

ELECTIONS, CORPORATIONS, DEMOCRACY AND BEYOND

With questions surfacing in the major media about the anti-democratic nature of the Electoral College, those of us who believe that the US Constitution was from the start rigged to benefit a privileged few have before us a teachable moment.

What follows are a few recent reflections on the significance of elections under our current system, the power of corporations, the major constitutional barriers to a more authentic inclusion of all voices in our nation, and a few ideas of ways to move forward.

Any and all feedback is welcome.

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Delegate: What exactly were they protesting?

Reporter: The influence of money in politics, mostly,

Delegate: Isn't that naive... Money drives everything! Everyone has an agenda, and it takes money to run an agenda.

Reporter: How could people without money influence the agenda in the same way as corporate contributors?

Delegate: I agree that contributors get perks, but that's democracy.

Reporter: Perhaps it shouldn't be that way?

Delegate: Fiddle-dee-dee! [Cleveland Free Times, Aug. 9-15, 2000]

This interchange between a newspaper reporter and Ohio delegate to the Republican National Convention while observing street protests in Philadelphia sums up for many the perception, if not reality, of our "democracy" and futility of elections to bring substantive change given the current political and constitutional ground rules.

The widespread perception or reality is as follows: Democracy equals elections. Elections equal huge sums of money from the rich and corporations.

Thus democracy equals huge sums of money. "Fiddle-dee-dee!" Next topic please.

Yet, elections are not an effective means to control corporations.

Controlling corporations is not all there is to a democracy. And democracy is insufficient in including all voices and solving problems of injustice and violence.

CAN ELECTIONS PREVENT CORPORATE CONTROL?

Each and every election season it is pounded into the citizenry that elections are what make our democracy real. We are told over and over again that political races from Bush and Gore to those at the municipal level are places where significant ideas are shared, choices made, voters engaged, justice furthered, and changed futures begun.

Not quite.

A mere changing of faces or even of political parties, especially at the federal level, has not resulted in more "democracy", however one measures it (i.e., voter turn out, more responsiveness by candidates to constituent concerns, more participation by citizens in the political process, etc.). Nor have election results in any way significantly changed the relationship between citizens and corporations.

For more than 150 years, corporations have been perverting national political conventions, federal campaigns and candidates. It was the railroad corporations that brokered a deal which sent Rutherford B. Hayes to the White House over Samuel J. Tilden in the 1876 election, despite Tilden having received more popular votes. It was the 1896 election of William McKinley over William Jennings Bryan in which McKinley's campaign manager Mark Hanna first systematized campaign contributions (or investments) based on a formula according to the size and wealth of specific corporations [Source: Center for Responsive Politics].

Teddy Roosevelt's administration pushed through legislation outlawing direct corporate contribution in the early 1900's. Many states, including Wisconsin and Ohio, passed tough legislation prohibiting direct and indirect corporate involvement in elections. Nevertheless, corporate contributions/investments continued to flow under the table for decades. This eventually led to the Teapot Dome and Watergate scandals and post-Watergate "reforms" in the mid-1970's which created "Political Action Committees," or "PACs." Corporate PAC money has exploded on the political scene. Add to this

corporate “soft money,” which is unregulated direct contributions/investments to political parties for “party building” activities and “independent expenditures” which are funds used for advertisements that are supposed to be unrelated to campaigns, and you have a huge problem.

It is estimated that this year’s presidential and congressional elections cost about \$3 billion. Corporate contributions/investments in 1996 outweighed labor investments by a factor of 9 to 1 at the federal level.

When it comes to corporate contributions/investments, state and even municipal elections are different only in the scale but not in kind.

The perversion of the political system is so severe that several internet users tried to sell their votes for President on eBay, fetching as much as \$10,000 before the online auctioneer canceled the bidding. A second site,

Voteauction.com, promised to collect votes by absentee ballot, verify and then mail them to the appropriate locations. “The election industry is spending hundreds of millions of dollars in an attempt to influence the presidential election,” organizers were quoted in a statement. “This system is an inefficient waste of money for the candidate and their supporters.”

[Web users try to sell their votes on Internet, AP, 8/20/00]

Elections have not prevented corporations from gaining or reversing personhood and other constitutional “rights” never intended for these legal fictions. Corporations were granted expanded “rights” mostly through the courts using the commerce (Art 1, Sec 8) and contract (Art 1, Sec 10) clauses to the US Constitution. It didn’t make much difference who was elected or who was appointed to the federal judicial benches.

Elections have not prevented corporations from expanding their global influence through US initiated wars and conquests -- backed up by the military, CIA, etc. As Michael Parenti has said, the sword and dollar have moved hand in hand over the decades -- whoever has been elected.

