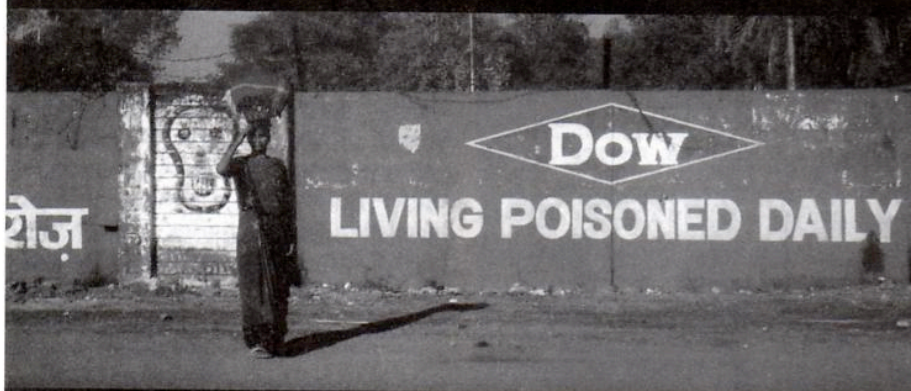


By What Authority

A Publication of the
PROGRAM ON CORPORATIONS,
LAW & DEMOCRACY

Vol. 7, No. 1 • Spring 2005

THE MEANING OF BHOPAL



Reframing the World's Worst Industrial Disaster After 20 Years

By Ward Morehouse

A NIGHT OF HORROR

Late at night on December 2, 1984, most of the people of Bhopal, India, were sleeping peacefully when their city was blanketed with a cloud of highly toxic gases spewing from a Union Carbide Corporation pesticide plant. They awoke with eyes burning, lungs aching and began running for their lives. The next morning's scene was one of absolute horror: roads and lanes littered with the dead bodies of persons and animals, hospitals overwhelmed with desperately sick and dying Bhopalis.

Within 48 hours of that fateful night, at least 4,000 persons died, more likely twice that figure. This is many more fatalities than occurred on September 11, 2001, in New York and Washington. The death toll today, 20 years later, is over 20,000, and more than 100,000 people are permanently disabled. This disaster was caused by faulty

plant design, wantonly negligent management, and cost cutting on safety devices for a plant running at a loss.

After years of stalling litigation in Indian and United States courts, 1989 found Union Carbide Corporation colluding with the government of India in a \$470 million settlement. This is a trivial sum, barely enough to cover modest medical expenses for many survivors, compared with compensation awards in U. S. courts that can run into billions of dollars.

In 2001, Dow Chemical Company acquired Union Carbide Corporation and its assets, and maintains to this day that it has no liability for the Bhopal disaster. **Twenty years after that fateful night, most survivors have received less than \$500 in compensation, their descendants are plagued with various illnesses and disabilities, and pollution at the factory**

site and nearby residential colonies has not been cleaned up.

The Bhopal disaster remains, by most calculations, the world's most horrendous industrial disaster. Given the magnitude of loss of life, disabling injury and community destruction, it has been labeled "the Hiroshima of the chemical industry."

OBSTACLES TO JUSTICE

The International Campaign for Justice in Bhopal (ICJIB), a worldwide coalition of worker, religious, environmental and human rights groups, has characterized the current state of the struggle and assessed its significance in these words:

"Twenty years after the world's worst industrial disaster in Bhopal, India, survivors and their children are still battling against an insensitive government to bring a criminal corporation to address its pending liabilities. Meanwhile, the Union Carbide Corporation is now a wholly owned subsidiary of the U. S. transnational Dow Chemical Company."

ICJIB, reflecting the demands of the survivors, states that the Dow Chemical Company (and Union Carbide) must:

- ensure that Warren Anderson, former chairman of Union Carbide Corporation, no longer escape criminal justice in India and face trial, along with the authorized representatives of the company, in Bhopal's criminal court;
- provide long-term health care for exposed persons and their future generations. This includes medical care, health monitoring and necessary research studies;
- clean up poisons at the plant and remove all contamination from the ground water and soil in and around the abandoned factory;
- provide economic and social support to survivors and their families.

These are not outlandish demands, but rather the minimum that justice requires.

