

By What Authority

A Publication of the PROGRAM ON CORPORATIONS, LAW & DEMOCRACY

POCLAD

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By What Authority, the name of our publication, is English for *quo warranto*.

Quo warranto is the sovereign's command to halt continuing exercise of illegitimate privileges and authority. Evolved over the last millennium by people organizing to perfect a fair and just common law tradition, the spirit of *By What Authority* animates people's movements today.

We the people and our federal and state officials have long been giving giant business corporations illegitimate authority.

As a result, a minority directing giant corporations privileged by illegitimate authority and backed by police, courts and the military, define the public good, deny people our human and constitutional rights, dictate to our communities, and govern the Earth.

By What Authority is an unabashed assertion of the right of the sovereign people to govern themselves.

WANT TO VIOLATE A CORPORATION'S CIVIL RIGHTS? JUST SAY NO TO ITS CELL PHONE TOWER

By Richard Grossman

POCLAD has been saying that business entities exercise greater rights than people. How this works is not always readily apparent. Today, telecommunications businesses are forcing their microwave towers upon cities, hamlets and towns. People are resisting. Out of this resistance emerges clarity.

The Telecommunications Act of 1996—the length of the Manhattan telephone directory—asserts that our municipalities have no right to just say no to a corporate microwave tower.

A century ago, railroad corporations accumulated 180 million acres of land plus bags of taxpayer cash in exchange for their exploiting tens of thousands of immigrant Asians and other laborers to lay steel rails coast to coast. For decades they paid former senators and judges to lobby the Supreme Court to interpret the Constitution in ways which privileged property organized in corporate form, and denied fundamental rights to people. Then, along with banking, insurance, food processing and other corporations, they designed the nation's regulatory agencies, beginning with the Interstate Commerce Commission in 1887.

Today, the Federal Communications Commission (FCC) helps giant corporations get fabulously rich advertising the products of other corporations and strewing drivel along airwaves belonging to the American people. Lately, the FCC has been giving out licenses to corporations for wireless communications over the people's airwaves. The FCC has been charging bargain basement prices—and accepting small down payments at low or “suspended” interest rates. Like the ICC,

the FCC is doing the corporations' dirty work.

These days our Congress is concerned with the “rule of law.” But consider this observation by Senator Bob Kerrey (D—Nebraska): “Despite the scope of its impact on their lives, Americans neither asked for [the Telecommunications Act of 1996] nor do many of them even know we engaged in this debate. ...This one is being driven by corporations.”

So when people speak and assemble in their communities to protect themselves from corporate usurpations and micro waves, as they believe is their right, they find their local elected officials saying that “the law” denies people the right to speak or assemble for such purposes. They hear media corporation lawyers opining that all Americans must obey the

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In this issue...

The regulatory state that we chafe under is not a democratic state (See BWA #1 for a discussion of this issue). Though some people think of regulation as affecting mostly environmental and trade issues, Labor, too, is hobbled by being defined by a regulatory regime tailored to serve corporations.

Regulated workers are forced to park their rights when they enter the workplace. But regulated corporations are treated as if they were desperately vulnerable “persons” deserving maximum constitutional protection.

In this issue's centerfold, Peter Kellman offers an analysis of Labor's woes and a program for beginning to address them.

From the Field — Defining the Corporation

CORPORATIONS CAN'T OWN FARMLAND HERE

South Dakota citizens are not sitting quietly while giant agribusiness corporations take over the farm economy and destroy a way of life. In November's election, 59 percent of voters approved a constitutional amendment prohibiting corporations from owning farmland in the state. It would also end the practice of companies contracting with farmers to raise crops or livestock. While this action will most likely be challenged in the courts, it gives voice and momentum to self-governance in South Dakota. To

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Readers are encouraged to get back to us with comments, questions and suggestions. We promise to read every one of them.

Please include a way for us to contact you, should BWA want to quote you with attribution.