Elections are not and have never been an effective arena for controlling corporate behavior. Rather it’s been through grassroots movement-building involving diverse people and organizations that have challenged corporate rule. The Populists, Locofocos, unions, women, farmers and others over the past century and a half organized to change state and federal laws, alter corporate codes, amend state constitutions, revoke corporate charters, pressure state and federal courts, create alternative cooperative institutions, and pressure political parties to bring substantive change.

Such movements have represented to those in power, however a "crisis of democracy." The elite policy commentator and Harvard professor Samuel P. Huntington comments that democratic societies "cannot work" unless the citizenry is "passive." It’s OK to vote but nothing more. The "democratic surge of the 1960s" represented an "excess of democracy," which must be reduced if governments are to carry out their traditional domestic and foreign policies in which the a small number of politicians, corporations, banks, law firms, foundations and media run the show. [Holly Sklar ed., Trilateralism - the Trilateral Commission and Elite Planning for World Management, South End Press, Boston, 1980.]

Unfortunately, our high school civics classes, corporate-owned media and culture of many community and activist groups still believe elections are where significant change originates. It just hasn’t been the case.

And the history of “third” parties has been less than successful. Most flop after an election or two, or at best, their reform agenda gets coopted or watered-down by one of the existing corporatized parties. Only the Republican Party shifted from “third” party to one of the major two. The “Billionaries for Bush (or Gore)” people who marched in tuxes and evening gowns at this year’s political conventions may have said it best: “we don’t care who you vote for (Bush or Gore), we own them both.” The Greens, however, certainly do offer hope for reversing this trend but that will depend on the extent they are able to help build and maintain a social "movement" and not focus simply on political party-building.

There are other ways to control corporations than simply through elections.

To be sure, it includes challenging and replacing public officials who give away public authority to business and charitable corporations. But it also includes:

- Coming to learn the story in your community, state and nation of democracy and threats by corporations, legislators, judges, and regulators to all-inclusive self-governance.

- Claiming as our main social identity that of “citizen” instead of “consumer” and acting accordingly to challenge every aspect of the corporate culture of overproduction and overconsumption.
- Creating cooperative, all-inclusive community institutions to provide food, health care, employment, currency, housing, energy, clothing, media, entertainment, etc.
- Convincing ourselves and others who work against one corporate harm at a time to shift goals, strategies and tactics to contest the constitutionalized property, personhood, contract and commerce authority of corporations (the rule of thumb should be: “Is this changing a basic groundrule and not simply relieving a single harm?”).
- Changing state constitutions, corporation codes and corporate charters to define corporations as public, subordinate entities.
- Contesting the exercise of illegitimate corporate authority in city councils, state legislatures and the US Congress and instead, becoming involved ourselves in creating, implementing and evaluating rules of government on behalf of people and the planet.
- Charging courts which act to shield corporations and privilege as irresponsible and unaccountable and work with others.

CONTROLLING CORPORATIONS AND PROMOTING DEMOCRACY

Many citizens have begun to understand that the corporate form is a major impediment to democracy in this nation. Through their dominance of elections, major media arenas, think tanks, foundations, and overall economy, the political culture is shaped by corporate ideals and missions.

But it’s not the only impediment. Even if the largest 100 or 1000 US-based corporations disappeared tomorrow, significant structural barriers would still exist to true justice, nonviolence and inclusion in our nation.

The Program on Corporations, Law and Democracy (POCLAD) has for the last several years evolved from looking exclusively at corporations and their harms toward examining all impediments of and opportunities for direct democracy. One of the major impediments is the US Constitution.

It’s difficult for many to believe that the Constitution is anything other than a useful aid for activists and citizens in the quest for democracy. Yet, “the Constitution was intended to ensure that only a few people would run the government and that they would be the few who would run the economy...”

Effective radical politics, however, is inhibited by our acceptance and glorification of the constitution and the Framers who engineered its ratification.” [Jerry Fresia *Toward an American Revolution: Exposing the Constitution and Other Illusions*, p 8]

The Framers, as John Quincy Adams said, did not profess to be “slavish adorers of our sovereign lords the people.” [Fresia, p 59] Instead, they were themselves wealthy landowners, ultimate advocates of capitalist values, who felt they should run the country and who had a deep disdain and fear of the common people.

