

**Sins of the Fathers: How Corporations Use the Constitution
and Environmental Law to Plunder Communities and Nature**

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Our work over the past four years has taken us in new directions for environmental attorneys -- we now give most of our presentations in municipal garages, one room schoolhouses, even bingo halls in rural Pennsylvania.

What we talk about is how environmental regulatory law has fundamentally failed to protect our communities and nature. And how rural communities must reject that regulatory approach and instead work to assert local control to protect the environment.

Many find that to be a depressing message -- learning that tools conceived by many to protect the environment are actually protecting the rights of corporations to destroy the environment.

I find that it is, however, in the end, a message of hope -- because it allows us to change course before it is too late.

So, in the time that we have this afternoon, we'll travel from the state of the planet to the food that we eat, over to the American Revolution and the Fugitive Slave Law, then to factory hog farms, cell phone towers, and garbage, then on to corporations and that Alabama woman who refused to move to the back of the bus. Then we'll come back home to the Constitution.

So, hang on to your seats.

We'll start with the proposition that our home -- this planet -- is in dire straits, and getting worse. Whether we look at the oceans, the forests, the soil, our bodies, our water, or our air, one conclusion is readily apparent: this planet is being destroyed, and our life support systems -- along with the habitat and the life support systems of other living creatures -- are being destroyed in the process.

If there's one thing that we have drilled into our heads as environmental lawyers from the first year of law school, and as environmental activists from the first day on the job -- it's data. So let's take a dip into the data:

- Each year, 38 billion tons of pollutants are pumped into our air, water, and land. 120 million people now live in areas where the simple act of breathing can kill them.
- Only 4% of old growth forest now remains in the United States, which means, of course, that timber corporations have logged 96% of the original forests and the ecosystems dependent upon them.
- Each year in this country, over one million acres of parks, farms, and openspace are bulldozed by development corporations.
- Each year in this country, over 20,000 acres of coastal wetlands and estuaries are filled in for development; and over 100,000 acres of wetlands are destroyed.
- Every eight months, oil run-off from our streets and driveways equivalent in volume to that carried by the Exxon Valdez, is emptied into our waters.
- 45% of this country's waterways are unsafe for recreation or consumption.
- Smog in this country forces 159,000 admissions to emergency rooms, 53,000 to be hospitalized, and 6 million to have asthma attacks each summer.
- 60% of all coastal rivers and bays in this country have been degraded by run-off and each summer, a biologically dead zone the size of Massachusetts forms in the Gulf of Mexico.
- Toxins causing cancer, known as persistent organic pollutants -- resulting from corporate research and development -- are now found in the tissues of every living creature on this planet.
- Nuclear energy corporations have produced over 77,000 tons of high level nuclear waste that cannot be destroyed and will remain radioactive for hundreds of thousands of years; and millions of tons of low level nuclear waste that must be isolated for hundreds and thousands of years.
- Carbon dioxide in our atmosphere is 30% more concentrated now than prior to the industrial age -- provoking the fastest warming trend in the 21st Century than at any other time in the history of human civilization.
- Half of all plants in the world, and over 11,000 animal species, are now threatened with extinction as a result of habitat destruction and hunting.

It's enough to make a person look for another perfectly good planet. And those, of course, as we know, are hard to find.

It also reminds me of a bumpersticker that became popular several years ago, that reads: "Beam me up Scotty, there's no intelligent life down here."

But there is intelligent life down here, right? From *Silent Spring*[1] to the Club of Rome's Report in the 1970's,[2] to the annual State of the World Report[3] -- year in and year out -- good people document, in excruciating detail, the demise of nature and our communities.

And the major environmental groups in the United States have been doing this for years. In fact, if you look at their publications and webpages -- as we do from time to time -- you can find data galore -- a complete documenting of how quickly and thoroughly the planet is being destroyed, and us with it.

In addition to the major environmental groups -- like the Sierra Club, the Environmental Defense Fund, the Natural Resources Defense Council -- thousands of community groups composed of hundreds of thousands of good people -- perhaps millions -- across this nation, have been created.

Those community groups have seen something wrong with what the data reveals -- both on an academic and moral level -- and have both said that it isn't sustainable to use the planet the way it is being used -- that there is something morally and ethically wrong in destroying millions of years of evolution simply to manufacture X-boxes, SUV's, disposable cameras, and cheap toilet paper.

There's no shortage of people who have been paying attention, documenting our demise, and even proposing new ways for people, cities, and the nation to *generate* renewable energy, *practice* sustainable agriculture, *design* livable neighborhoods, *protect* quality of life.

So, after close to fifty years of environmental activism, after thousands of groups and hundreds of thousands of people have mobilized, after people have given over \$500 million a year to the major environmental groups in D.C., after millions of environmental permits have been issued and appealed by people and groups, after many environmental laws have been passed, after lawsuits galore have been filed, after solutions galore have been proposed, and after a slew of environmental regulatory agencies have been created, you would think that problems would have been solved and restoration begun.

You'd be wrong.

On one hand, there has been a major change in public consciousness about environmental issues over the past four decades. Due to that change and back-breaking work, community activists have stopped an incinerator here, or a landfill there, after pledging chunks of our lives -- and resources we didn't have -- to stopping specific projects.

But when you examine almost every measurable criteria by which we evaluate the health of the planet and our communities, things have gotten worse. Recently, national environmental groups commemorated the passage of the Clean Water Act, which was originally adopted to clean our waterways by 1970. Major environmental groups claim the law is a success, but a look at the statistics shows something very disturbing.

In 1970, 45% of all waterways in the United States passed muster under the Clean Water Act. *Thirty-two years later*, 60% of waterways now meet the Act's definition of clean water. Keeping in mind, of course, that the Act's definition of "clean" water is severely limited itself -- to the *agency's* definitions of what is "swimmable, drinkable, and fishable." Not pristine. It's even possible -- probable perhaps -- that the most pristine waterways have actually degraded -- just not past the point of the agency's definition of "clean" water -- so even the 60% number is misleading.

At that rate, we'll have clean water in our waterways -- under the limited definitions offered by the agencies -- in another 90 years.

I don't think that this planet of ours can wait that long.

What has become patently obvious to a growing number of folks is that the work of environmental activists and environmental groups has been largely unsuccessful for doing anything else other than raising public awareness.

And, of course, raising funding for the national environmental groups.

Those same groups parade incremental advances as "victories" to pad those funding resources. After all, they have staffs and offices to support.

Some would say that their work has been worse than unsuccessful, because that work has convinced people and communities that national environmental groups are at work solving environmental problems *for* them; while dissuading others from becoming involved because "serious environmentalists" do battle with heavily paid scientists, experts, and lawyers. Because environmentalism is serious work -- best left in the hands of the big environmental groups who have been "doing environmental protection" for decades.[4]

Because the "issues" are scientific and technical -- best left in the hands of the experts. Because, they explain, the "issues" are **not** about democracy and self-governance, or who *makes* the rules.

