

ratitor's corner

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## **What To Do In Our Crazy Life? Attend Democracy School**

Today is the December solstice, when the sun, appearing to travel along the ecliptic, reaches the point where it is the farthest south of the celestial equator. In the northern hemisphere days are shortest and nights longest while the opposite occurs in the southern hemisphere.

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Imagine a place where people make their own law. Where people in their local community are the deciding authority exercising the power to govern. Where the rights of corporations do not and can not trump the rights of people, rivers, mountains, trees, birds, and animals. Where people living in a locality assert their right to govern themselves free from the corporations that have usurped the locals authority. Where the fundamental guarantee of our republican form of government is upheld: securing the people's inalienable right that the many should govern, not the few. Where the law serves and protects people, communities, and the planet instead of protecting property and the interests of business to make profit.

People's thinking is being liberated through exposure to the history, and most importantly, the corporate history of the United States. This context of people's struggles to govern themselves include the American Revolution, the fight between the Federalists and the Anti-Federalists, the Abolitionist Movement, the Populist Movement, the Women's Movement, the Labor Movement, and the Anti-Segregation and Civil Rights movement.

The seeds of expressions of democratic empowerment are sprouting in numerous townships in Pennsylvania, thanks in part to the assistance of the Community Environmental Legal Defense Fund (CELDF) and support of the Program on Corporations, Law, & Democracy (POCLAD). Thomas Linzey Esq., is the Founder and Executive Director of CELDF, a grassroots legal support group based in Chambersburg, PA and founded in 1995.

In March 2004 I had the good fortune to attend a three day symposium of the Daniel Pennock Democracy School in Boston, Massachusetts, presented by Thomas Linzey and Richard Grossman, Co-Founder of POCLAD. The symposium, run over a weekend's period, explores the systemic historical and legal analysis of corporate power and democracy, and exposes why democratic self-government is impossible when corporations wield constitutional rights against communities to deny the rights of people.[1] Our group learned how processes being experimented with and developed in Pennsylvania are creating a plethora of teachable moments. These moments include: people understanding that in a

democracy there isn't this private power that interferes with the ability of public officials to make decisions on behalf of their constituents; that we *can* create the type of ferment that people before us did to abolish slavery and give women more of the rights all must have if any of us are going to be truly free.

The symposium held such a wide range of topics. A current outline of the symposium is available online. Here, in the first segment of this recounting, I will highlight portions of the weekend. The next Democracy School will be held in Pennsylvania in February 2005. It features "Interfering with Democratic Rights in Saint Thomas Township, Franklin County, Pennsylvania: A Community Confronts a Quarry Corporation." A recent article in *By What Authority* (POCLAD's newsletter), provides details on this case:

Last year, Friends and Residents of St. Thomas Township (FROST) saw a giant quarry-asphalt-cement corporation poised to invade their community.

In South-Central Pennsylvania, where St. Thomas Township is located, factory farms and sludge spreading, toxic dumps, quarries and other unwelcome corporate projects have been a reality in many communities. Logically, people have been working to nip these assaults in the bud. Vigorous explorations have been under way about corporations and the law, about people's persistent struggles for rights in these United States. Such efforts have been driving innovative citizen campaigns into village squares, voting booths, local legislatures, courts, and assorted political and cultural arenas.

To date, 78 Pennsylvania townships have passed laws banning corporate involvement in agriculture. Several townships have passed laws stripping corporations of constitutional protections and powers.

Because these campaigns have been energizing and effective, growing numbers of people in this part of Pennsylvania have lost interest in waging endless, defensive battles with regulatory agencies like the state's Department of Environmental Protection or township zoning and planning boards. People are learning that they can stop corporate directors and managers from rigging the law and choreographing public officials and public policy.

Integral to its new organizing, FROST filed an unusual legal challenge to corporate and state officials. Here is a short summary of what's been going on in St. Thomas Township, followed by a glimpse at how FROST members see their struggle.[2]

The history of democratic movements centers on the questions, Who is in control? Who has the authority? Who makes the rules? Who enforces the rules? It is difficult for us to appreciate how people in the era of the American Revolution framed their struggle in the context of fundamental rights and the theory that we the people are the source of all governing authority. Those people decided that they had the authority to make the rules. People's belief in possessing the sovereignty to govern themselves is almost wholly lost on us today. Yet the legacy of those early Americans beckons us to reclaim our own power. They beckon us to choose to participate directly in representing our own interests instead of leaving it to someone else to represent us by proxy: in other words, participatory or representative government.