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By What Authority (ISSN: 524-1106) is published two times a year by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation, and plunder the earth. **By What Authority** reflects an unabashed assertion of the right of the sovereign people to govern themselves.

POCLAD is a group of 12 people instigating democratic conversations and actions that contest the authority of corporations to govern. Our analysis evolves through historical and legal research, writing, public speaking, and working with organizations to develop new strategies that assert people's rights over property interests.

BWA is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions, and suggestions.

POCLAD
P.O. Box 246
South Yarmouth, MA 02664-0246
508-398-1145; 508-398-1552 (fax)
people@poclad.org; www.poclad.org

POCLAD is a project of the nonprofit Council on International and Public Affairs.

Bill Bachle, London, UK
Karen Coulter, OR
Greg Coleridge,* OH
Mike Ferner, OH
Richard Grossman, PA
Dave Henson, CA
Ward Morehouse, MA
Jane Anne Morris, WI
Jim Price, AL
Virginia Rasmussen,*† NY
Mary Zepernick,* MA

*BWA editorial board
†BWA editor

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BHOPAL (continued from page 1)

So why, more than two decades later, has justice yet to be delivered? How is it that corporations can pillage, poison and destroy with such impunity – here, there and everywhere? Is such behavior “criminal” or is it business as usual under the law?

Warren Anderson and his Union Carbide Corporation cohorts have, for over 20 years, hidden behind the legal shield of limited liability. **The Dow Chemical Company acquired Union Carbide Corporation's assets, yet denied any responsibility for the liabilities in India from which its subsidiary walked away. How is it that these legal fictions became so powerful as to wreak havoc and death in their wake, only to move on to the next conquest, country and merger?** When natural persons acquire something – let's say, a house – they assume the pluses (enclosed porch and lovely fireplace) and the minuses (leaky roof and shabby paint). Where is the legitimacy in corporations “privatizing the gain and socializing the pain,” as they take the profits and dump the costs on everybody else?

The answer, in considerable part, is that they are protected by legal regimes rooted in corporate power and backed by violence or threat of violence. Such legal regimes confronting Bhopal survivors in both India and the United States have been formidable barriers to justice. These barriers were partially overcome when the survivors took to the streets, embracing “people's law.”

It is a truism, manifested repeatedly in the Bhopal struggle over the past decades, that courtrooms are corporate turf while people's movements function best in the streets. Still, Bhopal survivors and their supporters have learned much about melding legal action and street action as they sought to overcome obstacles to justice.

THE TIDE HAS TURNED

For the first decade and a half after the Bhopal disaster, the struggle for justice was all up hill. There were all too few achievements by survivors and their supporters. One notable exception was the agitation that led to the payment of interim relief allowances to gas affected persons. The allowances were meager but helpful to the destitute who had lost their capacity to engage in heavy labor. Union Carbide and the Government of India (with political cover provided by the Indian Supreme Court) reached a settlement of personal

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injury claims in 1989 that was reaffirmed in 1991. Unfortunately, processes for claim adjudication and payment of allowances for injuries or death became corrupt, resulting in little or no help to those who suffered so much.

Yet the people persisted in their struggle. **Survivors assumed leadership, formed their own organizations and built new ties with support groups in the United States and elsewhere. Together they laid a foundation for steps forward in the last half decade.** Following a hunger strike by survivors and a worldwide campaign by activists, the Indian government finally issued a “no objection” letter to New York's Federal Court, clearing the way for litigating Union Carbide Corporation's cleanup of the Bhopal factory site and addressing the public health effects of that contamination. **Whether a trial will be held is uncertain but preparations are moving ahead with the exercise of discovery over documents and deposition of Union Carbide officials. If the corporation opts for a settlement in order not to have its complicity in this historic catastrophe more fully revealed, the lawyers for the survivors will have enhanced their bargaining position.**

A public interest lawyer in Delhi succeeded in getting the Indian Supreme Court to order the government of India to pay survivors the remaining compensation money from the Union Carbide settlement of more than ten years earlier. **This provides a small psychological boost for those who have endured endless pain and dismissal.**

