See Also: Model *Amici Curiae* Brief to Eliminate Corporate Rights, by Richard L. Grossman, Thomas Alan Linzey, & Daniel E. Brannen, 9/23/03

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Consent of the Governed

The reign of corporations and the fight for democracy

by Jeffrey Kaplan

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DESCRIBING THE UNITED STATES of the 1830s in his now-famous work, *Democracy in America*, the young French aristocrat Alexis de Tocqueville depicted a country passionate about self-governance. In the fifty years since sovereignty had passed from the crown to the people, citizens of the new republic had seized upon every opportunity "to take a hand in the government of society and to talk about it. . . . If an American should be reduced to occupying himself with his own affairs," wrote de Tocqueville, "half his existence would be snatched from him; he would feel it as a vast void in his life."

At the center of this vibrant society was the town or county government. "Without local institutions," de Tocqueville believed, "a nation has not got the spirit of liberty," and might easily fall victim to "despotic tendencies."

In the era's burgeoning textile and nascent railroad industries, and in its rising commercial class, de Tocqueville had already detected a threat to the "equality of conditions" he so admired in America. "The friends of democracy should keep their eyes anxiously fixed," he warned, on an "industrial aristocracy. . . . For if ever again permanent inequality of conditions and aristocracy make their way into the world it will have been by that door that they entered." Under those conditions, he thought, life might very well be worse than it had been under the old regimes of Europe. The old land-based aristocracy of Europe at least felt obliged "to come to the help of its servants and relieve their distress. But the industrial aristocracy . . . when it has impoverished and brutalized the men it uses, abandons them in a time of crisis."

As de Tocqueville predicted, the industrial aristocrats have prevailed in America. They have garnered enormous power over the past 150 years through the inexorable development of the modern corporation. Having achieved extensive control over so many facets of our lives -- from food and clothing production to information, transportation, and other necessities -- corporate institutions have become more powerful than the sovereign people who originally granted them existence.

As late as 1840, state legislators closely supervised the operation of corporations, allowing them to be created only for very specific public benefits, such as the building of a highway or a canal. Corporations were subject to a variety of limitations: a finite period of existence, limits to the amount of property they could own, and prohibitions against one corporation owning another.[1] After a period of time deemed sufficient for investors to recoup a fair profit, the assets of a business would often revert to public ownership. In some states, it was even a felony for a corporation to donate to a political campaign.

But in the headlong rush into the Industrial Age, legislators and the courts stripped away almost all of those limitations. By the 1860s, most states had granted owners limited liability, waiving virtually all personal accountability for an institution's cumulative actions. In 1886, without comment, the United States Supreme Court ruled for corporate owners in *Santa Clara County v. Southern Pacific Railroad*, allowing corporations to be considered "persons,"[2] thereby opening the door to free speech and other civil rights under the Bill of Rights; and by the early 1890s, states had largely eliminated restrictions on corporations owning each other. By 1904, 318 corporations owned forty percent of all manufacturing assets. Corporate owners were replacing de Tocqueville's "equality of conditions" with what one writer of the time, W. J. Ghent, called "the new feudalism . . . characterized by a class dependence rather than by a personal dependence."

Throughout the twentieth century, federal courts have granted U.S. corporations additional rights that once applied only to human beings -- including those of "due process" and "equal protection." Corporations, in turn, have used those rights to thwart democratic efforts to check their growth and influence.[3]

CORPORATE POWER, largely unimpeded by democratic processes, today affects municipalities across the country. But in the conservative farming communities of western Pennsylvania, where agribusiness corporations have obstructed local efforts to ban noxious corporate farming practices, the commercial feudalism de Tocqueville warned against has evoked a response that echoes the defiant spirit of the Declaration of Independence.

In late 2002 and early 2003, two of the county's townships did something that no municipal government had ever dared: They decreed that a corporation's rights do not apply within their jurisdictions.

The author of the ordinances, Thomas Linzey, an Alabama-born lawyer who attended law school in nearby Harrisburg, did not start out trying to convince the citizens of the heavily Republican county to attack the legal framework of corporate power. But over the past five years, Linzey has seen township supervisors begin to take a stand against expanding corporate influence -- and not just in Clarion County. Throughout rural Pennsylvania, supervisors have held at bay some of the most well-connected agribusiness executives in the state, along with their lawyers, lobbyists, and representatives in the Pennsylvania legislature.

