

**THOMAS LINZEY**

Corporations, Communities & the Environment

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Thomas Linzey is an attorney and co-founder and executive director of the Community Environmental Legal Defense Fund and serves as its chief legal counsel. He is the author of *Be the Change: How to Get What You Want in Your Community*. His work has been featured in the *New York Times*, the *Los Angeles Times*, *Mother Jones*, and *the Nation*.

So let's get down to business. This is being recorded for about 175 radio stations across the U.S. and Canada, thanks to David Barsamian on Alternative Radio. That basically means I can't swear, which is what I usually do during these presentations. So let's get down to it. We're fucked. Generally, when I say that at smaller events—and they're going to have gone to bleep that out, I understand—I'm sorry, David—there's three things that people say to me.

They say, "Well, you can't say that, because if you say that, then people lose hope. And when people lose hope, they won't do anything. They won't appeal regulatory permits, they won't get active in doing regulatory work, they won't try to ask corporations to do X, Y, and Z for them."

The second thing people say is that, "If we say it's fucked, which is it is, then we will lose funding, because there's no funder, there's no foundation, program officer that wants to hear, 'Hey we're fucked,' because then there's nothing we can do."

And the third group of people that come up to me after the talk—and some are really offended—say, "You can't say that because it's just not true. Things aren't worse now than they were 40 years ago when we passed the major environmental laws." You people snicker and laugh, but I get it all the time. In fact, I got it talking to a foundation program officer a couple weeks ago for a major foundation. He said, "Well, of course things aren't worse today than they were 40 years ago. Rivers don't catch on fire." And I said, "Well, if that's our standard now, we've got some really serious problems."

So on the first point that, when you say we're screwed and that things are hopeless and that our work isn't working—because I don't think it is—and the things we're doing aren't working, on the first one, that hopeless piece, Derrick Jensen probably says it best. I think he's one of the best writers of our generation. Here's what Derrick has to say about hope, in a piece called "Beyond Hope," which everybody should read. It's the best piece I've read in a long, long time. He says giving up hope is a good thing. And this is a quote from Derrick's piece. He says, "Hope is a longing for a future condition over which you have no agency." He writes, "I'm not going to say 'I hope I eat something tomorrow.' I just will. I don't hope I take another breath right now, nor that I write this

sentence. I just do them. On the other hand, I do hope that the next time I get on a plane it doesn't crash. To hope for some result means you have given up any agency or control concerning it." He writes further in the piece, "Having hope is about having hope that someone else is going to save you—a regulatory agency, a corporation, the Sierra Club, Alpha Centauri, beings from another world—that someone else has control over our destiny and our job is to influence them or attempt to put pressure on them because we don't have it."

The second thing that people come up to talk to me about is you can't say you're screwed because the funders don't want to hear it, money won't come in. Well, that one is between your foundation program officer and you, if you have one.

The last one I'm going to talk about now, which is people coming up and saying, "Well, it's just not true things are worse now than they were 40 years ago before the major environmental laws were passed." So I have some numbers now. I used to go without these, but now I have them. And they're very, very depressing and dismal, so we'll get through them as quickly as possible. Here are a couple. Each year in the U.S. alone 570 billion pounds of municipal waste is produced, with 60% of that waste ending up in landfills or incinerators. Four billion pounds of toxic chemicals, including 72 million pounds of known carcinogens, are released into the atmosphere from 20,000 industrial polluters. Two trillion pounds of livestock waste laced with antibiotics, hormones, and chemicals are dumped into waterways and applied to land. Eleven million people live within 1 mile of a federal Superfund site. Eighty thousand industrial chemicals currently are in use in the U.S., with more than 700 now found within every human body. Eighteen hundred new chemicals are introduced annually. Forty percent of our waterways fail to meet even the minimal requirements of federal and state clean water laws. More than 90% of America's original forests have now been logged. Over 70% of all biodiversity on the planet has now been lost, according to a major conservation organization. And in July of 2011 the United Nations declared our situation "a major planetary catastrophe."

In the 1990s, when we got our start, things weren't rosy. It's not like these things have come into being overnight. In the 1990s, we got our start with the Legal

Defense Fund. Note to law students: If you decide to start your own law firm without funding in place or some place to go for that, generally not a good idea. We raised about \$3,000 the first year. I think it was the right decision to make, but there are tough times ahead for folks who form their own law firms right out of law school. What did we do when we came out of law school? We formed the Community Environmental Legal Defense Fund. The point of the Legal Defense Fund was to say to ourselves when we were in law school that if the U.S. has the best environmental laws in the world—and in fact, our laws are so good, apparently, that we export them to other countries on a routine basis—that if our environmental laws in the U.S. are so good, that the reason why things are so fucked in the U.S. must be because we don't have enough lawyers enforcing those laws. There's several hundred full-time public-interest environmental lawyers in the U.S. doing this kind of work. We decided to add one more, which was me.