In another achievement, the Chief Magistrate in Bhopal ordered Dow Chemical Company to deliver Union Carbide Corporation to stand trial on the criminal charges of culpable homicide outstanding against it. **Survivors and their supporters have been working for years to bring this corporation and its chairman and chief executive officer at the time of the Bhopal disaster, Warren Anderson, to trial in Bhopal.**

THE REFRAMING CHALLENGE

The struggle for justice in Bhopal over the last two decades has been bedeviled by a preponderance of “head-banging” or “fire-fighting” initiatives. It was frustration with “conventional” methods of fighting corporate power in the Bhopal case that led this author, a decade ago, to join hands with Richard Grossman, Peter Kellman, and the other POCLAD principals in pursuing different analyses and courses of action that sought to attack the foundations of corporate power and not the harmful behavior of specific corporations. Bhopal survivors and their activist supporters can hardly be expected to abandon short term, specific goals (like the “no objection” letter from the Government of India to the U. S. Federal District Court) when so much is at stake that affects their very survival. Yet, Bhopal is a story of one, or at most two, chemical corporations. How do we move beyond corporate “social responsibility” and ineffective regulatory initiatives to actions that effectively challenge corporate legal authority in a rapidly globalizing world?

Amnesty International recently issued a report on Bhopal entitled, *Clouds of Injustice: Bhopal 20 Years On*. It concludes that the Bhopal disaster and its aftermath clearly demonstrate the need for an international human rights framework that could be applied to companies directly and act as a catalyst for changes in national law. The report states, “The international community must ensure that victims of human rights violations have effective access to justice and effective redress for the harms suffered, without discrimination, and regardless of whether those responsible... are governments or corporations.”

A human rights framework that will accomplish this goal must include the fundamental right of self-governance. With the people in charge of the institutions they create, governing and otherwise, communities would have authority to establish both preventive and remedial policies, enabling them to take *defining* action against corporate violators of human and earthly rights. Standing behind such a rights-based approach is the 1948 United Nations’ *Universal Declaration of Human Rights*, which claims the people’s will as the basis of all governing authority, their right to personal security, and to a social and international order that enables these and all rights stated therein to be realized.

The Charter on Industrial Hazards and Human Rights, which emerged from a series of people’s tribunals in the 1990s on matters of corporate assaults against communities, takes an important step toward reframing the goals of struggle in Bhopal, as does the *Algiers Declaration of the Rights of Peoples* (1976) on which it builds. Characterized by a formulation for people’s rights from the bottom up rather than the top down, this Charter could become a dominant feature in the next round of action around Bhopal. Requiring that corporations adhere to this charter would go a long way toward empowering those exposed to risks which, to use Charles Perrow’s compelling language in his 1984 book, *Normal Accidents*, “a few have decided the many cannot do without.”

Perrow also reminds us that the real issue for communities like Bhopal is not risk but power. And it is precisely misplaced and misused power that makes it so extraordinarily difficult to achieve a just environment where disasters like Bhopal can no longer occur. There is need to outright eliminate multinational corporations’ right to “forum hop,” to take their case to places distant from that in which the damage was inflicted. This in turn is a subset of limiting the mobility of capital which some (the author included) believe to be a critical step in putting an end to corporate rule of the world.

Within India, there is critical memory embedded in the phrase, “Quit India.” The people’s demand for the end of British colonial rule, and for the exodus of corporations causing great destruction in recent times, holds power among India’s citizens. Is it not logical for the people of Bhopal to require, in the spirit of the people’s right to define their communities and economies, that Dow Chemical Company pay just costs for its appalling assault on Bhopal and then “Quit India”?

In both international and Canadian law, Union Carbide Corporation committed serious crimes against humanity in Bhopal. The ultimate challenge to any such crime means confronting the illegitimate power of massive corporations. As long as the perpetrators of the world’s worst industrial disaster roam free, the message to all global corporations is that in pursuit of profit, they can kill and maim innocent people. The time has come to send a different message by enforcing present law, as well as writing new law, that serves and protects the people.

Is it not logical for the people of Bhopal to require, in the spirit of the people’s right to define their communities and economies, that Dow Chemical Company pay just costs for its appalling assault on Bhopal and then “Quit India”?

