

**Richard Grossman Letter to Akhil Reed Amar on Amar's book,**  
*The Bill of Rights: Creation and Reconstruction*  
co-founder, Program on Corporations, Law & Democracy (POCLAD)  
from *Defying Corporations, Defining Democracy* (Apex Press: 2001), pp. 217-219

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## LETTER TO AKHIL REED AMAR

YALE LAW SCHOOL

*by Richard L. Grossman*

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30 December 1998

Professor Akhil Reed Amar  
Yale Law School

Dear Professor Amar:

I have read your intriguing and stimulating *Bill Of Rights*. [1] I have a few questions. First, I would like to reacquaint you with some of your own words:

In the tradition of the Virginia and Kentucky Resolutions, representatives of the various New England states met in the Hartford convention of 1814-15 to denounce as unconstitutional any national attempt to "subject the militia . . . to forcible drafts, conscriptions, or impressments." The eventual republican triumph on this issue -- none of the proposed draft bills passed -- should be as central a precedent for our Second Amendment [2] as the 1800 triumph over the Sedition Act [3] is for our First. (p. 58)

Nor should we ignore the Fourth Amendment's [4] image of federalism. The reasonableness requirement limited all federal officers, and the warrant clause imposed special restrictions on federal judges and magistrates, but vindication of these restrictions would largely come from state bodies. State statutes and state common law, after all, would typically define and protect ordinary individuals' property rights to their "persons, houses, papers, and effects." Thus state law would initially create the trespass cause of action that would enable ordinary men and women to challenge unconstitutional intrusions by federal officials . . . Here, as elsewhere, localism would protect Liberty. (p. 76)

The framers crafted a system of republican governments, state and federal -- governments of, by, and for the people. Here, the people would rule -- not day to day, but ultimately, in the long run. All governmental policy and governmental policymakers could, in time, be lawfully replaced by the sovereign people via constitutional conventions and ordinary elections. The ultimate right of the public to change policy and policy makers called for strong presumption that the courts would be open. (p. 112)

I'm impressed with your claims about the founders' and the rabble's intentions to keep power and authority local. But let's jump to today, and consider fundamental decision-making of giant corporations about money, production and governance. This decision-making [5] shapes our lives, communities, politics, work, appetites, aspirations -- our nation and the world. Monsanto Corporation creates terminator seeds via genetic engineering; Maxxam Corporation alters the ecology, climate, biology and humanity of vast ecosystems by clear-cutting ancient redwood forests; Exxon Corporation promotes and advantages the burning of fossil fuels while inhibiting transitions to solar energy systems; General Motors Corporation destroys interurban trolley systems and replaces them with corporate buses, trucks and tires and a billion dollar annual propaganda budget, *ad nauseam*.

Such corporate decision-making is treated by law and culture as the domain of private property and private law, the province of the self-regulating market.

Oh, maybe government can intervene to lessen some harmful impacts of these decisions, if enough people spend years educating themselves and raising money via cake and cookie sales, and mobilizing. But I haven't seen acknowledgment (not to mention leadership) within the legal community that We the People have constitutional authority -- and obligation -- to replace these governing corporate leaders or seriously reconfigure these governing corporations. It's hard enough for shareholders (the human ones, at least) to affect their corporations' leadership.

The courts bestowed civil and political rights of persons upon our giant corporations. So giant corporations quite logically invade and destroy basic self-governance (elections, law-making, jurisprudence and education). They quite logically (and relatively anonymously) take life, liberty and property. Is it likely that flesh and blood people will be able to "lawfully replace" elected officials and appointed judges who (the "rule of law" and "federalism" and "republicanism" and "abuse of authority" notwithstanding) see no alternative to giant business corporations for jobs, progress, liberty, and the American way?

For such remedies, the people's courts today are not open.

On the contrary: the courts are where corporations reflexively turn to deny We the People our fundamental rights. The courts are the branch of our republican government which have usurped from localities and states the authority and power to define the political nature of giant corporate entities.

