

**Richard Grossman Letter to *The Nation*
on "Liberalizing The Law" by Alexander Wohl
co-founder, Program on Corporations, Law & Democracy (POCLAD)**

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Richard Grossman
email: people@poclad.org
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Katrina vanden Heuvel
Editor, The Nation
33 Irving Place
NY NY 10003

re: June 16 edition "Liberalizing The Law" by Alexander Wohl

Wohl writes that the American Constitution Society's focus is "unabashedly liberal." He says that this group was designed to support "progressives on law school campuses." He also says that the ACS has the support of "well-known liberals" such as Harvard law professor Laurence Tribe, former Clinton Administration solicitor general Walter Dellinger, NY Law School professor and ACLU president Nadine Strossen.

I'm confused about "liberal" -- can The Nation help me out? For generations, human civic organizers have been resisting corporate assaults upon the Earth. They have been struggling against corporate deprivations of people's, species' and communities' rights. People's groups galore -- periodically coming together in great popular movements -- have been opposing corporate structuring of the whole society, corporate defining of work and denial of worker rights, corporate factory agriculture, corporate toxics, corporate radiation, corporate wars, corporate malls, corporate highways, corporate diseases, corporate clearcutting, corporate theft of pensions, corporate control of knowledge, corporate global rights agreements, corporate weapons of mass destruction . . . corporate usurpations *ad nauseam*.

People from all over have been mobilizing for just and ecologically sane transitions in industries dominated by giant corporations privileged by law -- from energy to health care, from food to information. Folks have been campaigning to get corporations out of our elections, out of our legislatures, out of our schools, out of our judges' chambers, out of our village squares, out of our DNA, out of our brains.

At every step of the way, valiant civic activists have run smack into our nation's law schools and the Supreme Court's Constitution. They have run up against the rule of law enforced by the armed might of the nation, as the Supreme Court put it (*In Re: Debs*, 1895). *The Nation* magazine reports on this reality in just about every edition.

Wohl's "unabashed liberals" -- Tribe, Dellinger and their American Constitution Society, Strossen and the ACLU -- have lined up against all this massive human organizing for justice and democratic self-governance. They advocate the supremacy of corporate interests over human and Earthly rights. Tribe and Dellinger hire themselves out to corporations (see, for example, the recent Nike Inc. v. biological person Marc Kasky.) A few years ago Tribe represented sugar-caffeine-and-advertising corporations, helping them invoke the Constitution to prevent communities from uprooting his clients from schools. The ACLU is adamant about defending business corporations' claims to the Constitution -- see that same *Nike Inc. v. Kasky* case, among many others.

In the great struggles of our era to defite our society, unabashed liberals Tribe, Dellinger and Strossen have chosen to run with men of property. They and their nonprofit educational corporations and their foundation corporations are shilling for the corporate state.

Which side is The Nation on?

In Solidarity,

Richard Grossman,
Co-Founder, Program on Corporations, Law
& Democracy (POCLAD)

personal PS to: Katrina: The Nation identifies Alexander Wohl as "an adjunct professor in the Department of Justice, Law and Society at American University." I rang this department to talk to Wohl. I was told they have no record of this person. I rang AU's law school just in case -- and was told the same thing.

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In "So, Who Makes the Law?" (Nov 2000) Richard Grossman writes,

[J]udicial supremacy did not come from God or Mother Nature -- consider that the Articles of Confederation had no provision for a Supreme Court. And when debate broke out over the replacement constitution drafted in Philadelphia, the idea of judicial supremacy provoked intense opposition.

Robert Yates of New York noted, "The opinions of the supreme court, whatever they may be, will have the force of law; because there is not power provided in the constitution, that can correct their errors, or controul their adjudications." (Cecelia M. Kenyon, editor, *The Anti-federalists*, Indianapolis. Bobbs-Merrill Company, Inc., 1996, page 335) John De Witt of Massachusetts observed: "There are no well-defined limits of the Judiciary Powers, they seem to be left as a boundless ocean..." (*Ibid*, pp. 104-5)

The US and state supreme courts were created by men of property to protect themselves from democracy. And so today when judges confirm laws that establish special privilege; nullify laws that challenge special privilege; and amend state and federal constitutions to deny people's fundamental rights, they are doing what the antidemocratic Federalist Founders intended.

From thousands of rulings, here are a few samples of judges validating laws, nullifying laws, and amending constitutions.
US Supreme Court

- In *Re Debs*, 1895: uphold judge-made labor injunctions banning strikers from picketing, holding meetings, conferring with union officers, publishing articles or in any way seeking public support. It also sent Debs and three other leaders of the National Railway Union to jail for violating such an injunction.

You can read all about this judicial usurpation. Here are some resources: *Lawless Judges*, by Louis P. Goldberg and Eleanore Levenson, NY: The Rand School Press, 1935; *The Supreme Court and the National Will*, by Dean Alfange, Garden City: Doubleday, Doran & Co., 1937; *Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887-1985*, by Arnold Paul, Gloucester: Peter Smith, 1976; *Lawyers and the Constitution: How Laissez Faire Came to the Supreme Court*, by Benjamin Twiss, Princeton: 1942.

<http://www.ratical.org/corporations/RG2KvH.html>