

Rebel Towns

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The 600 residents of Sugar Hill, New Hampshire, have done a laudable job of keeping the vulgarities of modern life at bay. There are no fast-food restaurants, no neon signs. Instead, the former iron-mining town has rambling country inns and a main road lined with Victorian and Arts and Crafts houses. Locals gather for breakfast, as they have since 1938, at Polly's Pancake Parlor, which grinds its own corn and wheat and uses syrup from the sugar maples that give the town its name. With tourism driving the economy, the village's biggest assets are its fall foliage, fields of lupines and uninterrupted views of the snow-capped White Mountains.

Each March, Sugar Hill's voters gather at the white meetinghouse—a converted church built in 1830 with a trio of gold-leaf clocks on its steeple—for their annual town meeting. Anyone who collects enough signatures can place an item on the agenda to be voted into law. That New Englander impulse toward self-government, combined with the feistiness that led Sugar Hill to secede from a neighboring town in 1962, might explain its residents' sweeping response when they learned in 2010 that an international electric consortium has proposed a high-voltage transmission line that would slice through the village like a giant zipper.

The Northern Pass, if built, would enter New Hampshire at the Canadian border and bisect some of the state's most intact forestland as it connects Quebec's hydroelectric dams with New England's power grid. Steel towers, some exceeding thirteen stories in height, would line the 180-mile route, which snakes through ten miles of protected national forest and seven miles of Sugar Hill. Conservationists say the project is unneeded and could degrade waterways and fragment wildlife habitats.

But what New Hampshirites fear most is that the Northern Pass will disfigure the state's visual landscape. "It could destroy our economy," says Dolly McPhaul, a lifelong Sugar Hill resident. "If people don't build their second homes here, where are the builders going to get their money? The plumbers? The grocery store that feeds these people?" McPhaul and her neighbors were particularly disheartened to learn that the Northern Pass required federal and state permits—but no local permits at all.

"You're shocked to find out you have no say," says Nancy Martland, a retired child-development researcher who moved to Sugar Hill in 2007. "Even your whole town. Even at town meeting. Even your Select Board. You have no power. People in New Hampshire—maybe everywhere, I don't know—we want to stand up for ourselves."

So they did. Last year, Martland and McPhaul campaigned for a local ordinance that would ban corporations from acquiring land or building structures to support any "unsustainable energy system." The ordinance stripped those corporations of their free-speech and due-process rights under the Constitution, as well as protections afforded by the Constitution's commerce and contract clauses. Judicial rulings that recognized corporations as legal "persons" would not be recognized in Sugar Hill. Any state or federal law that tried to interfere with the town's authority would be invalidated. "Natural communities and ecosystems"—wetlands, streams, rivers,

aquifers—would acquire “inalienable and fundamental rights to exist and flourish,” and any resident could enforce the law on their behalf. “All power is inherent in the people,” the measure stated.

Sugar Hill’s attorney suggested this was folly; local governments can’t override state or federal law, much less the Constitution. Such an ordinance could attract a lawsuit, which the village could ill afford. McPhaul, a Republican and a charity volunteer and self-described “goody two-shoes,” also worried about litigation. “But what is your option?” she asks. “To lie down, play dead and let them destroy your town?” After a two-month public-awareness campaign, Sugar Hill’s residents took up the ordinance at their 2012 town meeting. It passed by a unanimous voice vote.

Thus, Sugar Hill became one of dozens of communities nationwide—mostly villages but also the city of Pittsburgh—that have reacted to environmental threats by directly challenging the Constitution and established case law. The leading champion of this confrontational strategy—which has its share of critics, even among progressives who share the sense of desperation that is driving it—is a bearish 43-year-old attorney named Thomas Linzey. These skirmishes, Linzey believes, are the first steps in a long campaign to wrest power from corporations and strengthen American democracy. He refers to the strategy as “collective nonviolent civil disobedience through municipal lawmaking.”

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Linzey runs the Community Environmental Legal Defense Fund, a Pennsylvania nonprofit that advocates for local self-government and the rights of nature. CELDF comes into threatened communities, educates residents about US legal history, and trains them to advocate for “rights-based ordinances” like Sugar Hill’s. About thirty municipalities in Maine, New Hampshire, Massachusetts, New York, Pennsylvania, Maryland, Virginia, Ohio and New Mexico have enacted such measures, according to Linzey, following an earlier round of over 100 more modest laws. CELDF’s organizers have helped citizens fight frackers, coal companies, factory farms, big-box stores, water bottlers and sewage-sludge dumpers. They’ve campaigned to overhaul the city charter in Spokane, Washington. And they aided the successful effort to confer rights on nature in Ecuador’s 2008 Constitution. Linzey, whose baritone voice is filled with populist fire, has crafted a message whose appeal brings together liberals distrustful of big business and conservatives distrustful of big government.