Last year, someone asked me why, after decades of work, billions of dollars, the work of thousands of communities, and the involvement of the largest environmental groups, that things are worse now than they've ever been.

I answered, it's because we've never had an environmental *movement* in this country.

When I've said that before -- depending on the audience -- I almost always hear at least one loud gasp after the words come out, but I believe it to be true.

We've never *had* an environmental movement in this country. What we've *had* is groups and people resisting one hog factory farm at a time, one toxic waste incinerator at a time, one road project at a time, one asphalt plant at a time.

We've been playing defense -- and as anyone who plays strategic games like chess will tell you -- if you're always reacting, you're going to lose the game.

Peoples' Movements, on the other hand, are driven by communities unwilling to accept such a defensive role for themselves. Peoples' movements are about moving beyond defense. They focus instead on fixing the problems of *governance* that consistently shove them onto the defense in the first place. They question why the law is not on their side.

Movements recognize that the current framework of governance has rendered them remediless, and that the only solution available to them is to create new remedies by *changing* the plan of governance that placed them on the defensive.

It's not easy work. Our culture makes it that much harder. Awards are given to those who

work within the regulatory system to reduce adverse environmental harms from projects; Foundations give money to those groups who can show a track record of "success" by appealing permits and improving regulations.

True peoples' movements are thus few and far between, and emerge only in response to serious crises that have erupted in this nation -- when the denial of rights to slaves and women was deemed incompatible with "all men are created equal", when an English King and his trading corporations made self-government impossible, and when denial of rights to African-Americans led to the Civil Rights Movement.

Movements thus seek to drive rights into the Constitution -- our framework of governance in these United States. Past Peoples' movements have thrust groups of people into the protections of our framework of governance.

Mountains, lakes, rivers, whales, trees, raccoons, oceans, salmon, wolves, plants, and ecosystems have no rights under our framework of governance. They have no rights. No legal protections. Under the law, animals, plants, ecological systems, water, air -- they're *property*, and are treated as such.

At one time in this nation's history, people were also property.

The Abolitionist movement thrust the rights of slaves into the Constitution via the Fourteenth Amendment, transforming once-property into people. The womens' rights movement thrust the rights of women into the Constitution via the Twentieth Amendment, transforming those once considered property into people. Indeed, the American Revolution transformed states that were once private corporations and royal proprietorships -- run and owned as private property by English investors -- into public, constitutionalized governments.

Securing rights for that considered property means not fiddling around with *regulating* how that property can be used, but instead, it means changing the very framework of governance that defined those things as *property* in the first place.

After all, the Abolitionists didn't urge the creation of a Slavery Protection Agency. The American Revolution wasn't born because people were asking for a socially responsible King.

Some Abolitionists burned copies of the Constitution -- calling it a covenant with death and an agreement with Hell[5] because the Constitution legitimated slavery by requiring the return of private property -- slaves and indentured servants -- back to their rightful owners[6] Laws adopted to carry out those Constitutional provisions actually paid federal marshals with public taxpayer money as a bounty for each slave captured and returned.

The Abolitionists understood that getting rid of slavery required changes to the Constitution -- in the form of the 14th Amendment -- because slaves -- and the people who believed that they should be free and secure their inherent rights as people -- were remediless under the Constitution.

American revolutionaries took up arms to build no less than an independent nation -- seen as an absurd notion at that time in most intellectual circles -- in which all governing authority resided not in a King and the hereditary parliament of Lords, but in the people themselves.

They understood that self-government could not be achieved while being a colony -- as the property of England. They understood that they needed a new plan of governance that secured rights for themselves.

Those movements understood that the real battles worth fighting are the ones focused on *rights*, and that everything else is simply window dressing.

Movements thus arise and surge to pledge lives and fortunes to securing rights and protections for others.

Not only has the environmental "movement" never secured rights and legal protections for living creatures and ecosystems on this planet, that's never even been an explicit goal -- instead, we've settled into attempting to *minimize* the environmental impacts of harmful activities -- while being instructed that the real issues -- of governing power and rights to determine the very future of our communities -- are beyond our authority.

Thus, the environmentalist focus has been on the activities themselves, and not on the frame of governance that protects the ability of certain people and corporations to create projects and carry them out, or *by what authority* those people and corporations make those decisions for us in the first place.

And it's logical that environmentalists have traveled in that direction. After all, *major* decisions about labor, energy, transportation, food, and production, we're told, are simply made by the "invisible hand" of the "free" market -- *beyond* the authority of the people to decide.

Of course, as Wayne Andreas, CEO of the food giant Archer Daniels Midland Corporation once declared "There is not one grain of anything in the world that is sold in the free market. Not one. The only place you see a free market is in the speeches of politicians." Andrew Young, the former Mayor of Atlanta, put it this way: "Nothing is illegal if 100 businessmen decide to do it."

From the beginning of the institutionalization of the environmental "movement", the focus has thus been placed on environmental impacts themselves, rather than on asking why the rights of nature and our communities have always been overridden by the rights of a corporate class.

As Jane Anne Morris explains,

"We work on separate harms. When we protect one stand of old growth forests, others go unprotected. When we protest about one chemical, others go unprotected. When we testify for the preservation of one watershed, others are not spoken for. We have whole campaigns directed at one chemical, one corporation, one species, one grove of trees, one article of clothing." [7]

Thus, instead of working to secure rights, we've focused on attempting to "regulate"

environmental harms from certain activities. Of course, when you "regulate" something, you inherently confer upon it the "right" to exist. At the same time, you reinforce your sole role as a regulator.

When a regulatory agency writes a permit for the emission of pollution into the air, it legalizes that pollution. When an agency writes a strip-mining permit, it legalizes that mining.

In regulating, we've given up something very tangible -- our right to make critical decisions to build the kind of future that we want for our communities. We've traded it in for a right to regulate.

And so, we've sought to put out spotfires that flare up across the landscape. We've drawn up regulatory schemes so complex that our own lawyers can't figure them out. We've helped communities spend millions of dollars and billions of hours appealing permits. We've drafted laws to regulate the *amount* of pollution that is put into our air, our water, our land, and our bodies. We've organized around our "right to know", about the necessity of disclosure on the part of industry and corporations. We've submitted comments to agencies, devised voting guides for the most environmentally-sound candidates, and spent billions of dollars -- all together -- on a regulatory system that, *even when working perfectly*, simply regulates how quickly we'll destroy ourselves and this planet.

