

# Strategic Corporate Initiative

**Toward a Global Citizens' Movement  
to Bring Corporations Back Under Control**



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# 1

## A Call for a Global Movement to Bring Corporations Back Under Control: *From Corporate Rights to Community and Human Rights*

### The Emergency

There are tectonic stresses building beneath the surface of our society that threaten a global earthquake unlike any we've seen in recent history. Global warming is accelerating; fossil fuels are being rapidly exhausted; critical eco-systems have been severely damaged; and the income gap between rich and poor is increasing rapidly. The root cause of most of these problems can be found in the excessive power of global corporations. To solve these problems, we must bring corporations back under our control. This will be one of the greatest challenges our society faces this century.

It is alarming that, despite a long history of successful efforts to change individual corporations, their power has grown so large that the corporate state is now poised to supplant the nation state. Corporations have managed to obtain rights that in essence supersede those of individuals, communities, and even governments. This imbalance of power is a grave threat to democracy and the health of our planet.

The main components of a movement to bring corporations back under citizen control already exist in the U.S. and around the world — including organized labor, environmentalists, religious activists, shareholder activists, students, farmers, consumer advocates, health activists, indigenous and community-based organizations. We have seen these activists in action on the streets of Seattle in 1999, challenging the World Trade Organization. We have seen them achieve impressive results curbing sweatshop abuses, stigmatizing tobacco, guiding bank lending practices, and protecting millions of acres of forests, to name just a few successes. We have seen the building of new institutions like worker-owned enterprises, cooperatives, and land trusts.

All these movements are advocating for healthy communities, for a moral economy, for the common good. Added together, these various movements possess enormous collective power. Yet the whole is less than the sum of the parts. Despite our many achievements, the gap in power between corporations and democratic forces grows wider each year.

If we are to have a chance of closing the gap, our strategies must evolve. We need to challenge ourselves to dream bigger, to speak with one voice across issue sectors, and to act more strategically. The streams of many small movements must flow together into a single river, creating a global movement to bring corporations back under the control of citizens and their elected governments.

The urgency of the need for unified action is what impelled a small group of organizations to initiate this long-term Strategic Corporate Initiative. We seek to join our voices with others in hopes of sparking a debate among civil society organizations about the need for a unified movement of movements. We believe that, if united, we can be the catalytic force to create a humane, sustainable, democratic society and economy.

## A Movement of Movements: From Corporate Rights to Community and Human Rights

There are tectonic stresses building beneath the surface of our society that threaten a global earthquake unlike any we've seen in recent history. Global warming is accelerating; fossil fuels are being rapidly exhausted; critical eco-systems have been severely damaged; and the income gap between rich and poor is increasing rapidly. The root cause of most of these problems can be found in the excessive power of global corporations. To solve these problems, we must bring corporations back under our citizen and community control. This will require nothing less than a movement of movements engaged in a long-term strategic corporate initiative.

A strategic corporate initiative will only succeed if it is global. At the same time, we must recognize that every country will have different priorities. For example, separating corporations and state is a much higher priority in the U.S. than in the European Union. One challenge will be to support regional priorities while also linking them to global priorities.

In order to build a globally unified movement, the most urgent current need is for a shared ideology, a shared common belief system. We need what feminism had in the 1970s, which was a central insight that united disparate reform efforts. As Marjorie Kelly wrote in *The Divine Right of Capital*:

*It would not have been enough to see poor funding for girls' athletics as one problem, unequal wages for women as a separate problem, and harassment in the workplace as still a different problem. These battles became one when their common source in sex discrimination was recognized. Yet today we chase after corporate pollution as one problem, low wages as another problem, and corporate welfare as still a third problem.<sup>1</sup>*

When we can see the common problem at the heart of these issues, we will become one movement. And that movement will gain momentum.

The common problem can be named in two words: *corporate power*.

The solution is twofold. We must *enhance countervailing powers and restore democracy*, so corporate power no longer dominates the landscape. And we must *change the nature of the market system* itself, to make its power less destructive.

The corporate sector, the private sector, has grown too powerful. We need to redraw the boundary between public and private, and ensure that in both sectors the common good is protected. This means reinvigorating government, elevating community rights, protecting the commons, and reconstituting corporations to bring them back to their original purpose of serving the common good. A central theme is protecting and building livable communities that have control over their futures. Communities are the front lines in the battle to bring corporations back under citizen control. They are where movements begin.

As we seek transformation, we must converge around core strategies that have the potential to dramatically change the political and economic landscape. After a year and a half of consultation with dozens of activists and experts, we have identified seven strategic pathways. For each, the team has designed or identified innovative campaigns that can, first, unite a movement, and second, drive its agenda toward deeper transformation. We recognize that these campaigns represent an Anglo-American perspective. Our intention with these proposed campaigns is to broaden the discussion both in the U.S. and globally with the expectation of integrating other diverse views in the future. The pathways:

## Enhancing Countervailing Powers and Restoring Democracy

- ▶ Separate corporation and state.
- ▶ Change international rules.
- ▶ Elevate community rights.

## Changing the Nature of the Market System

- ▶ Protect the commons.
- ▶ Transform corporate purpose.
- ▶ Tame the giant corporations.
- ▶ Re-direct capital.

This is a large agenda. Given the unprecedented financial power of global corporations, we are not suggesting that a battle of muscle vs. muscle is one we can win. A key strategy must be to *undermine the legitimacy* of the existing order. No system can long stand that relies upon force alone, as many fallen despots of the twentieth century might attest.

In this regard, transformation is already well advanced. Corporations have lost much of their moral legitimacy, as we see in front-page stories on excessive CEO pay packages, predatory lending, the Enron and stock options scandals, and countless other abuses. As *Business Week* found in 2000, 82 percent of Americans agree that: "Business has gained too much power over too many aspects of American life."<sup>2</sup> We are in the midst of a massive corporate crisis of legitimacy. It can be leveraged into significant momentum for change.

Other trigger events lie ahead that will create further openings for change, such as rising energy prices from peak oil, new global warming catastrophes, new corporate scandals, and countless other potential crises. We need not create openings for change. What we need is a transformative agenda to capitalize on these openings when they come. Preparing that agenda is the aim of this report.

We offer it to citizen organizations as provocative food for thought, as suggestions on steps that could be taken to form a movement of movements. We offer it as well to the philanthropic community as suggestions of paths forward in corporate work that might be most strategic for achieving their objectives.

Finally, we want to state that we offer these thoughts with humility. We are inspired by the strength, success, and wisdom of the thousands of movement organizations and activists that face the daunting challenges posed by overwhelming corporate power. This report is an invitation to discussion, and to joint action. We firmly believe the time has arrived when we can create a global movement to bring corporations back in service to all citizens and under their control.

### Endnotes

<sup>1</sup> The Divine Right of Capital, Marjorie Kelly, 2001, p.98.

<sup>2</sup> *Business Week*, September 11, 2000, p. 148.

# 2

## Vision 20 Years in the Future

“Without vision, the people perish,” says the famous Biblical quotation. It is vital that we as a movement share a vision of where we are headed, what we are aiming toward, what successful transformation might look like.

For each of the seven strategic pathways, we have sketched a vision of success — a vision of the transformed economy and society we seek, where new institutions and arrangements allow us to enjoy vital communities, shared prosperity, a revitalized democracy, and a reviving ecosystem. We offer a vision of an economy in which corporations are simply one more element of a democratic society that is designed to preserve and enhance our collective well-being.

### Enhancing Countervailing Powers and Restoring Democracy

#### 1. Separating Corporation and State

In 20 years, a profound shift in the political and civic culture will have occurred. People will once again put their faith in government as an instrument of community and collective self-governance. This rebirth of civic culture will drive corporations out of key areas of public life where they currently operate or wield illegitimate influence. Citizens will no longer look to corporations, but instead to government, to protect the common good. There will be a strong, independent, nonpartisan movement for democracy, with a significant grassroots base in communities across the country, as well as effective public policies.

The new principle of “separation of corporation and state” will be nearly as sacrosanct as the separation of church and state. Corporate rights of speech, equal protection, and due process will have been severely restricted. The line between corporations and government will be carefully drawn to dramatically diminish financial influence on elections or state and local initiatives. Lobbying will be by invitation of government bodies. The revolving door between business and government will be closed off, with former government employees unable to contract with corporations or be employed by them for five years. Former corporate employees will not be allowed to serve on governmental regulatory bodies, although they may be asked to advise them.

#### 2. Changing International Rules

Twenty years from now, the institutions and rules of the global economy will have been overhauled. Existing international trade and financial institutions would be placed under the authority of a strengthened and reformed UN. Under the rules of this new infrastructure, impoverished nations will be freed from the burden of unpayable international debts. Trade and investment rules will promote fair exchange, while allowing national governments the policy space to support social and environmental goals. Public financing will support environmentally and socially responsible projects, and will permit governments to avoid harsh austerity measures in times of crisis.

Working with national governments, a new international court will exist to punish corporate violators of international human rights laws. Other new arrangements or institutions will address global monopolies.

### 3. Elevating Community Rights

In 20 years, a rights-based people's movement will be working to revamp the constitutional structures of law, which today place the rights of corporations above the rights of people, workers, communities, and the environment. A legal and campaign infrastructure aimed at achieving a legal framework that supports community self governance will be built.

Like historic prior people's movements, the community rights movement will harness the collective power of the many to drive real change into the law. Communities will be the nexus for the work to truly elevate people and community rights, and necessarily strip corporations of their illegitimate rights.

## Changing the Nature of the Market System

### 4. Protecting the Commons

Within two decades, the commons will be widely recognized as a sector off limits to corporate interference, a sector containing our precious common wealth, including the *natural or ecological* commons (including air, land, water, soil, airwaves, oceans, the atmosphere, fisheries, forests, seeds, animals, rivers, wind, etc.); the *community or social* commons (those things we create together such as laws, roads, libraries, museums, property and intellectual property law, rail systems); and the *cultural or knowledge* commons (such as music, indigenous knowledge, science, jokes, wisdom, languages, open-source software, and the Internet).

Roughly a third to a half of all economic activity on earth would be declared a "no go" zone for corporations, placed into commons zones. In these zones, ownership of the commons would take the form of what Gar Alperovitz calls a "pluralist commonwealth," involving hundreds of public and private institutions from the local to the global level. These might include private land trusts, cooperatives, municipal holding companies, and so forth. Through such institutional forms, our common gifts of nature and society would be passed onto our heirs, undiminished, in relatively equal measure. In addition, new rules at local, national, and global levels would require corporations to internalize the costs they have historically externalized.

To move from an exploited or degraded commons to a healthy society, we must reclaim our commons, giving it standing and protection. We must change our consciousness to be able to see the commons, cultivating a commons sensibility that takes offense when it is encroached upon. This will happen as social movements press for protection of the commons — and create institutions to own, manage, and defend it. It will happen when organized movements press government to assign the ownership rights of various commons to appropriate trusts, local authorities, or other legal entities. A key goal of commons/corporations work is to connect social movements that are already working to defend the commons across sectors and to deepen our understanding of the various forms of commons.

### 5. Transforming Corporate Purpose

Within 20 years, the tide of public opinion will have turned against Corporate America's penchant for short-term thinking. The public discourse will include talk about fair dealing, a moral bottom line, and a moral economy. Building on these values, the nation will address the structural incentives and pressures keeping corporations tied to short-termism. It will be considered bad form to pay CEOs outsized compensation, or to aggressively fight unions. Corporate boards will have worker and public interest directors, and company purpose will be legally broadened to include fair treatment of employees, the environment, and the community. It will be commonly accepted that healthy policies on the environment and human resources are a necessary part of a well-run company. This vision will be embedded in structures like social reports, social ratings, pay tied to social metrics, government purchasing guidelines, capital investment policies, municipal ordinances, capital gains taxes on short-term trades, and periodic charter review.

Such changes will be perceived as representing moral limits and be widely embraced as legitimate. Responsible companies will find incentives work in their favor, while bad actors will find it increasingly difficult to do business.

There will be growing recognition that corporate design — in law, charters, ownership, and governance — is a powerful tool for transforming corporate purpose. A movement for hybrid, community-friendly, social enterprises will take off, with exciting experimentation. Media companies will embrace hybrid designs supporting their dual social and financial missions. It might be government policy to make employee ownership as widespread as home ownership, via government-chartered financing institutions similar to Fannie Mae. These new kinds of “for-benefit” companies will be seen as representing a sector beyond government, business, and nonprofits — a “Fourth Sector” equaling 20 to 30 percent of the business sector. Some companies will choose to cross over into this Fourth Sector, because of advantages in employee morale and customer loyalty.

## 6. Taming Giant Corporations

In 20 years, the power of corporations — as measured by market sector concentration — will be significantly reduced, with positive consequences across the entire economy. The current diminished antitrust regulatory framework, dominated as it is by neoclassical economic thinking, will be challenged by an emerging ideology that brings markets back under democratic control. Markets (and therefore corporate power) will be restricted, as government, the commons, and Fourth Sector community-based businesses and institutions expand.

In areas of the economy critical to the general welfare — like water, electricity, transportation, health care, and media — we will see substantially diminished corporate control. In many cases these services will be turned over to community-based institutions.

Significant crises will force the restructuring and even dismantlement of parts of other sectors, such as defense, automobile manufacturing, oil, and gas. Government might use crises, or prosecution arrangements, as opportunities to create federal charters that restructure particular corporations in the public interest. Industries dependent on monopolistic intellectual property laws and regulations could be gradually displaced by new nonprofit, open-source providers — in areas such as essential medicines, for example.

Overall, the regulatory focus will be less on promoting competition and providing for market efficiency, instead shifting toward eliminating short-sighted consumption, moving vital services back under public control, and expanding community-based institutions.

## 7. Re-directing Capital

In 20 years, governments at the local, state, and national levels will provide strong procurement incentives, as well as tax and regulatory incentives, to give an advantage to companies with high social and environmental ratings, and disadvantage those with poor ratings. Social and environmental ratings will be embraced culturally as a new measure of risk and sustainability. As a result, all major pension funds, socially responsible investment funds, foundations, and a large percentage of mutual funds will invest primarily in companies that are highly rated socially, in much the same way they now invest in bonds that are highly rated.

A uniform rating system will exist that is based on a reliable, respected process integrating the UN Principles for Responsible Investment as well as other civil society ratings schemes. Civil society organizations would be systematically empowered in the ratings process, able to influence the system and its evolution.

It will be widely understood that in the long run, financial interests converge with the interests of communities, employees, and the environment. This message will have been driven home by multiplying environmental crises and expanding financial crises similar to the predatory lending fiasco, where environmental and financial well-being are clearly seen to be tightly linked. There will no longer be the sense that investors can prosper at the expense of employees or the environment — or that financial well-being is somehow independent of the larger cultural and ecological world.

Corporations worldwide would ideally recognize the business benefits of scoring well in social and environmental terms, and would embrace the ratings as a new standard of excellence. As a result of all these changes, companies will welcome the opportunity to compete in a race to the top.

# 3

## Summary of Recommended Strategies

### Short- and Long-Term Transformative Initiatives

In creating a movement of movements to begin to attain the visions outlined here, it is vital to have creative initiatives that step boldly forward — transforming public understanding, shifting the debate, putting opponents on the defensive, and attracting widespread support.

For each of the seven pathways forward, the Strategic Corporate Initiative team has identified or crafted one key short-term strategy, aimed at uniting a movement, and one key long-term strategy, aimed at taking reform to a deeper, more transformational level. The sections that follow will describe these in more depth. We offer here a summary overview.

We have molded our initiatives based on the following criteria, culled from our research and interviews. Each initiative should:

- ▶ Limit corporate power.
- ▶ Be a wedge issue that is synergistic with other issues and creates a ripple effect.
- ▶ Capitalize on existing or likely public outrage.
- ▶ Activate powerful constituencies, especially grassroots.
- ▶ Carry the overall framing well.
- ▶ Have clearly defined goals.
- ▶ Build movement strength and infrastructure.
- ▶ Have a reasonable likelihood of success.
- ▶ Advance one or more of the strategic tracks.
- ▶ Take advantage of trigger events (e.g. global warming, elections).

The strategies were also selected to spark debate within the activist community. It may not be possible for a united movement to advance all of these strategies described below at once. But by laying out a reasonably comprehensive agenda, we aim to create room for discussion, in the hope that we will find interest converging around certain of these initiatives.

We envision convening discussion sessions with leaders of key constituencies to debate priorities and define their roles for achieving them. Different countries and regions will need to set their own priorities, within a common frame.

# Enhancing Countervailing Powers and Restoring Democracy

## 1. Separate Corporations and State

### Short-Term: Getting Corporations out of Elections

Corporations' ability to influence the election of public officials must be stopped. This initiative could bring corporate and policy campaigners into a high visibility, joint campaign to promote public financing of political campaigns and eliminate corporate PACs. It could create a campaign targeting Diebold Corporation to end its involvement in vote counting, or build on seminal state and local campaigns that offer strategic ways to limit corporate contributions. In the next five years, the goals will be to:

- ▶ **Build public consensus for legislation** to fund federal campaigns with public money.
- ▶ **Stigmatize corporations that fund elections** by campaigning for consumer boycotts of companies that buy elected officials.
- ▶ **Stigmatize politicians for accepting corporate money and then voting against the public interest** in favor of their corporate supporters.
- ▶ **Require an auditable paper-trail** for all electronic voting machines.

### Long-Term: Limiting Corporate Speech Rights

This initiative would reframe popular campaigns around community rights, to structure the public sphere in ways that enhance democratic discourse by limiting corporations' ability to influence the electoral process by restricting their speech rights. It would create a National Community Rights Network — as we'll see in more detail under Section 6 on communities — which will house a national community free-speech clearinghouse to support campaigns that seek to exclude corporate involvement in elections, challenge corporate radio and TV broadcast licenses, work to prohibit direct-to-consumer pharmaceutical advertising, and prohibit product marketing in schools. The clearinghouse would develop a network of scholars to support these campaigns; strategize around key court cases related to corporate speech rights; and popularize a fundamental reframing of the First Amendment around the right of communities to democratic discourse. The goals of this initiative:

- ▶ **Expand community ownership** and control of the broadcast spectrum.
- ▶ **Reduce the reach and amount of corporate advertising** in the public arena.
- ▶ **Restrict out-of-jurisdiction corporations' involvement** in local and state elections.

## 2. Changing International Rules

### Short-Term: Fair Trade Movement — Moving from Defense to Offense

The "free trade" agenda that elevates corporate interests above all else must be stopped and alternative policies put into practice. Civil society organizations — like the International Forum on Globalization and the Hemispheric Social Alliance — have already developed detailed alternatives, and some Latin American governments have adopted portions of these agendas. These alternatives need to be popularized. Trade activists should be brought together with media and popular education experts to develop creative ways of communicating alternative proposals. To promote joint international action, discussions would be held between policymakers, civil society, and legal experts in countries where criticism of investor protections in treaties is highest, such as Bolivia, Brazil, Argentina, Ecuador, Canada, and the U.S. Goals of this initiative:

- ▶ **Mainstream the discussion of alternatives to the current trade model.**
- ▶ **Create alternative investment rules**, which are ripe for attack because they are an extreme example of excessive power granted to corporations through trade pacts.
- ▶ **Create stronger links between trade activism and corporate campaigns**, to put a corporate face

on the problems associated with the current trade model.

### Long-Term: Creating an International Court for Corporate Crimes

Following the precedent of the International Criminal Court (ICC), a similar mechanism should be established to punish corporate criminals, either through an expansion of the ICC's mandate or through an independent entity. Ideally, this court would have the authority to investigate the entire range of wrongdoing by transnational corporations under international law. Initially, it may be more realistic to focus on the most egregious corporate crimes, such as slave labor and the worst forms of child labor. There are a number of information-gathering activities that could lay the foundation for a movement for binding international standards. For example, the UN could develop a database that tracks national governments' capacities to regulate corporate behavior. Goals:

- ▶ **Create a wikipedia** on global corporations or a corporate rating initiative.
- ▶ **Build widespread support for an International Court for Corporate Crimes.**
- ▶ **Create people's tribunals** to expose corporate crimes.

## 3. Elevating Community Rights

### Short-Term: Build a National Community Rights Network

Building toward the 20-year vision means focusing individual campaigns on dismantling the existing legal structure. At the local level, this means assisting community groups to build new campaigns across the country, and then helping to stitch them together to form a cohesive, national movement that will push municipal challenges to the legal structure of law into higher levels of government.

Communities need to move beyond single issue approaches to corporate power. We need a people's movement driven by communities across the country, where organizers educate community leaders on common legal barriers. We need campaigns to create "crises of jurisdiction" in which municipalities confront not just corporate aggressors, but governmental entities and legal structures that empower those aggressors. Communities can then join together with each other — and with environmental, labor, and human rights activists - to fundamentally change the legal system, dismantling current law that empowers corporations with constitutional rights. The aim is to create a powerful community network to seed a national movement that will over time push municipal challenges to the legal structure of law into higher levels of government. Goals:

- ▶ **Build a powerful network** dedicated to community rights.
- ▶ **Elevate the issue of community rights** to the national level.
- ▶ **Build and educate a cadre of talented community organizers.**
- ▶ **Lay the foundation for a rights-based people's movement aimed at long-term legal change,** to establish community self-governance and strip corporations of their constitutional rights.