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TAKING DEMOCRATIC CONTROL

Arcata, California, passed a November ballot initiative that asks the City Council to co-sponsor with Democracy Unlimited of Humboldt County (DUHC) two town hall meetings on the question: "Can we have democracy when large corporations wield so much power and wealth under law?" The initiative also asked the city to establish a standing commission on Democracy and Corporations that would "propose policies and programs to ensure democratic control over corporations conducting business within the city." Look for more on the Arcata Initiative in the next issue of BWA. You can reach DUHC through Paul Cienfuegos, POB 27, Arcata, CA 95518. E-mail: cienfuegos@igc.org

CITIZENS JUST SAY NO

Wayne Township in Mifflin County, Pennsylvania, passed an ordinance that prohibits any corporation from doing business in the township if it has a history of repeatedly violating regulatory or statutory law, or if a member of its board of directors is on the board of any corporation with a history of such violation. Included is a clause granting citizens the right to petition the township to investigate and define which corporations or subsidiaries locate within town boundaries. Other jurisdictions in the state are looking at this precedent with interest. For information contact Community Environmental Legal Defense Fund (CELDF), 2244 Lindsay Lot Road, Shippensburg, PA 17257. E-mail: tal@cvns.net

Just Say No

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rule of law, and, of course, threatening to sue. When communities say no to the corporations and their towers, which is now happening, the corporations DO sue. Citing the authority of the 1996 Act, which the telecommunication corporations wrote, they instruct federal judges to order city councils, county legislatures, New England-style town meetings—wherever democracy rears its head—to get out of the way. And citing the Civil Rights Act of 1964, they also claim that their civil rights have been violated, and so demand that offending communities cover their lawyers' fees.

In the late 19th Century, the US Supreme Court defined business corporations as legal persons under the 14th Amendment. When a community dares to say no to corporate poisoning and corporate political assault, corporate operatives demand that our courts—backed by the police and the army—punish the community and protect the corporation.

The courts comply, defending the rule of law, and proclaiming that the Constitution made them do it. This is what the Supreme Court said when it declared in 1857 that the slave Dred Scott was property with no rights any

court must respect. This is what the Supreme Court said in 1896 when it declared that Jim Crow laws were legal. This is what the Supreme Court said in 1886 when it decreed that the 14th Amendment, added to the Constitution in 1870 to protect the right of freed African Americans, had been intended to bestow upon the business corporation the civil and political rights of white, property-owning persons.

And this is the basis for a federal court's recent award of attorneys fees to the Omnipoint Telecommunication Corporation under section 1983 of the 1964 Civil Rights Act.¹ This law—banning discrimination by race, religion and gender—was derived in part from the Anti-KKK Act of 1871, a law passed to protect African Americans in the former Confederacy. Today, our courts are using it to protect corporations from the free speech and self-governing initiatives of the American people assembling in our communities.

How do you like them microwave apples?

1. See Omnipoint Communications Enterprises L. P. v. Zoning Hearing Board of Chadds Ford Township, PA, UCS Bi, 98-2295, November 1998.

Labor Must CHALLENGE CORPORATE RULE

By Peter Kellman

It is time for labor to go beyond signing contracts with corporations. We need to start challenging the very concept of corporate privilege and rule.

The people of this country need to act on the understanding that we the people create corporations through our state legislatures. As the Pennsylvania Legislature declared in 1834, "A corporation in law is just what the incorporation act makes it. It is the creature of the law and may be molded to any shape or for any purpose the Legislature may deem most conducive for the common good." If we don't mold corporations, they will continue to mold us. They will mold us at the expense of our rights, our health, our democracy, our communities, our environment and most importantly, our souls.

For almost 80 years, labor's message has been primarily limited to protecting the interests of organized workers. But workers' rights don't exist in a vacuum. A fundamental law of physics can also be applied to politics: two things cannot occupy the same place at the same time. Workers' rights in this country have been relegated to a little space under a chair in the corner of a large room occupied by corporate "rights"—in quotes because only people can have rights, and corporations are not people.

People have rights, inalienable rights. Corporations have only the privileges we the people give them, because corporations are created by

people through their legislatures. Corporations are not mentioned in the United States Constitution. Their constitutional privileges stem from Supreme Court cases, judge-made law. These judges are lawyers, appointed for life. In *Santa Clara County v. the Southern Pacific Railroad Corporation* (1886), the Supreme Court of the United States declared that "...equal protection of the laws, applies to these corporations." The meaning of the Court was clear: corporations are persons under the law deserving "equal protection."