We began to do work for free. We opened our doors up to community organizations that were being inflicted upon by a toxic waste landfill or sewage sludge being dumped or toxic emissions or a pipeline coming in or all those types of things. We would represent those community groups, primarily in Pennsylvania, to go through the regulatory process.

I don't know if anybody has ever seen the film *Groundhog Day* with Bill Murray from the 1990s? *Groundhog Day* for us would always start the same, which was a phone call from the community organization that would say, "We need your help. We can't afford a lawyer to fight this toxic-waste incinerator that's coming in. We need help to fight it because we don't want it. Our community doesn't want it here. Our definition of sustainability for our community means that we don't have a toxic-waste incinerator in the middle of it or a 25,000-head hog factory farm in the middle of our community."

We would say to them, "Well, we're sorry"—this was the traditional spiel, and still is today by most traditional environmental lawyers—"We're sorry, but we can't help you stop it because the law does not recognize your community's authority to actually say no to the thing coming in. The entire nub of what our Democracy Schools are built around is that the law does not recognize that your municipality, your community has the ability or authority to say no to a federal or a state permitted project. Once a state has permitted it, the municipality can't say no to it. In fact, the law is generally that if something is a legal use, l-e-g-a-l, that the community has no power to actually say no to it.

So what do we do as environmental lawyers? Well, we become experts on the regulations. We become experts on Section 25(c)(d)(1)(2)(c)(d)(i)(2)(e)(f), and we end up arguing in front of regulatory agencies or administrative law judges that something is missing from the permit

application that has been put in by the corporations trying to put the project into the municipality. Most times, just by showing up, in some ways in rural communities, because 90% of these communities never hire an attorney, they never have input into the regulatory process, never show up, we would generally win. Which meant that we would find the signature that was left out or the macro invertebrate study or the hydro study that was outdated that the corporation had submitted with the permit application. And we would argue to the judge that something was missing from what was required by the environmental regulations or the permit application and we would win in front of the judge.

What would happen next was the community group that we were assisting would have a victory party. So they would call us back to the house, and we would have some wine and beer and snacks, and people would pat themselves on the back and they would say, "The system works. We came together around our kitchen table. We found a problem that we were having in the community, we found the right lawyer to represent us, the judge listened to us, he actually ruled in our favor. And now we're not going to get the toxic waste incinerator in our community. The system worked."

What would happen three months from then or six months from then or a year later is that the corporation would come back. In fact, at those regulatory hearings I had lawyers from Waste Management Corporation and other major corporations come up to me and thank me, because we had found a deficiency or an omission or something that had been left out of their permit application. So three, six months, a year later the corporation would come back, and this time they would have a new and improved permit application for the process. They would have filled in the signature, they would have had the new hydro study or macro invertebrate study done or whatever else had to be put into the regulations and the permit application. I'm shortening this down, but we would go through this process with them for 8 or 10 or 12 cycles. Some groups are still at it, trying to stop Wal-Marts in central Pennsylvania for 8 or 9 or 10 years. Because we're in a system that doesn't recognize our authority to actually say no to those things coming in, we fight with what we have; we fight with what we have been given.

The nasty little secret about that time period, of our lives, at least, was that as soon as that permit application came back, that new and improved permit application from the corporation came back, that the community group would come back to us and say, "Mr. Linzey, we need you to do that jujitsu again that you did the first time around to keep the toxic-waste incinerator from being built in the community." And we would look back at them and we would say, "We're sorry. Unfortunately, there's nothing we can do for you anymore, because the corporation has now dotted all the i's and crossed all the

t's in the permit application." So we had a win-loss record at the Legal Defense Fund of about 130 and 4. We were on fire. The problem was, if you actually set foot in the communities that we were representing, you would see absolutely no resemblance between the community that was getting the toxic-waste incinerator and our win-loss record as a law firm. But that didn't stop the progressive community from giving us awards, from giving us money. We got invited to the White House one year by Al Gore to celebrate the best environmental law firms in the U.S. that year. It didn't seem to matter that environmental law seemed to not be working in these situations. So we had a crisis in our office. We decided that we had not created the Legal Defense Fund just to build better permit applications for the corporations.

It was about at that time that we started talking to some other folks that were having experiences with the regulatory system and how environmental law is practiced. One of those people was a woman named Jane Anne Morris. She bills herself as a corporate anthropologist. Jane Anne Morris said a couple things which still resonate with me today. She said, "The only thing that environmental regulations regulate are environmentalists, because they make us predictable in how we oppose projects that are coming into our community. Because the regulations are written by the very corporations that ostensibly the regulatory structure is supposed to regulate. Do we really believe that regulatory structures written by the very corporations that those structures are supposed to regulate are going to recognize any rights for the communities in which they do business, especially rights to say no, which we don't have under the law?"