Linzey anticipated none of this when he cofounded the Community Environmental Legal Defense Fund (CELDF), a grassroots legal support group, in 1995. Initially, CELDF worked with activists according to a conventional formula. "We were launched to provide free legal services to community groups, specifically grassroots community environmental organizations," Linzey says. "That involved us in permit appeals and other typical regulatory stuff." But all that soon changed.

In 1997, the state of Pennsylvania began enforcing a weak waste-disposal law, passed at the urging of agribusiness lobbyists several years earlier, which explicitly barred townships from passing any more stringent law. It had the effect of repealing the waste-disposal regulations of more than one hundred townships, regulations that had prevented corporations from establishing factory farms in their communities. The supervisors, who had seen massive hog farms despoil the ecosystems and destroy the social and economic fabric of communities in nearby states, were desperate to find a way to protect their townships. Within a year, CELDF "started getting calls from municipal governments in Pennsylvania, as many as sixty to seventy a week," Linzey says. "Of 1,400 rural governments in the state we were interacting with perhaps ten percent of them. We still are."

But factory hog farms weren't the only threat introduced by the state's industry-backed regulation. The law also served to preempt local control over the spreading of municipal sewage sludge on rural farmland. In Pittsburgh and other large cities, powerful municipal treatment agencies, seeking to avoid costly payments to landfills, began contracting with corporate sewage haulers. Haulers, in turn, relied on rural farmers willing to use the sludge as fertilizer -- a practice deemed "safe" by corporate-friendly government environmental agencies.

Pennsylvania required the sewage sludge leaving treatment plants, which contains numerous dangerous microorganisms, to be tested only at three-month intervals, and only for E. coli and heavy metals. Most individual batches arriving at farms were not tested at all. It was clear, from the local vantage, that the state Department of Environmental Protection had failed to protect the townships, turning many rural communities into toxic dumping grounds -- with fatal results. In 1995, two local youths, Tony Behun and Danny Pennock, died after being exposed to the material -- Behun while riding an all-terrain vehicle, Pennock while hunting.

"People are up in arms all over the place," said Russell Pennock, Danny's father, a millwright from Centre County. "They're considering this a normal agricultural operation. I'll tell you something right now: If anyone would have seen the way my son suffered and died, they would not even get near this stuff." After a U.S. Environmental Protection Agency scientist linked the two deaths to a pathogen in the sludge, county supervisors tried to pass ordinances to stop the practice, but found that the state had preempted such local control with its less restrictive law.

The state's apparent complicity with the corporations outraged local elected officials. People began to understand, Linzey recalls, "that the state was being used by corporations to strip away democratic authority from local governments."

MANY SMALL FARMERS in rural Pennsylvania were already feeling the devastating effects of increasing corporate control over the market. They often had no choice but to sign contracts with large agribusiness corporations -- resulting in a modern form of peonage. By the corporate formula, a farmer must agree to raise hogs exclusively for the corporation, and to borrow $250,000 or more to build specialized factory-farm barns. Yet the corporation could cancel the contract at any time. The farmer doesn't even own the animals -- except the dead ones, which pile up in mortality bins as infectious diseases ravage the crowded pens. The agribusiness company takes the lion's share of the profits while externalizing the costs and liabilities; the farmer left financially and legally responsible for all environmental harms, including groundwater contamination from manure lagoons.

Even if farmers could find a way to market their hogs on their own, loan officers often deny applications from farmers unless they are locked into a corporate livestock contract. "The once-proud occupation of 'independent family farmer' has become a black mark on loan papers," Linzey writes on the CELDF website.

A bespectacled thirty-four-year-old, Linzey speaks with a tinge of southern drawl. Under the tutelage of historian Richard Grossman of the Program on Corporations, Law, and Democracy, he has become an eloquent speaker on organizing tactics, constitutional theory, and the history of corporations in this country.[4] But he is also an excellent listener. He heard the indignation as incredulous supervisors came to understand their lack of authority in the regulatory arena. The rights and privileges that corporations were able to assert seemed incomprehensible to them. "There's disbelief," he says. "Then the clients attack you, and then you have to explain it to them, giving prior examples of how this works."

Township supervisors were quick to see that the problem was not simply factory farms or sludge, "but the corporations that were pushing them," Linzey says. Enormously wealthy corporations were able to secure rulings that channeled citizen energies into futile battles. The supervisors started to realize, according to Linzey, "that the only thing environmental law regulates is environmentalists."