In *The Oxford History of the American People* (1965, Chapter 12), Samuel Eliot Morison writes, "Make no mistake; the American Revolution was not fought to obtain freedom, but to preserve the liberties that Americans already had as colonials." More accurately, Morison might have said, "preserve the liberties that some Americans already had". We'll come back to this point. Over 200 years ago in eastern North America, people seeking to maintain the

liberties some of them enjoyed in contrast to the hegemony of European monarchy, well understood what they were facing. The language in *The Alarm*, written by The Sons Of Liberty in 1773,[3] demonstrates a lucid understanding of the corporation and its role in the colonies as well its sanction by the state:

It was fully proved to you in my first Number, That the *East-India* Company obtained their exclusive Privilege of Trade to that Country, by Bribery and Corruption. Wonder not then, that Power thus obtained, at the Expence of the national Commerce, should be used to the most tyrannical and cruel Purposes. It is shocking to Humanity to relate the relentless Barbarity, practiced by the Servants of that Body, on the helpless Asiatics; a Barbarity scarce equalled even by the most brutal Savages, or *Cortez*, the *Mexican* Conqueror. . . .

Taught by the Monopoly of Trade they had wickedly acquired, with Impunity from their Countrymen, they were left to all the Feelings of Humanity, and monopolized the absolute Necessaries of Life in India, at a Time of apprehended Scarcity.

Thousands perished by this black sordid, and cruel Avarice. But that did not falsify their more than insatiable Thirst for the Property of this miserable People. What the nominal Christians could not extort from these wretched Mortals, for the Wants of their Bellies, they determined to torture from them by the Pains of their Backs. They were stripped naked, and suspended to Polls, and in that excruciating Condition, Mastiffs and Cats, suspended by their Tails, were applied to the Backs of the miserable Victims, until they gave such Sums to these more than cruel Tyrants, as they were pleased to exact.

This, and more than this, has been charged upon them in the Face of the Sun, in the London Papers, where they might if innocent, exculpate themselves. Have they done that? No. Or have the Directors for their own, and the national Honour, brought them to a public Trial, or displaced them? No. Can the Directors then be innocent of this matchless Extortion and Cruelty? No. Can the numerous Millions collected in India, by those rapacious and cruel Servants, be justly accounted for to the Company, and their Affairs be as they are represented? No. . . .

. . . The Poverty of the Nation by these corrupt Means, forced venal Ministers to be regardless of the Ways and Means to support their Creatures. To support these Creatures, the Stamp, and Revenue Acts originated; Acts pregnant with Chains, and the Loss of all that's dear to these Colonies. Will you my Countrymen suffer these Miscreants who ruined the Constitution at Home, to rivet the Chains their Wickedness has by the matchless Means recounted, forged for you? Now the Minister hitherto unable either by his cajoling Art, or the Thunders of the Parliament, to execute the Project of subjugating this Country to his lawless Rule; the purchase of the *Company's* Iniquities, *Tea* must be sent to the Colonies, the Profit of which is to support the Tyranny of the East in the East, enslave the West, and prepare us fit Victims for the Exercise of that horrid Inhumanity they have in such dread Abundance, and with more than Savage Cruelty, practised, in the Face of the Sun, on the helpless Asiatics.

This recognition -- of the corporation as a creature of the state and that corporations with state sanctions were seeking to enslave the West, as they already had been doing in the Orient -- indicates an active, engaged cultural conversation. The authors were aware that the corporation was exercising oppression among people in the colonies through a trade perspective as well as through a rights perspective. Framing the issue in broad, inclusive terms spoke to the majority of people; a primary focus of the Democracy School is to illustrate how to re-frame the many single issues our nation now faces in an equivalent manner.

The origins of the Daniel Pennock Democracy School grew out of the tragic deaths of two Pennsylvanian youths exposed to urban sewage sludge spread on farmlands, actions sanctioned by state regulatory environmental law. [4] Thomas Linzey described how the

system of regulatory law put into place in the 20th century has served to strip away democratic authority from communities and their local governments.

Movements seek to drive rights into the Constitution. At this point communities, towns, rivers, streams, [animals] don't have rights.

When we regulate, we assume the role of regulator. When you regulate something you automatically allow it in. That's what regulating is. You regulate an on-going activity or an on-going facility.

As a young environmental lawyer I used to go to these environmental forums held in Pennsylvania where they bring all the environmental lawyers together for an afternoon and are addressed by the Secretary of the Department of Environmental Protection -- the most important person in the regulatory arena in the state, the Secretary of DEP.

We had a situation in a place called Chester, Pennsylvania, which has been hit with thirteen toxic waste facilities. It's an African-American community. It's the poorest African-American community in a four-county area. It's been targeted for toxic waste incinerators and toxic waste landfills. It's a story that everybody knows, about environmental justice and how communities of color and poor communities are used to cite these things because they don't have the financial ability to fight them off.