### Long-Term: The Community Rights Initiative

This initiative is dependent on the strength of the community rights campaigns undertaken under the short-term initiative which are building a rights-based people's movement. This initiative confronts the reality that for communities to be self-governing, corporate rights necessarily must be significantly reduced, especially where they are used to undermine local and democratic decision-making authorities. This, we believe, will require a sophisticated strategy that binds movement organizing to strategic litigation and efforts to transform constitutional theory to reflect populist interests. Because it will take some time, we must build a legal and campaign infrastructure dedicated to developing and implementing this strategy. Goals:

- ▶ **Continue to build and strengthen a rights-based people's movements,** and elevate the community rights issue to the national level.
- ▶ **Develop legal theory and strategy for establishing community rights to self-governance in the law** and for eliminating corporate constitutional rights.
- ▶ **Achieve a legal outcome that establishes in law community self-governance.**

# Changing the Nature of the Market System

## 4. Protecting the Commons

### Short-Term: Creating Water Trusts

Water is the number one strategic short-term commons issue. Around the world, 1.2 billion people lack access to clean drinking water. Every year over 2 million people, mostly young children, die from preventable diarrhea contracted from drinking unsafe water. One of the key culprits is a small group of giant water firms taking over municipal water systems around the world. This project would build on existing initiatives, like the Blue Planet Project, which has forced some corporations to retreat from failed private water contracts, or the African Water Network, created in January 2007 by activists from over 40 countries who seek to counter water privatization. Goals:

- ▶ **Shift international opinion toward treating water as a right**, not a commodity.
- ▶ **Create a UN Convention on the Right to Water.**
- ▶ **Block privatization of community water supplies in the U.S.**

### Long-Term: Creating the Sky Trust

The climate and global warming crisis will be a major driver of a deeper understanding of corporate encroachment on the commons and the need to create mechanisms to defend the “sky commons.” In the coming years, governments will be designing carbon-reduction programs. The value of the sky will either be given to historic polluters — or we could recognize that we all own the sky as a commons and direct rents to common good purposes. This campaign would mobilize constituencies to support a Sky Trust, a cap-and-trade system chartered by government, in which initial carbon emission rights are assigned to a not-for-profit trust or quasi-public agency. The trust would establish a gradually declining cap for CO<sub>2</sub> emissions and auction tradable emission permits to corporations. Revenue from the Sky Trust could be rebated to all citizens on a per capita basis, be used to fund education, or go toward public goods such as energy conservation, renewable energy development, and carbon offsets. Goals of this initiative:

- ▶ **Promote the concept of the sky as a commons.**
- ▶ **Create public awareness** of alternative commons management institutions.
- ▶ **Pass legislation** creating the Sky Trust.

## 5. Transforming Corporate Purpose

### Short-Term: Ending Short-Termism

Building on public outrage at exorbitant CEO pay, and tapping growing business concern about short-termism, this campaign would tie the two together in a new moral narrative, showing how selfishness is tightly linked to free market ideology, because of its ethic of self-interest. The greatest symbol of free market selfish excess is CEO pay. Stock options are the linchpin keeping companies focused on short-term profits — leading them to ignore environmental harm, pay poverty-level wages, fight unions viciously, and so on. The aim is to tie economic immorality to short-termism and break its grip with a new vision of a Moral Economy that creates win-win outcomes. The elements of the campaign would include a research agenda demonstrating how stakeholder and stockholder benefits converge over the long-term; an ethical business council speaking out against short-termism; grassroots campaigns to stigmatize selected CEOs and implement circuit breaker policies; and a capital component tying the moral bottom line to investment policies or shareholder activism. The initiative's goals:

- ▶ **Stigmatize exorbitant CEO pay** to tell the deeper, systemic story of the unethical effects of

short-term thinking.

- ▶ **Create a coherent Moral Economy vision of company success**, with a clear moral bottom line representing a bright line for unacceptable behavior. This might mean, for example, companies that have multiple felony convictions, that have multiple environmental violations, and that fire union organizers.
- ▶ **Implement circuit breaker policies** that use this moral bottom line in areas like government procurement, investment policies, or municipal ordinances.
- ▶ **Work for policy changes**, like taxing short-term capital gains at a higher rate than long-term gains.

### Long-Term: Promoting Social Enterprise

While “ending short-termism” seeds awareness of the role of corporate design in unethical behavior, the social enterprise initiative provides alternative conceptions of enterprise design. By showing what companies can look like, it offers a vision for the future and exemplifies the values of a humane economy. A social enterprise initiative can set the context for a myriad of national and local activities. The aim is to promote the concept of profit-making, community-friendly companies that exemplify redefined company purpose, such as employee-owned companies, municipally chartered companies, mission-driven family-controlled firms, cooperatives, community banks, and credit unions. Building on the work of the Aspen Institute, the Institute for Local Self-Reliance, Gar Alperovitz’s Democracy Collaborative, and others, the initiative would identify this as an emerging hybrid “Fourth Sector,” beyond business, nonprofits, and government. The initiative would encourage new hybrids like trust-owned firms and nonprofit-owned social enterprises that combine social mission with profit. Goals:

- ▶ **Map the Fourth Sector and provide a census of activity**, disseminating this analysis widely, via an Annual Report on the Fourth Sector.
- ▶ **Sponsor trainings in hybrid company design** and build a database of company profiles and legal templates.
- ▶ **Advance public awareness** through media coverage and community outreach.
- ▶ **Promote policy changes that advance the Fourth Sector**, such as state or national policies to promote widespread employee ownership, using state offices of employee ownership or a Fannie Mae-type federal funding vehicle.
- ▶ **Create grassroots campaigns** to get NGOs and colleges to bank with their values at community-based institutions.

## 6. Taming Giant Corporations

### Short-Term: Stigmatizing Corporate Concentration

The current diminished antitrust regulatory framework should be challenged by an emerging ideology that stigmatizes corporate concentration, restores public awareness of its negative impacts on market competition, and brings markets back under democratic control. In this new paradigm, markets should be restricted, the public sphere and “Fourth Sector” community-based businesses should expand, and essential services (water, electricity, transportation, etc.) should be brought under democratic control. The groundwork for a fundamental shift in economic thinking must be laid out over the next five years. Goals:

- ▶ **Build broad understanding** of how the failure of antitrust affects all of us in our everyday lives.
- ▶ **Use corporate campaigns** to expose how the power of giant corporations leads to important societal problems not addressed by antitrust regulations (for example, Wal-Mart campaigns, campaigns to challenge Big Pharma’s monopoly patent claims on lifesaving medicines).
- ▶ **Promote emerging community-ownership models.**
- ▶ **Organize congressional hearings** and investigations to increase political engagement with the issue of corporate concentration and explore federal chartering and other options.

### Long-Term: Bringing Media Under Public Control

The media reform movement, which is already well advanced, can be used as a critical wedge into broader challenges to corporate concentration. The long-range aim is to reclaim media as an essential public service, which needs to be under public control. Goals of this initiative:

- ▶ **Challenge the credibility of current regulatory approaches** and institutions like the Federal Communications Commission.
- ▶ **Create new community-based technological platforms** such as WiFi (the increasingly common community-based provision of free access to the internet) and corporate-free broadcasting;
- ▶ **Reframe the First Amendment** around the right of communities to democratic discourse. Use this as a wedge into a broader challenge to corporate rights.

## 7. Re-directing Capital

### Short-Term: The Corporate Ratings Initiative

It is vital to have an embodied vision of what good corporate behavior looks like. This can be accomplished with a standardized social and environmental ratings system, which could serve to direct government procurement, tax incentives, business opportunities, and consumer purchases toward companies that reflect a sustainable vision of the future. Standardized ratings can have broad impact, and will provide a vehicle for unifying a fragmented movement. The ratings should be done independently, with ongoing civil society input and support. As a result of the ratings and their economic impact, good social and environmental performance would be pursued by businesses as a mark of business excellence and responsible behavior. Rather than starting from scratch, this initiative could build on the work of existing ratings already being developed and use the UN Principles for Responsible Investment as a foundation. The goals of this initiative:

- ▶ **Create a credible corporate rating system and an oversight agency**, to provide uniform ratings of companies based on social and environmental criteria.
- ▶ **Use this rating system to influence corporate behavior**, by driving government procurement, tax incentives, business opportunities, and consumer purchases toward companies that reflect a sustainable vision of the future.
- ▶ **Introduce normative social and environmental standards** that define the responsible corporation of the future.

### Long-Term: The Institutional Investor Initiative

Institutional investors who control trillions of dollars of capital are not currently a major driver of positive social and environmental change. Instead, in the name of fiduciary responsibility, pension funds and foundations often invest in companies whose practices threaten the livelihoods of those they are supposed to support. Recognizing that looming ecological crises make incremental change insufficient, this initiative would aim to re-direct institutional investments in a large-scale, coherent, and transformational way. The proposed corporate ratings lay the groundwork for this by changing the fiduciary calculus. If civil society can coalesce around a harmonized corporate rating system and shift government policies to favor highly rated companies, this creates a fiduciary rationale for redirecting investments. The aim is to create a short-term initiative that lays the grassroots foundation for this longer-term initiative, by building alliances that create pressure on institutional investors. Goals of this initiative:

- ▶ **Expand the definition of fiduciary responsibility** such that major institutional investors re-direct capital toward highly rated companies.
- ▶ **Produce a broad public upwelling of pressure** on institutional investors to re-direct capital toward responsible companies.
- ▶ **Create capital market conditions** that force recalcitrant companies to bring practices into alignment with the rating criteria.

# 4

## Separate Corporation and State

In the course of our year and a half-long investigation, we found unanimous agreement among those we interviewed concerning the need to curb corporate political power. It is foundational to other efforts to challenge corporate power. No meaningful policies to limit corporate power are possible so long as corporations wield such overwhelming control over the political process.

**Corporations virtually determine the accepted boundaries of legitimate public policy debate.**

### The Problem

Corporate influence shoots out to virtually every fork in every branch of government. With the influence they have over the campaign finance system that supports the two major parties, corporations have enormous influence over the field of viable candidates that run for office, especially at the federal level. And if they win, when our elected officials arrive in Washington, they find themselves in a city dominated by the tens of thousands of hired lobbyists and lawyers working inside the Washington, D.C. beltway, who constitute a kind of “permanent government,” regardless of who is in office.<sup>1</sup> Because corporations far outweigh any other interest group on most major issues, it is not hyperbole to suggest that corporations wield an unprecedented, even hegemonic influence over public life. Corporations virtually determine the accepted boundaries of legitimate public policy debate.

The power of corporations has increased, for example, with an increased acceptance of the Right’s attack on government, since this ideologically-driven attack not only has the intended result of alienating people from their own participation in government, but by doing so it provides more space for corporations to enter the gap.

As people become more alienated and disengaged from government, a vicious cycle is perpetuated, in which government becomes captive of deeply entrenched corporate interests.<sup>2</sup> As the far Right accomplishes its agenda — the gutting of social services — government failures become even more evident (e.g. FEMA’s response to Hurricane Katrina), leading to an expansion of corporate contracting and outsourcing to the private sector. Instead of resulting in demands for effective governmental provision of essential services, the failure of government leads to an acceleration of the process.

The distance between Washington and the rest of the country is demonstrated by public opinion polls showing the vast majority of people believe “business has gained too much power over too many aspects of American life,” especially electoral politics.<sup>3</sup> Whether it’s the oil industry being able to meet in secret with the vice president, or Congress extending an exemption to Big Pharma from the federal government’s ability to negotiate drug prices, the perception that corporations are the most special of “special interests” is proven true.

While average people may not connect all of the dots between the corporate sector’s capture of government and the government’s failure to function in the public interest, they do know elected officials are in the pockets of the wealthy and powerful.

In short, there is strong potential support for getting corporations out of elections and other essential functions of government.

## A 20-Year Vision

In 20 years, we envision a profound shift in political and civic culture. People will once again put their faith in government as an instrument of community and collective self-governance. Corporations will be driven out of key areas of public life where they currently operate or wield significant and illegitimate influence, including elections, essential services, and other essential functions of government. Citizens will no longer look to corporations, but instead to government, to protect the common good. There will be a strong, independent, nonpartisan movement for Democracy, with a significant grassroots base in communities across the country, pushing for a range of effective public policies and political reforms.

The “separation of corporation and state” will be nearly as sacrosanct as the “separation of church and state.” Corporate rights of speech, equal protection, and due process will have been severely restricted through court decisions. The line between corporations and government will be carefully drawn to prohibit any direct or indirect financial influence on elections or state and local initiatives. Lobbying at the local, state, and federal levels will be limited to invitation only by government bodies. The employment of or contracting with former government employees by corporations will be separated by five years. Former corporate employees will not be allowed to serve on governmental regulatory bodies, although they may be asked to advise them.

## The Steps Forward: Some Initial Considerations

While there is no simple way to do this, success can be defined as our ability to open enough space up for political candidates to succeed in federal elections who are not beholden to corporate interests — i.e. candidates able to sustain a successful drive for office without corporate funding. Providing the space for candidates to succeed without having to rely on corporate funding is therefore key to establishing champions for even deeper reforms that we discuss elsewhere in this report.

Nevertheless, even the best policies cannot succeed in any real way if sought in isolation, instead of contributing toward a larger movement-building process. That is, any particular policy that we strive for must also be viewed as a means toward another end — building a democracy movement.

The challenge, therefore, will be to frame such proposals in ways that provide an opportunity for significant short- and medium-term victories at the same time that they create the kind of consciousness-raising dynamic that attracts people to engage in the longer-term struggle.

But the challenge goes well beyond mere questions of framing — it means finding ways of engaging people in the larger political struggle. It requires us to develop an organizing strategy.

In sum, any reforms we choose must be guided by a few principles and the recognition of a few practical realities:

- ▶ Ideally the strategies should have a strong grassroots, populist component that is sustained by significant short- and mid-term victories.
- ▶ At the same time, we have to build the democracy we want, which likely means winning at the local and state level first. We have to encourage strong regional coalitions, fast-acting groups that combine community organizing with new Internet tools for virtual organizing.
- ▶ Specific campaigns must not be perceived as ends in themselves, but as a means of opening up space for deeper change.
- ▶ Our strategy should be nonpartisan. The goal is to establish principles of democracy that transcend partisan interests. Crucial to this is our ability to build organizations designed to influence the political system from the outside.
- ▶ Our work should be connected to a populist constitutional power analysis. The corporate and Right-wing lock on the Supreme Court is certain to subject many legislative gains to judicial challenge, as

*Randall v. Sorrell* (Vermont campaign finance case) makes clear. The *Randall* and *Belotti* decisions have made it extremely difficult to use campaign finance limits as a way to level the playing field between the wealthy and the rest of us.<sup>4</sup> The *Belotti* decision succeeded in protecting corporate spending as “speech,” but left open the possibility of challenging the overwhelming influence of corporate money, should the facts of a specific case be clear that corporate money creates an unfair advantage. Activists in Humboldt County, California, for instance, mounted a successful campaign in 2006 to pass a law (Measure T) that restricts non-local corporations from spending money to influence their campaigns, mindful that the law might have to withstand a constitutional challenge.<sup>5</sup> Such campaigns — organized around the principle of community rights — have the kind of potency of purpose and strategic foresight necessary to win legislative as well as court battles.

## The Current Landscape: Key Groups and Strategies

Many groups have a long history of leading the campaign finance reform and other electoral reform and ethics reform battles, while other efforts to push corporations out of politics are just beginning. Rather than provide an exhaustive list, we wish to identify some key groups.

- ▶ **Public Campaign** ([publiccampaign.org](http://publiccampaign.org)): Public Campaign has spearheaded the ongoing push for public financing of “voter-owned” elections, which has succeeded in a few states (ME, AZ, CT). The effort has stalled in others, notably Massachusetts, where it was never funded; Vermont, where it was killed; and California, where a referendum was voted down handily in 2006 and is unlikely to be reintroduced unless it gets much greater support from the unions and others. The group is also part of a coalition of “good government” groups that have monitored and pushed for ethics reform in Washington.<sup>6</sup> Other groups involved at the federal level include **Public Citizen (Congress Watch)**, **US PIRG**, **Common Cause**, and **Democracy 21**.
- ▶ **The Center for Voting and Democracy** ([fairvote.org](http://fairvote.org)) serves as an effective clearinghouse for a national network of groups interested in a variety of cutting-edge electoral reforms, including instant runoff voting (a key reform for breaking the two-party oligopoly), fusion voting, proportional representation, etc. They also support Jesse Jackson, Jr.’s proposal to pass a Right to Vote constitutional amendment.
- ▶ A loose network of groups including the **Electronic Frontier Foundation (EFF)**, **Progressive Democrats of America**, **Black Box Voting**, **Common Cause**, **VoteTrustUSA.org**, and others have led the fight against electronic voting technologies (including security risks and reports of lost votes, vote-flipping, and other problems<sup>7</sup>), leading the increasing resistance to corporate involvement in vote-counting.
- ▶ A relative newcomer to the campaign finance reform issue is the **Center for Political Accountability**, which has succeeded in using shareholder resolutions to pressure companies to disclose all of their political-related expenditures, including those given to trade associations and lobbyists.<sup>8</sup>
- ▶ **The Populist Democracy Movement**: Grassroots groups like the **Community Environmental Legal Defense Fund (CELDF.org)** and **Democracy United of Humboldt County** ([www.DUHC.org](http://www.DUHC.org)) have pioneered aggressive local organizing models which help communities challenge corporate involvement in political decision making and participation in elections. These groups have used different strategies. In Pennsylvania and elsewhere, CELDF has succeeded by organizing in communities that pressure their elected officials to enact ordinances. In Humboldt County, DUHC chose to pass a county-wide ban on outside corporate political money — Measure T — through a popular referendum.<sup>9</sup> Both approach the question of corporate involvement in politics by framing the question around a deeper analysis of popular participatory democracy. Their goal is to build a populist movement with a rights-driven agenda informed by constitutional and historical analysis. More on this work can be found in Section 6, on elevating community rights.

- ▶ CELDF is perhaps furthest along in the development of this strategy. Along with other groups, they have created **Democracy Schools** to spread their organizing model around the country.
- ▶ Other groups that play an important role include the **Sunlight Foundation** and **Congresspedia**, who have both begun to use the Internet to make it easier for average citizens to track their elected officials.

## Short-Term Strategies

### Getting Corporations Out of Elections

There are few policies that are as clear and easily understood as public funding of elections (a.k.a. “clean elections” or “voter-owned elections”). The impact of this particular reform, although not revolutionary, is tangible, and broad adoption of the policy is achievable within 10 years. Efforts to pass public financing have succeeded in an increasing number of states (ME, AZ, CT). While such efforts have stalled in some states (MA, VT, CA), it is likely that more states will go this direction, especially where progressive governors have been elected (e.g. Eliot Spitzer in NY) who intend to make it the centerpiece of their efforts at reforming state government.

The experience of states that have passed the law has been mixed, mostly because it requires enforcement. In Massachusetts, for example, the state assembly has resisted funding the policy. Nevertheless, candidates in states like Maine testify to being freed up from having to spend the majority of their time “dialing for dollars” and groveling to rich donors at \$500/plate fundraisers. Instead, they can focus on issues of concern to their constituents while being able to compete with well-funded candidates. Public funding of elections will not solve the overwhelming influence of corporations in the election process, but it will open up space for more voices and choices.

The shift in support for public funding can come quite suddenly. Public funding was the key reform passed in Connecticut after that state was rocked by a corruption scandal a few years ago.

After the Jack Abramoff scandal, a strong bill proposing public financing of congressional elections was introduced by Rep. John Tierney in 2006. And although a public financing bill was not part of the Democrats’ initial reform package in 2007, Sen. Richard Durbin recently introduced similar legislation in the Senate, “The Fair Elections Now Act” (S. 936). Although these bills are unlikely to pass in this session, momentum can build as more Members of Congress support the bill, and other efforts at ethics and lobby reform are viewed as insufficient.

*In short, public election funding is the next big campaign finance reform, the single most important political and ethics reform policy to push for in the short-term.*

The strategic challenge with this particular reform will be to link it to the process of building a broader democracy movement. It appears to be the kind of reform that traditional corporate accountability groups and progressives will unite around without putting it in a larger organizing context. There’s value in this reform, but with Public Campaign and other groups already working the field, it’s doubtful it will be enough to create a major political and cultural shift. Nevertheless, this would be a strong short-term benchmark.

### Getting Corporations Out of Elections: Related Activities

Corporations’ ability to influence the election of public officials will take more than one piece of legislation. Over the course of the next five years, additional strategies will be necessary to get corporations out of the electoral process. Recommended goals:

- ▶ Build a strong public consensus by organizing around legislation that essentially funds all federal campaigns with public money.
- ▶ Stigmatize corporations that fund elections by publicizing, campaigning, and educating consumers so they boycott products of companies that “buy” elected officials.

Public election funding is the single most important political reform to push for in the short-term.

**The ultimate goal should be to demand that corporations not be involved in politics at all.**

- ▶ Stigmatize politicians for accepting corporate money and then voting against the public interest in favor of their corporate supporters.

Some elements of this overall short-term initiative might include:

- ▶ Bring corporate and policy campaigners together into a high-visibility coalition willing to push for the legislation while using the other tactics in a joint campaign to promote public financing of political campaigns and eliminate corporate PACs.
- ▶ Spread successful models of state and local campaigns that offer a strategic way to limit corporate contributions.

## Additional Short-Term Strategies

### Attack the Corporate PACs

Reducing corporate influence over elections must be reinforced with an effort to reduce the influence of lobbyists. Current efforts at congressional ethics reform — in the wake of the Abramoff and related scandals — have bogged down in partisan bickering. Moreover, with First Amendment protections, there is no easy fix. Policies will inevitably be incremental and fall short of the mark. Still a number of things can be done that change the atmosphere in Washington:

- ▶ Improve the ability of ordinary citizens to access and track the actions of their elected officials, as is being done by the Sunlight Foundation and Congresspedia.
- ▶ Force expanded disclosure of lobbying and related activities. In just the last two years at least 18 companies have begun disclosing donations on their websites and given their boards oversight of the contributions. The Center for Political Accountability and its allies (large progressive fiduciaries) have succeeded in doing this by framing the issue around reputational risk and the right of shareholders to know where their money is spent.<sup>10</sup> Several companies — including Morgan Stanley, McDonald's, Eli Lilly, PepsiCo, and Coca-Cola have agreed to publish a list of contributions and have it reviewed by their boards annually.<sup>11</sup> If enough companies agree to do this, the potential for legislating the rest is possible.
- ▶ Increase the strength and focus of campaigns against highly influential industrial lobbies and PACs, including the “greenhouse gangsters” (oil, coal, auto) and pharmaceutical companies — in order to expose and confront such companies for the damage caused by their political funding and lobbying activities. Corporate Ethics International and its Business Ethics Network are uniquely positioned to facilitate the spread of these tactics among corporate campaigners. Groups like Oil Change International have already begun to develop model campaigns that bridge work around a specific sector to this question of corporate involvement in politics.<sup>12</sup>
- ▶ Create related corporate disclosure campaigns to drive a wedge between corporations and the trade associations. Companies caught in a contradiction between their own codes of conduct and the policies of trade associations will be embarrassed into making changes.<sup>13</sup>

While we believe that the ultimate goal should be to demand that corporations not be involved in politics at all (with the understanding that individuals who work for companies will always have the same rights as other citizens), the shorter-term goal of demanding complete disclosure of political involvement will (like the pollution reporting requirements that established the Toxic Release Inventory) help push corporations in the right direction, by drawing attention to the magnitude and character of such expenditures.

