reclaiming, revitalizing or renewing something that never existed; as we analyze, plan and carry out strategies to uproot concentrations of so-called private power and build democratic institutions in their place.** POCLAD is cooperating with organizations seeking to make such a shift. For example, the U.S. Section of the Women's International League for Peace & Freedom has launched a three-year campaign to Challenge Corporate Power, Assert the People's Rights. Phase one is a study group curriculum featuring readings and discussion guidelines on the U.S. corporate power grab and on global corporatization; phase two is about crafting commensurate strategies in WILPF communities and coalitions. This is hard work for all concerned: \* in an activist organization around which a mythology has grown as a means of survival, leaders often treat internal debate on mission and tactics as threats to their authority; \* given that most organizations were created to gain relief from corporate and government assaults--either in progress or looming-- money, time and even the inclination to "rethink" are generally in short supply; \* whether the impetus for change comes from membership, staff, officers, board of directors, or funders, all must be involved in analyses and deliberations around how the organization can evolve; yet few activist organizations are really structured democratically, and many actually replicate the very hierarchical corporate model they purport to resist; \* people in existing and new organizations committed to building democracy need to study models throughout history and to practice the "democratic arts"; \* when sufficiently pressured, the ruling class may concede some ground to unionization, higher minimum wages, limits to their spewing of poisons, etc.; however, they draw the line when it comes to sharing power and authority under law with those whom they, like Hamilton, regard as the mob, the rabble. If people cannot make our own civic organizations democratic, we will be unable to gain our rightful power. As the late poet Audre Lorde put it, "You can't dismantle the master's house using the master's tools!" When more and more people adopt democracy as their goal, it will become easier to see that the logical and efficient way to end corporate assaults is by contesting illegitimate corporate power; the logical and efficient way to right government wrongs is by challenging government's relentless denial of people's fundamental rights; and the logical and efficient way to practice democracy is not by making the bad less bad but by rewriting the rules of governance. We can let C. Douglas Lummis cheer us on: "The basic idea of democracy is simple....Democracy is a word that joins demos --the people--with krakia -- power....It describes an ideal, not a method for achieving it. It is not a kind of government, but an end of government; not a historically existing institution, but a historical project....if people take it up as such and struggle for it." 4 That's a tall order, folks. What do you think? **ENDNOTES** 1. C. Douglas Lummis, *Radical Democracy*, Ithaca: Cornell University Press, 1996, p. 15. 2. Jerry Fresia, *Toward an American Revolution: Exposing the Constitution & Other Illusions*, South End Press, Boston, 1988, p. 23. 3. Geoffrey R. Stone, Louis M. Seidman, Cass R. Sunstein, Mark V. Tushnet, *Constitutional Law*, Third Ed., Little Brown & Co., Boston, 1996, p. 19. 4. Lummis, p. 22.

## **FROM THE BELLY OF THE OCTOPUS**

*By What Authority* interviewed Peter Kellman, a Maine labor activist who brings a working class perspective to his work for the Program on Corporations, Law & Democracy.

**BWA:** What is the Maine Clean Election Law?

**PK:** It was a referendum approved by the voters of Maine in 1996 to make it easier for people who could already run for office to run for office.

**BWA:** What's wrong with that?

**PK:** Nothing. But it's far fetched to think this law will be a launching pad to change the fabric of our society, or for that matter the electoral process itself.

**BWA:** Is that because the drafters, the advocates, focused on elections, and not on something else?

**PK:** No, you can focus on any aspect of our society to raise people's awareness of fundamental problems. The trouble is, if you take a bad system and try to make a small part of it better, you will not necessarily raise people's awareness of what is fundamentally wrong. You may make a small part of a bad system better, but the structural problems will remain untouched.