In addition to that, Jane Anne Morris said another thing to me which blew my mind. She said, "You know all the monies that get spent by the corporations to fight off the permit appeals that you file"—because at least I thought we were costing the corporate boys some money when we walked into the administrative law courts—"the monies that the corporations spend fighting the permit appeals are tax-deductible as reasonable and necessary business expenses under the law. They can write them off."

Jane Anne has this great piece that she wrote which we use in the Democracy School. The title of it is, "Help. I've been colonized and I can't get up." The subtitle is "Take a lawyer and an expert to a hearing and call me in a decade." This is what she has to say: "At regulatory agencies corporate persons have constitutional rights to due process and equal protection that human persons, affected citizens, don't have. For noncorporate human citizens"—that's us—"there's a democracy theme park where we can pull levers on voting machines and talk into microphones at hearings. But don't worry, they're not connected to anything and nobody is listening except for us. What regulatory law regulates is citizen input, not

corporate behavior." That's what Jane Anne has to say.

So what did we do? We had a crisis in our office. We said, "We were constructed, we were built to protect the natural environment, to protect communities and do all that mom-and-apple-pie kind of stuff. And instead we found ourselves building better permit applications for the corporate boys that wanted to come in and put in projects." So we decided to shut down the office, we decided to close, because we decided we could do other things and other things would be more effective than trying to enforce environmental law in this context.

In addition to that I should mention, we weren't just doing permit appeals and regulatory stuff. We were challenging environmental impact statements under the National Environmental Policy Act, we were doing Clean Water Act litigation, attempting to enforce clean water dictates. We were across the board dealing with environmental laws that seemed to us to be not about protecting the natural environment but instead about easing certain projects in by carving off some of the harms that were caused by some of those projects coming in. It wasn't about actually stopping the projects, no matter how harmful they are to the natural environment.

The National Environmental Policy Act is a perfect example. You have environmental impact statements that have to be prepared if federal monies are used for a project, but nowhere in the law does it say that the entity, the agency, has to select the most environmentally sound alternative. So we were challenging road projects in Virginia. What the agency would say is, Yes, this is going to extinguish this ecosystem, this is going to kill this stuff off, but we still think it's a great idea, and we complied with the federal environmental laws by simply disclosing the harms. That's how NEPA is built, that's how the EIS stuff is built.

As we were closing down our office in Pennsylvania, something interesting happened, which was a spate of phone calls from a constituency that we were not established to assist. The constituency that started to come in our door was local elected officials from rural south-central Pennsylvania. What was their problem and why were they turning to us? They were turning to us because agribusiness corporations were driving their way up from North Carolina and South Carolina to site a bunch of mega factory hog farms in south-central Pennsylvania. These are the biggest agribusiness corporations on the planet.

Just to give you an idea of how agriculture has been corporatized over the years, six corporations currently control 80% of the pork processing market in the U.S., four corporations control 60% of chicken processing, one corporation, Kraft, controls about 80% of cheese processing in the U.S. today. Suicide among farmers is now the number one cause of non-natural death for farmers in the U.S. It's a statistic that began in 2004. So when we're talking about corporatization of agriculture, we're talking about more than just changing methods of

production. We're talking about extinguishing generations-old farms and ways of life and implement dealers and open livestock auctions and all those kinds of things that keep rural communities alive.

In the late 1990s, as we were closing down our office and these calls started coming in, the calls were coming in because there was slated and proposed a span of factory farms to run through about eight counties in the south-central Pennsylvania. The municipalities and the elected officials didn't want the factory farms coming in, for a bunch of reasons: number one, impact on farmers; number two, impact on property values; number three, the environmental pollution, water pollution, stuff that flows when you jam these animals into these intensive livestock operations.

For the last 10 years municipal governments in Pennsylvania in that area had passed very stringent manure disposal laws. We're not going to get into the details here, but suffice it to say that those laws, in the best environmental regulatory tradition, tried to make it too expensive for liquid manure from the factory farms to be applied to land in those municipalities. So for a number of years factory farms couldn't set up shop because of those environmental regulations. What happened when the big agribusiness corporations came into town, the town being the state of Pennsylvania, is they went to the legislature and they drafted something called the Nutrient Management Act. The Nutrient Management Act promptly removed control over any factory farm regulation from the local municipalities and centralized it at the state level, making putting in a factory farm merely a planning process that you had to file a plan with the state agency for rather than go through any kind of local ordinances that might interfere with those operations coming in.

