

By What Authority

A Publication of the PROGRAM ON CORPORATIONS, LAW & DEMOCRACY

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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.

RIGHT TO KNOW VS RIGHT TO GOVERN

By Richard Grossman, Ward Morehouse & Mary Zepernick

POCLAD grew out of the realization that with all the valiant organizing so many have done for so long, governing power hasn't shifted from corporations to people. When a situation is bad and getting worse, it doesn't make sense for activists to pursue the same failed remedies. As a Chinese proverb puts it, if we continue in the same direction we'll end up where we're headed!

POCLAD exists to help people grapple with this challenge: Analysis that ignores the overwhelming evidence that the majority doesn't govern will lead to recommended solutions that are off the mark.

In POCLAD's new booklet *Building Unions: Past, Present & Future*, Peter Kellman writes that new theories to frame organizing for changing the existing power structure "must be grounded in human rights, not corporate privilege."

"If we want to associate, to organize, to exercise power, we need to change some fundamental relationships in our society. *But first we need to understand how the fundamental relationships that now govern our lives were established. We need to know our own history.*"¹

So how do we change direction? This spring's PBS special, "Trade Secrets,"

provides an opportunity to move the rethinking process along.

Produced by Bill Moyers and Sherry Jones, the program was an exposé of chemical corporations, based on internal industry documents.² It stimulated enormous activist energy; the Internet was abuzz for weeks beforehand and people organized house parties to watch and discuss it.

In a speech to the National Press Club³ several weeks later, Moyers revealed some of his thoughts about the show, calling it "a two-hour investigative special based on the chemical industry's own words, what the industry didn't tell us about toxic chemicals, why they didn't tell us and why we still don't know what we have the right to know."

Moyers then stated his conclusions: "The public policy implications of our broadcast are profound. We live today under a regulatory system designed by the industry itself. The truth is, if the public, media, independent scientists and government regulators had known what the industry knew about the health risks of its products — when the industry knew it — America's laws and regulations governing chemical manufacturing

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would be far more protective of human health than they are today. But the industry didn't want us to know. That's the

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Instigating democratic conversations and actions that contest the authority of corporations to govern.

Readers are encouraged to get back to us with comments, questions and suggestions. Please include a way for us to contact you, should BWA want to quote you with attribution.

Editor, Mary Zepernick

Editorial Board

Mike Ferner

Greg Coleridge

Mary Zepernick

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

Karen Coulter, OR

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Mike Ferner, OH

Richard Grossman, NH

Dave Henson, CA

Peter Kellman, ME

Ward Morehouse, NY

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Jim Price, AL

Virginia Rasmussen, MA

Mary Zepernick, MA



Bill Bachle, London, UK

POCLAD

P.O. Box 246

So. Yarmouth, MA 02664-0246

Phone: (508) 398-1145

FAX: (508) 398-1552

E-mail: people@poclad.org

Website: www.poclad.org

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message of the documents. That's the story."

Bill Moyers acknowledges that chemical (and other) corporations designed the regulatory system. However, this did not impel him to use the program to ask: By what authority did corporations become the fox in the public's hen house? Why are chemical corporations permitted to kill?

"Trade Secrets" didn't explore how the regulatory regime concedes to corporations enormous power under law, including the protection of the police and courts from the people's authority. It didn't ask why corporate decisions about production, investment, technology and work are private and dictatorial rather than public and democratic — this is particularly surprising because Moyers has done a number of programs on corporations and democracy, advocates and funds campaign finance reform to limit/regulate corporate influence in elections, and considers today's giant corporations a threat to democracy.

Because "Trade Secrets" didn't tell the whole story, Moyers drew a diversionary conclusion: People should organize to win the right to know which corporations are killing with what poisons. Such a "solution" will neither end nor even seriously curtail corporate poisoning because it is not information about corporations that "we the people" lack. It's legal authority and the political power to govern ourselves, to govern our country, that we don't have.