By 1999, with CELDF's help, five townships in two counties had adopted a straightforward ordinance that challenged state law by prohibiting corporations from farming or owning farmland.[5] Five more townships in three more counties followed suit. Also in 1999, Rush Township of Centre County became the first in the nation to pass an ordinance to control sludge spreading. Haulers who wanted to apply sewage sludge to farmland would have to test every load at their own expense -- and for a wider array of toxic substances than required by the weaker state law. Three dozen townships in seven counties have unanimously passed similar sludge ordinances to date.[6] Citing a township's mandate to protect its citizens, Licking Township Supervisor Mik Robertson declares, "If the state isn't going to do the job, we'll do it for them."

So far, the spate of unanimous votes at the municipal level has halted both new hog farms and the spreading of additional sludge in these townships.[7]

IN DE TOCQUEVILLE'S TIME, local communities like those in Clarion County had enormous strength and autonomy. The large corporation was nonexistent, and the federal government had little say over local affairs. Americans by and large reserved patriotic feelings for their state. People, at least those of European descent, played a more active role in local governance than they do today. Their only direct experience with the federal government was through the post office. As de Tocqueville pointed out, "real political life" was not concentrated in what was called "the Union," itself a telling term; before the Civil War the "United States" was a plural noun, as in, "The United States are a large country."

Since the consolidation of the Union and throughout the twentieth century, the autonomy of state and local governments has continued to wane as corporations have grown larger and gained more extensive rights under the U.S. Constitution. In two decisions in the mid-1970s, the Supreme Court affirmed a corporation's right to make contributions to political campaigns, considering money to be a form of "free speech." And over the past few decades, corporations have won increasingly generous interpretations of the Interstate Commerce Clause of the Constitution.[8] Originally intended to prevent individual states from obstructing the flow of goods and people across their borders, the clause has been used by corporations to challenge almost any state law that might affect activity across state lines. In 2002, for example, the federal courts ruled that a Virginia law prohibiting the dumping of trash from other states violated a waste hauler's rights. In early 2003, Smithfield Foods, one of the nation's largest factory-farm conglomerates, sued on similar grounds to overturn Iowa's citizen initiative banning meatpacking companies from owning livestock, a practice the citizens believed undercut family farms.[9]

Elsewhere, corporate rights have posed increasingly absurd threats to sovereignty. In 1994, for example, Vermont passed a law requiring the labeling of milk from cows that had received a bioengineered bovine growth hormone; in 1996 the federal courts overthrew that law, saying that the mandated disclosure violated a corporation's First Amendment right "not to speak."[10] Four years later, a Pennsylvania township tried to use zoning laws to control the placement of a cell-phone tower; the telecommunications company sued the township and won, citing a nineteenth-century civil rights law designed to protect newly freed slaves.

Until recently, these incidents might have been seen simply as aberrations or "corporate abuse." But an increasing number of Americans have begun to consider a whole range of single-issue cases as examples of "corporate rule." The role that government has played, in their view, is merely that of a referee who enforces the rules defined by corporations for their own benefit rather than the public's.

It was this perception that motivated the townships to take their revolutionary stand. But their successes in halting factory farming and sludge applications within their borders didn't prohibit corporations from attempting to press their case in the courtroom.

In 2000, the transnational hauler Synagro-WWT, Inc. sued Rush Township, claiming its antisludge ordinance illegally preempted the weaker state law and violated the company's constitutional right of due process. It also sued each supervisor personally for one million dollars. In response, Linzey recalls, one township supervisor asked, "What the hell are the constitutional rights of corporations?" A year later, PennAg Industries Association, a statewide agribusiness trade group, funded its own suit against the factory farm ordinance in Fulton County's Belfast Township on similar constitutional grounds. Rulings on both suits are expected as early as mid-2004.

It was only after those suits had been filed that the two Clarion County townships, Licking and Porter, took the historic step of passing ordinances to decree that within their townships, "Corporations shall not be considered to be 'persons' protected by the Constitution of the

United States," a measure that effectively declared their independence from corporate rule.[11] For Mik Robertson, the issue is simple: "Those rights are meant for individuals." He and his two fellow supervisors later revised their ordinance to also deny corporations the right to invoke the Constitution's Interstate Commerce Clause; Porter Township is considering a similar amendment. Several other townships are preparing their own versions of the corporate rights ordinance, according to Linzey.