Linzey’s approach has evolved dramatically since 1995, when the organization he co-founded started assisting Pennsylvania communities that were battling polluters and developers. Newly admitted to the bar, the young Alabaman initially put his faith in the regulatory system. “It seemed to us at the time that people needed lawyers,” he recalls. “The problem was not that we didn’t have good environmental laws. The problem was, the world has gone to shit because we didn’t have enough people enforcing those laws.” So Linzey applied what he’d learned in law school. Faced with a proposed incinerator or landfill, “we would take the 400-page application and try to find places where it was deficient—gaps, omissions, those types of things.” Based on these bureaucratic challenges, CELDF’s clients often won their first rounds.

“Then the community group would have a victory party,” he recalls. “Everybody would pat each other on the back and say the system works. Meanwhile, thirty, sixty days from then, the corporation would come back and submit a new and improved permit application, and the project would move forward. So we weren’t stopping anything.”

The attorney wondered what he was accomplishing by working within the system. “In many ways, the regulatory process is intended to exhaust communities, because it does not recognize—and neither does the broader structure of the law recognize—that communities have any power to make those fundamental decisions about energy or transportation or agriculture.” Citizens could delay but not stop projects; the law was “merely regulating the rate at which the environment was being destroyed.”

Behind Linzey’s epiphany is almost 200 years of jurisprudence giving both constitutional rights and legal personhood to corporations. The Supreme Court’s 2010 *Citizens United* decision, which used the First Amendment to permit corporations unlimited independent political spending, is just the latest in a chain of such rulings. Most famous is the 1886 case *Santa Clara v. Southern Pacific*, in which a railroad company argued that a particular tax law violated the Fourteenth Amendment’s equal-protection clause. “The court does not wish to hear argument on the question whether the [clause] applies to these corporations,” Chief Justice Morrison Waite said from the bench. “We are all of opinion that it does.” Since then, courts have also used the Constitution’s Fourth and Fifth Amendments, and its commerce and contract clauses, to expand corporate rights. Linzey believes these rulings are rooted in the very structure of the Constitution, which he says “puts the rights of property and commerce over the rights of people, communities and nature.”

The Constitution also concentrates power by declaring itself, along with federal statutes, “the supreme law of the land.” And starting in 1868, a judicial doctrine known as Dillon’s Rule held local governments subservient to state legislatures, which “breathes into them the breath of life, without which they cannot exist,” Linzey adds.

With communities holding so little authority, Linzey and his colleagues decided that the only way to fight environmental threats was through open defiance. He compares this to Northern jurors who refused to convict defendants in fugitive slave cases, suffragists who risked arrest to vote and African-Americans who sat down at segregated lunch counters. “Change does not happen by silver-tongued lawyers going into courthouses,” he says. “The only way law changes is through disobedience.” There was no reason, he concluded, that disobedience couldn’t come from local governments—and he found eager allies in Pennsylvania’s Republican-leaning farm country.

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Linzey had started receiving calls from elected supervisors worried about the arrival of factory hog farms in their rural townships. The officials had tried to stave off the invasions by strictly regulating manure disposal, only to find their efforts pre-empted by Pennsylvania law. Now some were willing to butt heads with the state government. Linzey drafted an ordinance that would ban corporate farming altogether, drawing from similar laws passed by nine Midwestern

states. About twenty townships enacted the measure, he estimates, followed by eighty that banned the importing of corporate-hauled sewage sludge for use as fertilizer on farm fields. (Despite industry assurances, some scientists consider the noxious sludge toxic. Two Pennsylvania teens had recently died after exposure to such sludge.) A few townships went further, refusing altogether to recognize the personhood of corporate sludge haulers.

Predictably, Pennsylvania's state government invoked its supremacy. It passed a law in 2005 empowering the attorney general to sue local governments that restrict "normal agricultural operations," then took legal action against two townships, East Brunswick and Packer. Both withdrew their sludge bans, though Packer's supervisors voted not to recognize the attorney general's authority to restrict their autonomy. A court voided that measure.

News of the Pennsylvania rebellion reached other places. In Barnstead, New Hampshire (population 4,600), a home-schooling mother named Gail Darrell, who lives in a Revolutionary War-era cabin with her piano-tuner husband, watched with alarm as a water bottler called USA Springs announced plans to extract 310,000 gallons a day from three bedrock wells in nearby Nottingham. A report by civil engineer Thomas Ballestero warned that the operations could deplete and contaminate the local water supply. Yet the project seemed to be moving forward.