In the final analysis, the Bhopal story reflects the vital importance of “people’s law” in the struggle for justice. When legal systems backed by state and corporate power failed survivors and their counterparts elsewhere, legal actions based on popular formulations of justice and the right to be human emerged. The hunger strikes, marches and demonstrations by Bhopal survivors and the various sessions of the Permanent People’s Tribunal leading to the *Charter on Industrial Hazards and Human Rights* are all manifestations of people’s law – an unsettling prospect for those few who would continue to rule the many. The compelling challenge for the future is to frame and apply people’s law regimes that serve the ends of justice.

One important characteristic of the Bhopal struggle is its symbolic revelation of the pathology of corporate-driven globalization. Justice for Bhopalis would set a towering precedent in international law that no corporate operatives could ignore. Given this possibility, it can truly be said that Bhopal is everybody’s business as it is also a striking affirmation of these words by the Czech author, Milan Kundera:

“The struggle of people against power is the struggle of memory against forgetfulness.”

NOTE: Portions of this essay have been drawn from Ward Morehouse and Chandana Mathur, *People Against Power*, forthcoming (2005); Bridget Hanna, Ward Morehouse, Satinath Sarangi, *The Bhopal Reader* (2005); Ward Morehouse, *Reframing Bhopal - Discussion Notes* (Memorandum to the Program on Corporations, Law & Democracy principals, June 29, 2004); and Chandana Mathur and Ward Morehouse, “Twice Poisoned Bhopal,” *International Labor and Working Class History Journal*, No. 62 (Fall 2002).

The Rule of Property

By Karen Coulter



Painting by John Constable

HISTORICAL CONCEPTS OF PROPERTY AND THE COMMONS

In 1942, British Labourite Member of Parliament Aneurin Bevan, said, "Either poverty must use democracy to destroy the power of property, or property in fear of poverty will destroy democracy." This fundamental conflict between individual property rights and an egalitarian or radical democracy remains on center stage today. Its deep roots rest in historical political clashes that brought a redefinition of property, rapidly shifting it from the hands of the many to those of the few. The authority to define equates with the power to govern.

The meaning of the word "property" has changed dramatically over the course of history. Most cultures of the world held property to be one's personal possessions, such as clothing, household goods and the tools of one's trade. Land, on the other hand, was held in common and often viewed as insepara-

ble from God or Nature, denied to human ownership. Under Iroquois Confederacy law, the buying, selling and monopolizing of land was illegal and immoral. The commons concept underlay many cultures' mode of community organization. These included indigenous traditions of Native Americans, West African villages, the Irish kinship-based society before the English conquest, and the more recent Mexican ejido communal land system. These cultural commons varied widely in organization, being based on clan rights, gender rights, or powers conferred on some other social group. They had differing practices regarding member participation, equity and relationship to the natural world.

Knowing the world as a commons generated a very different reality from that held by most of us in today's ownership society. When missionary John Heckewelder scolded a Native American for grazing horses in "his" meadow, he heard this response: "My

Editor's note: This is the first article of a two-part series on the connection between property and power. **Part one** tells the story of the enclosure of the commons in England as historical antecedent to the rule of property in the United States. The development of the modern corporation as the primary instrument to "enclose" every aspect of our lives is described. **Part two** (next issue of *BWA*) follows the rule of property into the colonies of the "New World," reveals the history of popular resistance, and outlines the role of the U. S. Constitution in creating the dominating power of private property rights. It concludes by exploring a shift toward revaluing the commons, granting it cultural and legal protections by laying claim to people's governing rights in a democracy.

friend, it seems you lay claim to the grass my horses have eaten because you had enclosed it with a fence. Now tell me, who caused the grass to grow? ... (T)he grass which grows out of the earth is common to all."

The commons shapes a social system and defines human arrangements. It is not just bodies of water, acreage of land and natural resources. Examples of commons that are acknowledged today include government-owned property (e.g. public lands); natural systems such as the oceans and atmosphere; user-managed regimes such as community gardens, land trusts and Linux computer software; social networks based on gift exchange such as public libraries, and inherited information or understandings such as historical knowledge, scientific developments, and cultural traditions. Writers in *The Ecologist* magazine describe the commons as "...the social and political space where things get done and where people

derive a sense of belonging and have an element of control over their lives.”