Now, when a corporation claims that an antisludge ordinance violates its rights, the townships can simply say those rights don't apply here. The corporation would then be forced to defend corporate personhood in a legal battle. That hasn't happened yet, but Linzey and his allies have energized a statewide coalition that has vowed to fight the issue all the way to the Supreme Court, raising awareness along the way about a basic question of sovereignty: By what authority can a conglomeration of capital and property, whose existence is granted by the public, deny the right of a sovereign people to govern itself democratically?[12] Linzey predicts that such a suit could happen within a decade. That battle, he says, could ignite populist sentiment across the country -- even around the world.

Growing support for these issues was put to the test in 2002, when agribusiness interests, displeased by the spread of ordinances prohibiting factory farming, began prodding the Pennsylvania state legislature to pass an even more severe bill than the 1997 directive. This time there was no disguising it as waste-disposal regulation. The 2002 bill had one explicitly stated purpose: To strip away a township's right to control agriculture -- including sludge applications -- within its borders. When it stalled in a senate committee, the Pennsylvania legislators renumbered the bill and rammed it through before their constituents noticed. By the time CELDF found out about the bill, it was up for a vote in the house.

"We ignited opposition almost overnight," Linzey recalls. "We were working with 100-plus townships already. All we had to do was notify them."

Within two weeks, the coalition included four hundred local townships, five countywide associations of township officials, the Sierra Club, two small-farmers groups, the citizens' rights group Common Cause -- even the United Mine Workers (whose members had been sickened by sewage sludge applied on mine reclamation sites), which invited in the formidable AFL-CIO.

"It was like Sam Adams in 1766, when the Townsend Acts were passed," says Linzey. "He had already built the mob, the rabble, and just had to alert the people that this was happening as an act of oppression."

Because the issue had been defined as protection of a community's right to self-determination, the bill became unpopular and was tabled indefinitely. On Thanksgiving Eve 2002, it met its end when a mandated voting period elapsed. Astonishingly, the coalition had won.

In so defining the issue, the deliberations in Clarion County resonate far beyond its borders. In recent years, judges, mayors, and a host of local and state legislators nationwide, whose authority as democratically elected representatives is similarly threatened by the increasing legal dominance of corporations, have begun to take action:

- In Minnesota, State Representative Bill Hilty has introduced a state constitutional amendment eliminating corporate personhood.

- The Arizona Green Party is campaigning for the passage of a similar amendment in their state.

- In the northern California town of Point Arena, legislators passed nonbinding resolutions in opposition to corporate personhood.

- Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, North Dakota, South Dakota, and Wisconsin have all passed laws outlawing corporate ownership of farms.

But in the age of globalization, questions of sovereignty can no longer be addressed strictly within U.S. borders. Clarion County's townships may pass an ordinance saying that a sludge hauler's constitutional rights don't apply. "But if there is foreign participation, say if they are partially German-owned or Canadian," says Victor Menotti of the International Forum on Globalization, "you run up against another set of corporate rights under [international] trade agreements."

It was this other set of rights, the understanding of global "corporate rule," that brought many of the forty thousand demonstrators to the streets of Seattle in December 1999 to shut down the meeting of the World Trade Organization (WTO) . It is also what incited subsequent demonstrations at the meeting of the World Bank in Prague in 2000, the meeting of the G-8 (the eight most economically powerful countries) in Genoa in 2001, the Free Trade Area of the Americas meeting in Québec in 2001 , and most recently, the WTO meeting in Cancun. Through it all, protesters have held fast to one principle: the right of a people to govern themselves, through their representatives, without obstruction by corporations.

One of the increasing number of public officials in the U.S. who face challenges to their sovereignty similar to those faced by their counterparts in the Pennsylvania townships is Velma Veloria, chair of the Washington State legislature's Joint Committee on Trade Policy. For fifty-three-year-old Veloria, the 1999 Seattle demonstration against the WTO was a defining event. Veloria realized that behind the tumult in the streets, "there was a whole movement that was asking for accountability and transparency." She imagined what might happen if a tanker that was not double-hulled spilled oil in Puget Sound. She and her colleagues could pass a law requiring double hulls in Seattle harbor, but under the emerging rules of the WTO, such a law could meet the same fate as a Clarion County antisludge ordinance: It could be attacked as interfering with the rights of corporations, as a barrier to trade. "It opened a whole new field for me about the sovereignty of the state," Veloria says.