Darrell had never been involved in local politics. But her children were getting older, leaving her with free time. So she volunteered to sit on a committee studying how Barnstead could protect its own water. There she learned about CELDF and invited Linzey to speak to the town's selectmen. Linzey's call to outlaw corporate privilege found a receptive audience in freedom-loving New Hampshire. (The state constitution authorizes its citizens to form a new government when the existing one starts serving private interests.) "It's always been a bit ornery up here," says Gordon Preston, who chaired the board of selectmen at the time. Preston had reservations about CELDF's approach: "The biggest fear of a small town is that they get their asses hauled into court and have little or no money to defend themselves." But he also shared Linzey's concern about corporate power and supported the principle of local self-government.

Darrell worked with the selectmen to put an anti-bottling ordinance on the 2006 town meeting agenda. Shortly before the vote, Linzey and historian Richard Grossman came to Barnstead to teach CELDF's Democracy School, an intensive seminar that traces the history of corporate and government power. It was a clarifying moment for Darrell. "I didn't really understand about the Constitution till I went through the school—that it wasn't about freedom," she says. "We grow up with that IV drip in our arm that tells us that we live in the greatest democracy that ever was." The seminar gave Darrell the momentum she needed to defend the ordinance, which passed overwhelmingly at the town meeting and was strengthened two years later. Barnstead not only banned corporate water withdrawals and stripped bottling companies of their presumed constitutional rights; it also threatened secession from any government that tries to overturn the ban or "intimidate the people of Barnstead." The measure was among the first to confer civil rights on natural systems like aquifers and rivers. Nottingham, which had initially rebuffed CELDF, followed suit with a similar measure.

"New Hampshire has always had an independent spirit," Darrell says. "The soil here is crap, and you really have to work hard to farm. When people came up here to settle, they were coming into

no-man's land. You had to have enough gumption to stick it out, to stand up for yourself, and to make it through the winter. That spirit has carried out into the way we treat government. We believe that we have the inalienable right to govern ourselves. So to hear the language of the ordinance—that didn't seem foreign to people."

USA Springs later filed for bankruptcy, so it is hard to know whether these ordinances had any impact. But Darrell, who became CELDF's New England organizer, claimed a more tangible victory in Shapleigh, Maine, where residents passed a rights-based ordinance in 2009. Their target, the Nestlé subsidiary Poland Spring, pulled up its test wells and left four months later. "Without the town's permission to proceed on that project," says Mark Dubois, the company's natural-resource manager, "we had no project."

Nestlé's withdrawal felt particularly sweet because Shapleigh's citizens had defied both the company and their own elected officials. When the board of selectmen refused to put the rights-based ordinance to a public vote, calling it unconstitutional, bottling opponents convened their own town meeting and passed it 114-66. "Nobody is covering our asses out here," says Charles Mullins, a retired machinist who later served one term as selectman. "When the people up high don't do their jobs, then we've got to get out in the streets and do it ourselves."

Victories like Shapleigh's have inspired other threatened communities, but they're not really part of CELDF's long-term game plan. For Linzey, disobedient lawmaking is an organizing tactic, not a legal one. He knows municipalities violate the law when they assert supremacy over state and federal governments. He expects "lawsuits galore" and assumes judges won't permit these affronts to the Constitution. But he also believes that every courtroom defeat will trigger a bigger backlash against the status quo, leading to more municipal defiance. Over time, he expects to build the critical mass necessary to amend state constitutions and eventually the federal one.

CELDf considers this the only path to environmental sustainability, and its leaders freely criticize liberals who believe otherwise. "We're seen as not able to play well with others," says Ben Price, who leads the nonprofit's efforts in Pennsylvania. He admits that CELDF's uncompromising style can be off-putting, but he doesn't care. "Frankly, I'm not willing to suggest that the traditional progressive strategy is just as good" as the one CELDF is pursuing, and "we're just giving another tool in the toolbox—I don't agree with that. If trying to regulate the rate of destruction was working so well, we wouldn't be in the mess we're in environmentally."

Price says that when he chats with mainstream environmentalists, "what I constantly hear is, 'We need to have a seat at the table. If we're not sitting down when they're talking about these rules and regs, we're left out. Is that what you want?' My answer is yes. We need to stop legitimizing what they're doing by being invited to the table of power, and then having no power."

The criticism, though, runs both ways. Some progressives call CELDF's tactics pie-in-the-sky at best, dangerous at worst. "I'm concerned about how this can suck energy out of other avenues for change," says Jon Snyder, a Spokane City Council member who believes the resources spent on a CELDF-sponsored ballot initiative cost his council the chance for its "first progressive majority." The 2011 measure would have amended the city charter to strip rights from

corporations and give them to waterways, neighborhoods and workers. It lost by 1,000 votes out of 58,700 cast. That's a thin margin, but wider than the eighty-nine votes that would have elected a fourth progressive to the seven-member council. The liberal bloc has lost 4–3 votes on marriage equality, saving union jobs, utility rate reform, historic preservation, alternatives to incarceration and job-placement services for the poor, Snyder says.