So imagine yourself being a municipal official in south-central Pennsylvania. Your residents are screaming at you. They're saying, "We don't want to lose 60% of our property value if we live within three-quarters of a mile of one of these mega hog factory farms. We don't want the smell and the water pollution and everything else that comes with us." And there was some inkling of a conversation about, Why should agribusiness corporations decide what farming looks like in our community rather than us, rather than the farmers that actually live in that community? So the calls in to the office took on a different tenor at that point, where we still had our phones hooked up for those calls to come in.

The calls got much more complex. It might have been something in the water or the air, I don't know. Something was changing about that time in the way people think about environmental law, I think, at least at the community level. These folks would get me on the phone, and we would say "What could we do?" and they would say, "Well, we have this corporate factory farm coming in." And they would say, "We don't want it. Our

farmers here don't want a 25,000-head hog factory farm in the middle of our community." And they said, "We want to say no to it, we want to stop it." We tried to give them the old song and dance, which is embedded in our heads, in my head since law school, which was, "I'm sorry, you can't stop it because it's going to have a state permit and it's a permit operation. You can't say no to it within the municipality."

And these folks—and keep in mind this is rural south-central Pennsylvania, an NRA membership area, local control, folks that had been in office for 30-40 years at the local level, very small municipalities—asked me one question, which threw me off for the next 15 years. They asked, "Why? Why can't we say no?" So I was on the other end, and I said, "Well, you can't say no because if you do try to prohibit a factory farm from coming into your municipality, you're going to get sued, and you're going to get sued by the agribusiness corporation that contends that you're violating the corporation's constitutional rights under the law. Because when you pass an ordinance that bans a legal use, the corporation comes in and uses the Fifth and Fourteenth Amendments to say to the court, You've taken our property, because you're not allowing us to do what we want in your community. This ordinance is stopping it. Therefore, we're going to sue you. Not only are we going to sue you for breaching or violating our constitutional rights, we're going to sue you under 42 U.S.C. Section 1983, which is a civil rights law, for damages incurred as a result of the passage of the ordinance to things like future lost profits of the corporation. That's how the system operates. That's not the exception, that's the default.

So again the folks on the other end of the line would ask me another question, which I didn't know how to answer. He said, "Why?" Being the lawyer, you give the lawyerly story, which is, "Corporations got constitutional rights way back in the early 1800s. Corporations became persons in the 1800s through the Supreme Court, through other federal courts, in which corporations now have the same rights as you or I. And by virtue of their wealth, they can exercise those rights more fully than you or I. It was those places, those Supreme Court cases and going back to 1800 and to the other jurisprudence, that corporations gained this control. That in essence the corporate board of directors has more decision making in your community than you do, because it creates that special layer of law.

To which the folks at the other end of the line said again, "Why? Why were corporations given those rights?" So, a typical lawyer, you say, "Well, it actually goes back to the U.S. Constitution." In some ways the U.S. Constitution is a property document. It's no secret. The U.S. Constitution protects property and commerce above other rights." You can look at the U.S. Constitution and thumb through it all you want, but you won't find a couple words mentioned. One is "nature." Forget about it. Another one is "labor." Forget about that one, too, unless

you're looking at a provision that uses the phrase "bonded labor," which is about returning slaves to their owners as property, which is also in the Constitution. That stuff isn't there. So when the environmental laws were passed, the Clean Water Act, the Clean Air Act, all of the good stuff that we have, the civil rights laws, the Violence Against Women Act, all that good stuff that's been passed has all been passed under the authority of the commerce clause of the Constitution.

It's kind of wacky. People say, "What does that matter? At least it's there. At least we have a place to plant our feet." And the answer is, essentially, the Constitution sees everything in terms of property protection. That's how it works, that's how it's structured. And because of that, when we actually make arguments about things like protecting the environment or nature in contexts that are outside of commerce, like protecting nature for its own sake or protecting a community's right to say no when that interferes with commerce, the system looks back at you with glazed-over eyes and doesn't understand what you're trying to say. It's like speaking Greek to a French person: it just doesn't fit, because the system runs a different way.

So these supervisors, these folks in rural Pennsylvania, said back to me on the phone, calling in, and said, "Why is that? Why is the Constitution written in such a way? The Constitutional structure seems to screw us automatically. So in our communities if we oppose a factory farm or a toxic-waste incinerator, we don't run up against the corporation first. We run up against our own Constitution first. We run into a constitutional structure first that doesn't recognize our authority to be self-governing within our own community, let alone talking about things like the rights of nature." So these folks would say, "Why is that?" And we would say, "Well, it's because of something called the English Common Law. The folks who wrote the U.S. Constitution were basted in this thing called English Common Law, which was a system of law that essentially legalized colonialism. And England was the top bill, they were the folks developing the most. So you have Hamilton and you have Dickinson and you have Madison talking about English Common Law as the best thing in the world, and that the U.S. constitutional structure was about replicating that system of law. There's no place in that for us if we're a community that's being hit with X, Y, and Z or for ecosystems themselves to be treated differently as property.