California State Senator Liz Figueroa, chair of the Senate Select Committee on International Trade Policy and State Legislature, has faced similar quandaries. In 2000, Figueroa authored a bill that made it illegal for the state to do business with companies that employed slave or forced labor. Figueroa explained to the city councils and constituents in her district that foreign trade imports produced by slave labor could undercut the local economy. But as pragmatic and ethically incontestable as the bill sounds, it could potentially be challenged under the WTO's rules.

"Our job is monumental," she says, referring to her efforts to explain how trade agreements can usurp democracy. "We have to make sure our own legislative offices even know of the conflict . . . we have to explain the reality of the situation."

Figueroa and Veloria are not alone. International trade agreements such as the North American Free Trade Agreement (NAFTA), the WTO's General Agreement on Trade and Tariffs (GATT), and the pending Free Trade Area of the Americas (FTAA) threaten the jurisdiction of any elected or appointed representative of a sovereign people at any level of government. A National League of Cities resolution declared that the trade agreements could "undermine the scope of local governmental authority under the Constitution." Last year, the Conference of Chief Justices, consisting of the top judges from each state, wrote a letter to the U.S. Senate stating that the proposed FTAA "does not protect adequately the traditional values of constitutional federalism" and "threatens the integrity of the courts of this country." In California, Minnesota, Oregon, Washington, Massachusetts, and New Hampshire, state legislatures have expressed concern over trade agreements, as has the National Council of State Legislators. Their statements, however more discreet, nonetheless echo the chants from the streets of Seattle: "This isn't about trade, this isn't about business; this is about democracy."

DESPITE THEIR ENORMOUS ramifications, most international trade agreements remain a mystery to the average American. At the core, they are simple.

GATT and NAFTA cover the trade of physical goods between countries. They can be used to override any country's protection of the environment, for example, or of workers' rights, by defining relevant laws and regulations as illegal "barriers to trade." They provide for a "dispute resolution" process, but the process routinely determines such laws to be in violation of the agreements.

In the case of GATT, a WTO member country can sue another member country on behalf of one of its corporations, on the grounds that a country's law has violated GATT trade rules. The case is heard by a secret tribunal appointed by the WTO. State and local officials are denied legal representation. If the tribunal finds that a law or regulation of a country -- or state or township -- is a "barrier to trade," the offending country must either rescind that law or pay the accusing country whatever amount the WTO decides the company had to forgo because of the barrier, a sum that can amount to billions of dollars. In short, practitioners of democracy at any level can be penalized for interfering with international profit-making.

Through this process, WTO tribunals have overturned such U.S. laws as EPA standards for clean-burning gasoline and regulations banning fish caught by methods that endanger dolphins and sea turtles. The WTO has also effectively undermined the use of the precautionary principle, by which practices can be banned until proven safe -- in one recent instance superseding European laws forbidding the use of growth hormones in beef cattle. A WTO tribunal dismissed laboratory evidence that such hormones may cause cancer because it lacked "scientific certainty." On similar grounds, the U.S., on behalf of Monsanto and other American agribusiness giants, recently initiated an action under GATT challenging the European Union's ban on genetically modified food.

Under NAFTA, which covers Canada, Mexico, and the U.S., a corporation can sue a government directly. The case would also be heard by a secret tribunal, such as when Vancouver-based Methanex sued the U.S. over California's ban on a cancer-causing gas additive, MTBE. The company, which manufactures the additive's key ingredient, claimed that the ban failed to consider its financial interests. Since July 2001, three men -- one former U.S. official and two corporate lawyers -- have held closed hearings on the thirteenth floor of World Bank headquarters in Washington, D.C., to decide whether, in this instance, a democratically elected governor's executive order to protect the public should cost the U.S. $970 million in fines. The FTAA, recently fast-tracked for negotiations to put it into effect by 2005, would extend NAFTA's provisions to all of Latin America.

GATS, the General Agreement on Trade in Services, a recent trade agreement under the WTO, takes the usurpation of democracy one step further. While GATT deals with the exchange of goods across international borders, GATS establishes certain privileges for transnational companies operating within a country. It covers "services," meaning almost anything from telecommunications to construction to mining to supplying drinking water. It even includes functions that traditionally have been carried out or closely controlled by government, like postal services and social services such as welfare -- even libraries. Activists point out that the primary focus of the GATS is to limit government involvement, "whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form," to quote the treaty itself. Public Citizen's Lori Wallach has called GATS a "massive attack on the most basic functions of local and state government."