In addition, a working group should be established to research ways that legal restrictions could be placed on corporate lobbying, including direct restrictions (anticipating constitutional challenges), eliminating corporations' ability to deduct such activities, so that corporations and other interests have no inherent advantage over average citizens when it comes to lobbying Congress.<sup>14</sup>

**We must reclaim the public sphere as a platform for democratic discourse.**

## Get Corporations Out of Vote Counting

Mechanical failures and other election-day horror stories, as well as mounting evidence of security vulnerabilities, have created deep public skepticism about the use of electronic voting machines and the companies that manufacture them.

Certain states (e.g. MD, IN) have reversed course after experiencing problems with electronic voting machines, seeking significant fixes, including an auditable paper trail. The loss of 18,000 votes in one congressional race in Florida (the seat vacated by Katherine Harris) reconfirmed for many the unreliable nature of the technology. The ability of technical experts from Princeton and other universities to hack the machines has lent further credibility to challenges to their security. Close ties between Diebold and other companies and the Republican Party have also stoked public concerns about the integrity of electronic voting machines.

For these and other reasons a number of groups have begun to focus on this issue, as has the House Progressive Caucus. Until now, however, most of the strategy has focused on technical fixes, including Rush Holt's Voter Confidence and Increased Accessibility Act, which would require that there be an auditable paper trail.<sup>15</sup>

Problems similar to those described above are bound to continue, providing a unique opportunity to attack the failures of privatization, the illegitimate involvement of corporations in the vote counting process, and to frame the issue around the importance of protecting the political commons.

Elements of this initiative would include:

- ▶ Pulling together a corporate campaign that focuses on one or more of the electronic voting machines companies, mobilizing online activists and election boards against them, exposing their conflicts of interest, and making a strong argument for the role of government.
- ▶ Making an aggressive effort to frame the issue as a salient example of why corporations should not be allowed into the public sphere. Corporate involvement in elections should be tied to other key struggles against privatization.

## Long-Term Strategies

The success of a movement wishing to challenge corporate involvement in politics is predicated upon our ability to engender a thirst for real, deep democracy in thousands of communities across the country. This will require that we create effective model campaigns for local organizing, help them grow into regional and national networks, and bolster their effectiveness with ancillary research, legal support, and strategic alliance-building.

Over the long haul, our focus cannot be on any specific initiative or strategy, because corporations are adept at poking loopholes in virtually every restraint. We can only succeed in challenging corporate power by establishing a broader cultural transformation, in which public life attracts the interest of average citizens. The construction of democratic culture is by definition an evolving, creative process. No single reform can capture the spirit of that process, which is why we call it movement building, and why such a process must be grounded in communities.

The challenge we face is to develop a workable vision of how communities can network themselves together around the common struggle for democracy — network in many ways including geographic, virtual, sectoral (i.e. by issue) — that in turn can be joined together in the larger movement building process. Before the mature states of such a movement can be envisioned, it will be important to find strong, local organizing models that get to the core question of democracy, and provide the tools for broader engagement with the rest of society. Below we propose some ideas for this effort.

## Limiting Corporate Speech Rights

One of our longer-term priorities must be to reclaim the public sphere as a platform for democratic discourse. We can only do that if we are able to effectively restrain corporate speech at the local level. In

essence, we envision an expansion of community sovereignty campaigns designed to foster democratic discourse in ways that directly challenge corporate involvement in democratic decision making, including:

- ▶ **Community campaigns to establish or expand public ownership of the local media infrastructure**, including radio and television broadcast stations, as well as municipally owned, publicly accessible WiFi systems.
- ▶ **Campaigns to limit corporate advertising**, especially when it undermines community health and safety, or trespasses on key public spaces (e.g. schools) where commercial messages directly undermine community values.
- ▶ The continued **spread of community sovereignty (Home Rule) and bans on out-of-jurisdiction corporate involvement in local elections**.

Each of these campaigns involves a direct challenge to the current presumptions of corporate speech rights. Therefore, they must be bolstered by a deliberate effort to foster popular understanding that the First Amendment was originally intended to protect community rights to structure the public sphere in a manner that facilitates democratic discourse. To do so, we envision the creation of a **National Community Rights Network** — as we'll see in more detail under Section 6 on communities — which will house a **national community free speech support center or clearinghouse** to organize legal support for such community-based campaigns.

The community speech clearinghouse would be responsible for developing a network of scholars and activist law students to support key community speech/media campaigns; strategizing around key cases (e.g. organize amicus briefs) related to local democracy and corporate speech rights; and popularizing this fundamental reframing of the First Amendment.

A growing number of activists and legal scholars have already begun to identify the restraint of corporate political and commercial speech as a critical set of strategies in the overall struggle for democratic control of corporations.<sup>16</sup> Political speech, for example, was critical to the Vermont campaign finance reform case and will continue to be important to local community challenges to corporate involvement in political activities, such as Humboldt County's Measure T, cited above.<sup>17</sup>

The doctrine of corporate commercial speech is already being challenged on a number of fronts, including the media reform movement's challenge to media ownership and structure,<sup>18</sup> resistance to commercial censorship of free speech,<sup>19</sup> do-not-call registries,<sup>20</sup> as well as other questions related to the spread of advertising — such as direct-to-consumer pharmaceutical advertising.<sup>21</sup> The current expansive view of corporate speech rights also contrasts sharply with the direct restraints that corporations place on union organizing campaigns and workplace democracy.<sup>22</sup>

Similarly, communities struggling to enrich their own democratic discourse are beginning to challenge the loosening of media ownership rules rationalized by the consideration of the broadcasters' First Amendment rights.<sup>23</sup> The more organized communities become, the more apt the courts are to become receptive to challenges to the presumed First Amendment rights of broadcasters operating on the public airwaves. As the Supreme Court suggested in one important case: "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee."<sup>24</sup>

It is increasingly being understood that this notion of a "marketplace of ideas" sells democracy short by couching it within the framework of a marketplace, particularly since many community values are anything but commercial. Indeed, the right of communities to defend themselves against the spread of commercial advertising (currently defended under the commercial speech doctrine) leads directly to efforts to define democratic culture differently, by making public areas off-limits to commercial interests.

We would appear naïve if we were not to acknowledge the fact that the courts currently provide for an expansive protection of corporate speech rights. In effect, the jurisprudence appears to be a major obstacle to this agenda, particularly at a time when the Supreme Court seems to be moving in the other direction.<sup>25</sup> But that doesn't mean we should automatically surrender.

Advertising — an important form of commercial speech — may still not enjoy the same First Amendment protections today that political speech does, but the gap is closing and that day might not be far away.

Nevertheless, the rights of commercial advertisers were protected by the Court in at least one instance as the result of a case brought by consumer groups seeking better pricing information.<sup>26</sup>

It should be remembered that the Supreme Court has not always ruled in favor of the expansion of corporate speech rights. Historically, consumers were more aggressive in challenging the spread of advertising in America.<sup>27</sup> In 1942, for example, when First Amendment protection for commercial speech was brought before the Court, the justices ruled unanimously against advertisers.<sup>28</sup>

Another reason is that advertising in America has exploded, becoming ubiquitous in public life. According to *Advertising Age*, U.S. advertising expenditures (in constant dollars) rose from \$33 billion in 1976 to \$266 billion in 2004.<sup>29</sup>

Our ability to restrain commercial speech is intimately tied to our ability to demonstrate the damage it does to core social values and community rights. The popularity of the do-not-call registry is one example of the potential for organizing against the spread of unfettered commercialism. There is a key lesson to remember here: People signed up for the registry because they were concerned about the threat that corporate marketers posed to their privacy. In a similar way, challenges to corporate speech can be framed around community safety and security. The popular response to efforts by small groups like Commercial Alert to restrain advertising in grade schools attests to the potential for broad public support for this kind of campaigning.

The assumption that doctrines like commercial speech cannot be challenged ignores the history of the Civil Rights movement, which was riddled with early failures and setbacks before *Brown v. Board of Education*.

The *Nike v. Kasky* case, though remanded without a finding, has already served as an important wake-up call for activists, most of whom were caught flat-footed. Our ability to develop a nimble response to key cases before the Supreme Court is another reason for the First Amendment clearinghouse.

Meanwhile, the global dimensions of this particular effort also pose certain challenges. As global movements press for new multinational health and environmental agreements, for example, the U.S. is being perceived as having unique constitutional protections for such activities as tobacco advertising, which other countries have banned in order to implement the Framework Treaty on Tobacco Control and protect public health.<sup>30</sup> The perception that our legal system lags behind those of other countries when it comes to public health issues is bound to be a sore spot exploited by activists, and could provide interesting synergies here in the U.S.

A campaign to update woefully outdated advertising regulations could provide an additional opportunity to challenge corporate speech rights. The Wheeler-Lea Amendment to the Federal Trade Commission Act controls advertising regulation, as it did in the late 1930s, when it was already being criticized for providing weak consumer protections. Today, this law looks impotent and out of date. The challenge would be to build a strong coalition before getting Congress to open the law up for revision. Certain groups have begun to organize strong coalitions to challenge the spread of commercialism in schools. That work might serve as a model for a challenge to the spread of commercial advertising.<sup>31</sup>

Meanwhile, any of the campaign-related issues mentioned above would be helped by an effort to organize a community of progressive legal scholars and practitioners willing to mount a strong public interest challenge to the faux "business civil liberties" movement for their particular area.

## Additional Long-Term Strategies

### Challenge Corporate Involvement in Local Initiatives

Another approach would be to limit out-of-jurisdiction corporate involvement in local elections, building on the experience of communities that are challenging the right of corporations to overturn local democratic processes. The objective would be to build a forceful, independent movement to fundamentally challenge corporate claims to constitutional rights. Elements of this initiative could include:

- ▶ Explore and develop the legal strategies and effective organizing models.
- ▶ Heighten the success of test cases.

An exploratory effort could be made to develop cross-issue challenges to corporate “speech” (either commercial and political), inviting activists, academics, and practitioners to work together in challenging the “business civil liberties” groups led by the Chamber of Commerce and various legal foundations. Given the ACLU’s ambivalent treatment of the issue, progressive foundations should consider funding a task force of lawyers exclusively focused on these issues.

## Endnotes

- <sup>1</sup> Many of the top lobbyists pass through the proverbial “revolving door” from government to the private sector where the corporate gravy train continues, regardless of the contours of partisan advantage. See “A Matter of Trust,” report released by the Revolving Door Working Group, 2005. Available at [www.cleanupwashington.org/documents/RevovDoor.pdf](http://www.cleanupwashington.org/documents/RevovDoor.pdf).
- <sup>2</sup> For a useful examination of the role of corporations in political alienation, see Carl Boggs, *The End of Politics: Corporate Power and the Decline of the Public Sphere* (Guilford Press, 2000).
- <sup>3</sup> *Business Week*, September 11, 2000. For other examples of nonpartisan polls, see Mark Green, *Selling Out: How Big Corporate Money Buys Elections, Rams Through Legislation and Betrays Our Democracy*, pp 243-244.
- <sup>4</sup> To learn more, see National Voting Rights Institute, [www.nvri.org](http://www.nvri.org).
- <sup>5</sup> To learn more, see Democracy United of Humboldt County, [www.duhc.org](http://www.duhc.org) and the Measure T campaign web site, [www.votelocalcontrol.org](http://www.votelocalcontrol.org).
- <sup>6</sup> See Charlie Cray, “Combating the Culture of Corruption. Or Not,” *Multinational Monitor*, May/June 2006. Available at <http://www.multinationalmonitor.org/mm2006/052006/cray.html>.
- <sup>7</sup> See Verified Voting <http://www.verifiedvoting.org/>
- <sup>8</sup> To learn more see <http://www.politicalaccountability.net>
- <sup>9</sup> To learn more about these efforts, and read the specific ordinances and initiative language see [www.celdf.org](http://www.celdf.org) and [www.duhc.org](http://www.duhc.org) or [www.votelocalcontrol.org](http://www.votelocalcontrol.org).
- <sup>10</sup> Although others we consulted are deeply skeptical, in an article for *The Washington Monthly*, Jeff Birnbaum, the *Washington Post*’s leading reporter on K Street and the lobby industry, reported that federal prosecutors are considering filing bribery charges against members of Congress whose actions can be linked to the timing of legal campaign contributions. If such a precedent were established, the potential risk of even legal contributions by corporate-funded lobbyists would become an issue. See Jeff Birnbaum, “The End of Legal Bribery,” *Washington Monthly*, June 2006. Available at <http://www.washingtonmonthly.com/features/2006/0606.birnbaum.html>
- <sup>11</sup> As of November 10, 2006, CPA posted transparency reports for 28 members of the Fortune 500 on their site. See <http://www.politicalaccountability.net/content.asp?contentid=418>
- <sup>12</sup> See the Separate Oil and State campaign, <http://www.priceofoil.org/oilandstate/>.
- <sup>13</sup> In October, 2006, Public Citizen filed a complaint with the IRS against the Chamber of Commerce and its affiliate, the Institute for Legal Reform, for failing to report taxable spending on state campaigns. The companies that pay dues to the Chamber could be induced (via shareholder pressure) to ask how their money is spent by the Chamber and other front groups. Merely raising the issue is likely to foreclose such actions in the future. With other front groups, it could mean the end of the corporation’s support for their work. A variety of strategies like this could be examined. E.g. see Oliver Houck, 1984 *Yale Law Review* Article “With Charity for All” — which argues that corporate front groups should have their tax-exempt status revoked because they violate IRS rules on non-profits.
- <sup>14</sup> “Grassroots” lobbying (defined as trying to stir up the general public around specific legislation) is not deductible because it’s perceived to be more like politicking. Exhortations to members of an organization are not considered to be grassroots lobbying.
- <sup>15</sup> For more information: <http://www.eff.org/Activism/E-voting/>
- <sup>16</sup> See, for example, “Corporations & The First Amendment: Examining the Health of Democracy,” a symposium organized by The Center on Corporations, Law & Society at Seattle University School of Law, Friday October 20, 2006. For a description see: <http://www.law.seattleu.edu/ccls/events/firstamendment>. Also, Brennan Center for Justice, “Reclaiming the First Amendment: Constitutional Theories of Media Reform,” conference at Hofstra Law School, January 19, 2007.
- <sup>17</sup> For more on the corporate political speech issue, see the National Voting Rights Institute, [www.nvri.org](http://www.nvri.org).
- <sup>18</sup> See Mark Cooper, “Reclaiming the First Amendment: Legal, Factual, and Analytic Support for Limits on Media Ownership,” in Robert McChesney et al., *The Future of the Media* (2005).
- <sup>19</sup> Lawrence Soley, *Advertising Censorship* (2002).
- <sup>20</sup> Lawrence Tribe, one of the preeminent First Amendment attorneys in the country, told *Business Week* (11/10/03) that

regulations on spam and telemarketing should not be “suffocated by a dogmatic adherence to the idea that truthful information can never cause harm.”

<sup>21</sup> For an overview see Bruce Ledewitz, “Corporate Advertising’s Democracy,” 12 B.U. Pub. Int. L.J. 389, Spring/Summer 2003. To learn more about the problems of direct-to-consumer advertising see Commercial Alert — <http://www.commercialalert.org>.

<sup>22</sup> Lawrence Soley, *Censorship, Inc.* and

<sup>23</sup> See remarks of Commissioner Abernathy on the FCC’s 2002 proposal, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-235047A4.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-235047A4.pdf)

<sup>24</sup> *Red Lion Broad. v. FCC*, 395 U.S. 367 (1969).

<sup>25</sup> The latter reality is partly attributable, at least, to a deliberate effort mounted by certain corporate interests starting in the early 1970s, starting with the Powell Memo, and the subsequent growth of the “business civil liberties” movement, as embodied in groups like the Pacific Legal Foundation, the Washington Legal Foundation, and the U.S. Chamber of Commerce Institute for Legal Reform. For others, see <http://www.corporatepolicy.org/issues/legalfoundations.htm>, and Jean Stefancic and Richard Delgado, “No Mercy: How Conservative Think Tanks and Foundations Changed America’s Social Agenda,” (Temple Univ. Press), and Jeff Krehely et al., “Axis of Ideology: Conservative Foundations and Public Policy”, National Committee for Responsive Philanthropy, March 2004.

<sup>26</sup> *Virginia State Board of Pharmacy et al. v. Virginia Citizens Consumer Council, Inc., et al* (1976): VA law banning ads w/drug prices was ruled unconstitutional — since price information was held to empower consumers and help keep overall prices down.

<sup>27</sup> See, e.g. Inger Stole, *Advertising on Trial: Consumer Activism and Corporate Public Relations in the 1930s* (2006).

<sup>28</sup> *Valentine v. Chrestensen* 316 U.S. 52 (1942).

<sup>29</sup> *Advertising Age*, December 2003.

<sup>30</sup> According to tobacco activists, the only countries recognized as providing for a constitutional exemption from the Framework Treaty on Tobacco Control’s ban on tobacco advertising are Germany and the U.S. [need to double CK with Rob]

<sup>31</sup> Commercial Alert has made significant strides in the area of Direct-to-Consumer Advertising and the spread of commercial interests in schools, building coalitions with traditionally conservative groups. See [www.CommercialAlert.org](http://www.CommercialAlert.org).

# 5

## Change International Rules

As we work to reclaim government, a second key area of restoring democracy is the framework of international rules, which must likewise be changed. Nation states will and should remain primarily responsible for regulating corporate behavior, since it is through their elected representatives that citizens can have the most direct democratic impact. But national governments are often too weak, too desperate for foreign investment, or too dependent on corporate campaign contributions to hold global firms accountable for their crimes. Even where there might be the political will, the complexity of many firms' global operations has made it increasingly difficult for national governments to address a wide range of problems, from tax evasion to anti-competitive practices.

Perhaps the most pressing problem is that existing and proposed international trade rules are aimed at tying the hands of government officials, in many cases undermining their authority to ensure that global corporations support social and environmental goals. The most extreme example are the investment rules bilateral investment treaties and trade pacts that allow private foreign investors to sue governments over actions that diminish the value of their investment — including public interest regulations. But the whole package of reforms pushed by the WTO, World Bank, and IMF are designed to weaken the role of governments through trade and investment regulation, privatization, and granting special powers to global firms.

As a result, there is an extreme imbalance in power between global corporations on the one hand and civil society and regulators on the other. And corporations are using their privileges and enhanced mobility to drive a global race to the bottom in working conditions and environmental standards. China's reemergence as a global economic power has exacerbated this trend.

Yet a powerful backlash has been gaining strength. In recent years, Bolivians used people power to drive out foreign corporate water privatizers that had hiked prices beyond reach. Consumers and small farmers forced Monsanto to drop plans to market GMO wheat. U.S. lawyers, working with Burmese plaintiffs, won a historic settlement against Unocal for forced labor. Environmentalists pressured The Home Depot into adopting a policy on sustainable logging. Millions have bought fair trade products. Unions have worked across borders to pressure transnationals into respecting the right to organize. Students have pressured universities to buy sweatshop-free apparel.

Civil society opposition has helped stalemate two major negotiations — the Doha Round of the World Trade Organization and the hemisphere-wide Free Trade Area of the Americas. Civil society organizations proposals for alternatives to the free trade model are also gaining increased support among elected officials (See Box 1).

These are only a few examples of how people are working to challenge global corporations. Yet there is much that can be done so these types of campaigns add up to more than the sum of their parts, laying the foundation for a transformed role of corporations in our global economy.

## The Current Landscape

### Government Responses at the International Level

In surveying current activity, we begin with governmental responses and then civil society activities. Governmental responses range from the oldest, the International Labor Organization Conventions, to the

**Existing and proposed international trade rules are aimed at tying the hands of government officials.**

## Box 1: Progress Toward Alternatives to the Corporate-Driven Trade Agenda

For more than a dozen years, activists, and scholars have worked across borders to articulate alternatives to the dominant free trade model. During the debate leading up to the North American Free Trade Agreement, civil society networks in the three countries collaborated to produce a “Just and Sustainable” alternative incorporating resource transfer to Mexico and enforceable labor and environmental standards. These ideas were developed further through the Hemispheric Social Alliance, a coalition of labor unions and networks of environmental, farm, and other groups, which coordinated a multi-year process to develop an alternative to the proposed Free Trade Area of the Americas. The International Forum on Globalization produced *Alternatives to Economic Globalization*, laying out alternatives to the whole range of international trade and financial institutions.

While these proposals vary, they all reject the basic assumption of the free trade model that increased profits for corporations will benefit society. They call for national and local governments to have the right to place controls on corporations to support social and environmental goals.

In recent years, these proposals have gained support from governments. Activist protests, combined with resistance from developing country governments, blocked the formation of the FTAA, as well as a new round of negotiations in the WTO. And now, some governments are moving into offense. Bolivia, Venezuela, and Cuba signed a “Peoples Trade Agreement” emphasizing cooperation and resource sharing. Recently, the Bolivian government issued guidelines for a “fair and productive cooperation treaty” with the U.S.<sup>1</sup> The plan would allow the Bolivian government to guarantee access to affordable general medicines, ban patenting of plants and animals, and maintain programs that favor local producers. It would also preserve the right to require foreign investors to transfer technologies and use local inputs and labor and to resolve disputes through national courts rather than international tribunals.

With the corporate trade agenda largely at a standstill, there is reason to hope that alternative visions may be increasingly put into practice.

most recent, the Norms for Business developed by a sub-commission of the UN Human Rights Commission, which many NGOs have hailed as a positive step towards binding international standards.