Then they would say, "Why is that?" I would say, "Because God said so. I don't know. Because we're at the end of this conversation and we've got other things to do." So that why question has actually plagued us since the Democracy Schools. We actually use 15-hour trainings to take community folks through a series of historical stuff to show them why they're in the position that they're in. Because when community groups get hit with something,

the first thing they do is call up the DEP or whatever it's called in your state, the environmental agency. In Pennsylvania it's called the Department of Environmental Protection, or for many communities there it's known as the Department of Everything Permitted. So you have the DEP. And other folks pick up the phone and call their local government. The DEP says, "Well, we're so glad you called. Hire a lawyer and get involved in the regulatory process. It won't allow you to stop it, but you can, of course, publicly comment and be part of that process." The others call it to the municipal government. The municipal government sometimes says, "Our hands are tied. We can't do anything. It's a state issue. Go talk to your legislator and change the law." Fat chance of that.

So through the years we started getting these questions, and we decided that we weren't going to close down. The municipal governments and elected officials said to us, "What can we do?" And we said, "We have no idea what you can do." And they said, "Why don't you help us figure out what we can do?" And we said "Fine."

So we started looking at the laws that have been passed in different places on agribusiness issues. It turns out that in 1902—I had no idea till 12:30 at night, falling over some old law text trying to find it—the people of Oklahoma, mostly family farmers and communities, came together and banned corporations from farming. 1902, right? Nine states followed the lead, including, in the late 1990s South Dakota and Nebraska, through Initiative 300 and Amendment E, actually took the anti-corporate farming laws and drove them into their state constitutions.

So folks in those Midwestern states began to frame the problem a lot differently. It wasn't about water pollution or air pollution or parts per million or paper versus plastic or all the bullshit that we argue about when we get into the regulatory stuff. That if the problem was the corporatization of agriculture, then the solution is to get corporations out of agriculture. So they moved to do that. The frame was different. Rather than dealing with the manifestations of the environmental harms that flow from those projects, instead attempting to preempt them by taking control and writing the rules themselves.

So that without pride of authorship, we borrowed Amendment E, we reworked it into a local ordinance, and we actually sent it in to these Pennsylvania municipalities to begin adopting. And they did. The first one, in 2001, was a small community of 550 people, called Wells Township, a little place called Fulton County, right above the border with Maryland. Eventually the ordinances spread to eastern Pennsylvania, western Pennsylvania, north-central Pennsylvania, as communities began having a new conversation—not one about how many tons or gallons of liquid hog manure can be legally applied to an acre of land, but instead towards something based on the right of the community to decide what farming would look like there rather than a corporate board of directors located 3,000 miles away.

That conversation that started in 2001 has accelerated, expanded to today. In addition to the factory farm issues, in Pennsylvania we have a sludge problem. Typical of the environmental laws, which essentially are good at one thing—which is transferring pollution from one medium to another, so from water to land or from land to air—with the sewage sludge situation, all the sludge coming out of the centralized sewage treatment plants to clean up the waterways, we actually took the toxins and pollutants and put it into the sludge cake, which is the solid stuff, which goes to say that you can't put "cake" after everything and make it sound that much better. The sludge cake itself we used to dump off the coast of New Jersey. And then the major environmental groups did us a real favor and worked for a program that was approved by the EPA to dump it on land where we grow our crops. So all of those 60,000 different pollutants that are in that sewage-sludge stream that we now try to keep it of the waterways, we now dump on farm land. And four corporations control 90% of the market for hauling the sludge from the treatment plants to the farmland. In Pennsylvania we've had two kids die from exposure to sewage sludge. We named the Democracy School after one of those kids.

The municipalities that were faced with getting sludge dumped from Philadelphia—because, guess what, Philadelphia's municipal treatment plant doesn't dump sludge near the multimillion-dollar houses in suburban Philly, they actually send it out into the hinterlands, into the rural T of Pennsylvania to be dumped in these rural communities—a lot of these communities said, "We don't want it anymore. We don't want your shit coming from your place and being dumped in our home." So they began to work with us to take the anti-corporate-farming laws and make them into anti-corporate-sludging laws, which actually prohibited the corporations from bringing sludge into those municipalities. Those began to multiply quite quickly: we went from five to 10 to 15 to 20. We're up to 86. And on the factory farm laws, we're up to about two dozen in the state of Pennsylvania.