Under GATS, any activity the federal government agrees to declare a "service" would be thrown open to privatization. The supply and treatment of water is a timely example, since the European Union is currently pressing the United States to make water among the first of the services it places under GATS. If clean drinking water is so declared, no government body in the U.S. could insist that it remain publicly managed. If any government wanted to create a publicly owned water district, foreign corporate "competitors" would have the right to underbid the government for control of the service. Just as important, a transnational company could challenge any rules -- including environmental and health regulations -- that would hamper its ability to profit from a business that is related to a service under GATS.[13]

On March 28, 2003, twenty-nine California state legislators signed a letter of concern to U.S. Trade Representative Robert Zoellick about the provisions contained in GATS. The letter states that GATS could usurp any government regulation, including nurse-to-patient staffing levels, laws against racial discrimination, worker health and safety laws, regulatory limits to oil drilling, and standards for everything from waste incineration to trace toxins in drinking water. As a result, the letter states, GATS would "jeopardize the public welfare and pose grave consequences for democratic governance throughout the world."

Veloria and Figueroa both believe that if state legislators are to challenge this "power grab," in Veloria's words, they will have to organize among themselves. "One state cannot do it alone. We need to do it on a national scale." Otherwise U.S. citizens may find themselves under the thumb of NAFTA and WTO trade tribunals, "unelected bodies that have no accountability to the people." At that point, Veloria asks, "Why have state legislators, why have elected officials?"

IN HIS WORK WITH the rural Pennsylvania supervisors, Thomas Linzey's approach to domestic corporate rights may well illuminate how individuals, states, and nations can deal with international trade treaties.

"Clarion County is one of many emerging examples of local communities reasserting their own authority to define how they want land managed and what sort of protections they want for their community," says antiglobalization organizer Victor Menotti. "It's when things like this come to light that people question what the hell we've gotten ourselves into. These local communities stand up, and others say, 'if they can do that, we can do that.'"

On many issues of local governance, Linzey believes, a state or local legislature "could declare null and void the federal government's signature on GATT." To him it would be the "ultimate act of insurrection: saying governments have no constitutional authority to give away sovereign and democratic rights to international trade tribunals that operate in secrecy."

For now, Velma Veloria is still working through traditional channels. In an attempt to remove the antidemocratic provisions of the trade treaties, her committee will take up the issue with the state's delegation to Congress. But she is well aware that her colleagues, and the people of Washington State, may find that traditional route closed to them, as the Pennsylvania townships did in 1997.

If that happens, the practice of democracy at the local level would require legislators to defy the trade agreements. "At some point we might get to where the people working with Linzey are," she says. "We may end up saying we don't recognize parts of the international trade agreements that impact us. But that depends on the grassroots, on people demanding it."

There, too, the Pennsylvania coalition may offer some inspiration. "When the agribusiness folks filed suit over our anti-corporate farming laws," Linzey recalls, "page one of the lawsuit said 'we the corporations are people and this ordinance violates our personhood rights.' When we photocopied that, people immediately understood how they're ruled by these constitutional rights and privileges. It sparks a conversation."

The Pennsylvania township supervisors are backed by a determined grassroots movement, with a constituency "ready to go to the mat for their binding law to establish a sustainable vision that doesn't include corporate rights and privileges," says Linzey. "The product is not the ordinance," he adds. "The product is the people."

THE PENNSYLVANIA ordinances express the will of a sovereign people who are exercising their right to create institutions that support their vision of how they wish to live. And, as one would expect in a democratic society, the people of Pennsylvania wish to be the ones who define the rules under which those institutions may operate, be they governments or corporations.

History repeats itself. In the course of asserting their sovereign rights, the citizens of rural Pennsylvania have undergone a profound change in personal identity and political consciousness not unlike that of their forebears. As historian Lawrence Henry Gipson noted, "The period from 1760 to 1775 is really the history of the transformation of the attitude of the great body of colonials from acquiescence in the traditional order of things to a demand for a new order." People who for generations had considered themselves loyal Englishmen suddenly declared themselves to be citizens of a new nation, one based on the sovereignty of its citizens.

Veloria believes we are at a similar juncture today. "I have faith that the American people will stand up for themselves and for democracy. They can only be pushed so far."[14]

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Footnotes

1. For more on the history of people controlling corporations in the early days of the American experiment, *see TAKING CARE OF BUSINESS - Citizenship and the Charter of Incorporation*, by Richard L. Grossman and Frank T. Adams, Charter Ink, 1993, or the condensed version adapted for *Earth Island Journal*, Spring 1993.