### International Labor Organization

The International Labor Organization (ILO) sets standards for working conditions globally. Although it targets governments rather than corporations, these standards set out internationally recognized norms for corporate behavior. Since its founding in 1919, the ILO has adopted 185 standards in the form of conventions subject to ratification by member states. The most fundamental are the rights to freedom of association and collective bargaining and bans on forced labor, child labor, and discrimination in the workplace. Not all governments have ratified even these core standards, but those that are members of the ILO are nevertheless obliged to observe them.<sup>2</sup>

As a standard-setting body, the ILO has had tremendous impact in strengthening legal protections for workers. The problem is enforcement. While the ILO monitors government (not corporate) compliance, it holds no power to impose sanctions. In some cases, ILO reports have created a sufficient shame factor to result in improvements. But rampant abuse of basic labor rights continues in rich and poor countries, including those that have incorporate core standards into law.

The limits on the ILO's authority are most evident in its failure to remedy the widespread use of forced labor in Burma. In 2000, the ILO took the unprecedented step of approving a resolution denouncing Burma's military regime for inflicting a “contemporary form of slavery,” calling on ILO member states to

consider imposing economic sanctions. This was the strongest measure available under the ILO charter. Unfortunately, it had little impact. The Burmese government responded by claiming that it was officially banning slave labor, but years later, the problem remains.<sup>3</sup>

### OECD Guidelines for Multinational Enterprises

The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises represent the only comprehensive code for corporate conduct endorsed by a large number of governments. They cover multinational enterprises operating in or from the 30 OECD countries, plus eight non-members, which means they cover most of large transnational corporations.<sup>4</sup> The areas covered include employment and industrial relations, environment, bribery, consumer interests, science and technology, competition, and taxation.<sup>5</sup>

The OECD Guidelines are purely voluntary, yet they do provide a channel for raising complaints with governments. Each member state has flexibility in establishing its own entity responsible for investigating compliance, a "National Contact Point" (NCP). As a result, support for the guidelines varies greatly.

According to the Trade Union Advisory Committee to the OECD, trade unions have raised more than 50 complaints, half of which remained unresolved at the end of September 2004.<sup>6</sup> The Committee's report includes some examples in which the NCPs played a positive role. For example, in 2002, the Czech NCP helped pressure a subsidiary of the German company Bosch to resolve a labor dispute. On the other hand, the AFL-CIO wrote to the U.S. NCP in May 2001 to complain about U.S. corporations with ties to the military government of Burma, which the ILO had accused of using forced labor. They received no reply.

A number of environmental and other groups have also filed complaints under the OECD Guidelines, including Friends of the Earth, Greenpeace, Attac Sweden, and the Clean Clothes Campaign. They have also reported mixed experiences. Friends of the Earth, for example, has pointed out a number of weaknesses, but also notes that the procedure for filing complaints is not as expensive as filing a lawsuit and thus can give those with limited means a chance at recourse.<sup>7</sup>

### UN Global Compact

There is considerable skepticism about the ability of the UN to play a strong role in controlling transnational corporations. In part, this is due to the painful history of efforts begun in the 1970s to formulate a code of conduct. After more than a decade of work, the initiative fell apart in the 1980s due to opposition from the Reagan administration and also the Japanese and some European governments.<sup>8</sup> A further blow came in 1993 when the UN Centre on Transnational Corporations, which had conducted important research on corporate activity, was reduced to a small unit of the UN Conference on Trade and Development and tasked with promoting foreign investment.

In 2000, the UN rather timidly eased back into the area of corporate social responsibility with an initiative called the Global Compact. The Compact seeks to create a partnership between the UN and transnational corporations to promote 10 principles in the areas of human rights, labor, the environment, and anti-corruption.<sup>9</sup> The project's official goal is to "advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalization."

Hundreds of companies have agreed to participate in the Global Compact, and unions and NGOs are included as participants, with the stated goal that the Compact would provide the opportunity for dialogue with the corporations.

The Global Compact has been widely criticized as nothing more than a PR ploy (dubbed "blue-washing" by some, in a reference to the color of the UN flag). To participate, firms simply must state that they support the 10 principles and report annually on how they are supporting them. There is no monitoring, no evaluation, and no accountability.<sup>10</sup> The Compact has also been used by corporate participants to argue that stronger accountability initiatives are unnecessary.<sup>11</sup>

The International Trade Union Confederation (formerly the International Confederation of Free Trade Unions),<sup>12</sup> the umbrella body for most labor federations in the world, is a participant in the Global Compact. It concedes that trade union experience with the initiative has been mixed, but that some international union organizations have found it a useful means of engaging high-level corporate officials.<sup>13</sup>

### International Finance Corporation's Policy and Performance Standards on Social and Environmental Sustainability

The International Finance Corporation (IFC), the private sector lending arm of the World Bank, adopted new standards in 2006 requiring all companies that borrow from the IFC to observe the International Labor Organization's core labor standards and some other labor conditions. Nonobservance can lead to loan cancellation. The IFC is the first branch of the World Bank to impose such conditions.

Two years earlier, the IFC had agreed to a request by the International Trade Union Confederation to include ILO core standards as a condition in a loan to a clothing manufacturer, Grupo M, which opened facilities in Haiti. The firm initially dismissed hundreds of workers when they attempted to create a union, and it took months of pressure by the Haitian union, along with international support from trade unions and other organizations, before the workers were rehired and the company recognized the union. In December 2005, Grupo M and the Haitian union signed the first collective agreement aimed at improving wages and working conditions.

While the IFC's standards were heralded as a step forward on labor rights, many groups were critical of the new policy as a step backward on environmental standards.

### Equator Principles

The impact of the IFC's standards goes beyond its own lending because they are the basis of the Equator Principles adopted by about 40 multinational banks for their project financing in developing countries. The banks represent around 85 percent of global lending for development projects and include major international banks based in Europe, the U.S., Australia, Canada, Japan, Brazil, and South Africa. The principles apply to all projects over \$10 million. However, in contrast to the IFC's standards, the Equator Principles are voluntary and implementation is up to the adhering bank.

### UN Human Rights Norms on the Responsibilities of Transnational Corporations

Around the same time that the UN was launching the Global Compact, another effort was getting off the ground within the UN Sub-Commission on the Promotion and Protection of Human Rights. This is a body of independent human rights experts elected from around the world by the UN Commission on Human Rights. In 1999 the Sub-Commission began developing a draft corporate code of conduct, based on existing international agreements signed by nation states, including the Universal Declaration of Human Rights, as well as a wide range of labor, environmental, consumer protection, and anti-corruption agreements. The Norms are innovative in that they are a comprehensive interpretation of the responsibilities of corporations under these international laws.

After four years of work — including consultation with business, union, and human rights organizations — the Sub-Commission unanimously approved the Norms in August 2003.<sup>14</sup> Approval by the entire 53-nation UN Commission on Human Rights is the next step. The substantive provisions of the Norms cover:

- ▶ Right to equal opportunity and non-discriminatory treatment.
- ▶ Right to security of persons (e.g. businesses shall not engage in nor benefit from war crimes, genocide, torture, forced labor).
- ▶ Rights of workers, including a right to a living wage.
- ▶ Respect for sovereignty and human rights (includes prohibition on bribery, rights to development including adequate housing and clean water, and indigenous peoples rights).
- ▶ Consumer protection (prohibits producing or marketing harmful products).
- ▶ Environmental protection (e.g. businesses shall respect the precautionary principle and be responsible for the environmental and health impacts of all of their activities).

The Norms further would oblige corporations to incorporate them in contracts with suppliers. And they state that corporations "shall be subject to periodic monitoring and verification" by the UN or other mechanisms. They would also oblige corporations to compensate those adversely affected by violations.

There are differing interpretations of the Norms' potential legal effect. Most NGOs engaged in the issue — including Amnesty International, Oxfam, Human Rights Watch, and Christian Aid — consider them an important step in the long road toward binding international standards. Amnesty International claims that the Norms could over time evolve to become part of customary international law.<sup>15</sup> According to Human Rights Watch, the Norms “could provide the conceptual basis for a binding international instrument on corporate responsibility.”<sup>16</sup>

By contrast, statements by business groups give the impression that the Norms would result overnight in UN thugs hauling off CEOs for minor offenses. For example, the Confederation of British Industry argued that they are “ill-judged and unnecessary,” would impose “absurdly onerous” report requirements, and would hurt poor countries by discouraging foreign investment.<sup>17</sup> A Special Representative of the UN Secretary-General dealt a blow to the Norms in 2006 by describing them as “classic overreach.”

## Civil Society Efforts at the International Level

We offer here a sketch of some of the key strategies used by various entities outside government to place controls on corporations.

### Codes of Conduct

Since the early 1990s, codes of conduct for transnational corporations have proliferated. The greatest share of codes applies to the apparel and sports shoe sectors. Some focus on certification of production facilities. These include Social Accountability International, which uses commercial auditors to certify individual factories on workplace conditions, including living wage; and the Fair Labor Association, which accredits member brands. Other initiatives leverage consumer pressure, worker trainings, and other means to encourage compliance. These include the Fair Wear Foundation in the Netherlands, and the Workers Rights Consortium in the U.S., which works with universities to ban campus apparel produced in sweatshops.

To varying degrees, voluntary corporate codes have been the target of criticism from civil society leaders. For example, Walden Bello, of Focus on the Global South, has said a key reason corporations evade global and national regulation is that they have deflected pressures with the voluntary approach based on corporate social responsibility.

Kavaljit Singh, director of Public Interest Research Centre, Delhi, agrees: “The struggle for implementation of voluntary codes...dissipates the enthusiasm for launching a struggle for regulatory controls on TNCs,” as was seen with the decade-long campaign on the national law restricting marketing of baby food in India.<sup>18</sup>

### International Framework Agreements

Virtually unknown among activists in the U.S., these agreements are negotiated between a multinational company (almost all European) and an international union concerning the company's international activities. While they are a recent development, they could be an effective tool for using the power of unions in richer countries to advance the interests of developing country counterparts working for the same company. For example, in 2000, an agreement between Del Monte and the International Union of Food Workers led to the rehiring of Guatemalan banana workers fired for union activities.<sup>19</sup>

### Court Cases Using the Alien Tort Claims Act

Pioneering lawyers have opened a legal avenue for holding U.S.-based corporations accountable for human rights abuses committed abroad. The mechanism is the once obscure 1789 Alien Tort Claims Act (ATCA), which allows foreigners to bring civil suits in U.S. courts for serious human rights crimes committed anywhere in the world. These include murder, torture, genocide, slavery, and crimes against humanity.

Originally created for use against pirates, the ATCA was virtually forgotten until the Center for Constitutional Rights used it in 1979 to win a landmark human rights case against Paraguayan military officials. This opened the door for ATCA cases against corporate human rights abusers. Thus far, more than 40 such cases have been brought in U.S. courts, including one that resulted in a settlement against Unocal for profiting from slavery in Burma.

**Transforming the international role of corporations requires an overhaul of the institutions and rules that govern the global economy.**

The corporate lobby and the Bush administration have launched a major assault to undermine this legal tool, and lawyers who bring such cases face vast armies of corporate lawyers. Regardless of the outcome in court, however, these cases have brought tremendous exposure to corporate abuses, potentially deterring other crimes.

### International Solidarity Campaigns

Labor unions have a long history of working across borders to pressure corporations to change their behavior. One of the most high-profile cases in recent U.S. history was the successful resolution of the UPS strike of the early 1990s, with help from workers in other countries threatening sympathy strikes. There are also inspiring examples of the use of collective cross-border power that have involved students, religious groups, and others. The Taco Bell boycott, which resulted in improved pay for tomato field workers, is a prime example. While these campaigns can be tremendously effective, they are also extremely demanding in terms of financial and organizational resources.

## 20-Year Vision

Transforming the international role of corporations requires an overhaul of the institutions and rules that govern the global economy. The World Bank, IMF, WTO, and other trade and investment agreements elevate the interests of large corporations above social and environmental goals. The solution is not to simply eliminate international institutions. There is an essential need for international bodies to facilitate cooperative exchange and the working through of inevitable competing national interests. However, the current structures must be significantly reshaped. Ideally, their functions would be placed under the authority of a strengthened and reformed UN to facilitate the creation of a system of self-reliant, self-governing, local economies within an international framework of cooperation, human rights, environmental protection, and fair exchange. These new institutions would be responsible for:

- ▶ Freeing impoverished nations from the burden of unpayable international debts. As long as poor nations are strangled by debt, there will always be pressure to attract foreign investment by allowing global firms to violate internationally recognized labor and environmental standards.
- ▶ Developing rules for trade and investment that promote fair exchange, while allowing national governments the policy space they need to ensure that international economic activities support social and environmental goals.
- ▶ Providing public financing that supports environmentally and socially responsible projects and allows governments to avoid harsh austerity measures in times of crisis. This would make poor nations less vulnerable to the demands of profit-driven global firms, banks, and investors.
- ▶ Working with national governments to strengthen their capacity to regulate corporations. To fill gaps in national capacity, there would be an international mechanism for punishing corporate violators of international human rights laws and for addressing global monopolies and other problems.

## Short-Term Strategies

### Fair Trade Movement — Moving from Defense to Offense

There have been tremendous advancements over the past decade in challenging the expansion of a free trade model that has given excessive privileges to global corporations. Grassroots activism and massive protests outside every major negotiation have helped slow down the free trade juggernaut. The two major free trade initiatives at the international level — the WTO and the Free Trade Area of the Americas — have been stalled for several years (See Box 1). In the U.S., free trade critics helped make these policies an issue in the last election. According to Public Citizen, “fair traders” gained seven Senate and thirty House seats.

The media characterizes the debate as simply free trade vs. protectionism.

Most of the work of trade activists continues to be focused on blocking bad new deals. And as the Bush administration continues to push for new bilateral and regional deals, this work is extremely important.

At the same time, there are exciting new opportunities for supporting alternative approaches, particularly in South America, where public outrage over failed free trade policies has led to fresh leadership more open to new approaches. For example, the Bolivian government is promoting a "Peoples Trade Agreement" that allows governments to maintain authority to put conditions on trade and investment that support social goals, and they have obtained a commitment from the EU to consider a new approach in their trade negotiations. In December 2006, the heads of state of South American governments gathered in Bolivia to discuss an alternative regional integration plan. The Bolivian government launched a new era of government-civil society relations by inviting independent critics of the free trade model to submit recommendations and to participate in dialogues with officials.

## Goals

- ▶ **Mainstream the discussion of alternatives to the current trade model.**
- ▶ **Push for the implementation of key elements of the alternative agenda** that have traction.
- ▶ **Strengthen the alternatives movement by linking trade activism to dynamic corporate campaigns** that illustrate the problems with the current model.

## Mainstream the Discussion of Alternatives to the Current Trade Model

The media has been resistant to publicizing ideas around alternatives, preferring to characterize the debate as one with two simplistic sides: free trade vs. protectionism.

- ▶ Improve media coverage of the substance of concrete alternative proposals, including those of civil society groups like the Hemispheric Social Alliance and the International Forum on Globalization, as well as those of governments such as in Bolivia and Ecuador.
- ▶ Take advantage of upcoming or current media/education opportunities. For example, the upcoming fight over fast track in the U.S. Congress should be turned into a referendum on the free trade agenda and an opportunity to discuss alternatives. The current fast track authority expires July 2007. Also, the intense debate over immigration provides an opportunity to present trade alternatives as one piece of a positive agenda on immigration.
- ▶ Increase dialogue between policymakers in South America and the U.S. The Interfaith Working Group on Trade and Investment included a representative of the Bolivian government in a public forum on Capitol Hill on trade in March 2007. This is just one example of the type of work that should be significantly ramped up in this new phase. Ideally, there would be a more formal structure and network for this exchange. There have been some discussions about forging links between the Congressional Progressive Caucus and a newly formed Interparliamentary Network of the Americas, but more support is needed for face-to-face meetings and organizational support to make these dialogues effective.
- ▶ Increase dissemination of public education materials on alternatives. There have been a number of ambitious, multi-year processes to articulate civil society alternative visions. And while the lengthy and detailed results of these processes are extremely important, more work needs to be done to translate them into accessible popular education materials.

**Some leading organizations:** Hemispheric Social Alliance, International Forum on Globalization, Interparliamentary Network of the Americas, Mexican Action Network on Free Trade (RMALC), Fundacion Solon (Bolivia), Interfaith Working Group on Trade and Investment, Latin America Working Group, Focus on the Global South, Third World Network, and others working, when appropriate, with media and communications experts, such as Fenton Communications and focus group consultants.

## Realizing Key Elements of the Alternatives Agenda

While it is important to present comprehensive alternatives proposals for the global economy, now is the time to extract key elements with traction for concerted action. One potentially fruitful goal is to mount a serious challenge and push for alternatives to the powers granted to private foreign investors in trade

**Trade agreements and investment treaties are extreme examples of excessive powers granted to corporations.**

agreements and myriad investment treaties. These rules are ripe for attack because they are arguably the most extreme example of excessive powers granted to corporations. They allow foreign investors to sue governments directly in unaccountable international tribunals. While these tribunals cannot demand that a government change their laws, they have the power to order that massive damages be paid for violations of a sweeping list of investor protections. They can even sue over government measures, including public interest regulations that substantially reduce the value of an investment.

Because they represent such an extreme overreach, these provisions are among the most vulnerable elements of the current trade and investment model. In negotiating a trade agreement with the United States, the Australian government refused to accept the “investor-state” dispute mechanism, setting an important precedent for other countries. Some otherwise pro-free trade groups like the National Conference of State Legislatures, are strongly opposed to these rules on the grounds that they are anti-democratic.

Unfortunately, many countries have already signed such deals with the United States, either through trade pacts or investment treaties. Thus, there is an urgent need for strategizing on how countries might challenge these rules. A wide range of legal, environmental, and indigenous rights groups have been at the forefront of critiquing these policies and attempting to intervene in some of the most controversial “investor-state” lawsuits. An alliance of Bolivian and U.S. groups succeeded, for example, in pressuring Bechtel to drop a suit against Bolivia over a failed water privatization project. But a series of interviews conducted by the Institute for Policy Studies and Food and Water Watch in 2006 revealed that there has been very little brainstorming on how to move towards an alternative model on investment that would support social and environmental goals. A Canadian group, the International Institute for Sustainable Development, has proposed an alternative model that increases the responsibilities for investors, but it has not received much enthusiasm because it still allows “investor-state” lawsuits.

- ▶ Support strategic discussions between policymakers, civil society, and legal experts in the countries where criticism of these investor protections is highest — namely, Bolivia, Brazil, Argentina, Ecuador, Canada, and the United States.
- ▶ Increase publication of accessible educational materials on this issue, using human stories of the negative impacts of these excessive investor rights to reach a broader audience.

**Some leading organizations:** Fundacion Solon (Bolivia), Center for Legal Studies (CELS, Argentina), Friends of the Earth-International, Earth Justice (U.S.), Center for International Environmental Law (U.S.), Democracy Center (Bolivia), Institute for Policy Studies (U.S.), Food and Water Watch (U.S.), Accion Ecologica (Ecuador), Sierra Club (U.S.), Public Citizen (U.S.), Canadian Centre for Policy Alternatives, and Canadian Environmental Law Association.

### Linking Trade Activism and Corporate Campaigns

Also needed are stronger links between trade activists and corporate campaigners. Unfortunately, in the U.S., most trade activists focus narrowly on legislative battles over trade agreements — with key exceptions. For example, the Maine Fair Trade Campaign has launched a statewide initiative on Wal-Mart that has brought in new members previously unfamiliar with trade policies but are motivated to learn more.

Much more could be done to link this work in mutually supportive ways. For example, indigenous and environmental groups are engaged in a fight in Ecuador against Occidental Petroleum, which filed a \$1 billion investor-state lawsuit against Ecuador because it canceled a contract with the company, after years of protests against its environmental and human rights practices. Occidental is using investor protections in an investment treaty, making this case a powerful symbol of what’s wrong with the current model. It’s an example of a corporate campaign that could strengthen the work of international trade activists.

**Some leading organizations:** Hemispheric Social Alliance, Our World is Not for Sale Network, AFL-CIO Solidarity Center, Amazon Watch, Stop Firestone Campaign, Big Box Collaborative, Asia Floor Wage Alliance, International Trade Union Confederation and their relevant affiliates and regional bodies, Global Exchange, Jobs with Justice, Grassroots Global Justice, the International Labor Rights Forum, and Action Aid International.

**Why can a dictator face an international tribunal because of torture, while a CEO profiting from forced labor does not?**

## Challenges

- ▶ The Bush administration has effectively pressured more vulnerable countries to sign bilateral treaties to continue the free trade momentum, despite the deadlocks in the WTO and FTAA.
- ▶ The corporate lobby in support of the current free trade model is formidable. Thus, real change will depend to a certain degree on the successful achievement of goals identified in Section 4 on separating corporations and state.

## Additional Short-Term Strategies

### Re-Direct International Financial Institution Funding

One aim would be to engage anti-sweatshop groups to push all branches of the International Financial Institutions to adopt ILO core standards as a condition of loans, for example. Similarly, dialogue could be increased with developing country officials regarding alternative energy strategies aimed at building an “anti-climate change” bloc in the Global South.

### Leveraging Local Power to Advance International Goals

Here the aims would be to support local initiatives to adopt procurement regulations that are designed to prevent purchases from sweatshops; to support fair trade projects linking small-scale producer groups in developing countries directly to consumers; and to demand transparency in supply chain contracts, for example, through “international right-to-know” laws.

## Long-Term Strategies

### Creating an International Court for Corporate Crimes

Following the precedent set by the creation of the International Criminal Court (ICC), a similar accountability mechanism should be established for corporations. This could be accomplished through an expansion of the ICC’s mandate or an independent entity. Why can a dictator face an international tribunal because of torture, while a CEO profiting from forced labor does not?

In the long, we would have a court that would investigate the entire range of norms adopted by the UN Commission on Human Rights. Initially it may be more realistic to focus on the most egregious corporate crimes. These could include slave labor and forced labor and the worst forms of child labor.

### Challenges

Clearly, this vision of an International Court for Corporate Crimes will not be realized any time soon. In fact, a proposal to allow the ICC jurisdiction over corporations was debated but ultimately rejected at the Rome conference that established the Court. Opponents feared that the proposal would undermine state sovereignty in an area where there are significant differences in enforcement approaches. Strong opposition from the corporate lobby was also no doubt a factor.

Another obstacle is lack of consensus within global civil society. Some have argued that international corporate codes are fine, but any enforcement mechanism would be manipulated by the richer countries to undermine the sovereignty of the poorer nations. This argument is not without merit, as there are countless examples of U.S. bullying of international institutions. However, there is a stronger argument that the suffering caused by a lack of enforcement outweighs these concerns. If a judge in the U.S. was a racist who only convicted black men, it wouldn’t make sense to eliminate the whole judicial system.