As you can imagine—and the question is probably burgeoning in your head—you say, "Mr. Linzey, you said we can't do that. We can't ban X, Y, and Z." It turns out, when you attempt to actually begin to synthesize new law, and new law which is based on community self-governance, that there's a reaction. And the reaction is not equal but an unequal one. So in the years following this stuff moving, keeping in mind that 10% of all rural municipalities in the Pennsylvania had passed our ordinances, which really began to pull the teeth from some of these corporate boys who were attempting to use those municipalities for their own projects, two things happened: one was a lawsuit was filed by one of the major factory-farm agribusiness corporations against one of our municipalities, and the other one was that state legislature started to take action.

So on the lawsuit first, there were several filed. What was fascinating to me, watching them come in, was that they could have been written on the same computer, with the same boilerplate, with the same paragraphs, with the same everything. Because in the system and structure of laws set up in this country to actually make municipalities and communities where you live subordinate to the corporations that are coming in, in addition to corporate personhood, this concept that corporations are persons and they have certain rights they can exercise against the community, corporations also have something called commerce clause rights, that corporations can use the interstate commerce clause to knock down law making that interferes with the commerce interests of those corporations. As much as we talk about corporate personhood, corporate commerce clause rights are actually used more than that to overturn laws. In addition to those two, we have things called Dillon's Rule, which says your community can't pass any law that's not specifically been authorized to be passed by the state legislature—it's written by an ex-railroad lawyer who was an Iowa Supreme Court justice—and you have preemption. Preemption is the theory that the state and federal government can preempt completely what's passed at the municipal level. We all as lawyers, those of us who are lawyers, pretty much buy into these doctrines in many ways. They're referred to as well settled legal doctrines by the legal industry.

So these lawsuits that came in, you could literally read the complaints that came in from these corporations that were filing suit against the municipalities, and those four doctrines were laced throughout the complaint. So on page 1 it said, We are corporations, we are persons, you have violated our Fifth Amendment rights under the law, and you now owe us damages. Paragraph two was, You were not authorized to pass this because the state legislature hasn't authorized you to do this law making. Point number three, You can't do this law making because the Nutrient Management Act preempts you at the local level from being able to pass these things. And, of course, the corporate personhood stuff was meshed into that fourth claim.

So our communities, who had stepped outside the box—as Jane Anne Morris says, "Take a deep breath. We're going over the wall," that's what she says—these communities, because they went over the wall, because they did something outside of the box, were saying, "Hey, the problem isn't factory farms, really. The problem isn't the environmental impacts from those facilities or sludge or whatever else, and the problem really isn't the corporation itself. The problem is in many ways the structure of law itself." It's actually those doctrines which have been in some ways so IV'd into us since birth, not just the preemption and Dillon's Rule stuff but the constitutional stuff, that the Founding Fathers were the greatest people that ever trod the planet, that our system of

government is the bastion of democracy, and that if we don't win regulatory fights, if we don't win these fights that we're involved in when the corporations come in to do X, Y, and Z, it's our fault because we have the democratic system to use. We just didn't get enough people to the demonstration, or we just didn't get people to the church, or we didn't have the right podium for the pads that we write on, or we didn't bring the right microphone, the video camera, or whatever. We blame ourselves for failing within the system.

Meanwhile, the system is fixed. We've been snookered for a long, long time. No offense to the folks in this audience, but the fact is, the only people who see it are the folks who have to see it. Because they're in places like Port Arthur, they're in places where you run up directly against those legal doctrines. A lot of us try to go around them by doing things like, well, we need to negotiate an agreement with the corporation, or we need to buy the right stuff, or we need to invest in better stock, or we need to do all these voluntary fixes, self-help kind of stuff, like changing light bulbs, because we feel so disempowered by how the structure of law works.

It's our proposition to you that the structure of law has to be dismantled. It has to come apart, because otherwise we're cooked. Literally, we are cooked if we do not actually take that battle on. In the communities in Pennsylvania who started this conversation to change—when you're talking about parts per million, particulate matter, and bringing experts in, doing all that kind of stuff, it limits the number of people who actually get involved in those campaigns, because they say, "I'm not an expert. Therefore, I don't have a legitimate place here at the table or to speak about X, Y, and Z." But when you start talking about rights—community and local self-governance and corporations having more rights than the communities into which the corporations are coming in to build or construct or whatever, you start getting something that approximates the foundations for the beginnings of a movement, a movement that says that the state government is not going to help us, the federal government is not going to help us, and the only way that we're going to make change to those layers of law is to force it to happen by disobeying the law itself.

And it's not so foreign. We've been at that place before in our history. The abolitionists didn't advocate for establishing a slavery protection agency, right? They weren't interested in an agency that regulated the numbers of lashes you could give daily to a slave. The suffragists, they didn't just write letters to the White House. They voted. Virginia Minor and Susan B. Anthony, they went into ballot places and they cast ballots and they were arrested and they were thrown into jail and then they had trials. They understood that is when you don't directly challenge the law, you are validating it automatically.