POWER TO POISON, POWER TO GOVERN

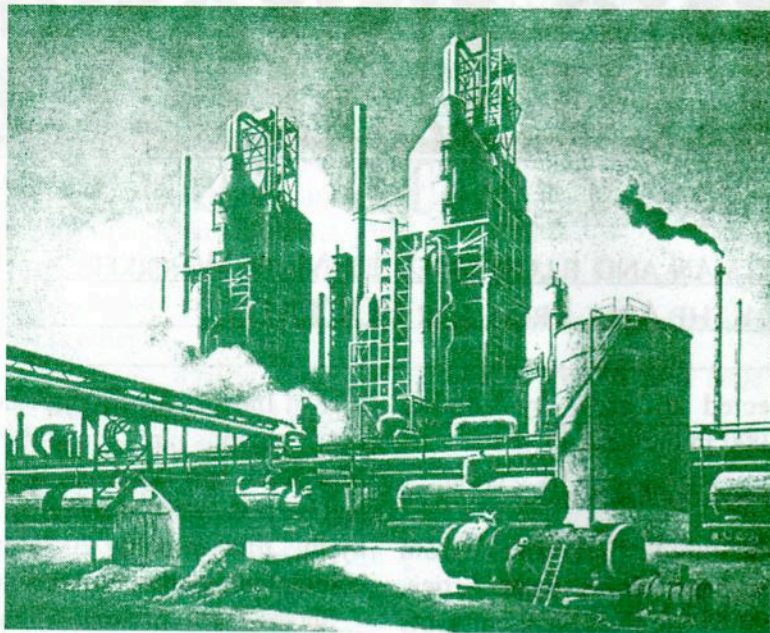
Even a quick look at scientific papers reveals that much information about corporate poisons — in the workplace, in production, in use and in the waste stream — has long been well-known. For instance, K. William Kapp, in his 1950 book *The Social Costs of Private Enterprise*, cited studies of industrial pollution as far back as 1927. In 1962 Rachel Carson's *Silent Spring* referred to scores of toxicological studies and congressional hearings revealing the effects of chemicals on wildlife, people and the Earth that supports us.

Dr. Barry Commoner, aware of the record, examined the petrochemical industry for two decades, and in *Making Peace with the Planet* (1990), essays he published over the previous 20 years, he wrote:

"Before 1950 crops were grown without chemical nitrogen fertilizer or synthetic pesticides...Before 1950 American cars were small and driven by low-compression engines...Before 1950 beer and soda were sold in reusable bottles; now they are sold in containers that are used once and converted into trash. Before 1950 cleansers were made out of soap; now over 85% are synthetic detergents. Before 1950 clothes were made out of natural fibers...now man-made, synthetic fibers have captured a large share of the market. Before 1950 all these goods were shipped from farm to factory to distant cities by rails; now highway trucks have taken over most hauling. Before 1950 meat was wrapped in paper and taken home in a paper bag... Before 1950 every baby's bottom was diapered in reusable cotton... Before 1950 no one in their right mind would throw out a razor or a camera after using it once... Unlike the steel, auto, or electric power industries, the petrochemical industry — at least on its present scale — is not essential. Nearly all of the products of the petrochemical industry are substitutes for perfectly serviceable preexisting ones... As petrochemical substitutes have invaded the economy they have made everyday activities more hazardous to the environment... In sum, the petrochemical industry is unique. Not only are its wastes dangerous, but its very products degrade the environment much more than the ones they displace. The petrochemical industry is inherently inimical to environmental quality."⁴

Commoner's knowledge of history led him to ask the next logical question: Who DECIDED all this? And he answered: A relative handful of chemical corporation executives.

Today POCLAD asks: By what authority did corporate operatives and the wealthy people they serve make such decisions, considered by law and culture to be private? Note that in 1978 the



This is hard, unsettling and sometimes painful work, requiring that we tap into our visceral sense that despite many successes, power relationships have not been fundamentally changed in this country. Warning: don't try it alone! Community is essential, so gather some friends and colleagues, as many did to watch "Trade Secrets," and explore the following questions for starters. See where they lead you.

1. How can people and communities resisting corporate toxic chemicals use law and government to bring about zero emissions and chemical bans? Redesign modern life and work based on safe substances and appropriate technologies, just and equitable transitions, restoration of people and places?

2. What can people do to move corporations — and their advocates and backers — out of democracy's way?

3. Can people mobilize effectively to accomplish #1 without simultaneously organizing to accomplish #2?

These questions can help us focus on the fundamental purpose of people's organizing: to gain the authority for self-governance — and then to practice governing. The challenge before us is not uncovering this or that trade secret. It's exposing power secrets and learning to govern ourselves. Now *that* will be hard. After all, decision-making is difficult with lotsa people chiming in and little collective experience in cooperating.

However, if the answer to question 3 is NO, what choice do we have?