The mere threat of international enforcement may also strengthen national government actions. For example, when a Spanish judge used international law to accept jurisdiction over a case against former dictator Augusto Pinochet, the Chilean government charged that this undermined Chile’s national sovereignty. In the end, the international pressure from the Spanish case led to Chilean authorities stripping

Pinochet of the immunity he enjoyed in his home country, opening the door for a trial there. Without the threat of international prosecution, this would not have happened.

Another objection to international enforcement is that punishing a corporation will only hurt its workers. And stiff fines might result in job cuts. But would people really prefer to give known violators a free pass? Some might also argue that a judgment against a corporation might cause it to move to another country, where workers might be less likely to file complaints. This would be far less likely under uniform binding standards, which would give corporate criminals fewer places to hide. Key strategies:

## Legal

While some NGOs have batted around the idea of an international criminal court for corporate crimes, there is a dearth of legal writing on the subject. One of the first steps, is for legal experts to take on the task of outlining what such a court might look like and how it would function.

## UN Information Gathering Activities to Lay the Groundwork

As suggested above, corporate campaigns can be used to help lay the foundation for a movement for binding international standards. It would also be helpful for the UN to document national governments' current capabilities for holding corporations accountable — either through existing UN agencies or a new UN Organization on Corporate Accountability, similar to that proposed by the International Forum on Globalization.<sup>20</sup> This work could include:

### Database of Corporate Crime

- ▶ Maintain comprehensive and accessible public records of regulatory infractions and civil and criminal prosecutions and convictions for all corporations with transnational operations.
- ▶ Publish a review of efforts to use national laws to hold global corporations accountable for offenses committed abroad (e.g. the Unocal case filed in U.S. courts over abuses in Burma).

### Right-to-Know

- ▶ In the U.S., right-to-know legislation requires corporations to publish information regarding toxic emissions from U.S. facilities, but not facilities elsewhere. The UN should publish regular reports on these gaps and double standards in reporting.

### Documenting the Race to the Bottom in Standards

- ▶ Collect information on corporations that move facilities from one country to another in response to union organizing drives or increased public interest regulation.

### Anti-Corruption

- ▶ Convene an international panel to recommend national legislation to limit the political influence of global corporations on government policymaking.
- ▶ Publish an annual review of the national laws regarding corporate money in politics in each member state.

### Anti-Trust

- ▶ Compile and publicize periodic reports on corporate concentration in major sectors and the impact of this concentration, naming dominant corporations.
- ▶ Produce studies on anti-competitive practices, including price-fixing and monopolies.
- ▶ Publish an annual evaluation of each member state's anti-trust laws, pointing out areas of weakness.

## Alternative Ways of Gathering/Publicizing Key Data

Rather than waiting on the UN, there are other ways of filling in the gaps in our global database on corporate behavior.

- ▶ **Wiki:** A group of academics or others could create a repository through a Wikipedia website, which allows anyone to add and edit content. While some are skeptical about the veracity of information on these sites, wikis do allow for the gathering of massive amounts of information without massive resources.
- ▶ **Corporate Ratings and Rules:** Another strategy is to expand upon NGO efforts to rate corporations based on international standards or some other widely accepted criteria, as discussed in Section 10 of this report.
- ▶ **Stronger National Reporting Requirements:** NGOs could demand that corporations be forced to report more data about their social and environmental behavior to their national governments.
- ▶ **People's Tribunals to Expose Corporate Crimes:** This is a strategy that has been pursued by Jobs with Justice and other groups to draw public attention to corporate wrongdoing. For example, a Jobs with Justice Workers Rights Board made up of various experts heard testimony from Wal-Mart workers from three countries during a hearing in 2005. Such tribunals could advance one important goal in all this work: to encourage short-term corporate campaigns to incorporate longer-term goals with broader impact. By linking immediate objectives to longer-term goals, we can avoid simply fighting one fire after another.

There is a lot of exciting work going on around the world to govern corporations, but there remain significant gaps. A major challenge is that there is no strong global consensus on a long-term vision. While some might agree that the goal should be binding international standards combined with stronger national enforcement, others are attracted to market-based campaigns or worker solidarity strategies because they are skeptical that regulation can ever be the solution. Still others want corporations to disappear altogether. One particular challenge is that there is little overlap between groups that engage the international institutions and those doing creative campaigning. There is not even a great deal of lesson-sharing between corporate campaigns. Thus, any long-term strategy around international rules for corporations must involve ongoing efforts to bring together these disparate parts.

## Endnotes

- <sup>1</sup> "Bolivian Government guidelines for a fair trade and cooperation treaty with the US," posted Sept. 15, 2006. See: [http://www.bilaterals.org/article.php?id\\_article=5919](http://www.bilaterals.org/article.php?id_article=5919)
- <sup>2</sup> For full text of the fundamental rights, see: [www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm](http://www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm)
- <sup>3</sup> Marwaan Macan-Markar, "Rights-Burma: Despite Vow, Generals Still Use Forced Labour," Inter-Press Service, June 8, 2004.
- <sup>4</sup> The eight nonmember countries are Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, and Slovenia.
- <sup>5</sup> For full text of the Guidelines, see: [http://www.oecd.org/document/28/0,2340,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html)
- <sup>6</sup> Trade Union Advisory Committee, "The OECD Guidelines for Multinational Enterprises: October 2004 TUAC Internal Analysis of Treatment of Cases Raised by Trade Unions with National Contact Points, 2001-2004," October 2004.
- <sup>7</sup> Friends of the Earth, "OECD Guidelines," <http://www.foe.org/oecdguidelines/>
- <sup>8</sup> Robin Broad and John Cavanagh, "The Corporate Accountability Movement: Lessons and Opportunities," The Fletcher Forum of World Affairs, Vol. 23: 2, Fall 1999.
- <sup>9</sup> For details, see <http://www.unglobalcompact.org>.
- <sup>10</sup> Email communication with the author, March 4, 2005.
- <sup>11</sup> For extensive criticism of the UN Global Compact by a number of international NGOs, as well as documentation of rights abuses by Global Compact corporate participants, see: <http://www.corpwatch.org>.
- <sup>12</sup> ITUC represents the new umbrella body formed by a merger between the ICFTU and the World Confederation of Labor in November 2006.

<sup>13</sup> Ibid, p. 77.

<sup>14</sup> For full text, see: <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>.

<sup>15</sup> Amnesty International, "The UN Human Rights Norms For Business: Towards Legal Accountability," 2004, p. 14.

<sup>16</sup> Human Rights Watch, "The U.N. Norms: Towards Greater Corporate Accountability," Sept. 30, 2004.

<sup>17</sup> David Gow, "Business cries foul over UN rights code," *Manchester Guardian Weekly*, March 11-17, 2004.

<sup>18</sup> See Kavaljit Singh and Jed Greer, *TNCs and India: A Citizen's Guide to Transnational Corporations*, Public Interest Research Group, New Delhi, 1996).

<sup>19</sup> Ingeborg Wick, "Workers' Tool or PR Ploy?" Friedrich Ebert Stiftung, 2005.

<sup>20</sup> John Cavanagh, Jerry Mander, et al, "Alternatives to Economic Globalization: A Better World is Possible" (San Francisco: Berrett-Koehler: 2004, 2





# 6

## Elevate Community Rights

In addition to changing international rules and separating corporation and state, a third key element of enhancing countervailing powers is elevating community rights. Corporations need to be under the control of civil society. This idea flows through each of the tracks of this report — from protecting the commons and ending short-termism, to limiting the scale of corporations and re-directing capital. To achieve this, we must build a movement for change that confronts and dismantles the fundamental legal barriers now standing in the way. We believe this movement begins in communities.

**Communities engaged in “site fights” run into a system of law that places the rights of corporations over the rights of communities.**

### The Problem

Across the globe, local communities bear much of the burden from corporate activities and corporate decision making. This is true in China where workers face inhumane factory conditions, in Indonesia where communities are seeing their forests leveled to make cheap picture frames for consumers on the other side of the world, and in India where communities face dwindling supplies of clean drinking water as Coca-Cola and other companies bottle it to sell overseas.

Here in the U.S., perhaps one of the most salient examples of the relationship between corporations and communities is with respect to the Big Box Retail Industry, particularly Wal-Mart. Communities see their Main Streets and small businesses collapse under the weight of big box retailers located on the outskirts of town. They face the loss of good jobs and revenues quickly whisked away to Bentonville or wherever corporate headquarters may be. Communities also face increased traffic, air and water quality impacts, and a reduction in their overall quality of life.

It should come as no surprise then that communities are fighting back.

Hundreds of communities across the U.S. have already or are engaged in “site fights” to block the development of another Wal-Mart Supercenter or Sam’s Club. They join a long tradition of local communities that have fought against hazardous waste incinerators, nuclear power plants, landfills, factory farms, mining, or any other type of corporate-driven project that the consultants typically call LULUs — locally unwanted land uses. And all of them — whether rural, suburban, or urban — run into the same fundamental barrier that they didn’t expect: a system of law that guarantees that corporate decisions about siting, production, workers, and the environment override community decision making — a system of law that places the rights of corporations over the rights of communities.

Communities facing unwanted corporate development quickly become embroiled in legal issues, particularly local zoning and land use codes. These regulations are the primary and traditional basis on which fights are won or lost. That a community may simply not want a Wal-Mart, for example — perhaps because it threatens to wipe out independent retailers, has a history of violating the Clean Water Act, or it relies on sweatshop factories to manufacture its products — is irrelevant to the typical zoning or land use inquiry. Instead, communities must be able to demonstrate that a proposed store will cause more traffic than the city’s land use plan allows for, or that it is not a permitted use for that area. Given these narrow parameters, it is very difficult for communities to block proposed sitings.

As one community organizer with ACORN puts it, “(O)nce citizens find out a Supercenter is coming, it’s like entering the ring in the 12th round with one arm tied behind their back.”<sup>1</sup> Indeed, site fighters estimate that perhaps 1 in 10 fights are won.

But why is this the case? Why is it that communities face such long odds in deciding what their city or town will look like? Why do communities seem to be at the mercy of a relative handful of corporate directors when a majority of people within the community oppose the siting?

In this next section we will explore these questions, taking a look at the work occurring in communities today and how this work is evolving, and must evolve, to eliminate the fundamental legal barriers to community self-governance. We will focus on the U.S., but these fights are happening around the world.

## The Current Landscape: Strategies to Control Corporations

### Site Fights and Their Limitations

There are a number of community organizations working in cities and towns across the country to stop Wal-Mart's store expansion, factory hog farms, mining projects, and other unwanted corporate sitings. Many follow the traditional model of organizing local residents, hiring lawyers and other experts, and testifying at zoning and land use hearings.

Some are identifying creative new ways to do this work to try to permanently protect their communities from future corporate threats. To give some examples of current work, we'll review various Wal-Mart fights. And we'll see that regardless of how committed communities are, they seem to lack the ability to subordinate corporate decision makers to their own legal and governing authority.

The **Los Angeles Alliance for a New Economy (LAANE)** received significant national and international attention during its 2004 fight to block a proposed Wal-Mart Supercenter in the City of Inglewood in Los Angeles County. The fight received widespread attention as Wal-Mart sought to locate in the working class, largely minority community. Ever aggressive in its expansion plans, Wal-Mart put an initiative on the local ballot to try to override the decision of city officials to block the development, spending over \$1 million on the campaign. To defeat the measure, a broad-based, multicultural coalition formed, including the critical involvement of communities of faith. The organizing effort mobilized significant support against the company with the community ultimately voting against the measure 60 percent to 40 percent.<sup>2</sup>

Since the Inglewood fight, LAANE has been much sought after by communities across the country needing help to fight off giants like Wal-Mart. It has provided technical assistance to local elected officials and citizens groups nationwide. In January 2007, LAANE released a report with the **Partnership for Working Families, *Wal-Mart and Beyond: The Battle for Good Jobs and Strong Communities in Urban America***, which is as an education tool to help communities fight and find alternatives to Wal-Mart.<sup>3</sup>

The **Institute for Local Self-Reliance** also works closely with communities across the U.S., providing a wealth of resources directly and through its on-line "Big Box Toolkit," which offers a step-by-step guide to fighting site fights.

The **Association of Community Organizations for Reform Now (ACORN)** organizes in communities on social and economic justice issues. Over the past several years, much of ACORN's work through its coalition, the **Wal-Mart Alliance for Reform Now**, has focused on slowing Wal-Mart's expansion as it seeks higher wages and improved worker benefits from the company. ACORN developed a mapping model — using economic, demographic, and transportation data — to predict where Wal-Mart would locate new stores. The model helps determine where to organize locally for anticipated future site fights. Called a "site fight in a box," the predictive model is being tested in Florida and has helped block numerous proposed Wal-Mart stores there.

Perhaps the most well known site fighter is Al Norman of **Sprawl-busters**, described by *60 Minutes* as "the guru of the anti-Wal-Mart movement."<sup>4</sup> Author of *Slam-Dunking Wal-Mart! How You Can Stop Superstore Sprawl in Your Hometown*, Norman has been engaged in site fights for nearly 15 years and fought his first fight in his hometown of Greenfield, Massachusetts. Today he consults with communities around the country engaged in site fights, offers on-line resources through the Sprawl-busters.com website, and provides analysis for the **Wal-Mart Watch** on-line site fight resource Battle-Mart.

Even in the “guru’s” hometown, however, Wal-Mart is trying to return. More than a decade after the company’s infamous defeat, Wal-Mart is once again seeking to locate in Greenfield, with a proposed 160,000 square foot store.<sup>5</sup> Al Norman is forced to fight once more on his home turf, as so many communities find they must do even after winning a site fight.

There is nothing to stop a corporation, after losing a site fight, from trying a second, third, or eighth time to locate in a community. The recent report from LAANE and the Partnership for Working Families tells us, “When unsuccessful, Wal-Mart rarely walks away, but instead returns (as it has tried to do in Inglewood) or looks for alternate sites nearby...”<sup>6</sup>

## Evolving Beyond the Site Fight

LAANE advises communities that, “Passing policy is a better investment than site fights.”<sup>7</sup> And it is with the help of groups like LAANE, the Institute for Local Self-Reliance, and ACORN that some communities are now passing local laws to try to bring decision making power to the community level. These laws include limits on the size and types of new development, and mandated studies of expected community impacts. These efforts are evolving the traditional organizing model to “go beyond the site fight.”

We learn from this that the value of site fights is short-term: *Site fights prevent immediate harm to a community and can buy it time to adopt new laws to make it easier to fight off the next assault.*

A growing number of communities are seizing governing power at the local level to attempt to permanently alter the power imbalance between corporate decision makers and community majorities. In so doing, they are beginning to understand the necessity of writing their own laws that redefine how corporations can operate in their communities. But along the way, they are also beginning to conflict with constitutional provisions that are used to protect corporations from local control. The approaches used include size caps, moratoria, and community impact reviews.

### Size Caps

A number of communities have passed local ordinances called “size caps,” aimed at limiting big box development based on square footage. Size caps limit the square footage of new developments from about 25,000 square feet as passed in Boxborough, Massachusetts, to upwards of 100,000 as adopted in Madison, Wisconsin. To give a sense of scale, an average Wal-Mart discount store is 101,000 square feet and an average Wal-Mart Supercenter is 185,000 square feet.<sup>8</sup>

Size cap ordinances limit the scale of a development, but not whether a development can occur. Thus, in Maryland, Wal-Mart proposed building side-by-side stores, each under the size cap of 75,000 feet, but with the overall square footage exceeding the cap level. The company pulled the proposal on its own volition, not because of legal concerns.<sup>9</sup>

Size cap ordinances face a number of constitutional legal challenges. A study by researchers at the Cumberland School of Law at Samford University in Birmingham, Alabama, found them to be highly vulnerable under the Interstate Commerce Clause, as interpreted under the Supreme Court’s doctrine of the “Dormant Commerce Clause.” As the study explains, the Dormant Commerce Clause is “judge-made doctrine rooted in the belief that power over interstate commerce was assigned to Congress by the Constitution largely to restrain states from discriminating against or burdening their neighbors’ commerce.”<sup>10</sup>

According to the Samford study, size caps may violate the Dormant Commerce Clause and be overturned if they are “passed with an impermissible purpose (i.e., to discriminate against out-of-state commerce, protect local economic interests, or both) or because, regardless of its purpose, its effects discriminate against out-of-state commercial actors.”<sup>11</sup>

Communities do not attempt to hide the fact that size cap ordinances are passed to protect small businesses and the local economy, as well as livability and good jobs. This is the very reason they are adopted. But it is also for this reason that the Samford study finds them highly vulnerable to constitutional challenge.

The Interstate Commerce Clause and corporate constitutional rights are discussed in more detail later.

Some communities are now passing laws to try to bring decision making power to the community level.

## Moratoria

Communities are also passing ordinances placing a moratorium on certain types of corporate development. In Pennsylvania, a number of communities have passed moratoria on new corporate factory hog farms — facilities which many blame for driving small independent, family farmers out of business and which bring a host of environmental concerns, including air and water quality problems. Communities have also passed moratoria on the development of big box stores, to prevent similar impacts on local businesses, the environment, Main Streets, and downtowns. Communities like Olympia, Washington, Easton, Maryland, and Fort Collins, Colorado, have all adopted big box moratoria ordinances. The Institute for Local Self-Reliance explains, “A number of communities have temporarily suspended large-scale retail development in order to allow time to consider the impacts of superstores and to revise the local comprehensive plan and zoning code accordingly.”<sup>12</sup>

While moratoria may give communities time to consider their local land use plans, they are by law limited in duration. While they often can be renewed, they cannot forever hold off unwanted development. In addition, these ordinances face similar constitutional concerns as size caps discussed above.

## Community Impact Reviews

Some localities have passed ordinances requiring that a community impact analysis be conducted as part of a permit review in siting a new development. These analyses often require a study on anticipated economic impacts, such as the number of new jobs created or lost and anticipated housing needs. Environmental issues may also be considered, such as air and water quality impacts.

In 2006, following its successful fight against Wal-Mart, the City of Inglewood passed an economic impact review ordinance in an attempt to ward off future site fights. The City of Los Angeles passed a similar ordinance requiring big box retailers that sell groceries to finance economic analyses as part of the permit review process.<sup>13</sup>

The findings of community impact reviews are largely non-binding on local officials. In addition, as Stacy Mitchell of the Institute for Local Self-Reliance writes in her recent book *Big-Box Swindle*, “Even when an analysis finds significant negative impacts, city decision-makers may still make a judgment that the benefits outweigh the costs.”<sup>14</sup> This undermines the ability of a community impact review from being used to block unwanted development. There’s another effect here as well. Like risk assessments, these reviews remove the question from democratic consideration and puts it into the hands of so-called “experts.” And as data is highly manipulable, it can be used to legitimize a bad decision by pretending that some objective analysis was involved.

These reviews also face serious legal challenges. Future economic and environmental impacts are difficult to quantify and data, as mentioned, can be manipulated. Decisions based on them, thus, open up a community to legal challenge. Due process protections under the Fourteenth Amendment to the United States Constitution prevent the use of qualitative judgments about those impacts, which corporations argue are an “arbitrary” enforcement of the law. The Fourteenth Amendment’s Due Process Clause — which protects corporations as “persons” under the law — prohibits governmental decisions made on the basis of arbitrary judgments. When they work against corporations, community impact review ordinances are not expected to survive constitutional challenge.<sup>15</sup>

## Conclusion

As we see in this brief review, site fights can only temporarily hold off a corporation. Seeing this, a number of communities and organizations have worked to go beyond this traditional organizing strategy by passing new law. Yet, as we see above — whether it be size caps, moratoria, or community impact reviews — under current law these newer strategies stand on very shaky legal ground. Corporations will work diligently, as they already are, to overturn these laws through the courts.

The ability of corporations to use the nation’s laws and courts to strip communities of any fundamental decision making powers has led some activists to question efforts that don’t challenge the legal system itself.

## Our Legal System: Protecting Corporations Over Communities

It's useful to understand how the U.S. legal system has evolved to elevate corporate interests over community interests, for it didn't begin that way at the nation's founding. At that time, the few corporations that existed were not permitted to own other corporations and were restricted in their activities. Over time, as corporations grew in number and wealth, a relatively small number of corporate owners and decision makers sought to shape the law to their own benefit.

Stacy Mitchell writes that through a series of decisions dating back to the early 1800s, the U.S. Supreme Court "greatly expanded the power of corporations by extending to them the same protections granted to citizens under the Bill of Rights...Where once corporations had been subordinate to the public will, now they were given equal footing and potent legal rights."<sup>16</sup> In this section, we offer an overview of the key laws — in the Bill of Rights and elsewhere — that allow corporations to override democratic decision making.

### Local Zoning and Land Use Laws

Generally, activists and community leaders consider zoning and land use planning tools as vehicles to control and regulate development and sitings. While those tools can be effective in regulating the placement of development, they may preempt the community's ability to ban certain types of corporate sitings. Indeed, zoning laws were originally adopted solely to separate incompatible land uses from one another — commercial from residential, industrial from agricultural.

Under these local regulations, communities can attempt to stop a proposed development if it will perhaps generate too much traffic. But if a corporation is able to structure its plan to comply with the letter of the law, then its permit must be approved — because denial of the permit by the local government then becomes based on other considerations, making it "arbitrary" under the law and thus violating a corporation's constitutional "rights." Thus, communities face site fight after site fight because local zoning and land use laws don't allow them to "just say no."

### Civil Rights Act, 42 U.S.C. § 1983

The Civil Rights Act was passed after the Civil War to protect the right of freed slaves to vote. It allowed the former slaves to sue if their rights were infringed on and seek monetary damages as well. Updated in 1964 during the Civil Rights movement, today corporations wield this law over communities.

When a corporation submits a development application to a community, the application immediately becomes a form of "property," representing the proposed development and its expected future profits. Taking the corporation's property without cause and without just compensation violates a corporation's constitutional rights. Discussion of "takings" under the law is discussed later in this section. Under the Civil Rights Act, if a corporation is denied a development permit under the local zoning code or for any other reason, it can sue for damages — "future lost profits" and attorney fees.