So these communities, the least likely of activists in some ways, the least likely of activists—folks that are

first-time activists, coming into the stuff for the very first time, not long-term progressive activists or people who worked in the regulatory arena—didn't have this stuff clouding their heads, all this past that said we have to do it this way or have to do it that way. They just said, This is the right thing, is actually to seize that ability, the authority for us to make decisions about what our community is going to look like in 20 or 40 or 60 years.

So they began coming to a conclusion. And that conclusion was, they had to take these doctrines on frontally, that the local ordinance making had to be more about just the imminent harm coming in when that imminent harm could be overridden. The ordinances could be overridden by those doctrines that were being brought against them. So they decided to begin writing these ordinances to directly challenge those legal doctrines which keep our communities subordinate to these corporations, because they understood that sustainability is impossible unless those people who are directly affected by the unsustainable practices are the ones who are deciding whether those practices occur. State legislatures, folks 500 miles away, they don't care. The community is a dumping ground, it's a toilet. They're going to use it for as long as they can until people stand up and say "We're not going to take it anymore."

The kids that sat in at the lunch counter at Woolworth's. They didn't write letters to Woolworth's. I suppose they did at the beginning. They said, Hey, please desegregate your lunch counters. But eventually, at some point, they said, No more. Things are so bad that we need to go in and actually break the law. We need to disobey the law. In a very structured way, but we need to do it. And so they did. In fact, this country is built on people not following the law. The Declaration of Independence, people breaking free, self-governance, all that stuff that's built into us that we seem to have lost.

We think it's time to return to that place. I think communities in Pennsylvania and other places certainly are beginning to lead the way, which is to say, the cost of doing nothing is more now than the cost of doing something, putting our municipalities on the line to take on these four legal doctrines. So they started to do that. Over 100 communities in Pennsylvania have passed those laws. In addition, the laws have spread. We have communities in New Hampshire and Maine who are taking on Nestlé corporation, saying, No corporate water withdrawals in our communities. There are folks in New Mexico and in Pennsylvania and elsewhere who have passed anti-fracking laws, saying, We're not going to allow corporations to frac here. We have the first county in New Mexico which is going to ban all hydrocarbon extraction within their municipality. What are we waiting for? Seriously, how bad does shit have to get before we actually begin to be less obedient to how the structure operates?

There are real consequences to all this stuff. When

we get called as counsel for municipalities, we give them the worst-case scenario. You could get sued, you could go bankrupt. This is very serious work that these municipalities are taking on, that these elected officials and other people are taking on. In places where their elected officials aren't willing to do it, citizen groups are coming together to go override them through initiative processes and home rule charter stuff.

People ask, Where is all this headed? In other words, what's the point, if a court is just going to come in and overturn the law as being against the doctrines? Well, we hope that courts won't. We've actually found judges who have ruled in our favor in other cases before. But it's very important that people understand, these ordinances are not the end point. Just because a judge rules that it's in violation of these other legal doctrines, that's not the end of the story. That's the first step. Because these communities now in Pennsylvania and New Mexico and New Hampshire and Washington state are now stitching themselves together to talk about what state constitutional change looks like. And eventually, 10 years, 20 years down the road, these states are going to come together through their municipalities to make federal constitutional change. It all comes down to what our theory of social change is. Can we be obedient folks petitioning our legislatures to do the right thing for us, or is it time to take that shit into our own control and do it ourselves, no matter what the cost?

One hundred fifty communities across the U.S. have passed those ordinances now. In addition to that, we've been working on something called "the rights of nature." One of the components of those ordinances, they contain rights of nature clauses which recognize the rights of ecosystem and natural communities to exist, flourish, and naturally evolve. Two dozen communities in Pennsylvania, New Hampshire, Massachusetts, Maine, New Mexico, other places have adopted these ordinances, which refuse to recognize that nature is property under the law. The controversial statement that we sometimes make is that there's never been an environmental movement in the U.S. And we say that there's never been an environmental movement in the U.S. because movements transform things that were treated as things under the law into being rights-bearing persons. The abolitionists were about a movement to her transform slaves and African Americans from being property into being persons. The suffragists were about transforming women from being property of their husband or their brother into being persons. That's what movements do.

We've had an environmental movement that's been focused on treating nature as property to be regulated. Under our system of law, if you have a 10-acre deed to a parcel of land, it carries with it the right to destroy the ecosystems on that parcel of land. That's the system of law that we have. These communities are beginning to adopt laws that refuse to recognize that nature and

ecosystems are property under the law, and that actually allow residents to step into the shoes of a river or a mountain to bring an action as a plaintiff to protect those rights of ecosystems within those communities.