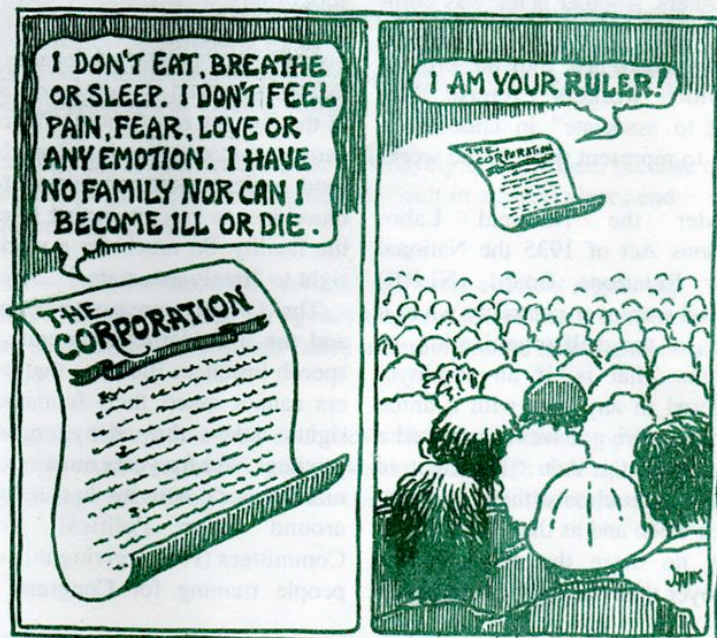
Equal protection is a term used in the 14th Amendment to bring African-Americans under constitutional protection. The activist Court

of 1886 bestowed "equal protection" on the corporation. This judicial conversion of people's rights to corporate privilege has done much to create the present situation. The price of each expansion of corporate privilege has been a contraction in workers' rights.

Every day union people are confronted with this erosion of their rights in union organizing, internal governance, the political process and authority over union property such as pension funds. Look, for example, how the court's role diminishes the power of the Occupational Safety and Health Administration (OSHA) to the detriment of workers' rights.

OSHA was put in place by Congress in 1970. When you called up OSHA, it would send an investigator to your place of work. Corporate managers objected and went to court. They argued that the corporation should be afforded the same protection that flesh and blood people have under the Fourth Amendment against unreasonable

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searches of their property. They said OSHA inspectors needed a search warrant to inspect corporate property!

In 1978 (*Marshall v. Barlow*) the Supreme Court of the United States agreed. So the right of individual people to be protected from the government arbitrarily entering a persons home was extended to corporations. The Court ruled that corporations have the privilege to require OSHA inspectors to get a search warrant before entering corporate property to investigate the complaints of a worker regarding her health and welfare. In essence, the Court interpreted the obligation of the government to "promote the general welfare" of workers to be secondary to the liberty of a corporation to prevent entry of a government inspector. In this case, while the OSHA inspector is getting a warrant from a judge, the corporation can clean up its act and avoid being found in violation of the law.

The OSHA case is but one example of how the granting of privileges to corporations diminishes the rights of workers. Another is the way corporate employers injected "employer free speech rights" into the process by which workers exercise their "right to associate" in choosing a union to represent them in the workplace.

Under the National Labor Relations Act of 1935 the National Labor Relations Board (NLRB) required employer neutrality when it came to the self-organization of workers. That is, if an employer interfered in any way with a union organizing drive it was considered a violation of the Act. "The right of employees to choose their representatives when and as they wish is normally no more the affair of the employer than the right of the stock-

holders to choose directors is the affair of employees" stated the Board. However, with the 1947 passage of the Taft-Hartley Act (termed "the slave labor act" by labor), corporate privilege was inserted into labor rights and corporations were granted "free speech" in the union certification process.

The concept of "corporate free speech" in the union certification process may sound benign to the casual observer. However, if you are involved in a union organizing drive the brutality of the corporate employer's use of "free speech" to usurp the worker's right to "freedom of association" becomes apparent in many ways. One example is called the "captive audience meeting" where the employer assembles workers during working hours and harangues them on the negative consequences of unionization. The corporate spokesperson will inject the notion that if the workers choose a union the company might take that as a sign that their facility might not be a good one to invest in. The company spokesperson will point out that many union shops have been closed over the past couple of decades and the work moved to non-union areas of the country or offshore. The company uses "corporate free speech" to send a clear message: voting for a union means you are voting to close the facility. So much for a worker's right to "freely associate."