We saw this happen in Massachusetts in 1998, when Omnipoint Corporation (now T-Mobile) sought to locate a cell phone antenna in the Town of Wellfleet on Cape Cod. Wellfleet residents, concerned about potential health hazards, rallied against the proposal. The local Planning Board agreed with the residents, turning down the proposal three to two.

Omnipoint responded with a lawsuit under the Civil Rights Act. The corporation argued that the community had violated its constitutional right to build a cell tower. It sued to reverse the decision and for damages from future lost profits and attorney's fees. Fearing that it would be forced to pay thousands of dollars to the company, Wellfleet reversed its decision allowing the antenna to be built.<sup>17</sup> Omnipoint won a similar case in Pennsylvania with a federal court awarding attorney's fees to the corporation.<sup>18</sup>

Wielding the Civil Rights Act, we find that a corporation need not even locate in a community to profit from it. The chilling effect this has on communities can be overwhelming.

**Communities face site fight after site fight because local zoning and land use laws don't allow them to "just say no."**

Today, corporations now have many of the same equal protection and due process protections under the U.S. Constitution as natural persons.

## Bill of Rights

Originally intended to enumerate the rights of citizens of the United States, the Bill of Rights — with its protections of the right of assembly, religion, free speech, and due process — has been widened by a series of U.S. Supreme Court decisions. Beginning in the early 1800s, corporations gained many of the same rights as citizens.

One of the most potent of these is the corporate right to political free speech under the **First Amendment**. As we saw in the earlier section on separating corporation and state, corporations use their speech rights to overwhelm citizen participation in politics, government, and elections. And the citizenry is largely powerless to adopt laws that ban corporate involvement in elections and policymaking. In *Corporation Nation*, Charles Derber explains that “courts have been constitutionalizing the right of corporations to finance elections, by equating corporate giving with free speech as protected by the First Amendment.”<sup>19</sup> Corporations can even put their own ballot referenda before voters, as Wal-Mart did in the high profile site fight in Inglewood.

Corporations also enjoy commercial free speech protections under the First Amendment. The Supreme Court maintains that commercial speech is a “protected interest” for sharing information with consumers.

In Oregon, Clear Channel Corporation sued the City of Portland for violating the company’s First Amendment rights by putting restrictions on billboards. Communities restrict billboard advertising to protect scenic views, skylines, and overall quality of life. A county circuit court awarded damages of half a million dollars as well as attorney fees to be paid by the city to the corporation.<sup>20</sup> In Massachusetts, the U.S. Supreme Court found that a state law preventing tobacco companies from advertising within 1,000 feet of a school or playground was unconstitutional.<sup>21</sup> As Charlie Cray (a co-author of this report) and Lee Drutman write in *The People’s Business*, “Again, the ability of states to legislate in the public interest failed to triumph over the rights of corporations to advertise freely.”<sup>22</sup>

Using the **Fourth Amendment** protection against “unreasonable search and seizure,” corporations can block surprise government inspections when the government does not have a warrant. Cray and Drutman ask, “If OSHA inspectors are required to obtain a warrant to search for safety violations, how likely is it that they will catch a safety violation? Or if EPA inspectors need a warrant, how likely is it that they will catch a company violating toxic waste regulations?”<sup>23</sup>

Judicial decisions have also given corporations broad due process rights and protections under the **Fifth Amendment** against governmental regulations that result in the diminishment of corporate property value, what’s known as a “taking.”

In its 1922 decision in *Pennsylvania Coal Company v. Mabon*, the U.S. Supreme Court ruled that a Pennsylvania law requiring coal mining companies to leave in place columns of coal under houses, buildings, or streets — to prevent them from caving in from underground mining — constituted a “taking” under the Fifth Amendment.<sup>24</sup> This case represents the first time the Supreme Court found that corporations must “be compensated for the diminishment in property value resulting from the application of regulations seeking to protect the health, safety, and welfare of people and the natural environment.”<sup>25</sup>

This decision, Cray and Drutman write, “undermines the entire idea of regulation, arguing that any government regulation that interferes with the ability of corporations to make expected profits is somehow a potentially unconstitutional taking of private property if not properly compensated.”<sup>26</sup>

## Fourteenth Amendment

The Fourteenth Amendment, ratified in 1868, extended protections to freed slaves, saying that no state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” It did not take long for corporations to claim these same rights.

Today, corporations now have many of the same equal protection and due process protections under the U.S. Constitution as natural persons. These provisions primarily protect corporations from being treated differently from other “persons” under the law.

Corporations wield their equal protection rights under the Fourteenth Amendment broadly. In *Louis K. Liggett Company v. Lee*, the Supreme Court overturned a Florida law which taxed chain stores differently

than small businesses. Chain stores argued that doing so violated their Fourteenth Amendment equal protection rights. The Court concurred, writing, "Corporations are as much entitled to the equal protection of the laws guaranteed by the Fourteenth Amendment as are natural persons."<sup>27</sup>

### Interstate Commerce Clause

The Interstate Commerce Clause, from which corporations derive so much of their power, grants to Congress the power to regulate commerce "among the several States." As the Supreme Court has written, the Commerce Clause "has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the free flow of commerce across state lines."<sup>28</sup> This is the court's doctrine of the Dormant Commerce Clause described earlier.

A 2001 decision by the Fourth Circuit U.S. Court of Appeals in *Waste Management Holdings v. Gilmore* offers a prime example of how corporations use the Commerce Clause to undermine state and local laws. To protect the public health, Virginia adopted standards about the type of biological and hazardous substances that could be in out-of-state municipal solid waste. The Court of Appeals, while acknowledging these public health concerns as legitimate, found the laws discriminated against the flow of interstate commerce and thus were unconstitutional.<sup>29</sup> In the decision, the court held that garbage was "commerce."

To stem the loss of small and family farms, in 1998 South Dakota amended the state constitution to ban agribusiness corporations from engaging in farming activities within the state. South Dakota lost over half of its farms between 1950 and today.<sup>30</sup> Agribusiness corporations sued the state, contending that their constitutional rights were violated by the amendment. A federal district court agreed throwing out the voter-approved amendment, finding that it violated the Interstate Commerce Clause.<sup>31</sup>

### International Rules

As discussed in Section 5 on international rules, international trade agreements —including NAFTA and GATT — also give corporations legal authority to undermine state and local laws. Chapter 11 of NAFTA, modeled on the Interstate Commerce Clause, is a prime example. It allows corporations to sue foreign governments for laws and regulations they claim result in future lost profits — including laws passed to protect the public health and welfare.<sup>32</sup>

In 1997, the Metalclad Corporation filed suit against Mexico under NAFTA, after the government shut down a hazardous waste treatment plant in San Luis Potosi which was found to have significant negative environmental impacts. Ultimately, a closed-door NAFTA tribunal awarded Metalclad nearly \$17 million in damages to be paid by the Mexican government.<sup>33</sup>

## The Need for Evolution in the Law

At every turn, communities come up against the broad constitutional and statutory protections that corporations wield against them. Some communities have decided that the existing legal structure leaves them remediless and have taken aim directly at it. Their work represents an understanding that creating community self-governance is impossible without dismantling the existing structure of law. Below we offer several case studies of communities that have taken this route.

### Case Study: Blaine Township, Pennsylvania

When multinational mining conglomerate CONSOL Energy announced plans to conduct longwall coal mining in Blaine Township in southwestern Pennsylvania, residents had reason for concern.

Longwall mining accounts for nearly forty percent of underground coal mining in the U.S.<sup>34</sup> and sixty percent of coal mining in Pennsylvania.<sup>35</sup> The U.S. Department of Energy describes it as "the essentially complete extraction of the coal...and the roof in the mined-out area is allowed to collapse."<sup>36</sup>

Homes, buildings, farmland, and waterways — anything on the surface above the underground coal beds — can collapse as the land falls in as much as four feet. House foundations crumble, wells run dry or are

poisoned, rivers and streams see severe species decline, and farms become non-irrigable. The federal government describes this as “inevitable.”<sup>37</sup>

Neighboring communities of Blaine Township tried to stop proposed mining plans, but found that federal laws stood in their way. Federal mining laws have legalized the practice of longwall mining, and in so doing, prohibit communities from saying “no.”

Residents in Blaine Township realized that if they were going to protect their community, they would need to stop the mining altogether. In October 2006, the Blaine Township Board of Supervisors passed an ordinance prohibiting corporations from mining in their jurisdiction, becoming the first municipality in the U.S. to adopt such a ban. The supervisors also passed an ordinance stripping corporations of constitutional rights, becoming the seventh municipality in the U.S. to do so. They did this because they understood that they could not stop longwall mining by acquiescing to the existing structure of law, for under it corporations can assert constitutional “rights” to overturn local laws.

**Residents of Blaine Township and Barnstead had no choice but to move beyond site fights.**

## Case Study: Barnstead, New Hampshire

Communities around the world are now facing multinational corporations seeking to bottle their water to ship overseas. In Section 7 on the commons, we discuss how privatization of water is critically damaging as drinking water sources are depleted and wilderness and rural communities experience desertification.<sup>38</sup>

U.S. consumers spend nearly \$10 billion a year on bottled water, spending more, ounce for ounce, than on a gallon of gas.<sup>39</sup> Marketed as important for your health, studies show that “there is no assurance that bottled water is any safer than tap water.”<sup>40</sup>

In Barnstead, New Hampshire, residents watched as large water bottling corporations like Nestle submitted plans to pump water from neighboring towns. Nestle controls nearly 20 percent of the worldwide bottled water market, selling under popular brand names including Poland Springs, Calistoga, and Arrowhead.<sup>41</sup>

Neighboring communities to Barnstead faced proposals from Nestle to withdraw upwards of 300,000 gallons of water a day from local aquifers. These communities fought for years to block corporate water withdrawals, yet their efforts ran into the legal system which regulated water withdrawals at the state level, preempting local governments from banning them locally.<sup>42</sup>

Faced with the fact that the existing legal system rendered them unable to stop corporations from withdrawing water, Barnstead decided to go outside the system and adopted the first local ordinance to ban corporate water withdrawals. The ordinance was adopted at the Barnstead Town Meeting in March 2006, by a vote of 122-1.

As in Blaine Township, the residents of Barnstead recognized that water withdrawals were only one, albeit major, way that a corporation can override the interests of a community. Thus they included language in the ordinance to strip all corporations of their constitutional rights, such that no “corporation be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the New Hampshire Constitution, within the Town of Barnstead.”<sup>43</sup> That provision guarantees that when a water corporation attempts to overturn the Barnstead ordinance, that the issue becomes one of whose rights trump whose, rather than merely focused on the amount of water that will be withdrawn from the aquifer.

## Building a Movement for Change

In many ways, residents of Blaine Township and Barnstead, intent on stopping destructive corporate coal mining and the corporatization of their water supplies, had no choice but to move beyond site fights. They watched as communities adjacent to theirs used conventional regulatory legal and land use tools and lost battles to keep coal mining and water withdrawals from occurring within those communities. Pushed to follow a different course, residents in those areas began to replicate some of this country’s prior people’s movements — which also realized that they had to pioneer a new structure of law to replace an old one which left them remediless.

If our current legal structure remains unchanged, a handful of corporate decision makers will continue to override the interests of people and communities.

The Abolitionists, for example, when faced with the legality of slavery in the 1830s, worked to alter the fundamental structure of law by driving the 13th, 14th, and 15th Amendments into the Constitution in the 1860s. Suffragists, faced with the legality of women as property, altered the fundamental structure of law by organizing for decades to drive the 19th Amendment into the Constitution. Communities like Blaine Township and Barnstead, faced with a lack of remedies within the existing legal structure to stop corporate assaults, have begun to turn to those historical lessons to begin to learn how to successfully challenge the existing structure of law while building a new one.

The **Community Environmental Legal Defense Fund**, which assisted residents and local officials in both Blaine and Barnstead, is pioneering this work. It is working in Pennsylvania, New York, Virginia, New Hampshire, Alaska, Washington, Ohio, and elsewhere, assisting communities to organize to pass local ordinances which seize the authority to make fundamental governing decisions within those communities. Those local laws also refuse to recognize that corporations have certain legal protections within those communities, and thus attempt to remove the structural legal hurdles that otherwise prevent them from governing. Over 100 of the Legal Defense Fund's drafted laws have been adopted by municipal governments and over 350,000 people now live in communities that have adopted those governing frameworks.

We see this work as fundamentally transformative and critical to the building of a larger movement that will eventually remove the structural barriers that exist within the current legal system which prevent the building of economically and environmentally sustainable communities. For without taking on the legal structure that favors a minority of corporate decision makers over democratically elected local governments, we will be relegated to only fighting around the edges, not addressing the core problem.

It is only by taking on the structural legal barriers, as is beginning to happen in communities like Barnstead and Blaine Township, can we achieve the goals of the initiatives outlined in this report. If corporations still possess First Amendment rights to political free speech, for example, campaign finance reform limiting the size of corporate PAC donations will only spread these contributions across multiple PACs, not reduce the amount of corporate money in the system. In essence, such laws — which work around the defining statutory and constitutional law — merely regulate where corporate money is in the electoral system. Ending corporate involvement in the electoral system is not even able to be considered, as it runs headlong into the United States Constitution.

## The Nexus of the Strategic Corporate Initiative

If our current legal structure remains unchanged, a handful of corporate decision makers will continue to override the interests of people and communities — the common good. Thus the initiatives identified throughout this report must confront this legal structure frontally, driving at this core problem in a coordinated, strategic way. And the movement to drive toward that change starts, we believe, in communities.

It begins in places like Blaine Township and Barnstead, and in other communities facing the clearcutting of their forests, the land application of sewage sludge, the corporatization of agriculture, water withdrawals, and Wal-Marts.

And thus it is at the community level where we see so many of our proposed initiatives in this report converge. Whether it's on separating corporations and government, climate change, water privatization, international trade rules, or Wal-Mart, it is at the community level where these impacts are felt most deeply and hence from where the movement for change will build. And just like the long tradition of local communities that have fought against nuclear power plants, landfills, and factory farms discovered — our proposed initiatives are all operating within this same system of law that guarantees that corporate decisions override democratic decision making. Each struggles against this system, and in order to make real change, we must take on this system frontally. At the community level, the seeds of this movement are being sown.

In the earlier section, *Separate Corporation and State*, we discuss how in the long-term, we must develop a workable vision of how communities can network themselves together around the common struggle for democracy —network in many ways including geographic, virtual, sectoral (i.e. by issue) —that in turn can be joined together in the larger movement-building process. Before the mature states of such a movement can be envisioned, we must promote local organizing models that get to the core question of democracy and provide the tools for broader engagement with the rest of society. In Blaine Township, Barnstead, and elsewhere, the seeds of this movement for democracy are being planted, and now must be cultivated and spread across communities in the U.S. and internationally.

Throughout this section on communities, we focus on rights. As we discuss in *Separate Corporation and State*, this also means reclaiming the public sphere as a platform for democratic discourse. We propose community campaigns to establish or expand public ownership of the local media infrastructure, including radio and television broadcast stations, as well as municipally owned, publicly accessible WiFi systems. In addition, we recommend campaigns to limit corporate advertising, especially when it undermines community health and safety, or trespasses on key public spaces (e.g. schools) where commercial messages directly undermine community values. Their success requires challenging the First Amendment protections held by corporations. We believe the more organized communities become, the more apt the courts are to become receptive to challenges to these presumed speech rights of corporations.

In *Change International Rules*, we advocate for leveraging local power to advance international goals. The aims for this organizing would be to support local initiatives to adopt procurement regulations that are designed to prevent purchases from sweatshops, to support fair trade projects linking small-scale producer groups in developing countries directly to consumers, and to demand transparency in supply chain contracts, for example, through “international right to know” laws.

In the section which follows, *Protect the Commons*, we propose a short-term initiative to create water trusts. There are already efforts waging a rigorous battle for what is called “the right to water.” Today, giant water firms, including Nestle, are taking over municipal water systems in many parts of the world. Communities like Barnstead are fighting to protect the most basic of life sustaining resources from corporate privatization.

In the later sections *Transform Corporate Purpose* and *Tame Corporate Giants*, we advocate for the long-term promotion of social enterprise. These can include promoting: *community-ownership business models such as family-owned and employee-owned firms; cooperative firms* like Organic Valley, a dairy cooperative owned by 950 organic family farms, a model for preventing the loss of family farms; *nonprofit-owned social enterprises*, like Greyston Bakery in Yonkers, New York, which hires the homeless; and *government-chartered firms* like community-owned electric companies, which are an alternative to investor-owned firms.

These efforts carry multiple benefits. First, they offer alternatives to the corporate giants. Key questions that organizers face when fighting a Wal-Mart or The Home Depot is, “What’s the alternative? Where will we buy toilet paper or light bulbs if they don’t locate here?” Community-based businesses offer those alternatives. Secondly, building the local economy on enterprises that keep revenues in the community and region has significant economic multiplier effects. As more small and local enterprises are developed, building a more vibrant local economy and higher quality of life, the more communities will be motivated to protect what they have from outside corporate pressure. We described earlier how communities faced with giant corporations learn quickly that they do not possess democratic decision making power. The more a community is able to collectively see how this lack of rights can undermine its very way of life, the more apt it is to rally to action. Thus these are critical elements to building a rights-based movement.

In *Re-Direct Capital*, Section 10, we put forward an initiative to form a corporate rating system to drive capital away from bad corporate actors to good. Communities have a particularly strong interest in this and we propose that they participate in the very development of such a system. As a movement to enhance community rights builds, and communities gain the right to self-determine, they will want to know how particular corporations behave and have ways to evaluate who is permitted to do business with the community and locate there. Thus community interests must be considered in the early development of a corporate ratings system.

## 20-Year Vision

It is at the local level where people come face to face with the most brutal aspects of corporate power. These are smaller scale versions of the landscape-shifting “trigger events” we discuss in this report. But we don’t have to wait for another major hurricane like Katrina to hit us, for they happen on a small scale every day in communities all over the world. And thus, this is where the bulk of this work — over the next 5 to 20 years — needs to be focused.

In 20 years, a rights-based people’s movements will be working to revamp the constitutional structures of law, which today place the rights of corporations above the rights of people, workers, communities, and the environment. A legal and campaign infrastructure aimed at achieving a legal outcome that establishes community self-governance will be built.

Like historic prior people’s movements, the community rights movement will harness the collective power of the many to drive real change into the law. Communities will be the nexus for the work to truly elevate people and community rights, and necessarily strip corporations of their illegitimate rights.

## Short-Term Strategies

We sit at a moment in time where corporations — and the few who ultimately run them — have led us down a most destructive path, and the veil of legal structures which made this possible — is now beginning to lift. And thus, we sit at the beginning of a new rights-based peoples’ movement focused on seizing self-government. Their work inherently requires that a corporate few be stripped of their legal authority to make governing decisions on our behalf.

We must invest in this change, for it is the basis for constructing a world where we are truly living sustainably with the earth’s natural systems, where workers are moved from the “liabilities” side of the balance sheet to the “assets” column, and where communities are able to build their economies, their neighborhoods, and their quality of life on their own terms.

## Build a National Community Rights Network

Building toward the 20 year vision means focusing individual campaigns on dismantling the existing legal structure. At the local level, this means assisting community groups to build new campaigns across the country, and then helping to stitch them together to form a cohesive, national movement that will push municipal challenges to the legal structure of law into higher levels of government.

Communities need to move beyond single issue approaches to corporate power. We need a people’s movement driven by communities across the country, where organizers educate community leaders on common legal barriers. We need campaigns to create “crises of jurisdiction” in which municipalities confront not just corporate aggressors, but governmental entities and legal structures that empower those aggressors. Communities can then join together with each other — and with environmental, labor, and human rights activists — to fundamentally change the legal system, dismantling current law that empowers corporations with constitutional rights. The aim is to create a powerful community network to seed a national movement that will over time push municipal challenges to the legal structure of law into higher levels of government.

### Goals

- ▶ **Build a powerful network** dedicated to community rights.
- ▶ **Elevate the issue of community rights** to the national level.
- ▶ **Build and educate a cadre of talented community organizers.**
- ▶ **Lay the foundation for a rights-based people’s movement aimed at long-term legal change,** to establish community self-governance and strip corporations of their constitutional rights.

**Our challenge is to work with communities to establish a new frame — one which assumes that we have not inherited a democracy.**

## Major Elements of this Initiative

- ▶ **Create a National Community Rights Network.** Its responsibility would be to create infrastructure to facilitate legal challenges, education, support, and strategic campaigns in communities as well as to recruit community leaders into its network.
- ▶ **Create a Legal Resource Center** under the auspices of the Network. It would be dedicated to building legal theory and strategy, fighting legal challenges by corporations, and helping draft new local governing laws.
- ▶ **Create an Educational Resource Center** under the auspices of the Network to educate activists using the model of the Democracy Schools conducted by CELDF. It would teach them how to conduct strategic community campaigns based on the experience of other communities.
- ▶ **Organize and recruit in strategic communities, building a people's movement** by educating and engaging people and communities that face corporate assaults on how to change the underlying rules that prevent them from having power over corporate decisions.

**Create a National Community Rights Network.** Communities are more powerful operating together. While there are NGOs dedicated to helping communities communicate with and learn from each other, there is no network dedicated to a fundamental change in community legal rights. A network could accelerate changes by creating structures that accelerate communications, learning, and strategic campaigns.

**Create a Legal Resource Center under the auspices of the Network.** We need a well staffed resource law center dedicated to building legal theory and fighting legal challenges by corporations. It is not easy to find lawyers willing to confront established legal principles, but locating those lawyers is a necessary prerequisite to establishing this type of law center. The center will also work with communities to draft new local governing laws, with the legal and organizing strategies evolving together.

**Create an Educational Resource Center under the auspices of the Network.** A perhaps obvious and extremely difficult aspect of this work is that it runs counter to what we think we know. In essence, communities are beginning to advocate for fundamentally changing what many consider to be bedrock and “well-settled” legal and constitutional principles — principles that we are taught from our earliest schooling are democratic and built to protect “we the people.”