2. The "decision" granting corporations the status and rights of persons was not included in the text of the ruling for *Santa Clara County v. Southern Pacific Railroad*. Rather it was written as the first sentence of what are called "headnotes" by court reporter J.C. Bancroft Davis: "The defendant Corporations are persons within the intent of the clause in section 1 of the Fourteen Amendment to the Constitution of the United States, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws." Headnotes are not written by judges or justices. They are usually added by a commentator or book publisher of Supreme Court cases. *See* the summary of this in "The Railroad Barons Are Back - And This Time They'll Finish the Job," by Thom Hartmann, *CommonDreams.org*, 12/11/02 and for more detail, *UNEQUAL PROTECTION: The Rise of Corporate Dominance and the Theft of Human Rights*, by Thom Hartmann, Rodale Press: 2002, "Chapter 6. The Deciding Moment."

3. For a detailed accounting of some of this history of rights corporations have won through the United States Judicial system *see* "Section III. Over the Past 150 Years, the Judiciary Has 'Found' Corporations Within the U.S. Constitution, and Bestowed Constitutional Rights Upon Them" and "Section IV. Corporations Illegitimately Wielding Constitutional Rights of Persons Against People and Communities Regularly Deny the People Their Inalienable Rights, Including Their Right to a Republican Form of Government" from the Model Amici Curiae Brief to Eliminate Corporate Rights, by Richard Grossman, Thomas Alan Linzey, & Daniel E. Brannen, 23 September 2003.

4. E.g. *see* Sins of the Fathers: How Corporations Use the Constitution and Environmental Law to Plunder Communities and Nature, speech by Thomas Alan Linzey at the University of Pittsburgh School of Law, 4 March 2004.

5. This is listed in the CELDF Local Ordinance Library as the Southhampton Anti-Corporate Farming Ordinance; *see also* the Frequently Asked Questions (FAQ's) on this ordinance also know as the "Family Farm Protection Ordinance" Prepared by Thomas Linzey, Esq.

6. The reference is to the Sewage Sludge Ordinance crafted by the Community Legal Environmental Defense Fund (CELDF) as part of its service of Local Ordinance Drafting for Townships available to local governments in Pennsylvania struggling to exert democratic controls over corporations. CELDF also responds to requests from Townships for customized Ordinances which they can present for passage.

7. *See* the CELDF Press Release, "Legal Defense Fund Names 'Factory Farm Five' in the Pennsylvania Senate,", 1/15/04 which discusses Pennsylvania Senate Bill 1413 and House Bill 1222, pertaining to both factory farming and sludge hauling:

   > "Senate Bill 1413 sought to strip away local control over corporate factory farms and land applied sewage sludge. An amendment to SB 1413 pasted to the Bill in a last minute attempt to pass the Bill at the end of 2002 would have made Township Supervisors individually and personally liable for the Township's adoption of Ordinances dealing with factory farms or the land application of sludge. In 2003, at 10:30 p.m. prior to the Christmas break, these Senators amended House Bill 1222 - Megan's Law - to include language from SB 1413. That Bill then passed the House and was vetoed by Governor Ed Rendell. . . .
   >
   > "During debates over those Bills, the 'Factory Farm five' vigorously pushed for their adoption. In one debate, Senator Waugh declared that corporate factory farms 'are today's family farm' and Senator Madigan declared that 'we should thank the factory farmers' for providing Thanksgiving dinner. At one point, Senator Wenger even exclaimed that 'I really do not know what a factory farm is.' See Senate Journal at 2555-2557 (November 27, 2002).
   >
   > "Linzey stated that 'without dispute, these Senators are the worst of the worst -- they seek to create a legal environment in which factory farm corporations can finally squash independent family farm competitors and further degrade the environment. Their Bills are anti-democratic, anti-farmer, anti-rural communities, and anti-quality of life.'"