ENDNOTES

1. Peter Kellman, *Building Unions: Past Present and Future*, Apex Press, Croton-on-Hudson NY, for the Program on Corporations, Law & Democracy, 2001, p. 7.
2. Environmental Working Group: www.chemicalindustryarchives.org.
3. Reported in *The Nation* issue of May 7, 2001.
4. Barry Commoner, *Making Peace with the Planet*, Pantheon Books, New York, 1988, pp. 47-54.

Supreme Court ruled that the people of New Jersey could not ban the transit of Philadelphia's toxic waste through their state; a 2000 Supreme Court decision nullified a Massachusetts law restricting the state from doing business with corporations operating in Burma. There is no shortage of such examples.

Why is this so? For the last 200 years (on top of the gazillion years before), men of wealth and property have used constitutional provisions and judicial interpretations to solidify power and authority over production and commerce decisions. Over the past hundred years they locked this power and authority into corporate boardrooms, thanks in part to the judicial gifts of 14th Amendment due process and equal protection, 1st Amendment freedom of speech and other Bill of Rights powers.

In sum, corporate leaders have used law and the Constitution to prohibit democracy. Do we need more evidence?

What Bill of Rights powers do *workers* at chemical and other corporations enjoy?

None.

What *constitutional rights* do people in neighborhoods, towns and cities have to choose what poisons (products or ideas) corporations may bring into their communities? To just say NO?

None.

What *legal standing* do environmental and public health rights have in decision-making by corporate executives and boards of directors?

None.

So although the theoretical basis of this nation is consent of the governed — with all political power inherent in the people — *the real decisions shaping our communities and our way of life have long been declared beyond the people's authority*. To the overwhelming majority of lawyers and judges, pastors and publishers, presidents and governors, historians and opinion-makers, that's the way things should be.

It's free enterprise. Liberty. Efficiency. Wisdom.

CLAIMING OUR GOVERNING AUTHORITY

Towards learning why corporate assaults on life, liberty and property keep coming, POCLAD has been looking at people's relationship with corporations. We have been working with many others to figure out how to free our thinking and develop processes for applying to present and future organizing the lessons learned in previous generations by people who confronted concentrated power.

BUILDING UNIONS

PRESENT, PAST AND FUTURE

WRITTEN BY PETER KELLMAN AND ILLUSTRATED BY MATT WUERKER

PUBLISHED BY THE APEX PRESS FOR POCLAD

In this Program on Corporations, Law and Democracy booklet Kellman takes the reader from:

The Problem.....

The bad news is that since 1953, the percentage of union workers in the United States has declined from 26% to less than 14%. The good news is that given the choice of joining a union or not, 48% of workers in this country would join.

Due to the exportation of jobs, outsourcing, union-busting and automation, union jobs are being lost as fast as new members come in. The strategy of organizing worksite by worksite does bring in new members, but employer opposition still denies union representation to millions who want it.

A case that makes the point is the health care industry in Massachusetts, which currently employs 400,000 workers, 10% of whom are union members. Unions put a fair amount of financial and human resources into organizing these workers, and in 1997 organized 819 new members through the union certification process. At this rate, it would take 434 years to organize the industry if the number employed remained at 400,000, but the industry is

projected to grow by another 250,000 in the next 45 years.

Through the history.....

Indentured servants from Europe and slaves from Africa, people whose lives were contracts to be bought and sold, provided our founding fathers — men like Washington, Jefferson, Madison and Franklin — with the labor to exploit the natural resources of North America.

Roughly half the immigrants to the English colonies were indentured servants. At the time of the

War of Independence, three out of four persons in Pennsylvania, Maryland and Virginia were or had been indentured servants. And by this time, roughly 20 % of the colonial population was in slavery.

Slaves from Africa and indentured servants from Europe lived under the same fugitive slave laws, and their children were the property of the masters. These people were bought and sold as property — a system protected by colonial law and later, by the United States Constitution.



Towards the solution.....

Rights-Based Movement, Rights-Based Law: The present National Labor Relations Act¹ is rooted in the Commerce Clause² of the Constitution. It is basically a subset of the clause that protects and promotes the interests of employers. A new law must be grounded in human rights, not corporate privilege.

For starters, a new National Labor Relations Act must be rooted in the 1st Amendment, which guarantees freedom of speech, assembly and association. It must include labor in the 13th Amendment, outlawing involuntary servitude both on and off the job. It must restore Norris-LaGuardia³ and throw out Taft-Hartley,⁴ because in order to be free, people must be able to exercise freedom of speech and assembly, the right to organize, the right to support the ideas and people they choose to — and boycott those they don't.