In 1998 they succeeded in fighting one off, the fourteenth one that wanted to come in. . . . The community organized. They found an attorney from the University of Pennsylvania who came in and litigated an environmental justice case. For the corporation that was trying to put a toxic waste incinerator in, it simply became too expensive for them to continue to pursue the permit. So they decided to leave the town.

Jim Seif, the Secretary of DEP, came in to do the keynote presentation with us and he talked about the failure of the toxic waste incinerator company to be able to site the facility in the town as a failure of environmental law. Sitting in my seat, I turned to the guy next to me and said, "Did I hear that right?" It was a successful use of environmental law, but to him it was a failure because the reason to have environmental law was to force those facilities into areas and minimize the environmental impact so that it becomes accessible. So he was talking about the failure of environmental law. I thought that was a turning point for us.

What we find when we start looking at history, when we start looking at the 200 years of organizing in this country and the rise of corporate rights, is that other people and other communities that went before us have rejected the regulatory approach. They're rejected being faced with the prospect of causing a little less harm or doing nothing. In other words, pursuing a regulatory approach or doing nothing.[5]

They've seized on the larger issues that we're going to be talking about today. They seized on equal protection and Bunker Hill and the Declaration of Independence and the Bill of Rights. They've seized on those issues as their organizing ground rather than ceding the fact that all they could do was cause a little less harm through a regulatory system and through minimizing impacts from certain projects and certain facilities and processes.

What they sought to do during that process was define the problem. What is the problem. When we walk in and deal with a quarry operation some folks frame the problem as particulate matter, or as water pollution. That becomes the problem. When you frame the problem that way, as a single issue problem, then the solution becomes rather simple. It's a regulatory solution. You frame the problem a certain way and the solution follows (in a very narrow sense), the solution to whatever the problem is framed as.

What we see from the history of movements in this country is that folks worked very hard to define the problem differently. As a power issue and as a rights issue rather than as a single issue or environmental issue or the types of things that we're channeled into doing. And when you

define the problem differently then the remedy becomes different. It's no longer a regulatory remedy. It's something much different. And that's what we're starting to put into play in Pennsylvania.

In our organizing, as a piece of all this, we define the problem as corporate rights. . . . the issue here is about people, about re-learning this rich history that we have and standing in the shoes of the folks that went before us to transform what would otherwise be single issues into issues about rights. Because that's the lesson to take from these 200 years -- what others have done fashioning a remedy and what that remedy means.[6]

CELDf has found that a key to successfully organized resistance to corporate harms being perpetrated in a community is to re-frame a single issue like exposure to toxics or a quarry operation or creation of factory hog farms, and redefine the focus to that of the rights corporations have been found to have by the United States Judiciary. To do so requires both experiential knowledge of how our system of governance actually works and learning about people's movements for rights in the past that can inform our strategies.

When a single issue of concern is re-framed in the context of a.) learning how corporations enjoy a more favorable interpretation by our legal system of the constitutional rights and privileges originally written for people and b.) challenging this state of political and economic reality to protect human beings and life over the legal fiction called the corporation, then a new perspective and range of options opens up.

Richard Grossman traced out some of the elements of how the rights of property were given a superior status over the rights of people beginning with slavery being written into the Constitution and sanctioned in law.

The property class wrote their class bias into the Constitution in many ways. It's logical. That's what you do. Whenever property rights (up to this day, as expanded and expanded by the courts) then clash with human rights in our Constitutional framework it's no contest. We can trace down the history of labor rights, of worker rights, of slaves and indentured servants, and then even the history of the Thirteenth, Fourteenth, and Fifteenth Amendments coming up against property and the mechanisms of decision-making put into the Constitution so that to this day, the bias in the Constitution around property and whatever the courts define as property, when that clashes with the fundamental human rights as expressed in the Declaration of Independence and the United Nations international Declaration of Human Rights, whenever there's a conflict, our law and our institutions and our culture, in all of the tangible and intangible forces of the culture, say property rights prevail. . . .

Slavery was written in to the Constitution. The return of bonded workers, whether they were white servants or black slaves was written into the Constitution. It was legal. The force of law would enforce slavery. From the very beginning the tradition was that property rights trump human rights. . . .

[However,] early on, the corporation as a governing instrument of the ruling men of property was not that important because they had written the Constitution. They governed through the Constitution. Eighty percent of the people, of the human beings who were in the thirteen states, had no rights. Twenty percent were able to write a Constitution that denied the rights of eighty percent. So the rule of law, the coercive force of law was done through the state and they did not need the corporation as a major, powerful vehicle which they did after the Civil War.[7] That's one point.