   Concerning the veto by Governor Ed Rendell, the veto itself stemmed in considerable measure from a powerful coalition of labor and environmental organizations, including a great deal of leadership from Thomas Linzey and township supervisors. The following is from the beginning of "What the Governor's Veto Message of House Bill 1222 Should Have Been":

   > **Prefatory Note:** On December 31, 2003, Pennsylvania Governor Ed Rendell vetoed House Bill 1222 -- legislation introduced by agribusiness corporations to strip away local control over corporate factory farms in Pennsylvania. In addition to the act of vetoing, the Governor released a Veto Message which explained that the Governor actually *supported* the goals of the legislation, but preferred a more comprehensive approach to what he termed "nutrient management." (a copy of the Governor's Message is at http://www.greenwatchusa.org/1222Veto-DidSay.pdf). The below Veto Message was drafted by the Sons and Daughters of Liberty -- a network of Pennsylvanians working to confront the power that corporations wield over communities in the Commonwealth. That network has drafted a Veto Message that *should* have been delivered by the Governor.

   See Also: "Boss Hog: The Reign of Factory Farm Corporations," a Guest Editorial Submitted by Thomas Linzey, Esq. Community Environmental Legal Defense Fund (CELDF) and Bill Belitskus, President Pennsylvania Environmental Network, January 2004.

8. The Commerce Clause -- Article I, Section 8, Clause 3 -- states: "[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

9. For the details of this *see* Section IV, Part "E. Corporations Wielding the Contracts and Commerce Clauses Interfere With the People's Inalienable Right to Life, Liberty, and a Republican Form of Government" of Model Amici Curiae Brief to Eliminate Corporate Rights, *op. cit.*

10. This is the case of *International Dairy Foods Association v. Amestoy* (1996) ruled on by the U.S. Second Circuit Court of Appeals. In a vote of 2-1 the court ruled that the right not to speak inheres in political and commercial speech alike and extends to statements of fact as well as statements of opinion.

11. This is the CELDF Model Ordinance on Corporate Personhood.

12. This is one of the essential thrusts of the Model Legal Brief to Eliminate Corporate Rights, *op. cit.*

13. Regarding the quest by private power to own the public commons of water see:
    - PDF: Global Water Grab: How corporations are planning to take control of local water services, Polaris Institute, January 2003
    - Going Down the Road - The Water Profiteers, by Jim Hightower, 9/2/02
    - Who Owns Water? by Maude Barlow and Tony Clark, 2/2/02
    - Water--A Trillion Dollar A Year Privatization Grab, by Boudewijn Wegerif, 4/19/01
    - Our New Resource Crisis: Global Drinking Water, by Peter Phillips, March 2001
    - IMF Forces Water Privatization on Poor Countries, by Sara Grusky, February 2001
    - Soaking the poor - S.F.'s Bechtel wants the Bolivian people to pay for its bad water investment, by Daniel Zoll, 12/13/00
    - Cochabamba Declaration, Cochabamba, Bolivia, 12/8/00
    - The Global Water Crisis and the Commodification of the World's Water Supply, by Maude Barlow, IFG Seattle Teach-In Transcript, 11/26/99

14. One extremely engaging way of becoming more involved in standing up for ourselves and for democracy is to learn about and consider participating in The Daniel Pennock Democracy School, conceived, designed, and run by The Community Environmental Legal Defense Fund and the Program on Corporations, Law, and Democracy.

    The School is dedicated to the memory of Daniel Pennock, a 17 year old Berks County, Pennsylvania boy who died in 1995 after being exposed to land applied sewage sludge (mentioned in the first section of this article). His parents, Antoinette and Russell Pennock, travel the state seeking an end to that practice of sludge disposal -- from which waste management corporations reap massive profits from hauling and spreading sludge on farmland.

    The curriculum is crafted to explore the reality of "Why Democratic Self-Government is Impossible When Corporations Wield Constitutional Rights Against Communities to Deny The Rights of People." The Community Environmental Legal Defense Fund and the Program on Corporations, Law, and Democracy launched the Democracy School in 2003. Held in weekend sessions, the five schools in 2003 drew activists, organizers, lawyers, and teachers from California, Texas, Iowa, Maryland, Virginia, New Hampshire, Massachusetts, New York, and Pennsylvania to Wilson College near CELDF's headquarters in Chambersburg, Pennsylvania. The syllabus used at the 2003 Schools provides an outline of what is inquired into.

    Attendees explore the limits of conventional regulatory organizing and learn how to "reframe" single issues into opportunities to confront the rights that corporations use to deny the rights of communities, people, and the earth. Part of the School involves learning about the recent organizing in Pennsylvania, discussed in this article, that has created communities willing to confront agribusiness, sewage sludge, and quarry corporations. Attendees can practice this organizing strategy by reframing a single issue selected by the group.