The work in the U.S. in 2001 to 2006 was carried down to Ecuador, which was beginning to work on a new national constitution in the country. They found out about the work of Wells Township and they found out about the work of Tamaqua Borough and they found out about the work of these small communities that were actually passing these laws, and they asked us to come down to help them write a new national constitution. The committee of delegates working on a fundamental rights section of that constitution, brought us in to help them fashion the law, because they wanted to become the first country in the world to transform from a regulatory, property-based system of environmental protection to a rights-based system of environmental protection. They took the rights from the U.S. communities, and they actually wrote it into their national constitution, which was ratified overwhelmingly in 2008, making Ecuador the first country to do that. We've been training judges in the Galapagos to deal with "rights of nature" cases that are coming in the door. The group that we work with in Ecuador has set up a 1-800 number for people to call to ask an ombudsman to begin representing "rights of nature" cases. All of that stuff has been happening.

We just got the first enforcement decisions. I just want to share them with you before we wrap up here. One was brought by a group of residents using the constitutional provisions on behalf of the Vilcabamba River, located in the province of Loja in Ecuador. The local government there was actually building a road project that was altering the course of the river by dumping that road refuse into the river. The residents there brought a case in which the plaintiff was the Vilcabamba River. They brought it in to the local court, and the local court agreed with them, in the first ruling ever in the globe on behalf of an ecosystem as a plaintiff, and then awarding injunctive relief and damages to repair and restore the ecosystem itself.

We believe that the "rights of nature" stuff is the next horizon for environmental law. It's actually about building a real environmental movement that makes it a rights-based movement rather than just something that raises consciousness or something that attempts to regulate around the edges. We think that's the next step. We've been in touch with Nepal. We just made a visit there. They're talking about putting the rights of nature into their national constitution. The Maldives Islands, where we had a conversation last year about building in a right to climate. In other words, a right to climate that was shared by ecosystems as well as people within the Maldives that could then be used to sue polluters around the globe, including countries, to actually begin to confront the damage that's being caused to the Maldives and other



low-lying island nations on global warming. But it's all pinned to that rights stuff, because we think it's a rights-based movement that's beginning to arise.

I just wanted to say, with no offense to anyone that it's really time to take our collective heads out of our collective asses. And people all the time say, Surely you're not saying to us we need to stop doing the front-line work that we're doing. Surely you're not saying to us that we've got to stop appealing permits and doing all that kind of stuff. I have a mixed response to that now. I used to have something different. But the first one is that there are a limited amount of monetary resources circulating out to nonprofit organizations and other groups doing environmental work. Those resources have to shift, because to build this new system of law, to give birth to this new collective consciousness, it takes money. And the funders have to stop giving money to the regulatory stuff. I think that's about as blunt as I've ever said it. They have to stop. Those are sponges that are taking up money. And we have to have the elbow space to actually build new room for this stuff to happen.

As for the front-line activists, the fact is, things would be even worse now without the courageous work of people that have gone before us to fight those front-line battles. But there has to be a time when we re-examine whether those battles have been successful. We have to regird into a different position, and we need to begin to frame the different fight which is now upon us, which is the collapse of our entire planetary ecosystems.

So here's Derrick Jensen again. I'd like to return to this hope thing. When I say things are hopeless and we're fucked and all those things, this is what Derrick Jensen has to say in his book, and I think the words are right on target. They asked Derrick, "If things are hopeless, why do you do anything at all?" And he said, "Because I'm in love—with salmon, with trees outside my window, with baby lampreys living in sandy stream bottoms, with slender salamanders crawling through the duff. And if you love, you act to defend your beloved. Of course results matter to you, but they don't determine whether or not you make the effort. You don't simply hope your beloved survives and thrives. You do whatever it takes. If my love doesn't cause me to protect those I love, it's not love."

And he goes on, last paragraph, "A wonderful thing happens when you give up on hope, which is that you realize you never needed it in the first place. You realize that giving up on hope didn't kill you. It didn't even make you less effective. In fact, it made you more effective because you ceased relying on someone or something to solve your problems. You ceased hoping your problems would somehow get solved through the magical assistance of God, the Great Mother, the Sierra Club, Valiant Tree Sitters, Brave Salmon, or even the Earth itself, and you just began doing whatever it takes to solve those problems yourself. I think there's that new world waiting to be born."

A final quote from Jensen, because I think it hits home. "If we wish to stop the atrocities, we need merely to step away from the isolation. There is a whole world waiting for us, ready to welcome us home."

Thank you.

*For information about obtaining CDs, MP3s, or transcripts of this or other programs, please contact:*

David Barsamian  
Alternative Radio  
P.O. Box 551  
Boulder, CO 80306-0551  
(800) 444-1977  
info@alternativeradio.org  
www.alternativeradio.org  
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