The second point is think what was happening over the previous 300 years. There were feudal societies in western Europe and monarchy societies where the few governed the many. We don't have to know an awful lot about the history to know that the few ruled the many. And there was a

lot of struggle, a lot of revolts in England, particularly in the 1600 and 1700s over the incredibly violent and vicious rule of the nobility. People were excluded from their own land. The common lands were being closed down. People couldn't make a living. There was the coming of factories and people having no choice but losing their independence as artisans and going into the factories.

So there was an extraordinary culture where the majority of people were under the gun all the time in the most physical and violent, clear and apparent way. Everything didn't have to be intermediated through the *New York Times* and talk shows. People understood what was going on. And that was replicated in the thirteen states. The same ruling class people came over and their descendants ended up in Philadelphia writing the Constitution.

Twenty percent of the people here were African-Americans, mostly slaves, brought by force. One-third to one-half of all the whites, except for the people who came with the Puritans, were indentured servants. A majority of the people basically were slaves whether white or black slaves, they were treated as slaves. They could not control their work. They could not quit. They could not travel. They had no rights. Plus women, plus native people, plus white men without property.

There was a culture here where people could understand what was going on. The language reflected that. It hadn't been sundered by 200 years of propaganda and nonsense. As it was stated in *The Alarm* [above], people understood the various forces that were going against them. It's not because they were so advanced. It was because (in my opinion) it was the culture that reinforced that. That people still talked, working class people wrote pamphlets galore. Tom Paine's pamphlet was the largest selling pamphlet in the history of the world at that point, even though there were a lot more illiterate people than there are today. So people talked, people conversed about this situation.

The majority got the shaft from the beginning. As we go along I would like to trace the thread of the corporation as it gained its rights. They didn't need the corporation to have all these rights because they had the law and most people didn't have rights. What we're going to trace is, increasingly, as they needed the corporation -- because more and more people started to struggle and gain their rights and forced their way into the law and begin to change the dynamics -- men of property decided (and we can trace this out after the Civil War) that they're going to make the corporation their principle governing instrument, along with the state. The corporation is going to be the means to control the state.

The corporation then is going to become the source of all jobs, the source of all goodness, the source of all progress, and the institution that's replicated throughout our society. So when we form our environmental groups we set them up just like a corporation, the same model, the same laws, the same rules. They increasingly encompassed us in their structure, in their ways of thinking, in their set of relationships.

As we as a country get further and further away from the revolutionary struggles, from that consciousness, from the great struggles of the Abolitionist Movement, the Anti-Segregation and Civil Rights Movement, the Labor Movement (when it was really a movement -- when the Labor Movement ceased to be a movement that was challenging the property class for setting the values to run this country, and became complicit as it did in the late 1940s), then there is no big institution and movement of people that is standing up and saying, We are putting forth a different way of looking at the world, of looking at ourselves, of looking at what kind of country this should be, at what values should be translated into law so that the law enforces our values. Instead of that we're always on the defensive.[8]

The "Model Legal Brief to Eliminate Corporate Rights," written by Richard Grossman, Thomas Linzey, and Daniel E. Brannen, [ 9 ] contains history of the United States government's gift of constitutional powers to property organized as corporations. The introductory **Summary of Argument** frames the focus of the Brief:

The people of these United States created local, state, and federal governments to protect, secure, and preserve the people's inalienable rights, including their rights to life, liberty, and the pursuit of happiness. It is axiomatic that the people of these United States -- the source of all governing authority in this nation -- created governments also to secure the people's inalienable right that the many should govern, not the few. That guarantee -- of a republican form of government -- provides the foundation for securing people's other inalienable rights and vindicates the actions of people and communities seeking to secure those rights.

Corporations are created by State governments through the chartering process. As such, corporations are subordinate, public entities that cannot usurp the authority that the sovereign people have delegated to the three branches of government. Corporations thus lack the authority to deny people's inalienable rights, including their right to a republican form of government, and public officials lack the authority to empower corporations to deny those rights.

Over the past 150 years, the Judiciary has "found" corporations within the people's documents that establish a frame of governance for this nation, including the United States Constitution. In doing so, Courts have illegitimately bestowed upon corporations immense constitutional powers of the Fourteenth, First, Fourth, and Fifth Amendments, and the expansive powers afforded by the Contracts and Commerce Clauses.

Wielding those constitutional rights and freedoms, corporations regularly and illegitimately deny the people their inalienable rights, including their most fundamental right to a republican form of government. Such denials are beyond the authority of the corporation to exercise.

Such denials are also beyond the authority of the Courts, or any other branches of government, to confer.