As Virginia Rasmussen of the Program on Corporations, Law, and Democracy, writes,

"We're fed up with behaving like subordinates content to influence the decisions of corporate boards. Having influence is valuable, but influencing is not deciding. We're weary of waging long, hard battles merely for the "right to know". Knowing is critical, but knowing is not deciding. We're tired of exercising our right to dissent as the be-all and end-all. Dissent is vital, but dissenting is not deciding. Influencing, knowing, dissenting, participating -- all are important to a democratic life, but not one of them carries with it the authority to decide, the power to be in charge." [8]

We've built an environmental community which is so used to losing that the occasional victory -- usually produced when a corporation seeking a permit decides that it has become too expensive to do so, or who simply moves next door to another community with lesser resources to fight it off -- is celebrated as if it were a real victory. *Celebrated as if it made our jobs easier the next time.*

As someone once said "it's as if we're running south on a northbound train, getting further and further away from our goal, celebrating our one step forward for three steps backward."

And when we lose, we pat each other on the back and gear up for the next one -- repeating the gambler's mantra -- if only we had one more attorney, if only we had one more power point slide, one more chart, one more piece of data, one more person at an environmental agency's public hearing.

As Jane Anne Morris once wrote, "We are stuck in a feedback loop where our failures are interpreted as signs that we should repeat our failed tactics, but simply try harder." [7]

Corporate managers doing the destroying, of course, have learned to use the regulatory

process for their own ends. Oh sure, when a regulation other than their own is adopted they sit for it when, on those rare occasions, they're forced to -- understanding that regulations make folks feel better by slowing destruction down -- but they have their sights set on much more important things.

Although you would think that they would be the last ones to understand peoples' movements, you'd be wrong.

Dead wrong. After all, they've been studying them for decades in their Board rooms and law firms, in their corporate retreats and family histories.

They had to, in order to keep communities and groups locked within the walls of the regulatory arena. To stop us from beginning to question and confront the fundamental authority claimed by corporations to govern our communities.

You see, long before so many put their faith in new and better regulations, and suing to get new and better disclosure information, corporate owners and managers were busy securing constitutional rights and protections for themselves -- precisely to shield themselves against "we the people." They sought to use the "rule of law" to *prevent* single issue environmental battles from becoming the foundation of a peoples' movement.

The folks that ran corporations understood that securing legal rights for corporations would automatically insulate them from the "we the people" idea released by the American Revolution. They believed, and still do, that real democratic control is a threat to their ability to wield power and make money, because democracy has always been a threat to power and wealth in the hands of a few.

Those who ran corporations understood that capturing the *Constitution* would enable them to use government and law to stifle the growth of peoples' movements. And they had a great head start, in that the Constitution -- written by those in their economic class to place the rights of property over other rights -- had given them such useful provisions that would enable them to expand the powers and rights of corporations.

Wielding of the Constitution could thus free them from those who still believed in democracy, and those in new generations willing to work to create it anew.[9]

And so, after engorging themselves on the profits and power that emerged from the American Civil War, corporations set out to dismantle state corporate restraints carefully laid by our revolutionary forebears to keep corporations out of the democratic mix.

After all, our forebears had up close and personal experiences with the East India Company and others -- chartered by England -- whose sole job was to vacuum resources out of different countries and send them back home -- To build a global empire in lockstep with the English King and Parliament that overrode native cultures, enslaved native peoples, and destroyed the natural environment, while lining the pockets of the privileged few.

With the understanding that true democracy was impossible in the face of concentrated power held by a few corporations, early Revolutionary legislatures passed state laws

declaring that corporations could only be formed for public purposes, that they couldn't own other corporations, that they could only exist for a certain number of years, that they could only be a certain size, that shareholders and directors were personally liable for the actions of the corporation, and that corporations must only operate under the privilege of a specially granted legislative charter.[10]

In short, they established the proper relationship in which the people had authority over corporations.

Dismantling that system took a lot -- but corporations had a lot. They took aim at all of those restrictions by focusing their efforts on securing protections within the Constitution originally intended solely for real, natural persons -- for us. Once secured, they understood that those constitutional rights could then be used to strike down those bothersome efforts and laws that kept corporations harnessed to the governments -- to the people -- that bestowed upon them the original privilege of operating.

And so, by the end of the 19th Century, after filing legal appeals, hiring the best law firms and lawyers, and frontally challenging peoples' laws as infringements on their rights -- the railroad corporations, some of the most powerful corporations on the planet, began to win a series of cases in which the Supreme Court of the United States formally anointed them with rights that the Constitution bestowed only on people.

Corporations became persons, protected and enabled by the Constitution and the Bill of Rights.[11] If you look carefully, you can see the results of those efforts today.

Telemarketing corporations recently won a federal District Court lawsuit to revoke the popular "Do Not Call" Program launched by the FCC. What did the lawsuit allege? That the laws violated the corporations' rights under the Fourteenth and First Amendments to the Constitution. As persons.

Factory farm corporations recently filed lawsuits to overturn laws adopted by Pennsylvania Township governments and nine Midwestern States that ban agribusiness corporations from owning or controlling farms, in a peoples' effort to protect family farmers.[12] First pages of those Complaints filed by the agribusiness corporations? We are corporations, we are persons -- we wield the rights of persons -- and these communities have violated our basic constitutional rights by passing a law that they had *no authority* to enact.

Several years ago, cell phone corporations sued a Pennsylvania municipal government for denying them authority to build a cell phone tower. Not content with asserting their rights as persons under the Constitution to strike down the law, the telecommunications corporation demanded attorneys fees and damages from the municipal government under the authority of Reconstruction-Era Civil Rights Statutes originally adopted to protect African-Americans from government sponsored discrimination.

Now, those statutes are used by corporations to punish those democratically elected local governments -- our governments -- who dare to confront corporate rights.

As persons, corporations have pioneered the concept of "regulatory takings" in which local

and state governments can be sued for the value of property "taken" by the enforcement of an environmental regulation.

A legal theory built on the rights of corporations as persons under the "takings" clause of the Constitution's Fifth Amendment[13]

A legal theory now codified in Chapter 11 of NAFTA, which is being used to strike down state and federal laws that "interfere" with commerce.[14]

As persons, corporations cannot be subjected to unannounced searches by OSHA and other regulatory agencies under the Fourth Amendment to the Constitution. Corporations are now guaranteed *by law* participation in our elections and issue discussions under the authority of the First Amendment.

Corporations are now guaranteed the right to a jury trial under the 7th Amendment.

And on, and on, and on.

But it doesn't just stop with "personhood" rights -- the securing by corporations of Bill of Rights protections originally written to protect people.