The Ice Cream Manufacturers Association corporation runs to federal court to get a Vermont rBST labeling law declared unconstitutional, and wins. [6] The National Foreign Trade Council corporation runs to federal court to get a Massachusetts don't-buy-from-corporations-doing-business-with-Burma law declared unconstitutional, and wins. [7] The Omnipoint Corporation runs to federal court -- citing the 1964 Civil Rights Act

no less -- to order a municipality to get out of the way and permit the corporation to construct a microwave tower, and wins. [8] Banking corporations run to the Supreme Court to invalidate a Massachusetts law banning corporate contributions to referenda campaigns, and the Supreme Court obliges (overruling not only the legislature and executive branches but also the Commonwealth's unanimous Supreme Judicial Court). [9] Resource extraction corporations get a federal court to throw out a similar Montana law enacted via a people's referendum. [10]

For over a century federal courts have been granting to corporate creations of our states more and more privileges and immunities. With these gifts, artificial entities called corporations have declared themselves independent of their creators . . . beyond the sovereignty of local and state jurisdictions, and essentially answerable to no branch/level of We the People's federal structure.

The *real* lawmakers of this nation have been the minority who own the majority of property and wealth. Behind the government-bestowed authority of the constantly transforming corporation, they have bastardized the idea (and ideal) of self-governance by writing our laws, electing our legislators, shaping our education, defining our work, poisoning our land, infecting our culture.

Our nation's judges, legislators, law school professors, corporate press titans, and university boards of trustees reveal little or no interest in even talking about this reality.

I found your book informative, provocative and even encouraging at times. You have a roving, creative mind. Here are my questions:

1. How did you write this whole book without mentioning the business corporation's transformation of the Fourteenth Amendment -- and the Bill of Rights, and the Commerce clause etc. -- into organized capital's weapon against not only organized labor but also We the People? Without referring to what Justice Black called the granting of "new and revolutionary rights to corporations"? [11]
2. Where shall the people turn for a republican form of government? How can the people invoke what you call our "ultimate right" to change policy and policymakers?

## NOTES

1. Amar, Akhil Reed. *The Bill of Rights: Creation and Reconstruction*. New Haven, Conn.: Yale University Press, 1998.
2. The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." --*Ed.*
3. The Sedition Act of 1798 made it a federal crime for a person to "write, print, utter, or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States . . . with intent to defame the said government . . . or to bring them into contempt or disrepute . . ." --*Ed.*

4. The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." --*Ed.*
5. I use the word "decisions" here to encompass not only the corporation's investment, research, technological, production, work and education/propaganda spending decisions, but also its investments to influence government in every nook and cranny of its federalist structure to bend governance to its will -- all regarded by law and culture as a corporation's constitutional right.

It's one thing for corporate entities to so invest; it's another thing altogether for such investment to be blessed by educated and honored judges in black robes, reinforced by police and army. See *Re: Debs*.

Those who design strategic implementation of a corporation's financial muscle understand precisely what they do. In contrast to liberal reformers, they deceive not themselves that a little transparency or regulatory reforms or ethical codes will thwart them in the slightest. Charles Francis Adams observed back almost In The Beginning: "He who owns the thing knows that he must also own the legislature which regulates the thing . . . The man who owns will possess himself of the man who regulates." (Joseph Dorfman, *The Economic Mind in American Civilization*. 3 vols. Vol. 3. New York, N.Y.: Viking Press, 1946) Corporations today do not merely own our legislatures. As your book makes clear by its silence on the subject, they own our Constitution.

6. *International Dairy Foods Assn. v. Amestoy*, 92 F.3d 67 (2nd Cir. 1996), 219
7. *Crosby, Secretary of Administration and Finance of Massachusetts, et al. v. National Foreign Trade Council*, 530 U.S. 363 (2000), 219, 281
8. *Omnipoint Communications Enterprises L.P. v. Zoning Hearing Board of Chadds Ford Township, PA*, PUCS BI 98-2295 (1998), 199, 219
9. *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), 38, 219, 286
10. *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (9th Cir. 2000), 219
11. *Connecticut General Life Insurance Company v. Johnson, Treasurer of California*, 303 U.S. 77 (1938), 107, 219, 268