Alexander Hamilton called the people “a great beast” [Fresia, p 3] John Jay,

President of the First Continental Congress and first Chief Justice of the US Supreme Court said, “The people who own the country ought to govern it.” [Fresia 32] For his part, the “father of the Constitution,” James Madison said: “An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings if indigence. According the equal laws of suffrage, the power will slide into the hands of the former.” [Fresia 53] The “father” of our country, George Washington, echoed the same opinion: “We have 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.” [Fresia 23]

For common people, independence and overall democratic governing rules were measured against a desired freedom from the oppression of colonial aristocracy as well as freedom from British rule -- freedom of all oligarchy, foreign or domestic. The non-wealthy and landless were thinking beyond independence, they were thinking of liberation from their many barriers.

“Self-rule was a matter not of pursuing self-interest, or of aggregating ‘preferences,’ but instead of selecting the values that ought to control public and private life... Political participation should be active and frequent and not limited to voting

or other similar statements of preference.” [Stone, Seidman, Sunstein, Tushnet, Constitutional Law, Third Ed., Little Brown and Company, 1996, pp 5-6]

Fear of an expanding citizen democracy led the Framers (who were not in any way democratically elected) to take drastic steps to solidify their power.

They defied their original purpose in coming together to simply ‘amend’ the Articles of Confederation. They kept proceedings of the Constitutional Convention secret for 53 years. They rammed through Congress the final document before those who opposed it could organized against it. They ensured that the document had to be ratified by only nine states, instead of all thirteen. They ignored calls for a Bill of Rights, which would not only protect citizens against the government, but also guarantee citizen participation (i.e. voting, investment decisions, natural resource use, workplace actions) and control of private power.

The final Constitution was an overall success for protecting property and privilege. The new Constitution simply abolished the sovereignty of the states in a variety of ways, including giving private powers greater commerce and contract rights (Article 1, Sections 8 and 10 receptively). [Fresia 51].

Hurdle upon hurdle to simple majority rule were elected. Only white, male, property owners could vote. The Presidency and Senate were not directly elected by citizens, but by the electoral college and representatives respectively. Separation of powers and checks and balances kept the House of Representatives (the unit of government closest to the common people) weak.

The Judiciary was insulated by Presidential lifetime appointment with Senatorial confirmation. “Judicial review,” that is, granting the courts the power to declare Congressional acts unconstitutional [Constitutional Law p33].

This made the courts the final authority and in fact, beyond accountability, kept popular “passions” in check and shielded the propertied minority. The ability to amend the Constitution was made extremely difficult. There was no national referendum or initiative possibilities. There was no built-in citizens protections or participation rights. Even the principle found in the

Declaration of Independence that revolution is a right of people was eliminated in the Constitution [Fresia 59]. “The ability to change the economy, to deal with substantive public policy issues such as the distribution of wealth and fiscal and monetary measures, was effectively removed from popular control” [Fresia p 52].

Judicial review remains one of the most undemocratic features of our current constitutional structure. “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. This idea responded to the distinction drawn by the framers between “law,” -- the realm of judgment -- and “politics” -- the realm of will, or personal preference [Constitutional Law p19].

The scholar Jennifer Nedelsky sums up the Constitution’s anti-democratic nature well: “From the perspective of the formation of the Constitution it becomes clear that problems of participation and economic power are not aberrations, but consequences of the system. They are not failures to put ideals into practice, but failures of a whole structure of ideas and institutions of which our ideals are a part” [Private Property and the Limits of American Consitutionalism The Madisonian Framework and Its Legacy , Jennifer Nedelsky, The University of Chicago Press, 1990 p 203].

While the phrase “we the people” in the Constitution’s Preamble may have been taken from the Iroquois Treaty of 1520 [Fresia 76], there was no similarity between the Framers commitment to democracy and inclusion compared to the “savages” among those in the Iroquois Confederacy.

Their laws and customs provided for universal suffrage, relative equality of wealth, and a decentralized governmental structure more like the Articles than the Constitution.

With such a set of Constitutional ground rules, how is anything resembling direct democracy possible? Is it conceivable to expect anything remotely close to a democratic political system when wealth is so skewed and fundamental economic decisions so private, beyond the control of citizens and our collective institutions?

Martin Luther King's comments in this arena are poignant: "What good is having the right to sit at a lunch counter if you can't afford to buy a hamburger?" As are the words of Supreme Court Justice Louis Brandeis: "We can have a democratic society or we can have great concentrated wealth in the hands of a few. We cannot have both."

DEMOCRACY AND BEYOND

Democracy some say is a process or society in which the people define their lives, arrangements and institutions; rule by the ruled; which is incompatible with capitalism and with corporate power and wealth as they exist today.