Based on the 1st, 13th and 14th Amendments, the right to representation in the employment setting is self-evident. If a person at work is denied the free speech, due process and equal protection of the 1st and 14th Amendments, the employer has placed the worker in a condition of involuntary servitude, which violates the 13th Amendment.

Will it be hard to pass a new labor law based on human rights? Indeed it will, but as Samuel Gompers said: "History honors none above those who, in the past, have set themselves against unjust laws, even unto the point of rebellion. The Republic of the United States is founded upon defiance of

unjust law. Manifestly unjust decisions of courts must be defied."

It was the militant labor activities of the 1930s, including the general strikes and mass sitdowns,

All persons who care about the natural environment and human health should find *Building Unions* of value. The sad legacy of property rights over human rights in the US, as revealed in this booklet, shows how monied interests have sought to dominate people and the Earth throughout US history.

*Jim Price,
Southeast Regional Staff Director,
Sierra Club*

that brought about the passage and implementation of the National Labor Relations Act. It will likely take a struggle of similar proportions on the part of workers - a struggle that once again defies the authority of the courts and the corporations — to rebuild our unions and bring about a new labor law. It will be a law steeped in our historic commitment to human rights.

ENDNOTES

1. The National Labor Relations Act of 1935 is the current U.S. labor law, which is supposed to guarantee a union's right to organize and an

employer's obligation to negotiate wages, hours and working conditions with unions certified by the National Labor Relations Board.

2. The Commerce Clause, Article I, Section 8, #3 of the Constitution, gives Congress the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."
3. The Norris-LaGuardia Act, passed in 1932, outlawed the yellow-dog contract (pledging workers not to join a union) and prevented federal courts from using injunctions to end strikes; it declared that a worker would have "full freedom of association...and that he shall be free from interference, restraint, or coercion of employers of labor...in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."
4. The Taft-Hartley Act of 1947 reversed many of workers' gains in Norris-LaGuardia and the National Labor Relations Act: it empowered the President to call for injunctions against "national emergency strikes" that "imperil the national health or safety"; allowed state legislatures to ban the union shop; outlawed the closed shop; effectively made sympathy strikes and secondary boycotts illegal; barred from NLRB elections unions that didn't ban Communist membership; eliminated union control of pension funds and health and welfare funds; gave employers the right to explicitly oppose labor union organizing; forced foremen out of unions; created the union decertification election.

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UNIQUE NEW BOOK COMING from POCLAD



Bev Glueckert

On September 1, The Apex Press and POCLAD will publish "Defying Corporations, Defining Democracy: A Book of History & Strategy," ably edited by Dean Ritz of the Jeannette Rankin Peace Center, Missoula, Montana. This 400-page book collects 70 published and unpublished articles, essays, speeches, letters, harangues, and screeds in which POCLADers grapple with the reality that giant corporations — backed by law — govern our communities, our nation and the Earth.

"Defying Corporations, Defining Democracy" chronicles POCLAD's reflections on past organizing efforts, reexamining stories we thought we had understood and experimenting with collective processes for rethinking democracy and corporations, history and strategy. Retracing our collaborative journey with thousands of activists, we offer this accumulation in a spirit of hope and solidarity.

Diverse selections consider public vs. private decision-making; corporations as "legal persons"; property's assault on human rights; a rights-based theory of labor organizing; "social responsibility" as corporate play

and regulatory law as protector of corporate privilege; past movements for democracy and justice; public officials as enablers of corporate usurpation — and many other concerns relevant to civic activism today. The writers also explore how people's campaigns against corporate global poisoning and warming, efforts to privatize Social Security, domination of elections, and destruction of farming communities (to list but a few) can stop such assaults while shifting governing authority from corporations to people and communities.

"Defying Corporations, Defining Democracy" reflects the growing efforts of people everywhere to establish shared humanity and Earthly harmony as foundations on which to build authentic democracy. Linking so-called "single issues" to each other and to shared roots in little-known or distorted popular movements, the authors show that there is much to learn from past generations about sources of today's messes and much that current generations can do to clean them up and liberate ourselves and our nation.

The book includes an extensive bibliography, an index of court cases (including reporter citations), and a subject index. Detailed editor's notes cross-reference the many related topics covered in the articles, provide insightful commentary, and document sources.

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Editor's note: Roses to Dean Ritz for creating a whole that is greater than POCLAD's individual parts. We hope the book's process as well as its substance will deepen and