Accordingly, the constitutional claims asserted by the [x corporation] against [y government] must be dismissed because those claims deny the people's rights to life and liberty, and their fundamental right to self-governance.

This legal brief was created to support U.S. community leaders and organizers who are involved in state and local campaigns confronting the array of judicially-bestowed constitutional rights wielded by corporations. The Brief deals with corporate personhood<sup>[10]</sup> -- the doctrine by which corporations claim Bill of Rights protections that have trumped communities' rights to self-governance -- and also with corporate rights claimed and granted under the Commerce<sup>[11]</sup> and Contracts<sup>[12]</sup> Clauses of the U.S. Constitution.

Thomas Linzey clarified that when he and Richard Grossman refer to corporate rights, they mean the whole gamut of rights asserted by the few over the many. Corporate personhood (1st, 4th, 5th, 7th, 14th Amendment rights primarily), plus seeking the protection (shield) of the Contracts and Commerce Clauses to strike down legislative enactments, plus preemption. Preemption is when state government pre-empts the ability of a township to pass laws at the local level because of a state law that overrides the authority of local laws. As Thomas explained to me regarding preemption, "the few use a higher level of government against a lower level of government. Of these, the least 'worked out' at this point, is preemption; because preemption is only partially constitutionally based."

The following is included in "Section III. Over the Past 150 Years, the Judiciary Has 'Found' Corporations Within the U.S. Constitution, and Bestowed Constitutional Rights Upon Them" from the Model Legal Brief.<sup>[9]</sup> It highlights the issue of how granting rights to corporations abrogates the fundamental guarantee of what our republican form of government is supposed to be -- to secure the people's inalienable right that the many should govern, not the few:

Courts since *Bellotti* have explored the contorted metes and bounds of political, <sup>[37]</sup> commercial <sup>[38]</sup> and negative corporate <sup>[39]</sup> speech rights without revealing why or how the Constitution compels the conclusion that corporations must be empowered by the First Amendment. <sup>[40]</sup> They have also avoided any discussion of how the exercise of those rights by

corporations negates the ability of people to exercise their own First Amendment rights -- thus preventing people from using their own free speech to secure their inalienable rights to life and liberty.

In addition, Courts have avoided the interrelated discussion of how the conferral of First Amendment rights upon corporations involuntarily subjects the majority to the blunt force of the speech of the corporate minority -- enabled through the massive wealth of corporations -- thus nullifying the fundamental guarantee of a republican form of government.

Footnote forty above cites Justice William O. Douglas dissenting in *Salyer Land Co. v. Tulare Lake Basin Water Stor. District* (1973) declaring that "It is indeed grotesque to think of corporations voting within the framework of political representation of people. . . . it is unthinkable in terms of the American tradition that corporations should be admitted to the franchise. . . the result [would be] a corporate political kingdom".

A prior contender to the current U.S. Constitution was the Articles of Confederation which kept power and authority in state legislatures. The Articles sought to define a decentralized system of authority and power in which no Supreme Court existed and each state legislature was the supreme governor of its state. As Thomas Linzey wrote to me recently, "the colonists both (1) feared that their 'limited self-rule' would be stripped, and (2) evolved to a point where they understood that the 'gift' of their 'limited' self-rule was not something that could be 'gifted,' but was something innate and inalienable, thus provoking them to codify that understanding via the Revolution." [13] Thomas spoke about the framework of the the American Revolution which we can likewise adopt to re-frame single issues into contesting the rights granted corporations.

The American Revolution was about much more than simply freeing folks from the king. It was about dealing with constitutional governance that was transferred to people rather than monarchy and the creatures of the king in the form of corporations.

I think that is an extremely important point. Because at the time of the American Revolution, in philosophical circles where folks were writing and thinking about these thoughts, it was believed to be absurd and absolutely preposterous that people could govern themselves.

So the concept of the American Revolution, not only transferring private companies with the constitutionalized governance that we talked about, not only about breaking apart from the King and defending against corporations that were chartered by the state to vacuum out resources, but also that the framework these people put into place, was that people in nature had certain rights and powers and that when they came together to form governments they didn't give up those rights. But they formed governments purely to secure those rights. That's the framework that the American Revolution stands in that we've used for the Model Brief in saying that if governments are established only to secure rights then by what authority do they confer rights onto corporations that then deny our rights. It's about doing indirectly what states and governments can't do directly. That's what the constitutional rights of corporations project is all about.[14]

When a single-issue grievance is re-framed in terms of rights -- the denials of rights of people and the protection of rights bestowed upon corporations by numerous U.S. judicial rulings -- there is much more at stake that energizes people to take on the same work in previous rights struggles that spawned the Abolition and Women's Rights movements. Look at the wording and its associated frame defined in the Declaration of Rights for Women which was read by Susan B. Anthony on July 4, 1876, in front of Independence Hall, Philadelphia.