Implicit in this definition is that decisions made by a winner-take-all majority of "people" are legitimate, even if a minority disagrees. Pure democracy is direct discussion and decision-making (i.e., no representatives) in which the majority opinion rules. "Tyranny of the majority" the Framers called it. Thus, the US Constitutional system was designed to not only protect but empower a minority (i.e. people of property, which today is equated with corporations). "Tyranny of the minority," defenders of democracy call it.

Nedelsky says that "[t]he greatest strength of the Madisonian conception of constitutionalism was its capacity to sustain a tension between democracy and individual rights," [p 266] that is, the tension between majority and minority power.

Yes and no.

There should be no tension when a dispute involves human beings and corporations. Corporations should have no "rights." To consider their "views," "voices," "feelings," "responsibilities," and "moral values" is to attribute human characteristics to these subordinate legal entities. Yet, the process among human persons for determining the rules for [re]creating and maintaining citizen control over corporations will reflect such a tension. So too will there be a tension when conflicts arise among human persons over questions of wealth and community.

When legitimate differences of opinions arise among human persons, democracy or majority rule is an insufficient problem-solving process. Democracy creates losers whose views are ignored, belittled or crushed and, thus, either drop out or scheme to counter the majority rule. Competitive factionalism is one result. Something more inclusive is needed.

For several centuries, Quakers [among others] have practiced and refined the notion of "consensus." Different than democracy, consensus affirms all points of view. It empowers all perspectives and persons. Its decision-making model is based on finding a synthesis between majority and minority views which seeks the best solution derived from listening and respect.

Many social change organizations use consensus in a pure or modified form..

They understand what Gandhi long ago realized, "You must be the change you wish to see in the world." And, "The ends are the means in the making."

It has often been said, with considerable merit, that consensus is an impossible or impractical decision-making model when large numbers of very different people need to agree on very complex decisions. Since a multi-cultural, global movement for self-determination is essential to reverse corporate globalism and challenge the power of international financial institutions, the thinking goes that any form of consensus wouldn't work.

Maybe.

Richard K. Moore with Citizens for a Democratic Renaissance says, "In order for the movement to end elite rule and establish livable societies to succeed, it will need to evolve a democratic process, and to use that process to develop a program of consensus reform that harmonizes the interests of its constituencies. In order to be politically victorious, it will need to reach out to all segments of society and become a majority movement. By such means, the democratic process of the movement can become the democratic process of a newly empowered civil society. There is no adequate theory of democracy at present, although there is much to be learned from history and from theory.

The movement will need to develop a democratic process as it goes along, and that objective must be pursued as diligently as victory itself." Escaping the Matrix, Richard K. Moore, Whole Earth Magazine (#101), Summer 2000.

Moore and Tom Atlee of the Co-Intelligence Institute in Eugene, OR have identified and publicized a variety of such inclusive, if not consensual, problem-solving models.

- Citizen consensus councils -- A microcosm of a larger population where citizens dialogue to deep agreement about issues of common concern. It is usually a group of 12-24 diverse citizens selected at random from (or to be demographically representative of) their organization, community, country, etc. A citizen consensus council deliberates about issues concerning the population from which it was selected, and is professionally facilitated to a consensus about how to address those issues. Its final statement is released both to appropriate authorities and to the larger population it represents, usually through the media. After that, the council usually disbands, just as a jury does when its work is done. Variations of these councils include Danish consensus conferences [promoted in the US by the Loka Institute], Wisdom Councils [also called Dynamic Facilitation], National Commons [a project which convenes diverse people who are already working on a particular social problem from across the political spectrum, to help them come to consensus], and "The People's Verdict" [a 1991 Canadian experiment where a dozen citizens were scientifically selected representative of ideological, geographical, gender and racial diversity, and gave them three days to come up with a consensus vision for Canada, successfully facilitated by a team from Harvard led by Getting to Yes co-author Roger Fisher]. [Source: <http://www.co-intelligence.org>]

- Cuban local community meetings -- A very high percentage of the population (upwards of 85%) participate in a very collaborative, problem-solving approach in which people's views matter. They discuss and agree on local issues and develop a "sense of the community" regarding values and preferences on broader issues that go beyond their own community. These meetings then select a slate of delegates to represent their locality at the next 'higher' level of government. These delegates are typical community members, sent off temporarily to represent the positions of the community as discussed in at the 'lower' level. The representatives are not full-time politicians who consider that being elected gives them a blank check to go off and pursue their own (or their party's) agenda. [The New World Order and What To Do About It, Richard K. Moore, New Dawn magazine, Spring, 2000]. A similar process has been promoted by Gandian disciples who in India in the 1970's called for "Lok Samitis" or "People's Committee's." Representatives of these committees convene to larger groupings ("Village Committees") who send reps to even larger groups. Narayan Desai and his Institute for Total Revolution has thoroughly described this approach.