Constitutional scholar Kent Greenfield believes CELDF's shortcomings go beyond misplaced energy. "I totally understand people's revulsion against corporations' misdeeds," says the Boston College law professor. "I think, though, that we shouldn't be squandering this political moment on organizational tools that, if implemented, would be a disaster. The reason we have a national government is because there are certain things we ought to decide at the national level and we can't let people opt out of." America's racial history, he says, is exhibit number one; if Barnstead can threaten to secede, so can a town that wants to re-segregate its schools. "This is what we fought the Civil War over, for goodness' sake. This is what the civil rights movement was about. We cannot let the George Wallaces of the world stand in the schoolhouse door and say, 'Our community norm of segregation is going to control here in the face of the national norm of equality.' The assertion of power to rewrite the Constitution within one's own community is a nonstarter—and ought to be."

Linzey has heard the racial analogy before and rejects it. He argues that CELDF's ordinances expand rights, at least to flesh-and-blood humans. The Constitution and federal laws should be used, he says, to overturn local restrictions of rights. "Vehicles are only as good," he says, "as the values that animate them."

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In the decade since it first took aim at corporate privilege, CELDF has jumped beyond its rural roots. It crossed the Rubicon in 2010, when Pittsburgh's City Council unanimously passed a rights-based anti-fracking ordinance. "It was a very, very assertive bill," says sponsor Doug Shields, who has since retired from the council. "It didn't mince words. And there was talk that if you do this, you'll be challenged the day after your vote." Sure enough, last year Pennsylvania's legislature passed a bill nullifying almost all local regulation of oil and gas extraction. (The state's Public Utility Commission says this includes the Pittsburgh ordinance.) The new law is currently in litigation.

Even before the Pittsburgh foray, CELDF started working internationally. After a handful of townships had given civil rights to "natural communities and ecosystems"—an idea floated forty years ago by legal scholar Christopher Stone in an essay titled "Should Trees Have Standing?"—CELDf was invited by an NGO to help draft a similar provision in Ecuador's Constitution. "Ecuador has been treated by multinational corporations as a cheap hotel," says associate director Mari Margil. "They come in, they make a giant mess, and then they leave." The new Constitution, adopted in 2008, gives nature the right to "respect for its existence and for the maintenance and regeneration of its life cycles." Courts have used that provision to crack down on illegal mining and road construction. Yet resource extraction continues, including the opening of 8 million acres of unspoiled rainforest to oil drilling. Margil and Linzey have also talked with activists in Nepal, Italy, India and New Zealand.

The heart of CELDF's work, though, remains in small American communities like those affected by the Northern Pass. Besides Sugar Hill, two other towns outlawed unsustainable energy projects by popular vote last year. Three others rejected or tabled the ordinance. For all of New Hampshire's iconoclasm, not everyone wants to register dissent through a vehicle that could be overturned in court. "Unfortunately, the state trumps anything the towns do," says Tom Mullen, developer of a resort that lies in the transmission line's path. "I want to focus on things that will stop this project now." For Mullen, that means working with the state government, which in 2012 led to a victory: legislators banned the use of eminent domain to obtain right-of-way for unneeded transmission projects.

Still, CELDF keeps minting activists who want nothing to do with government as usual. Alexis Eynon, a middle-school art teacher, started attending Democracy Schools—following them around New England—when she learned the Northern Pass would come within a mile of her home in Thornton. Eynon built her house from straw bale, framing it with salvaged timber from her five wooded acres and heating it with a geothermal pump and a wood stove. "The original concept was to disturb the land as little as possible," she says, which makes the nearby utility corridor that much harder to bear. "It takes a spectacular treasure that to me seems so rare in our country—these untouched places—and makes it mundane. It becomes like every other place that's been destroyed by some kind of industrial project."

Hearing Linzey speak, and attending the Democracy Schools, convinced Eynon that "nobody's going to help us here. We have to help ourselves." In March, she plans to present the rights-based ordinance at Thornton's town meeting in the hope that it will follow the lead of Sugar Hill, thirty miles away. Eynon knows that some of her neighbors are wary of a lawsuit and that others support the Northern Pass outright. She still considers such ordinances New Hampshire's only hope.

"The whole regulatory business feels like being a hamster in a hamster wheel," she says. "I want to put my track shoes to the pavement and just start running."

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