Several months ago, Smithfield Corporation -- one of the largest factory farm corporations on the planet -- sued the State of Iowa to overturn a law banning meat packing corporations from owning livestock on individual farms in the State. The goal of the citizens of Iowa? To prevent the same corporations that owned the processing plants from also owning the livestock that eventually went to the processing plant. They sought to prevent those corporations from dictating prices and markets, which would enable those pork corporations to dominate rural economies and communities.[15]

Considering that four corporations own or control over 60% of pork production in this country, the citizens of Iowa believed that protecting family farmers from the corporate squeeze was a worthy goal.

Smithfield Corporation brought suit under the Interstate Commerce Clause of the U.S. Constitution[16] and used a federal court to overturn the packer ban.

It's not a new story, really. Nor is it the exception.

It makes one begin to wonder what the Commerce Clause and the Courts were set up to be.

Two years ago, Waste Management Corporation used the same Interstate Commerce Clause to get federal judges to overturn a ban on out of state waste that had been driven into law by the citizens of Virginia -- who sought to ensure that the State's landfill space was used for Virginia garbage.

And the transformation of the law continues apace in the 21st Century.

In the *Smithfield* case, the corporation urged the court to adopt a standard by which any legal

restriction on any corporation would automatically be viewed as "interstate commerce" under the United States Constitution, and thus come under the protection of the Interstate Commerce Clause and the reach of the federal government.

In litigation surrounding interstate commerce issues, such a pronouncement would place all civic organizing at risk -- by trumping communities with a ban on any legislation that interferes with any *corporate* commerce.

The Contracts Clause of the U.S. Constitution^[17] -- the provision that protects against state interference with private contracts -- has also been used to shield corporations from the governance of communities -- while empowering them to use the law to strike down what people need and want.

Corporations and their owners have learned quite well that when you control the law, you can rise swiftly to power and wealth by shedding -- and shredding -- bothersome laws adopted by communities. By configuring and perpetuating a corporate culture -- that embeds corporate values into the culture: government bad, free enterprise good; jobs vs. the environment; efficiency and modernization good, leisure time bad -- people are slowly colonized to believe the unbelievable.

Kings used to drum into their subjects that they were anointed by God.

To the Kings, of course, it made perfect sense.

Or, as John Stuart Mill once asked, "Was there ever a domination that did not appear natural to those who possess it?"

If we understand that the planet is dying, and that we, along with our communities, are dying along with it, and that the driving by corporations of these legal rights and protections to protect their property, power, and wealth, stymies any attempt by the people to protect and restore this planet and its living systems, then what are we to do?

We must do what people striving to be free have done for the past two hundred years in this country. We must refuse to let our names, and the names of our communities be used to legitimate the illegitimate process by which we are ruled. And we must begin to do our work differently -- in a way that focuses work on each single issue into a spotlight that illuminates how corporations and state officials have turned our governments on their head. That begins to build a peoples' movement not focused on *regulating* our demise, but on *liberating* the self-governance of our communities.

First, we must see and acknowledge the reality of the situation that we are in -- that we need new approaches and new tools if we are to restore the planet and our communities. That means realizing that the major environmental groups we may have originally seen as allies will do everything in their power to defend a regulatory system that grants them prestige, power, and funding.

We no longer have the time to pretend that we're all working towards the same goals. We cannot afford to fool people into thinking that their concerns are being taken care of by others.

Second, we must stop lending legitimacy to the system that is. There's a relatively recent saying that goes, "the only thing that environmental regulations regulate is environmentalists." The first regulatory agency, the Interstate Commerce Commission, was actually created by the mammoth railroad corporations to drive the smaller railroads out of business -- through adding *regulatory compliance* costs to reduce their profits. [18] Environmental regulatory agencies, established by law, now serve as an energy sink for thousands of community groups -- forcing them to expend money and time to fight through the layers of regulations to eventually end up with exhausted organizations that then disband.

It means realizing that our role, as "we the people" is not limited to decisions about paper versus plastic. Our role, instead, is to *define* the powers of corporations within our communities and our nation.

We're here to *define* which corporations may have the privilege of operating within our communities, and which ones will not. We're here to *define* how corporations build, manage, manufacture, dispose, and use -- precisely because those decisions produce the spotfires that have kept us busy for decades.

And those corporations that refuse to follow our rules? We'll bar them from obtaining the privilege of doing business in our communities.

When we regulate, we don't even make it to that playing field.

We lose by default.

The Pennsylvania Constitution declares that the source of all governing authority in this State is the people of this state. So all of this stuff about corporations is really about us -- it's about how communities come together to make decisions and rules -- its about building sustainable communities, and deciding how corporations and other institutions should be *used* to reach that democratic vision.

It's not anti-corporate work, but pro-people and pro-planet work. It's about how we want to govern ourselves and how we want to restore this planet.

A self-governing people cannot get there through regulating. A self-governing people cannot govern through being forced to argue over parts per billion, channeled into regulatory agencies where only one topic can be discussed, limited to five minute comments at a regulatory hearing, or told that lawyers and experts must be hired for thousands of dollars to give "competent" testimony on the issuance of permits *legalizing* the destruction of a particular mountain, river, community, or forest.

It is time to quit allowing the regulatory agencies to regulate "in our names." It is time to stop lending legitimacy and energy to that process. For those that are still convinced that regulatory agencies are "ours" rather than "theirs", read agency literature. The Pennsylvania

Department of Environmental Protection refers to corporations in their printed materials as the Department's "clients", with the agency's sole job to assist their "clients" to comply with the law.

Where can we turn now to implement new forms of organizing? To those governments that are closest to us. Long overlooked, and much the subject of contempt by conventional environmental activists, municipal governments are becoming the political arenas in which we must do our work.

In Pennsylvania, rural Township governments have become some of the ground zeroes in the struggle to assert local, democratic control over corporations. Whether it's anti-corporate farming laws -- now adopted by close to a dozen Townships across the state to prohibit agribusiness corporate involvement in farming [12] -- **or** local laws controlling the land application of sludge by waste corporations -- now adopted by over four dozen Townships[19] -- **or** local laws adopted to deal with a variety of different corporations and industries[20] -- communities and municipal governments are now partnering to take the lead.

In early 2003, people in two rural Township governments in Northwestern Pennsylvania took the incredible -- but logical -- step of adopting a municipal law declaring that corporations would not be afforded Constitutional rights within their jurisdiction.[21] They took that step to eliminate corporate interference with their adoption of local laws intended to protect the environment. They became the first two municipal governments in the country to adopt those binding local laws.

Now *those* are actions worthy of the legacy of our revolutionary forebears who believed in democracy -- and who *refused* to validate the illegitimate.