. . . Our faith is firm and unwavering in the broad principles of human rights proclaimed in 1776, not only as abstract truths, but as the corner stones of a republic. . . .

The history of our country the past hundred years has been a series of assumptions and usurpations of power over woman, in direct opposition to the principles of just government, acknowledged by the United States as its foundation, which are:

*First* -- The natural rights of each individual.

*Second* -- The equality of these rights.

*Third* -- That rights not delegated are retained by the individual.

*Fourth* -- That no person can exercise the rights of others without delegated authority.

*Fifth* -- That the non-use of rights does not destroy them. . . .

*Bills of attainder* have been passed by the introduction of the word "male" into all the State constitutions, denying to women the right of suffrage, and thereby making sex a crime -- an exercise of power clearly forbidden in article I, sections 9, 10, of the United States constitution.

*The writ of habeas corpus*, the only protection against lettres de cachet and all forms of unjust imprisonment, which the constitution declares "shall not be suspended, except when in cases of rebellion or invasion the public safety demands it," is held inoperative in every State of the Union, in case of a married woman against her husband -- the marital rights of the husband being in all cases primary, and the rights of the wife secondary.

*The right of trial by a jury of one's peers* was so jealously guarded that States refused to ratify the original constitution until it was guaranteed by the sixth amendment. And yet the women of this nation have never been allowed a jury of their peers -- being tried in all cases by men, native and foreign, educated and ignorant, virtuous and vicious. Young girls have been arraigned in our courts for the crime of infanticide; tried, convicted, hanged -- victims, perchance, of judge, jurors, advocates -- while no woman's voice could be heard in their defense. And not only are women denied a jury of their peers, but in some cases, jury trial altogether. During the war, a woman was tried and hanged by military law, in defiance of the fifth amendment, which specifically declares: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases . . . of persons in actual service in time of war." During the last presidential campaign, a woman arrested for voting, was denied the protection of a jury, tried, convicted, and sentenced to a fine and costs of prosecution, by the absolute power of a judge of the Supreme Court of the United States. . . .[15]

These people chose to plant their feet in the fundamental ground of the Declaration of Independence. Clearly the scope of this Declaration was about more than obtaining the right to vote. It included a public harm or a public injury that was done by denying rights to women. This document defines a large frame that includes writ of habeas corpus related to marital rights, sixth amendment rights, and taxation without representation -- that women weren't represented in legislatures and couldn't vote and therefore they were being taxed without representation.

In mid-December 2004, the Inuit people, who make their home in the Arctic, re-framed the environmental issue they face from the threat of global warming to be that of "casting the issue as no longer simply an environmental problem but as an assault on their basic human rights. . . . The Inuit . . . plan to seek a ruling from the Inter-American Commission on Human Rights that the United States, by contributing substantially to global warming, is threatening their existence." [16] This is another example of re-framing a single issue people are threatened by to one based on human rights. Re-framing opens up new possibilities: "The Inuit plan is part of a broader shift in the debate over human-caused climate change evident among participants in the 10th round of international talks taking place in Buenos Aires aimed at averting dangerous human interference with the climate system." [16]

Thomas Linzey summed up the work we all can choose to be a part of where each of us lives.

There are hundreds, a thousand single issues out there waiting to be re-framed. Waiting to be organized around. That's the work. And to do it in an environment that's inclusive, that reaches out to a constituency and puts together, finally, what we call the movement, the hundred thousand places where that arises. That's the work.[17]

The Anti-Federalists sought a decentralized form of governance, not the centralized federal system spawned by the U.S. Constitution. We have as resources innumerable examples of inspirations, movements created solely for the purpose of establishing rights. The Abolition and Civil Rights movements, the Women's Movement, the Labor Movement seized the larger issues including the Declaration of Independence and the Bill of Rights as their organizing ground. And then there is the frame expressed by people like Thomas Berry that encompasses expanding the language and framework of rights for everything in the universe.[18]

Koyaanisqatsi, a noun from the Hopi Language, is defined as "crazy life, life in turmoil, life out of balance, life disintegrating, and, a state of life that calls for another way of living." Our time is a crescendo of accelerating koyaanisqatsi. It is left to each of us to choose how to creatively respond to what life is presenting. Author Sam Smith, writing in *Why Bother?*, asserts that "we must understand that in leaving the toxic ways of the present we are healing ourselves, our places, and our planet. We rebel not as a last act of desperation but as a first act of creation." [19]

More of the inspiring and tangible possibilities presented and discussed in the Daniel Pennock Democracy School will be the subject of future essays including how the rule of law in the United States has favored the rights of property over the rights of people and how empowerment is driven by altering a "What can we get?" approach to one of "What do we want?". Everyone is heart-fully encouraged to find a way to attend one of these Schools. (See the online Democracy School Schedule which lists upcoming schools by Date as well as by State.) The experience of attending these workshops will illuminate different, empowering ways to respond when faced with the constitutional doctrine that illegitimately denies people their inalienable rights as well as a tangible course we can pursue and how to build on the history and the footsteps of those who came before.