At the outset then, we are faced with a major cultural and re-framing challenge. As we describe in Section 11 on framing, citing George Lakoff, “Frames are the mental structures that allow human beings to understand reality...”<sup>44</sup> Lakoff explains the challenge we face. “To be accepted,” he writes, “the truth must fit people’s frames. If the facts do not fit a frame, the frame stays and the facts bounce off.”<sup>45</sup>

The facts that this work presents are unlikely to fit the current frame held by the vast majority of people, and thus they are apt to “bounce off.” Our challenge, knowing this, is to work with communities to establish a new frame — one which assumes that we have not inherited a democracy, but that our work within communities is to create one.

To that end, the Community Environmental Legal Defense Fund launched Democracy Schools in 2003. Those Schools, one and three-day intensive workshops attended by municipal officials, lawyers, and community leaders, use a critical examination of the regulatory system, an analysis of English law as the underlying framework for today’s legal system, and prior people’s movements to help communities understand why they are rarely successful in stopping corporate sitings and projects.

The Schools have been effective in getting the people who participate in them to take action in their own communities. This works best, not surprisingly, when participants are from communities facing corporate assaults. With their backs up against a wall, they come to realize that the legal system which they are looking to help them, is instead working against them by enabling the problem they are trying to solve. They are forced to look outside of the system, which then shatters their “frame” about democracy and how and for whom our system of law and governmental institutions actually work.

Building on the work of these Schools — and the campaigns emerging from them — is critical, as is the need to discover new ways to communicate this information that does not require a full-day or longer workshop.

Building a movement based on communities refusing to accept inevitable outcomes under the current system of law, requires an education of traditional activists working on environmental, labor, and human rights issues. Moving them beyond their use of the existing legal and regulatory systems is necessary to tap into their expertise, resources, and organizing ability, to assist communities to join together to move a common agenda.

**Organize and recruit in strategic communities, building a people's movement** by educating and engaging people and communities that face corporate assaults on how to change the underlying rules that prevent them from having power over corporate decisions. Central to broadening and deepening this work is on-the-ground organizing on a large scale. This involves organizing and educating people in communities facing corporate assaults. We must identify communities “ripe” for this work and strategically focus the organizing in target areas and states such that the individual successes become collective, thus lending themselves to being woven together into a movement.

In addition to giving birth to more and more target communities opposing particular corporate sitings and projects, the organizing must be qualitatively different — focusing on changing the rules under which these organizing campaigns are conducted. These campaigns must create “crises of jurisdiction” in which municipalities confront not just corporate aggressors, but governmental entities and legal structures that empower and enable those aggressors to override community visions for themselves. This work will thus require building a strong cadre of extremely talented community organizers.

Finding and training strong organizers that can work with people and their communities, and who are constantly identifying and recruiting new organizers, is critical. The “people” in the people’s movement needs to include organizers who can motivate and inspire, while being strategic and effective.

## Long-Term Strategies

### The Community Rights Initiative

This initiative is dependent on the strength of the community rights campaigns undertaken under the short-term initiative which are building a rights-based people’s movement. This initiative confronts the reality that for communities to be self-governing, corporate rights necessarily must be eliminated. This, we believe, will require constitutional and legal restructuring. We must build a legal and campaign infrastructure dedicated to developing and implementing this strategy.

#### Goals

- ▶ **Continue to build and strengthen a rights-based people’s movements**, and elevate the community rights issue to the national level.
- ▶ **Develop legal theory and strategy for establishing community rights to self-governance in the law** and for eliminating corporate constitutional rights.
- ▶ **Achieve a legal outcome that establishes in law community self-governance.**

#### Major Elements of this Initiative

- ▶ **The National Community Rights Network’s Legal Resource Center** evolves its short-term initiative work into a legal theory and strategy for achieving constitutional rights for communities.
- ▶ **The Network’s Educational Resource Center** evolves its short-term initiative work into educating and organizing campaigners for a national campaign to achieve community rights.
- ▶ **The Network develops and coordinates a national political campaign** with communities to drive into law constitutional rights to self-governance for communities.
- ▶ **The Network coordinates with other national level NGOs** engaged in this effort to ensure complementary efforts moving towards the same objectives.

**Communities are where movements begin.**

**The National Community Rights Network's Legal Resource Center** evolves its short-term initiative work into a legal theory and strategy for achieving constitutional rights for communities. While the Legal Resource Center is developing legal theories for defending community rights ordinances in the short-term initiative, it is also laying the legal foundation for a longer-term initiative. Its analysis should begin to determine the feasibility of pursuing legal challenges to existing case law versus pursuing a change to the federal Constitution that elevates community rights and eliminates corporate constitutional rights.

**The Network's Educational Resource Center** evolves its short-term initiative work into educating and organizing campaigners for a national campaign to achieve community rights. This will require developing a national network of trained organizers and activists to lead the national campaign. In the short-term initiative, community activists are focused on the local level and building the political power to drive ordinances that subjugate corporate rights to community rights. In this later stage of the movement, activists are now focused on efforts within their communities that are designed to advance change at the federal level. This may require more advanced training in the legal, political, and actual campaigning aspects of this initiative.

**The Network develops and coordinates a national political campaign** with communities to drive into law constitutional rights to self-governance for communities. The Network is the hub of the movement building. It is the logical entity to coordinate the national political campaign or to set up the 501(c)4 entity that does. This entity would act as the strategic facilitator for this national effort. It would coordinate strategic research and facilitate strategic planning. It would also facilitate collaboration among community network members. It would ensure integration of all campaign elements (research, framing, opinion polling, national days of action, media, etc.).

**The Network coordinates with other national level NGOs** engaged in this effort to ensure complementary efforts moving towards the same objectives. Working with other national NGOs engaged in this effort, the Network occupies a central position since it represents communities where most issues converge (i.e. environment, labor, human rights). As we indicated earlier, the community track represents a coalescence of the other strategic tracks. As such, it is not alone in its efforts to achieve a fundamental realignment of community and corporate rights. This initiative merges most of the critical issue sectors of the NGO community with community rights since subjugating corporate rights to individual and community rights is fundamental to the achievement of the goals of the people's movement here in the U.S. and ultimately on a global scale.

## Conclusion

Ultimately, we must face the challenge that all successful people's movements faced, the establishment of rights (for people), and in this case, the removing of illegitimate rights (for corporations). This seems daunting. Yet given the negative public attitudes towards corporations and the impending trigger events (global warming, end of cheap oil, etc.) that will further taint corporations, we believe that a well-orchestrated initiative over 20 years truly has a chance to succeed. Furthermore, communities are where movements begin. They inevitably are the ones that lead the fights to address many of the worst environmental, labor, and human rights abuses. When they join together, they have tremendous political power, which is key to driving real change. This is an idea whose time is coming, and we need to put the movement wheels in motion now to make it happen.

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Corporations see common assets as largely free for the taking.

## Protect the Commons

When we begin to enhance countervailing powers and restore democracy, we are reclaiming a space devoted to the public good. We need more such spaces in society. Creating those spaces — enlarging and protecting the commons — is central to changing the fundamental nature of the market system.

The commons refers to the various forms of common wealth around us, what we have together. This includes the *natural or ecological commons* (including air, land, water, soil, airwaves, oceans, the atmosphere, fisheries, forests, seeds, animals, rivers, wind, etc.). It includes the *community or social commons* (those things we create together such as laws, roads, libraries, museums, property and intellectual property law, rail systems). It also includes the *cultural or knowledge commons* (such as music, indigenous knowledge, science, jokes, wisdom, languages, open source software, and the Internet). Corporations operating in an economy with a robust commons sector would be constrained in their ability to externalize costs or enclose and privatize commons resources.

Some of these commons are gifts from nature. Others were built by people or by community institutions and shared funding. A good definition of the commons, suggested by Peter Barnes, is “the gifts of nature, plus the gifts of society that we share and inherit together — and that we have an obligation to pass onto our heirs, undiminished and more or less equally.”<sup>22</sup> The commons refers to forms of wealth and property that are not individually owned but belong to all of us. Some of this wealth can be counted and legally protected, while other forms don’t have legal standing or are difficult to quantify.

Many conflicts between public interests and private corporations can be understood in terms of contests over the commons. At the global level, there are robust movements fighting corporate assaults on the commons, especially around water, seeds, genetically modified organisms (GMOs), and open source technology. In the U.S., because of our particular brand of individualism and market orthodoxy, we are less inclined to see common assets as vital to health, welfare, and wealth creation. Nonetheless, struggles over the broadcast spectrum, drug pricing, and public-private property debates all have an underlying commons narrative.

The word “commons” historically invokes the English “enclosure movement,” which between 1600 and 1800 saw the enclosure of common lands and the forcible eviction of many peasants who drew their sustenance from the commons.

The commons is not another proxy or word for state ownership or government. It is not a media frame or a political strategy. Nor is it simply the “common good” though it is a means by which we can pursue the common good. The commons is a sector of the economy, with real assets and ownership. It is an organizing principle to explain and understand a wide variety of activities. The commons is also a set of values and principles such as universality and concern for future generations.

## The Problem: Corporations and the Commons

Many contemporary corporations relate to the commons by looting from it, externalizing costs onto it, or enclosing it. Because most forms of commons are poorly defined, lack property rights, or are poorly managed, corporations see common assets as largely free for the taking. For example, most extractive industries (fishing, oil, coal, mining, timber) take wealth from the ecological commons while paying nothing or only symbolic amounts of money to governments.

Corporations act as “externalizing machines,” shifting costs onto the commons.

Corporations siphon off wealth created by public and community investments for private gain. For example, real estate profits largely come from owning land near public and community investments (“or givings”) that greatly enhance adjoining parties.

Because corporations exist to maximize profits for their shareholders, they often act as “externalizing machines” — enlarging their profits by shifting costs off their balance sheets and onto the commons ledger. This can be done by externalizing costs such as pollution, employee health care, job training, and public services.

Finally, corporations enclose socially created and knowledge commons, placing them in private ownership and often charging us for their use. How did the Disney Company come to hold intellectual property rights over timeless fairy tales? Enormous profits are made by corporations enclosing commons such as art, culture, Internet, natural medicine, and much more.

All this is done largely within the framework of the existing legal and economic belief systems. In the current environment, it is both rational and necessary behavior for corporations to maximize profits by using the commons.

## The Current Landscape: Contested Ground

All around us, mainly off camera, there are contests over the commons. We may not think of them as “commons struggles,” but they are. One of our challenges is to see the connection between multiple areas of struggle. Examples of corporations and the natural commons are sometimes the quickest to grasp — but others are emerging. Consider these commons:

- ▶ **Water:** All across the world, there are struggles over the control of water: Is water a commodity or a basic human need and right?
- ▶ **Seeds:** For all of civilization, farmers have collected and traded seeds for the next planting. For centuries, many communities from India to Bolivia have treated seeds as collective property. Increasingly, agribusiness corporations are intervening in the seed market, patenting seed varieties that have long been in the commons sector as private property and suing farmers for “seed piracy” if they harvest and replant seeds for free.
- ▶ **New Technology:** The Internet revolution was spawned by public investment in communications technology and subsidized research at institutions of higher education. There are pitched battles over corporate enclosure of these new technologies. Will private corporations fence off portions of the information super-highway and set up toll booths?
- ▶ **Big Box Retailers:** The big box retail market is based upon aggressive cost shifting and extensive community subsidies. Stores like Wal-Mart are externalizing machines, shifting costs such as employee health care and infrastructure development onto taxpayers and the community.
- ▶ **Culture:** Corporations are attempting to privatize and enclose different aspects of the cultural commons including music, yoga, and traditional healing.

Many conflicts are thus fights over corporate externalization or enclosure. Once we understand this framework, we can appreciate the unifying thread between seemingly disparate struggles.

The solution is the development of a robust commons sector, strengthening the institutions that have ownership rights over common wealth. When commons are scarce or threatened (water, forests), we ought to limit use, assign property rights to trusts or public authorities, and charge market prices to users. When commons are limitless (like culture, the Internet, and potentially the airwaves), we have the opposite challenge to ensure access to the greatest number at the lowest cost.<sup>2</sup> Some real-life examples:

- ▶ The **Land Conservancy Movement** has protected millions of acres of land against abuse and exploitation. These lands are governed by trustees that have an ecological and long-term management perspective.

We need to block corporate enclosures of the commons and force the internationalization of their costs.

- ▶ **Free Software and Open-Source Movement.** Open-source software like Linux doesn't keep its operating codes proprietary. It benefits from the ways the commons strengthens shared technology insights. This movement has created legal mechanisms to ensure the open systems won't get enclosed.
- ▶ **State Sky Trusts.** A number of the Northeastern states in the Regional Greenhouse Gas Initiative are planning to auction carbon permits and allocate 100 percent of the proceeds for public goods and conservation.
- ▶ **Creative Commons Licensing.** Established in 2001, this involves establishment of special legal licenses that affirmatively encourage copy and reuse of creative works. Licenses include "Attribution," which permits use with attribution, and "Non-commercial," allowing copying, distribution, display, or performance of a work or derivative works, but only for non-commercial purposes.

Corporations operating in this fortified commons environment would be constrained from looting, externalizing, and enclosing — and essentially be forced to pursue high road development strategies. Businesses that are able to adapt to the new external environment will thrive and be profitable, but not on the basis of their exploitation of the commons.

## The Commons, Regulation, and Government

Corporate abuse of the commons has been historically addressed through government regulation. Citizen groups have pressured legislators to pass laws and impose fines to discourage obvious forms of negative externalities. Yet, we would posit that this response is inadequate to the task we confront today.

Corporations today currently enjoy incentives to maximize profits that are structured around an assumption of ecological limitlessness. Yet these incentives are obsolete and anachronistic as we confront ecological limits in terms of water, minerals, fossil fuels, and atmospheric carrying capacity.

We would suggest that a commons approach to corporate abuse would affirm several aspects worth preserving in the modern business corporation, including its expertise in management, mission-orientation, and various efficiencies. We presume that corporations are currently acting rationally in an economic marketplace of common wealth that is either largely free for the taking or poorly managed and essentially free.

Hence, the commons focus is about upgrading the operating system in which companies do business. *We need to alter the external environment that corporations operate in, blocking corporate enclosures of the commons and forcing the internalization of costs that have been historically externalized.* Successful corporations will adapt to this new environment, just as they have adapted to changing markets, laws, and cultural boundaries related to the natural environment and human relations.

The aim is to create "no-go zones" where corporations won't be allowed to tread (public schools, sacred spaces, common recreation). And we will charge fees for the use of carefully managed common resources. In effect, we will enclose the corporations rather than the commons.

Like the traditional game of "Go" (a remarkable 4,000-year-old commons in its own right), the goal of the commons approach is to cover as much of the commons board with our pieces as possible. Like the rules of Go, the "objective is to control a larger territory than the opponent by placing one's stones so they cannot be captured."

Our challenge legally is to define the commons sector and create robust institutions to manage and defend them. With clear legal boundaries, use fees, and management systems, the conflict over the commons shifts from a lopsided negotiation between powerful global corporations and an outgunned public sector, to a dispute between two vested property owners.

Ownership of the commons will take the form of what Gar Alperovitz calls a "pluralist commonwealth." He points to hundreds of inspiring institutions forming, many at the local level such as municipal holding companies, community land trusts, and cooperatives, which hold common wealth. The

**There is something inherently short-term and vulnerable to leaving protection of the commons entirely to government.**

commons will be owned by a variety of players including local, state, and federal government and the nonprofit sector. One important legal ownership form will be the trust, with trustees responsible for maintaining the commons for subsequent generations. Different levels of government will establish and assign property claims to these trusts, but their trusteeship governance will buffer them from short-term interests.

Government will always have an important role in protecting and owning the commons. But there is something inherently short-term and vulnerable to leaving the protection of the commons entirely as the responsibility of government. Government and politicians are accountable to today's donors and voters, too often shortchanging future generations for the needs of today's constituents. Peter Barnes writes,

*Laws, regulations, and taxes are easily rescinded or weakened when corporations don't like them. Property rights, by contrast, tend to endure, as do institutions that own them. So we should focus on creating such institutions and endowing them with permanent property rights.<sup>3</sup>*

Government has an important role in setting up the initial framework for the ownership and protection of commons. Government could establish legal frameworks for private trusts to manage commons, entrusted not only with concerns for today's voters, but with the long-term interests of all species and future generations.

## 20-Year Vision

Within 20 years, in order to enhance local, national, and global commons, roughly a third to a half of all economic activity on earth would be declared "no go" zones for global corporations. These zones would cover the ecological commons, community commons like roads, and cultural commons like music and science.

In these zones, ownership of the commons would be by hundreds of inspiring public and private institutions, from the local to the global level. In addition, new rules at local, national, and global levels, would force corporations to internalize the costs they have historically externalized.

To move from an exploited or degraded commons to a healthy society, we must reclaim our commons, give it standing and protect it. We must change our consciousness to be able to see the commons — and cultivate a "commons sensibility" that takes offense when it is encroached upon. This will happen as social movements press for protection of the commons — and create institutions to own, manage, and defend it. It will happen when organized movements press government to assign the ownership rights of various commons to appropriate trusts, local authorities, or other legal entities. Hence, a key goal of commons/corporations work is to connect social movements that are already working to defend the commons across sectors and to deepen our understanding of the various forms of commons.

### Selecting Strategic Initiatives

In addition to the criteria identified by the Strategic Corporate Initiative team for selecting initiatives, mentioned in Section 3, we have identified criteria specific to the work on the commons.

We cannot protect what we cannot name. A half a century ago, isolated groups of people began working to stop air pollution, protect endangered species, and understand the dangers of chemicals in our food, breast milk, and water. It was only later that the concept "environment" gave meaning and unified these struggles under one rubric.

We face a similar challenge in understanding the commons and the role an enhanced commons could play in preventing corporate harms. The battle for the commons must progress through several stages and the strategies that we advocate must reflect those stages. In this vein, we offer the following specific objectives, which inform our strategic criteria on the commons:

- ▶ The proposed initiatives must help the public to understand the concept of a commons. In the U.S., most of the commons or social wealth is invisible and un-named. The first step is to identify its many forms and how it touches our lives. Corporations see it — and take full advantage of it. But the

**1.2 billion people do not have access to clean drinking water.**

rest of us don't understand our struggle in relation to corporate encroachment upon our common wealth. Initiatives must win real gains, while raising consciousness about the commons.

- ▶ The proposed initiatives must help the public to identify different commons that surround us. We've struggled with language, but until anyone has a better phrase to offer, we will put forward the commons organizing principle. Naming it can help us develop, cultivate, and promote a commons sensibility, like an environmental sensibility.
- ▶ The proposed initiatives must help the public to understand that they own the commons. It is a shared wealth. We should make the public, moral, and political case that common assets are the property of everyone and not corporations. Claiming it means developing new legal forms, or expanding existing forms such as trusts.
- ▶ Proposed initiatives must concretely take ownership of common assets and utilize appropriate governance and management systems. They must strengthen the institutions that defend, own, and manage existing forms of commons against encroachment.
- ▶ The initiative must enhance and enlarge the commons sector. A strategic initiative would utilize common assets to expand and enlarge the commons sector, giving it greater capacity to prevent encroachment and protect assets for future generations.

With these general objectives, we offer the following strategic criteria:

- ▶ Short-term campaigns should be moral contests that are compelling and put corporations on defense — and promote high road business practices.
- ▶ They would be timely in how they relate to popular concerns (*zeitgeist*), opportunities, and crises (hurricanes, climate change, major unraveling of social safety net, economic collapse).
- ▶ They should be arenas where people deeply experience corporate encroachment on the commons in dramatic, visible, and understandable ways — and feel outrage to propel them to action.
- ▶ The struggles should lend themselves to a powerful commons narrative or meme (“don't tread on our stuff”) that have deep resonance with affected constituencies.
- ▶ There must be real advocates in state and federal policy arenas, promoting viable policies.
- ▶ The issue should reach across national borders and build global movements that can learn from each other and elaborate development models to defend, own, and enlarge the commons.

## Short-Term Strategies

We offer two short-term initiatives, led by the current global campaign on water. We feel that the water campaign best meets the 10 criteria laid out earlier. Before we go into the water work and other campaigns, we offer some thoughts on short-term movements.

### Creating Water Trusts

At the global level, water is the number one strategic short-term issue. There is already an overarching network called the Blue Planet Project ([www.blueplanetproject.net](http://www.blueplanetproject.net)), waging a rigorous battle for what they are calling “the right to water.”

The key issue is this: Around the world, 1.2 billion people do not have access to clean drinking water. Every year over 2 million people, mostly young children, die from preventable diarrhea contracted from drinking unsafe water. The key culprit is a small group of giant water firms who are taking over municipal water systems in many parts of the world. Other large firms control water services, others bottling, others clean-up. Another set of firms has polluted the majority of fresh waterways. According to Maude Barlow of the Council of Canadians, there are three things wrong with the corporate control of water:

- ▶ There is a built-in incentive against conservation and source protection when there is such massive

**International opinion is shifting toward treating water as a right, not a commodity.**

investment in clean-up technology and supplying water where it is scarce and polluted.

- ▶ Water will go to those who can pay for it, not to those who need it.
- ▶ No one will buy water for nature. As big cities grow and as big farms grow to feed them, water is being taken from wilderness and rural communities at an alarming rate, causing rapid desertification. Take water from a watershed to water a desert and you create two deserts.

Barlow reports that the water purification/desalination/reuse technology business is the fastest growing sector of the water industry. Governments in developed countries are putting billions into research and development of water clean-up technology, anticipating that the planet is running out of clean water. The industry is exploding with not only the traditional water companies like Suez and Veolia getting in on the act, but others such as GE, Siemens, and Dow Chemical.

The movement is not saying that there is no place for the private sector. The concern is that if this is left to corporations, there will be no independent testing as to whether technology is safe (such as water nanotechnology — a big part of the story) or is the right technology — such as desalination, for which there are huge plans, including nuclear-powered plants. The big water companies are pushing for deregulation of water, much like the deregulation of telecommunications that happened last decade — so they can make the decisions on a profit-oriented basis and not be held accountable.

We see the rudiments of a global water cartel forming, with the growth of water utilities like Suez who now serve 15 percent of the world's population served by piped water; the bottled water industry (200 billion liters of water put in plastic bottles last year); plus the big pipeline companies.

The U.S. movement infrastructure to defend the water commons is less developed than it is in Canada and the Global South. In Bolivia, a citizens' movement evicted Bechtel Corporation after the company was given a contract to collect and sell water, and they attempted to outlaw rainwater collection.