And we need to be prepared for the inevitable response by corporations and their owners -- indeed, we need to build that response directly into our organizing model. When Pennsylvania communities decided to pass laws that directly confronted factory farming by agribusiness corporations, State legislators supported by those corporations responded by introducing Bills to stop them. But instead of being able to sponsor legislation that focused on parts per billion, on regulatory agencies, or on simply altering permit conditions, those legislators were forced to confront those communities in an arena selected by the Townships: that corporations *lack the authority* to make critical decisions about how our food is produced.

In short, those communities changed the rules of the game by deciding to fight on the grounds of democracy.

That produced legislation that sought to strip away all democratic control by local governments over agribusiness corporations. The *local laws*, precisely because they were an expression of democracy and local control, forced a response by legislators focused on power and authority.

That, in turn, triggered the growth of a Statewide Coalition driven by over four hundred municipal governments -- and including Common Cause, the UMWA, the Farmers Union, the Pennsylvania Association for Sustainable Agriculture, PennFuture, and the Pennsylvania

Environmental Network. That Coalition then drove forward to defeat the legislation.[22]

And that experience illustrates why today we can't start with state governments to make the changes that we must make. State legislators holding seniority in the legislature are supported by corporations, and are the ones tasked with keeping local governments in their place. Legislators leading the Pennsylvania House and Senate Agriculture Committees believe -- after years of corporate education -- that corporate factory farms are the best and most efficient ways to produce cheap meat for the market. Calling them "modern" and "advanced" farms, they are enthusiastic supporters of that part of the corporate culture.

We must not think that *regulating* factory farms -- in the face of that corporate policy -- will get us where we need to go in creating a *sustainable agricultural policy* in this state that supports independent family farmers. We must not *think* that using public monies to subsidize the purchase of manure digesters for factory farms -- like the recent State Energy Harvest grants did -- does anything but validate a corporate factory farm model.

We must, instead, begin to sway the entire building by re-shaping the foundation.

Local control asserted over certain corporate projects is essential to building a movement of communities crafting their own sustainable visions for their communities and nature. But corporations and their owners cannot afford to sit idly by while communities begin to unravel themselves from the corporate culture.

They have, and they will, attack us through those institutions that create, and are empowered by, the "rule of law" and corporate culture. Courts, federal agencies, the national media, corporate think-tanks, secret NAFTA and GATT tribunals, and yes -- even law professors -- will all be enlisted to stop that awakening.

Their failure will be determined by the sheer number of people who are able to see through the corporate veil -- **to free themselves from the horrendous reality that we are ruled by those few who share none of our values and none of our beliefs. That we are ruled by those intent on stripping away the ideals of the American Revolution -- and trampling on all of those people -- names unknown -- who made the Revolution, and other peoples' movements, a reality.**

Those corporate few are intent on turning soil into sand.

Thomas Berry, a well-known writer, declared in his *Dream of the Earth* that "The deepest crises experienced by any society are those moments of change when the story becomes inadequate for meeting the survival demands of the present generation." [23]

We all know the story that's been embedded in our heads since the First Grade. That the wise Founding Fathers of this nation demanded independence, threw off the shackles of England, then wrote a Constitution that guaranteed rights and liberties. In the process, as the story goes, they established rules for amending the Constitution so that it could reflect the needs of each new generation.

But when we uncover the stories of the unnamed people like ourselves throughout our

history, we find some troubling parts to that story, such as:

- Slaves, indentured servants, women, native persons, and white men who didn't own property were not considered "persons" at the time of the drafting of the Constitution. In fact, the Constitution placed the full force and resources of the federal government behind the return of slaves and indentured servants to their owners. They had no rights and no remedies.[24]
- The Constitution itself was the product of a secret gathering. Minutes of the meeting were not published for over fifty years.[25] Talk about "right to know"!
- The Constitution established the most powerful Supreme Court -- *vesting the powers of the Court in judges appointed for life to enforce the "rule of law"* -- of any Court in any country on this planet.[26]
- The Constitution denied people the ability to directly elect our Senators to the U.S. Senate.[27]
- The Constitution enabled the passage of the Fugitive Slave Law in 1793 and 1850, which placed the power of the federal government behind slave owners seeking the return of their property. Under the Law, aiding an escaping slave or indentured servant (known as "bonded labor") became a crime punishable by jailing, the slave was prohibited from testifying on his or her behalf, and a trial by jury for the slave was prohibited. Slave catchers were paid a bounty by the federal government with public monies.
- It took women over one hundred and twenty years to obtain the right to vote under the Constitution's amendment process,[28] and over two hundred and twenty years later, women still lack equal rights.
- It took African-Americans close to a hundred years to drive themselves into the Constitution, with the simple statement that rights shall not be denied on the basis of skin color. After two hundred and twenty years, racial discrimination is still commonplace.
- The Interstate Commerce Clause, the Contracts Clause, and other parts of the Constitution guarantee that the rights of property, wealth, and capital will continue to override the rights of people, the planet, the rivers, streams, egrets, bears, and mountains.

In almost all ways, the Constitution's protection of property over communities and nature serves to shield the few who rule from democratic control.

Without democratic control over major decisions governing the health and welfare of our communities, our planet and our communities are set on a suicide run.

We need a new story.

We need a new story that is written by all of us.

We need a new story that is written to deal with the crises that we now face.

We need a new story that secures the rights and liberties of people -- not corporations -- and

that protects, preserves, and restores this planet of ours.

We need a new story that writes a new system of governance. That builds upon the work of those people who have been trying to write a new story for generations.

That means beginning to think in new ways -- not thinking in terms of "what we can get", but asking ourselves the forgotten question of "what do we want?" and "what do we need?" to ensure the survival of our communities and the survival of this planet.

One of the movements to do that in this country -- to ask questions about rights and liberties -- was the Populist movement -- that collection of farmers, citizens, and workers in the early 1900's. The Populists understood that democracy was not possible when big corporations controlled the issuance of money, the necessities of life, and labor.

The Populists' goal was to end special privilege, make all institutions democratic, render all corporate entities subordinate, replace competition with cooperation. They came to understand that for the American people to control their lives, they would have to gain authority over the mechanisms of governance by which they were ruled.

To do that, the Populists realized they would have to change this country's Constitution, which enabled *the corporate minority to rule the majority*.

But the corporate minority -- threatened by a real movement focused on eliminating their authority -- engineered a masterful illusion. Those comprising the corporate minority, realizing the potential for losing control, mobilized *pre-emptively for limited* reforms; thus solidifying their grip on government and culture.

They proclaimed the corporation as the dominant institution -- the only source of progress, jobs, liberty, efficiency and security. They diverted attention away from their authority to make decisions, and instead created what we now know as the regulatory system. Along the way, they picked up well-meaning reformers, who worked side by side with the corporate minority to reinforce and validate a regulatory system.

It was a time when our culture embraced a corporate system as both ideal and inevitable.