## Footnotes

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1. For an introduction of this analysis *See* *When Corporations Wield the Constitution*, by Richard L. Grossman and Ward Morehouse, Nov 2002
2. *Community Challenges Corporate Claims to Constitutional "Rights"*, by Virginia Rasmussen & Richard Grossman, *By What Authority*, Vol. 6, No. 2 - Autumn 2004
3. *The Alarm*, Number II, written by The Sons Of Liberty, October 9, 1773
4. That situation was described in "Consent of the Governed - The reign of corporations and the fight for democracy," by Jeffrey Kaplan, *Orion Magazine*, November/December 2003:

In late 2002 and early 2003, two [Pennsylvanian] 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. . . .

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."

5. Concerning environmental regulatory law, *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.
6. From the author's transcript of a set of audio recordings he was given permission to make during most of the weekend's sessions.
7. *See* "The Rule Of Law versus Democracy," by Doug Hammerstrom, *By What Authority*, Vol. 5, No. 1 - Winter 2002, for an exposition of how the codification of the rule of law created by the Federalists subordinated all other mediating processes human societies had previously used. In all this it is essential to recognize the political nature of law; the rule of law we have inherited has definite and distinct biases; it is not impartial nor disinterested.

The Federalists who drafted the Constitution did not trust the majority to make social or political decisions and successfully created a system in which the property-owning elite would rule. The constitutional role of the courts is an integral part of that system. The Federalists made certain that law would become the supreme medium of discourse to resolve conflicts in the new republic. Community values,

religion, morality, and other mediating processes long used by human societies were subordinated to the rule of law.

As evidence of their awareness of the power of judges to rule the nation, when the Federalists lost the presidency to Jefferson in the election of 1800, their response was to pack the courts with Federalist judges, including John Marshall as the Chief Justice of the Supreme Court. In more than 30 years in this role, Marshall made many highly political decisions and established the doctrine of judicial review, by which the unelected Supreme Court could overturn legislation by Congress and the states. . . .

Among the other ways laws were twisted by judges in the 19th century was changing the basis of contract law from examining the fairness of contracts to the laissez faire doctrine of *caveat emptor* -- let the buyer beware. This doctrine served the few who wanted everyone and everything to be viewed as a commodity in which they could speculate. However, for the vast majority it meant that the force of law amplified the raw power of those in command of the greatest resources. Laissez-faire contract law made the rule of the jungle the rule of law.

The class bias of judges is most clearly seen in labor law, which 19th century judges chose to develop from a concept called "master and servant." One of the features of labor law in that era was the criminal prosecution of workers' collective bargaining attempts as "conspiracy." Employers were not similarly treated for their collective efforts. . . .

Once they had changed the law, the attorneys and judges responsible for doing so used the legal commentary propaganda tool to persuade people that the new law had always been thus. They not only hid the fact that they had transformed it, but also that the flexible conception of the law had been used as an instrument for social engineering. They did this by creating an intellectual framework that gave common law rules the appearance of being apolitical and inevitable. The categories of law that existed in the late 1800s were enshrined as ancient principles. The legal commentators took advantage of the infatuation with objectivity in this era by making law seem like science. But law is created from opinions, not repeatable experiments. While the result of a valid scientific experiment will be the same no matter who conducts it, each judge's decision of what precedents are relevant to resolving a particular conflict between interests, and how those interests should be balanced, is just opinion that can vary widely from one person to another.

The clever despot, observed French philosopher Michel Foucault, binds us by the chains of our own ideas. We who seek to build democracy must not be bound by the false assertion that the rule of law is democratic. A re-examination of history teaches us that our powerful legal system is a massive fortress against popular sovereignty. One of our most important tasks is to revisit fundamental questions that were resolved by undemocratic means in the past. An even deeper aspect of our work is to bring hope to replace the despair people have internalized because of the futility of their own decision-making when the courts and the wealthy have usurped that power. . . .

We hear daily the hollow rhetoric that we live in the contemporary world's foremost democracy, but an examination of the legal history of the US exposes just the opposite. The Federalists succeeded in their goal of creating a Constitution that protects property rights from the "rabble." They were less successful at protecting political rights. The task of nurturing democracy remains for us. Part of that task must be to recognize the political nature of law. We must not let the changes we seek be constrained by believing that the law that *does* exist is the only law that *can* exist. In combating the power of corporations we cannot concede the legitimacy of that power simply because current law sanctions it.