**BWA:** What's wrong with that?

**PK:** The Maine Clean Election Law was proposed because it costs too much money to run for office. I agree. So organizers said the way to change this is to have the state pay for campaigns. However, there are problems this doesn't deal with. For one thing, 80% of people can't afford to be involved in politics, not because they can't raise the campaign funds but because their lives don't allow it. Where does a person who is raising a family, working more than 40 hours a week and making \$30,000 a year, find the time and resources to campaign for office and attend a six-month legislative session? In Maine an employer of over 100 people has to provide time off for legislative sessions, but without salary, and the pay of legislators is hardly enough to keep someone out of the poor house. Besides, most people work for employers of less than 100 people. So as it is, only a few working class people, living under very special circumstances, are able to run for office. For the most part this law helps only those run who already can run. The bigger problem, the one affecting most of the population, was not addressed. Also under this law, a candidate can only qualify for state funds if she gets a specified number of \$5 contributions. This sets a bad precedent. In effect it reinstates a poll tax. The principle here is that the rights of citizens should not be contingent on paying \$5 or any amount to participate in the public process. Signatures should be all that are necessary. Look at US history: the principle of having property to be able to be involved in elections is being brought back, in this case by so-called progressive forces.

**BWA:** How would you suggest people look at the ways to fix elections to get rid of big money and private interests?

**PK:** **The challenge is getting the octopus of big money, and all its tentacles, completely out of our political process, period!** This means that we define an electoral process in which money is NOT an issue. For instance, we can have free debates and discussion on our publicly-owned airwaves. We also need to confront the decision of the U.S. Supreme Court, our unelected legislature, that money is political speech and therefore there will be no limits on how much the wealthy can spend on their campaigns. Then there's the assumption that our current legislators are free to enact laws that will change the way things are done. But the parameters of their thought are determined by the people who define thought in this country. Corporate-sponsored think tanks are among the few places in our society where people have the time and resources to think about what our institutions should look like, what our state and national policies should be. And so what legislatures end up considering in what is supposed to be a public process is actually determined by private institutions that function in the interest of the already powerful few.

**BWA:** What about our public schools and universities? Aren't they training people to think?

**PK:** The same problem exists. They cater to the needs of private institutions. The idea that our public schools now operate on is "What's good for corporations is good for our schools." Corporate tentacles, today, reach into every part of society to determine parameters of thought. Once again, these corporate interests represent only a small proportion of our society, namely those who are already wealthy. In this process the institutions of the rich extract wealth from the rest of the population. Most citizens of the republic are defined as consumers, which means we don't vote on policy. We get to choose between Pepsi and Coke, between Nike and Converse, between MacDonald's and Burger King, between Tweedledum and Tweedledee. In this new world we get to vote with our taste buds and feet instead of our hearts and minds.

**BWA:** Why don't more people just see through all this?

**PK:** We're bombarded by a consumer-driven vision of life and we're brainwashed to believe that even if our system is flawed, we have the best one going.

**BWA:** But what if some groups have the time and resources to educate people?

**PK:** Name one labor union or environmental organization pushing for fundamental worker or species rights that has resources at their disposal that in any way compares to those of auto manufacturers or telecommunications corporations or banks.

**BWA:** So what can people do?

**PK:** Go back to my premise that what the Clean Election Law doesn't deal with is that most people don't have the time to get involved in politics, self-governance. Because we understand that there is more to democracy than just voting every few years, we need to have the time to participate in the functioning of government. I propose "Democracy Day." One day a week would be set aside for the common people to study and participate in the functioning of a democratic government. Democracy Day would happen on the same day every week and it would be linked to a 32-hour work week at a living wage. One day every week to sit on local, state and national boards. One day a week to attend seminars and participate in public meetings. One day a week to attend town meetings and state legislative sessions. The corporate lobby would head for the moon if millions of working class people had the time to actually participate in the legislative process. One day a

week everyone--workers, students and homemakers--would have the time to be involved in the political process. You will also change the culture. From the time they start school, students will be involved in decisions that affect them. Candidates for office and those who are elected will have to pay attention to a population that has time to consider public policy. In contrast, the impact of the Maine Clean Election Law and others modeled after it is to help perpetuate the current system. Talking about reforming the electoral law is like reforming the National Labor Relations Act or the Environmental Protection Act. It assumes there is something fundamentally correct about them but there isn't. All three are deeply flawed. Their purpose is to keep in power a system in which elections are a sham and democracy is held at bay, with pollution legal and labor law protecting corporations. Trying to make something that's bad better means we don't get out of the box. What we need to say is, it's a bad system because it is fundamentally flawed and just tinkering won't fix it. The solution is to deal with the underlying problems, which means we have to have a more basic discussion than the one settled for in the Clean Election campaigns.

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