The new **regulatory system** was hailed as "progressive", and thus the "Progressives", as we now know them as, wiped the Populists from our collective memories.[29]

Communities and towns across these United States struggling to ensure that people -- not corporations and their ilk -- govern, are now attempting to grasp the legacies of the Revolutionaries, the Populists, the Abolitionists, and the Womens' movements as their rightful inheritance.

To reject the progressive and **regulatory agenda** and build self-governing communities free from corporate control.[30]

We must not shirk from these lessons of history -- we must embrace them and learn from those who went before us. We must not pretend that work within regulatory arenas -- a

diversion at worst, an "energy sink" at best -- create remedies. Instead, we must seek to construct our own arenas. In short, we can't get there -- to securing rights for nature and communities -- from here -- where we are now.

To get *there*, we must unlearn what we've been taught about this country. Then, we must learn to frame the problems not as the single environmental issues we've been trained to see them as, but as power struggles over whether we, the people, will allow our country to be ruled by corporations *cloaked with the sacred rights and liberties that our revolutionary forebears fought, bled, and died for from the Lexington Green to Yorktown.*

The problem is not livestock factory farms, but the *power* of agribusiness corporations to determine what type of agriculture we will have. The problem is not land applied sewage sludge, but the *power* of sludge corporations to decide how we will deal with our waste and prevent us from designing systems that eliminate "waste" in all of its forms. The problem is not sprawl, but the power of development corporations to decide when and how to bulldoze our mountains, our hills, and our valleys.

And that reframing must reach beyond environmental issues. It's not about managed health care, its about the power of a few drug corporations to determine the system of health care that we all will have. It's not about air bags and highway projects, but about the power of car corporations to rip up trolley lines and unilaterally decree that mass transit will wither on the vine.[31] It's not about campaign finance reform, but the power of corporations to make the rules for our elections, and to select the issues even before people announce their candidacies.

And in the end, it's not even about corporations. It's about us. It's about whether we take "we the people" and democracy seriously enough to stop the corporate few from making decisions that imperil our planet and our communities.

How do we solve these issues of power and authority? It means activating, helping, and organizing millions of communities across this country to deal with issues important to them, by asserting local control over those issues and the corporations behind them.

It means learning from those that went before us: people whose communities and states broke with the King, those state legislatures and local governments that passed laws *nullifying* the Fugitive Slave Acts -- thus refusing to comply with federal law -- those peoples' governments that refused to comply with federal law that made it a crime to criticize the federal government under the Alien and Sedition Acts in the early years of this country. Those courageous individuals who refused to move to the back of the bus and who put their bodies in front of the dogs and firehoses.

It means taking the best of this country -- from our extraordinary history of largely unknown people organizing for rights, justice, and self-governance -- those who sacrificed and soared on the wings of democracy -- and using their footprints to guide us.

It means stitching together those communities working on seemingly disparate issues into a *peoples' movement* that will eventually wield the power to rewrite the Constitution while rewriting our own histories -- to write a new story that empowers us to build the

communities that we want, and to protect, preserve, and restore this amazing planet of ours.

Many feel that these realizations -- that require a shift away from what is comfortable -- abandoning much of what we've been taught -- and driving headlong into our reassuring corporate culture -- makes this job so hard that only a few will do it.

I disagree.

Sam Smith, author of several books about democracy, stated it best when he explained

"In a perverse way, our predicament makes life simpler. We have clearly lost what we have lost. We can give up our futile efforts to preserve the illusion and turn our energies instead to the construction of a new time. It is this willingness to walk away from the seductive power of the present that first divides the mere reformer from the rebel -- the courage to emigrate from one's own ways in order to meet the future not as an entitlement but as a frontier. Above all, 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."[32]

Thank-you.

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Footnotes

1. *Silent Spring* by Rachel Carson, originally published in 1962, described how DDT entered the food chain and accumulated in the fatty tissues of animals, including human beings, and caused cancer and genetic damage.
2. "The Limits to Growth," by Donella H. Meadows, Dennis L. Meadows, Jorgen Randers, William W. Behrens III, Club of Rome, 1972; For the report's conclusions, *See* Abstract established by Eduard Pestel. *See Also:* Uprooting "Growth" as Metaphor: 20th Century Reflections for the 21st, by Richard Grossman, 1999.
3. State of the World is published by the Worldwatch Institute ; "Worldwatch's flagship annual remains the most authoritative 'go-to' resource for those who understand the importance of nurturing a safe, sane, and healthy global environment through both policy and action."
4. *See* "Playing By Whose Rules? A Challenge to Environmental, Civil Rights and Other Activists," by Richard Grossman, *Daybreak*, Vol. 4, No. 4, 1995.

"Today's leading environmental law groups -- such as the Natural Resource Defense Council (NRDC) -- were formed 20-30 years ago, mostly by young men just out of law school. When these men were law students, the "Critical Legal Studies" movement was not yet a presence within law schools -- the first national Conference of Critical Legal Studies was held in 1977. So as students, they were not exposed to even the modest questioning of curriculum and law professor biases which goes on in some law schools today.

"Some of these environmental law groups received immediate support and financial backing from powerful philanthropies like the Ford and Rockefeller foundations, and from law firms which represented large corporations.

"Today, these groups define the legal agenda of environmentalism. They drive much of the environmental movement towards permitting and disclosure laws administered by federal and state regulatory and administrative agencies. Each wave of environmental activists has had to confront these legal groups eager to stop us from making investment and production decision-making a more public process (in other words from decreasing corporate power). Instead, they have sought mechanisms to determine acceptable amounts of corporate poisons and corporate clear-cuts, and to win compensation for corporate harms. They would have the public give greater profits to corporate leaders to encourage them to act more responsibly. We've seen campaign after campaign for citizen authority over corporations diverted into regulatory agencies and the courts, where all parties toe the line of managerial prerogative and other claimed corporate property rights. . . .

"Look at the roles of EDF and NRDC and the Conservation Law Foundation in energy. Under the banners of "demand side management" and energy efficiency, these groups -- with philanthropic assistance and cover -- have helped utility corporations get higher rates of return and decrease the powers of state public utility commissions to direct utility corporation executives to act. They have helped utility executives move decision-making behind closed doors, all in exchange for some voluntary corporation conservation efficiency investment."