8. *See supra* note 6
9. Model *Amici Curiae* Brief to Eliminate Corporate Rights, by Richard L. Grossman, Thomas Alan Linzey, & Daniel E. Brannen, 23 September 2003
10. *See* Timeline of Personhood Rights and Powers, by Jan Edwards *et al*, revised June 2002
11. 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;"
12. The Contracts Clause -- Article I, Section 10, Clause 1 -- states: "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Thomas Linzey described how the Dartmouth College private corporation board succeeded in using the Contracts Clause to protect a private enterprise from being interfered with by the new democratic constitutionalized state governments.

Reading from the article by Peter Kellman, "You've Heard of Santa Clara, Now Meet Dartmouth." *Santa Clara* was the railroad case that gave birth to corporations being persons. *Dartmouth College* came first. It was a holdover from the monarchy days. It was established by England. When the Jeffersonians took over power they led a movement to change the board, to expand who sat on the Dartmouth College private corporation board. The private corporation decided to challenge the move by the Jeffersonians' attempt by the legislature to change the charter of Dartmouth College.

The Trustees of Dartmouth College said, you can't change our charter because the charter is a contract. It's a contract that was made between the King and the Trustees of Dartmouth College. As a contract, you can not unilaterally change the terms of the contract because you're prevented by the Contracts Clause of the Constitution from doing so.

It's the first time that corporations drove into the Constitution to use the Contracts Clause to protect from being interfered with by the new democratic constitutionalized state governments that came into being after the Revolution. That's what Dartmouth College was all about.

What's the Contracts Clause of the Constitution? The Contracts Clause says that there should be no state interference with private contracts. That's what was written into the Constitution as a protection of property -- to protect the right of contracts.

Following the Dartmouth College case through the New Hampshire courts. The New Hampshire Supreme Court ruled that of course a corporate charter is not a private contract. It's much more than that. It's about a grant of public power from the people to a subordinate entity called the corporation. Which should be able to be changed at will, unilaterally change the terms of the charter. So it definitely was not a private contract protected by the Contracts Clause of the Constitution.

The New Hampshire Supreme Court agreed with the Jeffersonians that were trying to unilaterally change the contents of the charter. It goes up to the U.S. Supreme Court and the U.S. Supreme Court says a corporate charter is a contract. Therefore as the state you cannot unilaterally change the contract. The contract is a binding agreement between the parties and unless you have agreement among all the parties to change the contract you can't change the contract.

Peter Kellman writes,

The legislature made private Dartmouth College into public Dartmouth University and ordered the new university to set up public colleges around the state.

This is what provoked the controversy or dispute between the Trustees and the folks that were seeking to make private universities public colleges. And the recognition, Peter writes, "is that a republican form of government requires an educated populace." And it was not parallel to that that you would have private colleges held over from the colony relationship with England when we needed to make private universities public colleges to encourage, build, create, nurture, accelerate an educated populace that would govern. Peter writes at the end,

The Supreme Court delivered for the ruling elite, arguing that a corporation is a private contract not a public law. The Court decreed that although the state creates the corporation when it issues a charter, it is not sovereign over that charter but is simply a party to the contract. All of which means that the corporation is protected from state interference by the Contracts Clause of the Constitution because the relationship is a private not a public one.

13. E-mail to the author by Thomas Linzey, 12/24/04
14. *See supra* note 6
15. Excerpts from full speech printed in *Britannica online*. The source for the speech is *History of Woman Suffrage*, Elizabeth C. Stanton *et al.*, eds., Vol. III, New York, 1887, pp. 31-34.
16. "Inuit seek to recast global warming as human rights issue," by Andrew C. Revkin, *New York Times / Seattle Post-Intelligencer*, 12/15/04
17. For a good overview on successful community organizing occurring in Pennsylvania *see*: "Shifting into a Different Gear: Empowering Communities, Protecting the Environment, and Building Democracy by Asserting Local Control Over Factory Farm and Sludge Corporations in Pennsylvania, by Thomas Linzey & Richard Grossman, 2/15/04.
18. For more on expanding the language and framework of natural rights for everything else besides humans *see*: Moving Toward Thinking 'like a mountain'," *ratitor's corner*, September Equinox, 2004.
19. *Why Bother? Getting A Life In A Locked-Down Land* by Sam Smith (2001). See excerpts in "Opposing & Creating -- The twin tasks of a movement," and "Politics, Discouragement and Despair."