The more limited such shared democratic space becomes, the more inequality, ecological devastation, dehumanization and totalitarianism prevail. Anatole Anton describes the antithesis of the commons-based society: “...privatization, commodification, and the increasingly exclusive control of nature, communicative space, the social order, the political order, and the economic order that is characteristic of our time.” Put directly, the seizure of common property has translated into illegitimate governing authority for an owning elite.

ENCLOSURE AS MEANS TO DEPRIVE AND DEFINE

The commons has largely been removed as a keystone of democracy from the framework of U. S. cultural perception. Therefore, it is important to examine the 17th Century enclosure of the English Commons, a momentous revolution by the privileged few against the many poor. British imperialist policies went on to impose this enclosure model on the common lands of cultures around the globe. The American colonies did not escape this tumult.

The authors of the U. S. Constitution consolidated the heritage of enclosure and ensured the primacy of private property rights over the common good in the United States. For example, the Constitution’s slave system turned people into private property. While the Articles of Confederation gave states control over their economies, the Constitution’s commerce clause took that control away, even denying people the right of protection against harmful property being transported into their borders. So the landed minority, using property as its tool, designed a system of governance to take charge of the majority with little difficulty. **The United States has gone on to perfect the strategies, law and lore of prop-**

erty – its privatization, commodification and appropriation – to control peoples, cultures and ecosystems worldwide.

Pierre-Joseph Proudhon, the French Anarchist (1809-1865), equated property with theft, defining property not as the simple possessions of the peasant or artisan by which to make a living, but as the “sum of its abuses: competition, isolation of interests, monopoly, privilege, accumulation of capital, exclusive enjoyment, subordination of functions, individual production, the right of profit or increase, the exploitation of man by man.”



Feudal society in England was characterized by strict hierarchy – lords and masters over serfs; insistence on a particular religion as a means of maintaining the social order; exclusion of rights and advancement from those without property. There was also a growing resistance to these oppressions. Incorporating efforts to preserve liberty within their daily lives, new religious sects sought to democratize God; cottagers and squatters lived freely within commons, “wastes” and forests; urban “masterless men” – agitators, criminals, vagabonds and beggars – roamed the countryside and spread news of resistance movements. Sylvan liberty in the forests was an escape from the rule of property, as immortalized in the Robin Hood stories. Extensive forests then served as a shield for a free and mobile society while greater governmental and religious control reigned in the agricultural plains. The people of the woods were said to live without laws, government and dependency.

The controlling few considered the commons as “the nurseries” of those who refused to labor for others. And so deforestation and enclosure were promoted as ways to get rid of beggars, make the land more productive in a capitalist sense, and “employ thou-

sands of idle hands.” **In the mid-17th Century, the ancient commons were literally fenced by the landed gentry, replacing the age-old planting practices of the many with crops for the profits of a few. The resulting push by the ruling class for universal wage slavery was advanced by both enclosure and the takeover of individual craftsmanship by new industrial technology. A person laboring for wages would be more dependent on the capitalist system, both in England itself and in its growing colonies abroad, than one who was self-sufficient and independent.** This fundamental shift to dependency on capital and control originating elsewhere culminated in the current, vulturous “free trade” regime that now creeps into every nook and cranny on the planet.

The English Civil War contributed to the tearing of people from the land and a breakdown of authority. Destructive campaigns against squatter life filled the years from 1646 to 1660, but the uprooted refused to wither under the onslaught. After 1640, commoners increasingly asserted their rights through direct action.

THE DIGGERS’ RESISTANCE

On Sunday, April 1, 1649, a group of poor men gathered on St. George’s Hill and began to dig – planting carrots, parsnips and beans as a way to claim ownership of the common lands and reject conventional piety by ignoring the Sabbath. A contemporary observer witnessed, “They invite all to come in and help them and promise them meat, drink and clothes... They will be four or five thousand within ten days... It is feared they have some design in hand.” The Digger colony on St. George’s Hill was just one well-documented example of many such undertakings by those in resistant occupations.

The Diggers’ ordered the lords of the manors to stop cutting down “our

continued on page 6

common woods and trees... for your private use” (as the U. S. National Forests are now cut down by corporations for private use). **After Oliver Cromwell’s reformist victory over the monarchy, the Diggers demanded in 1650 that “confiscated church, crown and royalists’ land be turned over to the poor.” Such statements deeply challenged existing property usurpations with the consequence that direct military intervention on behalf of private property was soon taken by the new English republic.** The commoners were forced from St. George’s Hill by the end of the year.