The OSHA unreasonable search and the Taft-Hartley corporate free speech instances illustrate that workers cannot assert their fundamental rights unless they deny corporate privilege. Yet for years most of organized labor's activity has revolved around labor Political Action Committees (PACs) giving money to people running for Congress. The

money was followed by union leaders trying to convince union members to vote for endorsed "labor candidates." Then, when the new congress took office, labor lobbyists encourage politicians to support labor issues. Labor's record isn't very good because the focus has been on the money given to politicians instead of rank-and-file organizing to confront corporate privilege.

If labor abandoned its PACs and focused its energy on getting members involved in the process, think of the results. First, labor could develop organizations that would put resources into involving the membership in the political process rather than trying to influence politicians with money for their campaigns. Secondly, imagine the message that labor would be sending by voluntarily giving up that corrupting influence on our body politic, the Political Action Committee.

The bottom line is that historically, managers and large stockholders of corporations have a leg up on the rest of us. This process has continued for over 100 years and unlike the union people of a century ago, we no longer understand the origins of corporate privilege. So it is time to take another look. And out of that look MUST come an agenda created by working people that promotes workers' rights and challenges the root of corporate privilege.

So what is labor to do? Labor should take a sabbatical for a year and use the time to analyze what we have been doing over the past century. Then, with history as a guide and real democratic participation of the membership, labor could put together a new agenda that promotes workers' rights and attacks corporate privileges.

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One such agenda is already in place. The following resolution addressing many of the issues raised by Peter Kellman was unanimously approved at the Labor Party's First Constitutional Convention, held in Pittsburgh, Pennsylvania, November 13 - 15, 1998.

Resolution: WORKPLACE BILL OF RIGHTS

WHEREAS, the Bill of Rights of the United States Constitution does not protect us against the denial of our rights by private concentrations of power and wealth, and

WHEREAS, we have wrongly come to accept that at work we are not entitled to the rights and privileges we normally enjoy as citizens, and

WHEREAS, private wealth has made sure to convince the Supreme Court that although a corporation is not a living person it is afforded the protections and rights of the Bill of Rights, while living persons at work are denied these same protections, and

WHEREAS, we therefore find that the corporations and Congress through current law have turned democracy exactly backward —

At work, we are guilty unless proven innocent;

At work, we obey orders upon penalty of discharge;

At work, our most fundamental right, that of free speech, does not apply;

At work, we cannot freely associate with others to protect our interests;

At work, we have to qualify for rights, forced to take extraordinary efforts to win representation elections, gain government certification, and bargain employer recognition of even minimal rights. On the other hand, the corporations are assumed to possess civil rights, do not have to gain such rights, and consequently have more rights under the law than do people, including their "right" to free speech, to hold captive meetings of their employees, and to express political opinions; and

WHEREAS, working people's efforts to organize unions and bargain collectively is now made, because of the very imbalance in civil rights and economic power, to be extremely difficult in all workplaces and almost impossible in some sectors of the economy; and

WHEREAS, our usual political remedies — calls for labor law "reform" and more efficient regulatory agencies — miss the main point, which is that any legislation or agency that seeks to restrict a corporate "person's" freedom will be rejected, and such efforts have in fact failed miserably under both Democratic and Republican Party administrations; and

WHEREAS, in Japan, Canada and throughout Europe, the very countries which are our trading partners, competitors and national peers, there already exist long-standing methods that recognize civil rights at work, including those for forming unions, bargaining collectively, and otherwise dealing with the employers; and finally

WHEREAS, millions of U.S. workers are AT THIS MOMENT anxious and willing to form unions and bargain with their employers over matters of concern, and are ready to add their huge numbers to our union ranks. In other countries comparable to the United States, these workers would be free to speak, associate, organize unions and bargain with their employers.

THEREFORE BE IT RESOLVED THAT:

1. The Labor Party rejects the status quo of today's workplace where workers are forced to abandon their Constitutional Rights in order to earn their living, and are as a consequence subject to the tyranny of the corporation.
2. The Labor Party demands that workers have the actual right to concerted activity, free from employer involvement or interference, and that any number of interested workers in a workplace must have the right to form a union, and bargain with their employer.
3. The Labor Party insists that all workers must have the ability to exercise their rights to concerted activity irrespective of job titles and responsibilities, citizenship status, method of payment, or sector of the economy in which employed.
4. The Labor Party holds that workers, including workfare, contingent, part-time, temporary, and contract workers, must have the right to bargain over the terms and conditions of their labor with the employer(s) who controls or influences their work environment, irrespective of ownership title.
5. The Labor Party insists upon the restoration of all rights of free association, including the voluntary joining together to redress grievances by strikes, economic boycotts, sympathy actions, "hot cargo" agreements, and common situs picketing.
6. The Labor Party rejects limits on subjects upon which employees and unions may bargain with employers.
7. In order for this Campaign to be advanced, the Labor Party commits itself to:
 - A) Popularize this Campaign through Labor Party communications and with unions affiliated with the Labor Party;
 - B) Select a state in which to develop a state-based campaign to reform state labor relations laws and statutes in accordance with the above principles;
 - C) Select a state which presently does not permit collective bargaining rights for public employees in which to develop a state-based campaign for rights in accordance with the above principles;
 - D) Select a city or other location in which to popularize, build support around, and in other ways make real the Labor Party's campaign to bring the Bill of Rights into the workplace;
 - E) Conduct educational work within the trade union movement, helping all of us to rethink what we mean by workplace rights, to learn what is the practice in other countries similar to the United States; how the current imbalance between corporations and individual rights has evolved in our own country, and how the Labor Party proposes to change this;
 - F) The Labor Party supports the formation of committees of fired workers wherever possible, to organize and support their fight for workers' rights.

attorney general's REGULATORY fig leaf challenged

Dear David,

Thank you for the letter of September 9th in response to our request to the Attorney General's Office for the initiation of charter (certificate of authority to do business) revocation proceedings in Maryland against Neutron Products, Inc.

We are in substantial disagreement on several points — I've outlined the primary ones below.

(1) You mention in your letter that the state of Maryland has permitted Neutron Products, Inc. to leak radiation, fail to maintain appropriate records, and fail to monitor the property properly for radiation emissions. By what authority does Neutron Products, Inc. cause these harms in the first place? By what authority does Neutron Products, Inc.— the very creation of the citizens of the State of Maryland—flout the laws of the State of Maryland? Surely, this irregular situation is exactly the type of scenario guarded against by the Charter Revocation laws of the State of Maryland and it is the duty of the State's chief law enforcement officer to initiate charter revocation proceedings.

It would seem in some ways, that the master has become the servant.

(2) You mention that "the Attorney General's Office must give proper consideration to the present status of the matter within the regulatory process." Is this deference statutorily mandated? As the state's chief law enforcement officer, it

would seem that if laws were being broken, and public harm was being caused, that the Attorney General is under no obligation to defer to the legislature's inactivity as a reason for delaying action. In fact, just the opposite would seem true—that if one governmental branch is failing to respond to citizen concerns, that a very real duty materializes on the part of another branch to prevent and stop public harms.

These are just two of the points that we would raise vis-a-vis the situation between an artificial corporate entity that continues to cause harm versus the right of the democratic people, through their elected governments, to assure that they will be safe in their homes from the activities of any corporation chartered by them.

David, these are exactly the types of concerns that are being raised here—the ability of an artificial entity, given the privilege of operation by Maryland citizens, to cause harm to the very citizens that initially bequeathed the privilege.

The Maryland Corporate Charter Revocation Statute, as the revocation statutes in forty-nine other states and the District of Columbia, were codified to rectify this situation. Corporations that were thus "misusing" or "abusing" their charter powers were subject to revocation of their privilege to do business.

We'd enjoy the opportunity, at your convenience, to meet with you concerning this grave situation.

In the previous issue of BWA, our feature article ("Sheep in Wolf's Clothing") suggested that regulatory agencies, and by extension the regulatory state, are inherently flawed forums for our activism.

Here is an example from real life illustrating how sovereign people might respond to efforts to frustrate their democratic will through regulatory obfuscation promulgated (as they say) under cover of "the rule of law." This letter was sent to David M. Lyon, Assistant Attorney General of the state of Maryland, September, 1998.

When such a meeting is arranged, perhaps the local elected officials who have become enmeshed in this unfortunate situation would also enjoy attending. We believe that it is essential to resolve these concerns with as much participation as possible from every distinct level of government.

We thank you for your attention to this important matter and look forward to hosting you in January for the "Rethinking the Corporations/Rethinking Democracy" conference in Harrisburg, PA.

Sincerely,

Thomas Alan Linzey, Esq.

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Legal Defense Fund
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Shippensburg, PA 17257

Clarification:

The "Sheep in Wolf's Clothing" article in BWA #1 should have been copyrighted, Jane Anne Morris ©1998.