- Curitiba, Brazil -- Citizens of this rapidly growing city have been meaningfully involved for many years in development issues. The process involved requests from the community for ideas for a master community development plan, vigorous community discussions and debates, respect for and inclusion of many ideas into the final plan. The process was so participatory [and so ecological] that residents have 'bought-into' the plan. Thousands of residents help in the implementation -- which is vital given the lack of sufficient material resources at the city level. [Bill McKibben's Hope, Human and Wild, Little, Brown & Co., 1995]

Additional arenas where inclusive, if not consensual, problem-solving principles have been put into practice to challenge corporate rule and privilege are:

- Direct Action Groups (DAGs) -- The consensus model of decision-making was one of the critical factors in the success of DAGs in Seattle in shutting down the WTO. Consensus decision-making has been one of the key features for many years of nonviolent groups who risk arrest by directly confronting those in positions of power and attempting to disrupt "normal" operations.

Agreement on goals are reached in DAGs with actual implementation left to the discretion of small "affinity groups" of people who themselves develop a consensus of their specific plan. The process involves sometimes hundreds of people who reach agreement in a remarkably short amount of time.

- Technology -- The decentralization, increasing availability and decreasing cost of computer technologies offers promising possibilities to strengthen direct participation of more citizens which by-pass corporate controlled mediums. On-line discussions, strategy-sessions, and up-to-date information about issues, problems and organizing approaches all help. Following city council meetings on cable or Congress on C-SPAN has increased citizen education. Voting by mail has been done and voting on-line debated. Many states and communities hold referendums and initiatives on a regular basis.

There are problems connected with reliance on personal computers, however, around issues of access, and ecological destruction.

Enormous potentials exist to working more collectively to solve problems.

Although including every person in every political or economic decision may or may not be possible (or even desirable), a

commitment to collective decision-making and problem-solving inevitably results in increasing diverse and creative voices. This contrasts to authoritarian government and corporate systems which include only a few voices which travel in just one direction -- from the top down -- with military, police or economic power to enforce decisions.

Representative democracy was designed to establish small groups which channel the voices of entire populations. However, over time, our legislators, executives and judges have become more professional and entrenched and less responsive and representative -- concerned about their own careers and economic well-being. At times our "representatives" are bought, rented, leased or retained by corporations and the rich. At other times, their own entrenchment and gate-keeper positions in government result in "shake downs" of corporations and the rich for contributions/perks in exchange for favorable treatment.

This has led to widespread public apathy and disempowerment. It also leads to an opportunity to create a mass movement to push for a bottom-up power structure where citizens have an authentic voice in their community and the community has an authentic voice in the national and global society.

It is unclear what all this could specifically look like. We don't know in our society how to do democracy and consensus. We have not transformed these words from nouns to verbs. We have no authentic collaboration in our schools, religious bodies, media, workplaces, or malls. There is certainly none in our political parties and elections. Where is the decentralized collaborative space in our society? It must be created.

We need a local, regional and national conversation about elections, democracy and consensus.

We have no choice, however, but to "be the change we wish to see in the world." We must create our own conversations and structures of democracy and consensus in the short term in our own lives and circles of social involvement as we work toward long term structural and institutional change that challenges and seeks humane and sane alternatives to the current corporate form and to capitalism itself.

A simple model of what to focus against and what to advocate for may be summarized in Sherry Arnstein's "Ladder of Citizen Participation." At the very top and most oppressive steps to keep citizens in control by authoritarian power structures are found "manipulation," "therapy," and "informing." Mid-range steps are "consultation," "placation" and "partnership." A more inclusive step is "delegated power" in which citizens hold a clear majority of seats on committees with delegated powers to make decisions with the public now having the ability to assure accountability of the program to them. The most inclusive step is "citizen control" in which those who are being affected by decisions handle the entire job of planning, policy making and managing a program. [Arnstein, Sherry R. "A Ladder of Citizen Participation," Journal of the American Planning Association, Vol. 35, No. 4, July 1969, pp. 216-224.]

Is there any other choice but "citizen control?" Do we have the luxury of "fiddle-dee-deeing" around in our current work operating in our less than consensual processes when ever-consolidating corporations, ever-richer wealthy people and ever-destructive capitalism itself continues to threaten not only our elections and politics, but our economy and the planet?

Reporter: "Perhaps it shouldn't be [this] way."

All of us: Perhaps not!

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