Sounds familiar, doesn’t it? Property and rights deemed the domain of a ruling elite have long been protected by the armed military and police forces of a country. Whether we speak of people’s claims to the commons in the seventeenth century, the American colonists’ claims to fair governance in the eighteenth century, women’s claims to voting rights and workers’ claims to safety on the railroads in the nineteenth century, activist claims against corporate harms to our communities, environments and economic lives in the twentieth and twenty-first centuries, the response is always the same. People acting in unison on behalf of equality, fairness, ecological sanity, worker and public health, or real democracy are brought to heel by the “Rule of Law” in service to property and backed by government force.

The Diggers were accompanied in their rebellion against the elite’s redefinition of property by many other common folk including the Anabaptists, Antinomians, Familists and Ranters, the Quakers, New Model Army and the broader Leveler movement. These resisters put forth schemes to limit wealth and land concentration in English society. They demanded that the property of the rich be shared

among the poor and redivided yearly. **The Levelers reality was the commons and so they called for changes in their society that are unrecognizable in today’s dominant frame of reference. They advocated the abolition of buying and selling, with the resulting absence of property in a possessive, legal sense. This would greatly reduce the need for judges and lawyers – and by extension, for the coercive state.** Like their counterparts in every generation, they established arrangements for everyday life that manifested vastly different values, that put in place commitments to collectivity and fairness.

In contrast, in 1641, Sir Thomas Aston defined “true liberty” as knowing “by a certain law that our wives, our children, our servants, our goods are our own.” This patriarchal sentiment illustrates why Levelers equated enclosures and the coercive power of the state with slavery.

In the pivotal Putney debates of 1647 the landed gentry argued these issues with the New Model Army and Levelers. Henry Ireton, a spokesman for the gentry, acknowledged, “Liberty cannot be provided for in a general sense if property be preserved.” As authors Linebaugh and Rediker put it in *The Many Headed Hydra*, “The fork in the road at Putney pointed to either a future with the commons and without slavery, or to one with slavery and without the commons. The commons were a reality, not pie in the sky.”

CORPORATE ENCLOSURE OF MODERN FORMS OF THE COMMONS

The corporate form is the primary means to governing power of today’s ruling class. Its mission of unlimited production at lowest cost serves nicely to reinforce class divisions and cement the property relationships set forth by the Federalist Constitutional victory. The nation’s founding documents asserted the primacy of private prop-

“I never heard that the Creator opened an estate office to issue title deeds to land... Every proprietor of land owes to the community a ground rent for the land which he holds.”

— Thomas Paine (1737 - 1809)

erty rights over political rights of the community and the common good.

Anatole Anton characterizes the corporation as “an engine of enclosure, a device constructed to take over public goods.” The process of that construction he attributes to “judicial legislation,” presented as apolitical. Thus, with the corporation “...a structurally antidemocratic entity was created and the way was paved to legitimate the ever-increasing swallowing up of public space within an already disempowered liberal democracy. The most far-ranging political decisions, from the uses of technology to those concerning employment and the environment, are corporatized and therefore privatized. This new kind of person begins to strut on the legal stage, claiming wider and wider constitutional rights... Rather than being seen as part of the political order, the court has ruled them outside of politics.”

Corporate enclosures affect commons as diverse as child care, the environment, family assistance, public education, language (e.g. private ownership of brand names), public health (e.g. HMOs) and federal drug research. Then there is the privatization of public knowledge, the commercialization of culture and public spaces such as privatized shopping malls and sports arenas bearing corporate names. A present focus of cor-