5. William Lloyd Garrison, radical abolitionist and publisher of *The Liberator*; see Inaugural Editorial, 1831.
6. U.S. Constitution, Article IV, section 2, Clause 3 reads "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."
7. "Help! I've Been Colonized and I Can't Get Up . . .", Take a Lawyer and an Expert to a Hearing and Call Me in a Decade, by Jane Anne Morris, 1998, reprinted in *Defying Corporations, Defining Democracy*, Apex Press, 2001, pp. 8-12.
8. The Struggle for Democracy: Activists Take the Offense, by Virginia Rasmussen, *By What Authority*, Vol. 4, No. 3 - Summer 2002.
9. See "When Corporations Wield the Constitution," by Richard L. Grossman and Ward Morehouse, Co-Founders, Program on Corporations, Law & Democracy, November 2002:

"Wielding such power generation after generation breeds a special arrogance. Consider this: a few years ago, leaders of Travelers Group and Citibank corporations decided to merge. There was one minor problem: such a merger was against the law. But confident that in no time they could pass a new law wiping out a fifty-year old law, they went full speed ahead. . . ."

"Why do corporations get away with it? Because with few exceptions, civic activists have not looked closely at this history. They have not contested the nation's corporate class over its grab of governing authority."
10. For more on this 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.
11. For a summary of some of the 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" of Model Amici Curiae Brief to Eliminate Corporate Rights, by Richard Grossman, Thomas Alan Linzey, & Daniel E. Brannen, 9/23/03; See Also Timeline of Personhood Rights and Powers by Jan Edwards *et al*, Women's International League for Peace and Freedom.
12. The reference is to the Southampton Anti-Corporate Farming Ordinance crafted by the Community Environmental Legal Defense Fund (CELDF) as part of its service of Local Ordinance Drafting for Townships available to local governments in Pennsylvania struggling to assert democratic controls over corporations. The Southampton Ordinance, one of the two most popular ordinances, was developed in March of 1999. CELDF also responds to requests from Townships for customized Ordinances which they can present for passage.
13. The final clause of the Fifth Amendment states "nor shall private property be taken for public use, without just compensation."
14. As of early 2001, at a minimum, corporations had filed more than a dozen cases underunder NAFTA's Chapter 11 investment provisions enabling corporations to sue governments for infringements of their so-called investor rights. See the sidebar, "The Chapter 11 Dossier: Corporations Exercise Their Investor 'Rights' " in "NAFTA's Investor 'Rights' - A Corporate Dream, A Citizen Nightmare," by Mary Bottari, *Multinational Monitor*, Vol. 22 No. 4, April 2001.
15. 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*.
16. 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;"

17. 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."
18. For a concise history of the creation and influence of the Interstate Commerce Commission see "Sheep In Wolf's Clothing," by Jane Anne Morris, *By What Authority*, Vol. 1, No. 1 - Fall 1998.
19. The reference is to the Sewage Sludge Ordinance crafted by the Community Environmental Legal Defense Fund (CELDF) as part of its service of Local Ordinance Drafting for Townships available to local governments in Pennsylvania struggling to assert democratic controls over corporations. CELDF also responds to requests from Townships for customized Ordinances which they can present for passage.
20. The Community Environmental Legal Defense Fund (CELDF) offers a Local Ordinance Drafting for Townships service. Currently there are 16 Model Ordinances available on CELDF's website.
21. This is the Model Ordinance on Corporate Personhood.
22. As stated in *Shifting into a Different Gear - Building Democracy by Asserting Local Control*, by Thomas Linzey & Richard Grossman, 2/15/04:

That organizing was strong enough to force Governor Ed Rendell to veto the most recent legislative attempt to eliminate local control over factory farms and agribusiness corporations. This anti-democratic legislation had passed the Senate by a vote of 47-3.
23. *Dream of the Earth* is Thomas Berry's first book outlining his understanding of the universe as the primary revelation of God. Berry, a Passionist priest trained as a cultural historian -- he calls himself a "geologian" which emphasizes his lifelong commitment to the study of the earth -- touches on various aspects of the earth's dreams and the demands those dreams place on us. He avoids the impasse of positing the spiritual other-worldly religious community on the one hand and the physical meaninglessness of the scientific community on the other by making the cosmos humanity's most fundamental concern. A sampling of quotes from the book:
 - "If the earth does grow inhospitable toward human presence, it is primarily because we have lost our sense of gratitude, our willingness to recognize the sacred character of habitat, our capacity for the awesome, for the numinous quality of every earthly reality."
 - "The natural world is the maternal source of our being as earthlings and the life-giving nourishment of our physical, emotional, aesthetic, moral, and religious existence. The natural world is the larger sacred community to which we belong. To be alienated from this community is to become destitute in all that makes us human. To damage this community is to diminish our own existence."
 - "This is a sense of presence, a realization that the earth community is a wilderness community that will not be bargained with; nor will it simply be studied or examined or made an object of any kind; nor will it be domesticated or trivialized as a setting for vacation indulgence, except under duress and by oppressions which it cannot escape."
 - "Finally we begin to recover a reverence for the material out of which we were born, for the nourishing context that sustains us, the sounds and scenery, the warmth of the wind and the coolness of the water -- all of which delight us and purify us and communicate to us some sense of sacred presence."
 - "The ecological age fosters the deep awareness of the sacred presence within each reality of the universe. There is an awe and reverence due to the stars in the heavens, the sun, and all heavenly bodies; to the seas and the continents; to all living forms of trees and flowers; to the myriad expressions of life in the sea; to the animals of the forests and the birds of the air. To wantonly destroy a living species is to silence forever a divine voice. Our primary need for the various lifeforms of the planet is a psychic, rather than a physical, need."

See Also Thomas Berry - A Spirit in the Smokies Interview, *Spirit in the Smokies Magazine of New Paradigm Living*, May 1999; An Electronic Archive of Selected Papers by Thomas Berry, Papers Delivered at Harvard University, April 1996; "Thomas Berry's Earth Spirituality and the 'Great Work'," paper by Andrew Angyal at Works of Love - Scientific & Religious Perspectives on Altruism Conference, 2003;

24. Quoting from "When Corporations Wield the Constitution,"

"Until the Civil War, political power was held primarily by the representatives of large slave holders like George Washington, Thomas Jefferson and James Madison, who used their domination of southern state governments to direct the United States government. The constitution that they wrote guaranteed profits from the new government's denial of human rights by, among other things, directing government to guarantee the return of all "persons held to service or labor in one State" (U.S. Constitution, Article IV, section 2, Clause 3) to their rightful owners. ("Persons" here meant both African American slaves and white slaves better known today as indentured servants.) The Constitution provided as well that the armed might of the United States would aid states against rebellions (called "domestic violence"(Article IV, Section 4)) by workers -- whether they were chattel slaves or wage slaves.

Their Constitution also decreed their domination of politics and lawmaking. A slave was to count as "3/5 of a person" (Article 1, Section 3) for assigning representation in the House of Representatives and the Electoral College. This meant that slave state elites could turn their ownership of human beings into domination over congressional and presidential elections. (In 28 of the nation's first 32 years, the president was from a slave state: Washington, Jefferson, Madison, and Monroe, each of whom served two terms in office, were from Virginia.)