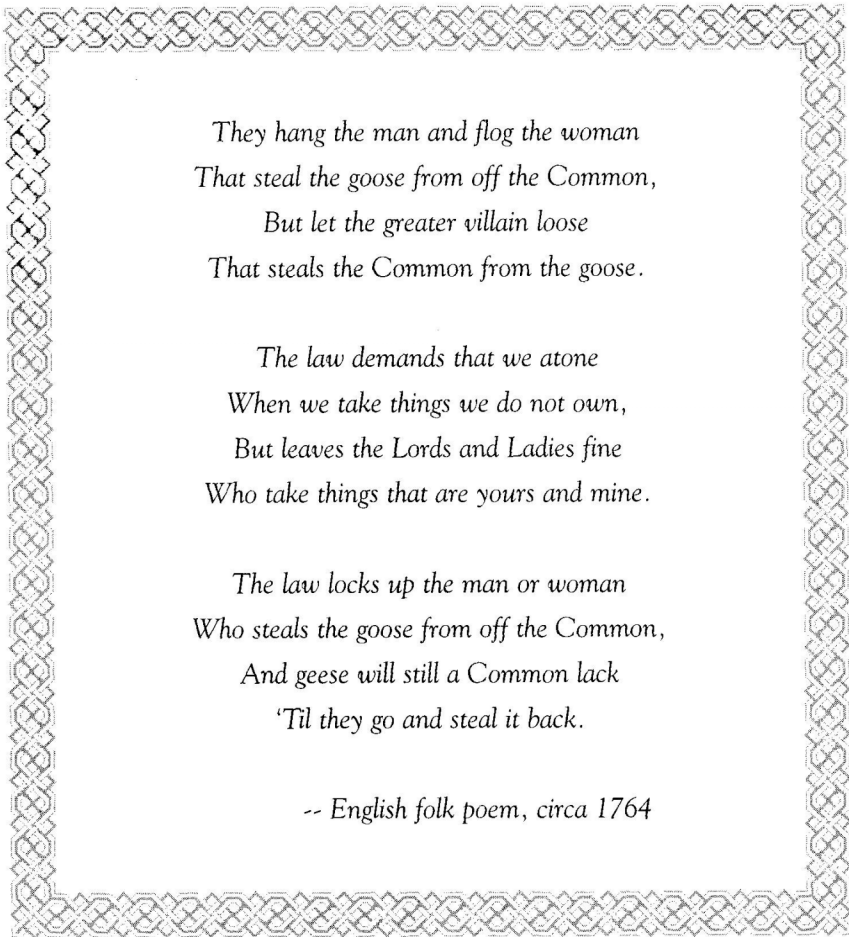
porate **acquisition** is the water and sewage **systems** of communities throughout this country and abroad. Indigenous knowledge and genetic heritage do not escape the clutches of the privatizers as they go after patents to the Neem tree, Basmati rice and human gene lines.

Lawrence Lessig, in his book, *Free Culture, How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, analyzes corporate enclosures of the cultural commons such as radio, film, recorded music, cable TV and the Internet, using the tool of “intellectual property rights.” He contrasts “permission culture... in which creators get to create only with the permission of the powerful, or of creators from the past” with “free culture” which supports **innovation** by limiting the reach of **intellectual property rights**.

Extremism in privatizing intellectual **property** has led to out-of-control **technological** developments, mad scientists **running** rampant with novel genetic **combinations** and nanotechnology **schemes** for human cyborgs – part **machine**, part human. In *Welcome to the Machine: Science, Surveillance and the Culture of Control*, Derrick **Jensen** and George Draffan painstakingly describe this technological past and present that inexorably places the vast majority of us under the watchful eye of a minority.

The diminished state of today’s commons is neither accident nor inevitable trend. It is the consequence of deliberate and methodical intent. The fact that its roots remain invisible to so many leaves people powerless to change it. As activists our work must begin with revealing invisibilities and unveiling deceptions. Only with deeper understanding can people build a sustained, effective movement to reverse and protect our mutual heritage.

“Another world is possible” is a phrase with currency in many lan-



They hang the man and flog the woman
That steal the goose from off the Common,
But let the greater villain loose
That steals the Common from the goose.

The law demands that we atone
When we take things we do not own,
But leaves the Lords and Ladies fine
Who take things that are yours and mine.

The law locks up the man or woman
Who steals the goose from off the Common,
And geese will still a Common lack
'Til they go and steal it back.

-- English folk poem, circa 1764

guages today. In order to bring that world into being, we need to familiarize ourselves with people’s historical struggles in various cultures, redefine property and property relationships, and renew the concept of the commons with its deep democratic promise.

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