25. See James Madison's Notes On the Constitutional Convention of 1787. Editor Jon Roland notes, "Madison's Notes were not published until about 1840, perhaps to fulfill an early decision by the original convention forbidding disclosure of the proceedings, to which Madison may have felt himself bound while the other participants lived, and it was after all the rest of them had died that he did finally publish them."

26. The following is an excerpt from "We're All In Prison, And Most Of Us Don't Know The Door Is Unlocked," by David Ratcliffe, September 2003:

In "The Rule Of Law versus Democracy" (published in POCLAD's *By What Authority*, Vol.5, No.1 - Winter 2002) author Doug Hammerstrom explores how a rule of law in the United States was initially defined, then extended, to serve the interests of the wealthy, white, male minority. The codification of this rule of law subordinated all other mediating processes human societies had previously used. 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 doctrine of judicial review, established by Chief Justice John Marshall, added powers fit for a King to those exercised by the Supreme Court.

"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."

Webster's defines **opinion** as "a belief not based on absolute certainty or positive knowledge but on what seems true, valid, or probable to one's own mind; what one thinks; judgement." Law is created from opinions. These opinions, cast in the purported sanctity of "the law," condition our thinking and perceptual awareness in fundamental ways we are rarely, if ever, conscious of. How often have we seen such critical analysis as the above presented in newscasts, daily papers, school history books, periodicals, or TV shows? The rule of law we are told we must live by is the result of opinions handed down by specific people. Whose opinions? What world views and whose interests are represented by the majority of those opinions?

In the 1803 Supreme Court case *Marbury v. Madison*, Chief Justice John Marshall affirmed in the opinion for the court, "The government of the United States has been emphatically termed a government of laws, and not of men." For a number of generations after 1776, it was the exclusive (and exclusionary) province of white property-owning males to create and legitimize a rule of law based primarily on a hierarchy of their beliefs informed by their own self-interests.

27. This was changed by the 17th Amendment, ratified and adopted in 1913, 124 years after the U.S. Constitution was ratified.

28. On July 4, 1876, in front of Independence Hall "under the shadow of Washington's statue, back of them the old bell that proclaimed 'liberty to all the land, and all the inhabitants thereof'," Susan B. Anthony read the Declaration of Rights for Women. Forty-four years later the 19th Amendment gave women the right to vote. Yet this Declaration is about much more than just the right to vote. It speaks to and addresses the public injury that was done by denying rights to women. What is fascinating about this Declaration of Rights is how much it parallels the original Declaration of Independence.

"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."

29. See the discussion about how the Progressive Era's legacy of regulatory and administrative law leaders fundamentally denied the aspirations and promise of the Populist Movement in "We're All In Prison, And Most Of Us Don't Know The Door Is Unlocked," by David Ratcliffe, September 2003 as well as sources it cites and quotes from:

- "Who Were the Populists?" - Richard Grossman on Bill Moyers 6/11/03 Speech, 6/24/03
- Introduction to *THE POPULIST MOMENT, A Short History of the Agrarian Revolt in America*, by Lawrence Goodwyn, 1978
- "Democratic Money: A Populist Perspective," with Lawrence Goodwyn and William Greider, 12/9/89

30. Regarding the fact that corporations thrive on regulatory agencies, *see also*:
- "Sheep In Wolf's Clothing," by Jane Anne Morris, *By What Authority*, Vol. 1, No. 1 - Fall 1998
 - *RACHEL's Environment & Health Weekly* #553: Let's Stop Wasting Our Time, 7/3/97.
 - Playing By Whose Rules? A Challenge to Environmental, Civil Rights and Other Activists, by Richard Grossman, *Daybreak*, Vol. 4, No. 4, 1995.
 - *RACHEL's Hazardous Waste News* #309: New Strategy Focuses On Corporations, 10/28/92.
31. A definitive documentary on this is "Taken for a Ride," by Jim Klein and Martha Olson, 1997. "Taken for a Ride reveals the tragic and little known story of an auto and oil industry campaign, led by General Motors, to buy and dismantle streetcar lines. Across the nation, tracks were torn up, sometimes overnight, and diesel buses placed on city streets. The highway lobby then pushed through Congress a vast network of urban freeways that doubled the cost of the Interstates, fueled suburban development, increased auto dependence, and elicited passionate opposition."
32. Quoted from *Why Bother? Getting A Life In A Locked-Down Land*, by Sam Smith, Feral House, November 2001, 151 pages. From the Introduction (plus 1 paragraph elsewhere):
- "What safety we have, the privilege of the cocoon, comes from those who, at much greater danger and with far less chance, climbed that wall, insisted on being human, fought despair, suppressed fear, and denied themselves the illusion of detachment. Some were only a generation or two away and carried our name, some were more distant. Our present safety is built upon their risks, on their integrity, rebellion, and passion, and upon the courage that propelled them. . . .
- "Yet, as Lily Tomlin said, even if you win the rat race, you are still a rat. And there is another irony. The rules of the marketplace recreate by artificial means the brutality, unfairness, and helplessness that humans have sought to escape for most of their evolution. Only during the last one-tenth of one percent of our history have at least some broken away from tyrannies of nature and culture to build societies hospitable to the free individual. No small part of this work has occurred in our own land.
- "Yet, rather than acting as stewards of this fragile achievement, we have lately become increasingly indifferent toward its lessons and profligate with its rewards. Too many, particularly in places of power, have become the spoiled brats of human progress. . . .
- "To survive in such a time, to retain the will to be human, to build good communities, and to be decent and caring in such places, is extraordinarily difficult. The carelessly powerful are not about to tell us how. We have to help each other.
- "What follows is my contribution to this common endeavor. It suggests three exercises. The first is to see clearly our present condition and to examine honestly our losses. The second is to pass safely through a maze of faulty promises and failed prophets. And the third is to consider some of the possibilities that remain.
- "Life is an endless pick-up game between hope and despair, understanding and doubt, crisis and resolution. 'Evermore,' Emerson said of it, 'beauty and disgust, magnificence and rats.' Sisyphus nears the mountaintop and the rock rolls down again. We lose courage and suddenly there is a light. What follows reflects this contest in which the grim and the glad are only oscillations and never the end. . . .
- "Hectorated, treated, advised, instructed, and compelled at every turn, history's subjects may falter, lose heart, courage, or sense of direction. The larger society is then quick to blame, to translate survival systems of the weak into pathologies, and to indict as neurotic clear recognition of the human condition. The safest defense against this is apathy, ignorance, or surrender. Adopt any of these strategies -- don't care, don't know or don't do -- and you will, in all likelihood, be considered normal. The only problem is that you will miss out on much of your life."