But water will soon emerge as a major corporation/commons issue in almost all regions of the country as water scarcity increases. Investors like T. Boone Pickens are buying up land and water claims throughout the U.S. Southwest, in a new gold rush that recognizes scarce water will be worth more than oil. A number of localities like Poland Spring, Maine, and Barnstead, New Hampshire, discussed in Section 6, are struggling against corporations that are aggressively withdrawing water from aquifers.

The Council of Canadians and groups from around the world have built a global campaign called the Blue Planet Project. This campaign has forced some corporations to retreat from failed private water contracts, and the campaign grows as international opinion shifts toward treating water as a right, not a commodity. In March 2006, the World Water Forum attracted activists from around the world. Thousands of people protested outside the Forum and marched across Mexico City to demonstrate their opposition to water privatization. By the time the Forum closed, the governments of Bolivia, Cuba, Venezuela, and Uruguay had refused to sign the final ministerial declaration because it failed to exempt water from trade agreements, and it did not endorse the right to water. Most recently, in January 2007, representatives from civil society groups and social movements in over 40 countries announced the launch of a new African Water Network to counter water privatization around the world.

Like the sky, issues around corporate control of the water commons have a powerful moral contest quality. The public will be offended by water privatization efforts and efforts to commodify water. Constituencies to engage include environmental organizations, public water commissioners, and consumers.

There is also the strong potential for cross-border organizing, as U.S. movements learn from resource rights struggles in other countries.

### Major Elements of this Strategy

- ▶ Local battles against corporations that are aggressively depleting local aquifers.
- ▶ Public education campaigns against bottled water and the promotion of public water systems.
- ▶ Legal battles over surface and below-ground water ownership.
- ▶ Defense of public water systems and development of commons management systems.

**The climate crisis will drive a deeper understanding of corporate encroachment on the commons.**

- ▶ Community efforts to identify and audit common assets.
- ▶ Inventory on management and mis- or no-management of common assets.
- ▶ Education on common assets — developing the political and moral claim.

## Additional Short-Term Strategies

### Define Health and Medicine as a Commons Issue

There is a short-term strategic opportunity to address the corporate/commons conflict related to the commercialization of health care and the enclosure for private profit of medicine and healing traditions. There are emerging movements pressing for some form of universal health care — and a backlash against the high cost of medicine. There is a wide public perception that there is something unseemly about profiteering and price gouging on drugs and enclosure through patenting and intellectual property laws of medicine such as AIDS drugs.

Big Pharma has used its incredible political and financial power to enclose different aspects of the health care commons. They have secured twenty-year patents on medicines that millions of people depend on to live. They have enclosed traditional health knowledge, securing patents and cornering supplies of traditional medicinal plants and knowledge. They have expropriated publicly subsidized research on medicine, such as the cancer fighting drug Taxol, which was created with government subsidies but now generates \$1.5 billion a year for Bristol Myers Squib. Most AIDS drugs were developed at the National Institutes of Health, but are now under patent monopolies.<sup>4</sup> Activities:

- ▶ Introduce the concept of commons to movements to expand universal health care coverage.
- ▶ Work for competitive pricing of prescription drugs, framing society's claim on the commons.
- ▶ Limit or eliminate patents on life-saving drugs for AIDS and other diseases.
- ▶ In the longer-term, push to ensure public investments in research remain as an ownership stake in any medicine sold to private corporations; create a trust to hold patents and shares of public investment in health research.

## Long-Term Strategies

### Creating the Sky Trust

The climate and global warming crisis will be a major driver of a deeper understanding of corporate encroachment on the commons. The atmosphere has exceeded its carbon-absorption capacity. In the coming years, state and federal governments will be designing carbon-reduction programs. The value of the sky will either be given to historic polluters — or we could recognize that we all own the sky as a commons and direct rents to common good purposes.

There is great organizing potential to mobilize constituencies — from environmental and commons areas of concern — to advocate for a Sky Trust. A Sky Trust is a cap-and-trade system in which initial carbon emission rights are assigned to a not-for-profit trust or quasi-public agency, which auctions them to polluters. The government would charter the trust and empower it to limit CO<sub>2</sub> emissions. The trust would establish a gradually declining cap for CO<sub>2</sub> emissions (e.g. 3 percent annual reductions starting in 2012). It would then auction tradable emission permits to corporations that bring carbon into the economy. (Such 'upstream' permits are easier to administer than 'downstream' permits, and would cover the whole economy.)

Issues of allocating revenue from the Sky Trust could bring together a broad political coalition to ensure its passage and preservation. One proposal is to rebate a portion of revenue to all citizens on a per capita basis, a form of guaranteed income. Other uses would be to fund education or public goods such as energy conservation, renewable energy development, carbon offsets, and transition assistance to affected workers and communities. The rent recycling to citizens is modeled after the Alaska

Permanent Fund, which invests a percentage of oil revenue and pays annual dividends to Alaska citizens on a per capita basis. It reflects our shared ownership of the atmosphere, and insulates households from higher energy prices.

The governance of the Sky Trust ideally creates a politically shielded entity (like the Federal Reserve) to make hard decisions about emission limits. This helps avoid political battles over who should be allocated free permits and the giving of windfall profits to polluters.

This issue meets a number of our strategic criteria: It is a powerful example of corporations externalizing pollution into our ecological commons — and damaging our public welfare. Corporations have no moral claim on the sky. In terms of public consciousness, air and the sky are dramatic and clear examples of our common heritage, vital to our survival.

There is an emerging movement infrastructure. Social movements, funders, and public opinion are shifting rapidly into solutions to global warming, creating a strategic opening. The concept of a Sky Trust has growing popularity, particularly in states trying to regulate carbon emissions. A Sky Trust establishes that the atmosphere is a commons and that scarcity rent should be charged for its use.

The issue galvanizes organized environmental organizations that are seeking solutions to global warming. It is also engaging faith-based organizations, and public health, academic, and business sectors. There are potential alliances with economic opportunity advocates. There are municipal, state, federal, and international policy debates that would benefit from the corporate/commons analysis.

### Major Elements of this Strategy

- ▶ Provide critical analysis of climate change solutions that give away our common atmosphere to polluters.
- ▶ Work with coalitions and legislatures in California, New York, and New England that have frameworks for greenhouse gas emissions, interjecting commons principles into state programs.
- ▶ Promote the potential uses of revenue from charging polluters for use of the sky commons.
- ▶ Promote a windfall oil profits tax with funds directed toward investments in energy conservation (with high job creation potential) and economic opportunity initiatives.

## Additional Long-Term Strategies

### Recycling Common Wealth

One commons-oriented theme focuses on the myth of individual wealth creation and growing economic inequality. This is a long-term issue that would contribute to the development of a commons consciousness and assist in recasting the debate around progressive taxation.

There is a new political focus in the U.S. on economic inequalities after three decades of wage stagnation. There is an opportunity to shift the anti-tax climate with progressive individual and corporate tax initiatives that channel funds toward building economic security and opportunity. The ten-year effort to abolish the federal estate tax has failed, creating a new opening to talk about taxing inherited wealth and recycling it for economic opportunity. Advocates of keeping the estate tax argue that society has a moral claim on a substantial portion of large fortunes because society's investments and common wealth make it possible. They are advancing a different narrative about individual wealth creation that recognizes the role of the commons.

In Washington State, voters overwhelmingly rejected a 2006 initiative to abolish the state's estate tax because it was structured as an "opportunity recycling" program. Revenue from the Washington tax is dedicated to an Education Legacy Trust Fund, providing funds to reduce K-12 class size and college scholarships for lower income students. Activities:

- ▶ Congressional hearings on the estate tax that propose linking revenue to broadening wealth and opportunity.

**Schools should be “no go zones” for corporate advertising.**

- ▶ Campaigns around state level inheritance/estate taxes that strengthen these linkages.
- ▶ Educational tools and articles casting the estate tax and wealth taxation debate as a commons issue — and arguing revenue should be dedicated toward commons purposes.

### Defending the Internet Commons

This is one campaign area where people are already organizing to defend a commons, even if they don't refer to it as such. A young, artistic, highly networked, and easily mobilized constituency already possesses a commons sensibility without the vocabulary. The electronic commons is evolving to be a social and knowledge commons beyond our imaginations. Enormous private wealth has built on the Internet commons platform, including E-bay, Amazon, and Google. Corporations are aggressively looking for ways to enclose the Internet highway. But a vigorous new sector, what David Bollier calls the “tech folk underground,” is pushing back, creating new legal forms, networks, culture, and commons sensibilities. From the open-source software movement, to Wikipedia, to the movement for free Wi-Fi as part of municipal infrastructure, this sector is ripe for a unifying commons narrative. Activities:

- ▶ Interject the commons narrative into free Wi-Fi battles — over municipal and public Internet access — that can build to larger battles over airwaves and broadcast spectrum.
- ▶ Bringing the commons organizing principal to contests over “net neutrality.”
- ▶ Participate in U.S. debates over ownership of Internet way-stations.
- ▶ Promote a commons narrative to frame resistance to corporate enclosure.

### Reclaiming the Broadcast Spectrum

Maintaining a strong independent and diverse media is an important commons issue. Congress continues to give away rights to the broadcast spectrum (valued at \$500 billion) to private broadcasters while asking virtually nothing in return. Engaging the public in a campaign to recognize the public airwaves as common property is important for a couple of reasons. First, it draws attention to growing media consolidation. Second, it opens the door for requirements for free media time to political candidates, a key aspect of our democratic commons. Third, it opens the door to a longer-range effort to quell our consumption addiction by limiting advertising. Fourth, it brings to the fore the issue of corporate speech rights, discussed earlier in Section 5. Activities:

- ▶ Engage with media reform activists around the themes of broadcast spectrum as a commons.
- ▶ Link with democracy activists to advocate proposals requiring free advertising for political candidates.
- ▶ Reinstigate provisions of the “fairness doctrine.”

### Stopping Encroachment on Kids and Education

The fiscal crisis in K-12 and higher education has forced open the door to more commercialization of schools and colleges. Education institutions are vulnerable to junk food vendors willing to pay fees, and free textbooks salted with commercial products and corporate logos. The corporate influence on college campuses is even more pervasive as corporations now finance science and technology research at public and private universities. Instead of colleges and universities being a countervailing force against corporate encroachment on the knowledge commons, they are deeply compromised.

While this is a powerful moral issue that inspires outrage among more educated and elite constituencies, it hasn't engaged broad movements yet. The movement infrastructure is weak and under-funded. Yet there is a growing constituency of parents and educators who will passionately defend their children against the commercial assault. And a growing number of states are passing laws against junk food, candy, and soda machines in schools — motivated by the obesity epidemic as well as common space sensibilities. Activities:

- ▶ Disseminating the analysis that educational institutions, like public parks, are a commons that

should be free of private corporate advertising, logos, and product placements.

- ▶ Campaigns to make K-12 schools “no go zones” for advertising. These campaigns could be waged school-by-school — and then ramp up to district and state public policies.
- ▶ Work with coalitions to pass ordinances against corporate-provided educational materials, such as Channel One television programs.

## Reframing Property Takings

A long-term strategy is to bring a commons analysis into the one-sided property rights/land use political debate. The individual property rights movement (self-described “wise use”) has challenged government regulation of land use as a “taking” when it diminishes the value of private property. Under their extreme definition, virtually all forms of zoning, land use limitations, and balancing of community interests are takings. In a property law system and culture that doesn’t recognize the role of the commons and its numerous “givings,” it is no wonder we end up with a stilted discussion. Introducing a commons perspective into this debate — including the role of public investment and commons institutions in enhancing private property values — provides an analytical counterweight.

There is a powerful movement pushing a narrow anti-commons property rights perspective. They are introducing ballot initiatives, legal actions, and legislative battles to advance their position. There is a local progressive response, working to defeat initiatives. Activities:

- ▶ Engage with campaigns dealing with property takings to inject commons reframing.
- ▶ Work with land trust, land conservancy, and land planning groups to seed commons organizing principles.
- ▶ Publicize corporate takings of value from the commons as the real problem.
- ▶ Articulate and expand the legal basis for common wealth in private property and the role of community investments in private property value.
- ▶ Create a “Corporate Takings” initiative, starting with a series of state and local educational initiatives that make certain types of companies pay for lowering neighbors’ property values or degrading the commons. Another initiative angle might be to tax developers who, for example, are not charged the costs that taxpayers will have to pay for services (e.g. transportation, education, recreation). Also possible is fair share legislation that charges companies for externalizing their costs to taxpayers.

## Conclusion

The Tomales Bay Institute is working to seed a number of activist discussions within different sectors. In addition, we should examine the way in which sources of common wealth linked together with common good spending might create synergies and new alignments of constituencies. Examples of these potential linkages include:

- ▶ **Sky Trust Concept** (from the work of Peter Barnes). Levy fees for dumping carbon into the atmosphere and channel funds into an American Permanent Fund which would pay a per capita dividend and invest in common good projects.
- ▶ **Culture Fund**. Charge corporations aiming to own culture a fee for copyright protections and enforcement — and channel it into regional Art Councils for public art and performances.
- ▶ **Taxing Wealth to Broaden Wealth, or Recycling Individual Wealth for Baby Bonds**. Revenue from an inheritance tax on multi-million dollar estates could be dedicated to a Children’s Opportunity Fund or “baby bond” that builds a next egg for each member of society.
- ▶ **Corporate Wealth for Common Good**. The wealth of private corporations is greatly enhanced by the commons. Corporations could be required to place 1 percent of their stock into an American

Permanent Fund each year for ten years, creating a sufficient asset base to pay dividends to citizen shareholders.

Organizing these initiatives would require extensive public education about society's claim on these different forms of common wealth. Political change would require a deep understanding of the legitimacy of society's claim to a stake in common wealth and each of our universal birthrights. Mobilizing different stakeholders interested in these efforts would be essential to their success.

## Legal Track

Many of the legal mechanisms required for giving property rights and for owning and maintaining the commons already exist: nonprofit corporations, trusts, and municipal authorities. Land trusts and nature conservancies own and manage millions of acres and conservation easements with a trusteeship structure that watches out for the interests of future generations.

There are also examples of existing institutions that embody the principles of commons management. These include legal accountability to future generations, inclusion, property income, and using sources of common assets for the common good.

There may be a need for new legal frameworks and new institutions to own, govern, and manage the other forms of commons we have discussed. This may involve research, theoretical groundwork, and new directions in law-making. There are encouraging developments in the legal field, as legal scholars and advocates are coming together to articulate an emerging commons legal theory and practice. David Bollier reports that,

*While there is no single, coordinated agenda, legal scholars are collaborating closely on a wide range of research, litigation, and policy advocacy projects. Among the many topics that legal scholarship is addressing are the economic dynamics of the commons versus markets, alternative business models for the distribution of music, the "geography" of the public domain, and the tensions between the Internet and copyright and trademark law.<sup>5</sup>*

This effort needs to push back against the narrow individual rights framework being advanced in property law, embodied in the takings movement.

The notion of securing the common good is being lifted up as a counterweight to the power of extreme individualism in our politics. But the common good is an amorphous value, only realized when the economy is organized to protect common assets and culture. We should celebrate the revived interest in the common good and offer the commons organizing principle as a key means to attain it.

## Endnotes

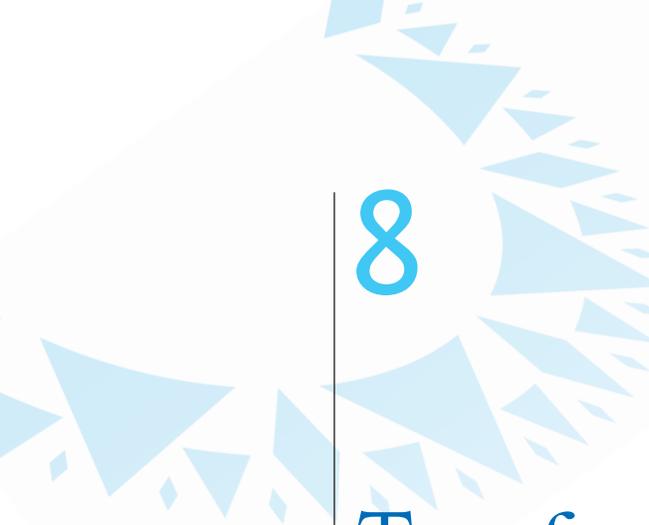
<sup>1</sup> Peter Barnes, "Capitalism, the Commons and Divine Right," address to the E. F. Schumacher Society, October 25, 2003.

<sup>2</sup> Peter Barnes, *Capitalism 3.0*, p. 131.

<sup>3</sup> *Ibid.*, p. 47-48.

<sup>4</sup> ([www.cptech.org](http://www.cptech.org) and [www.citizen.org](http://www.citizen.org))

<sup>5</sup> David Bollier, *Brand Name Bullies*,



# 8

## Transform Corporate Purpose

**“Fundamental change — radical, systemic change — is as common as grass in world history.”**

— Gar Alperovitz<sup>1</sup>

Previous sections have dealt with issues outside corporations — the need for restoring democracy, elevating community rights, and developing new commons institutions. This work is primary. But as vital as it is, it may not create the economy we want in the long run if corporations remain single-mindedly focused on flattening all obstacles to profit-making. Corporations themselves need to evolve. We cannot leave in place a system fundamentally designed to concentrate wealth, privatize gains, and socialize costs.

If we are to carry on the vital project of democracy — democratizing economic as well as political power — we must get at the deeper structural issues. We must move beyond dealing with corporate outcomes one at a time, and take on the task of transforming corporate purpose.

Civil society is the force to light the fuse. In a time when business and government have formed a symbiotic partnership, this new situation demands new solutions. Coalitions of citizens, labor, investors, and non-governmental organizations — working creatively with both business and government — can be the catalyst. As Simon Zadek, chief executive of the British NGO AccountAbility, notes, such alliances bring together “the would-be architects of tomorrow’s world.”<sup>2</sup>

### The Problem — Understanding What Is Wrong

Traditional forms of regulation — wage and hour laws, clean air and water laws, laws protecting the right to organize — remain vital and must be reinvigorated. But they bring us only part of the way toward our goal.

“We can’t lead people back into a regulatory system that has failed,” says University of Maryland political economist Gar Alperovitz, “especially when the reasons we lost it are not going to be solved anytime soon.” The framework of countervailing powers that once restrained capitalist excess has been shaken apart by the 1980s surge of globalization and deregulation. Globalization opened opportunities to outsource work and relocate companies to other countries, allowing them to win labor concessions, evade environmental regulation, and reduce taxes. At home, antitrust laws have atrophied. Unions have been beaten back. The minimum wage has ceased to function. Environmental laws have failed to stop the deterioration of the environment.<sup>3</sup>

As Harvard economist Richard Freeman puts it, “current strategies run the gamut from inadequate to sham.”<sup>4</sup>

These strategies focus solely on external restraints on the capitalist drive, which is like trying to stop a hell-bent locomotive by erecting stop signs. The train will simply flatten obstacles in its way. We must begin to understand: Why is the train accelerating?

This brings into focus the world of internal corporate dynamics. Here we find that profit-seeking is

**Society has become an adjunct of the economic system.**

accelerating because the stock market — already swollen beyond historical dimensions — demands infinite increase, and CEOs deliver those increases because they make untold fortunes doing so. If this pursuit of profit harms employees, communities, and the environment, that is not formally a concern of corporations' governing design.

This design remains essentially unchanged since the 19th century, when industrial capitalism appeared with the Industrial Revolution. What has changed in recent decades is that the system was unfettered, laying bare its core design. Karl Polanyi described that design in his 1944 classic, *The Great Transformation*, showing how industrial capitalism transformed social relations. Instead of the economy being one part of society — as it had been throughout history — society became an adjunct of the economic system. Human beings and the natural world were transformed into commodities: raw material to be fed through the capitalist machine, to output profit.<sup>5</sup>

“Such an institution could not exist for any length of time without annihilating the human and material substance of society,” Polanyi wrote. Indeed, the vision of a self-regulating market was so destructive, it almost immediately led to the self-protection of society, through social legislation. The U.S. has seen waves of protection, such as antitrust laws under Theodore Roosevelt, labor protections under the New Deal, and environmental protections beginning in the 1970s.

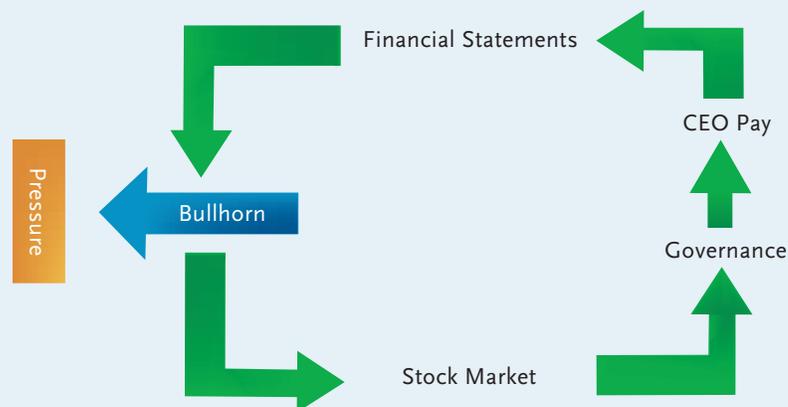
In 1944, when Polanyi published *The Great Transformation*, laissez faire theory was considered dead, after the bitter lessons of the Great Depression and the explanatory power of Keynesian economics. But with the Reagan Revolution in the 1980s, the neo-classical ideal of unfettered markets rose from the dead.<sup>6</sup>

With self-seeking back in vogue, it found its historical expression in corporate raids and hostile takeovers. The opportunity for this was created by a stock market languishing in the early 1980s at levels below that of twenty years earlier. Corporations could be taken over and stock prices boosted through layoffs, plant closings, and wage and benefit reductions. The rise of institutional investors and hedge funds led to still greater demands for profits. These converging demands sparked a revolution in corporate boardrooms, with formerly passive boards firing CEOs for failure to deliver. The demands have accelerated, with CEO turnover rising 300 percent in the last decade. Today, 40 percent of all CEO departures are forced exit — leading one business magazine to deem CEOs “the world’s most prominent temp workers.”

The ultimate tool — the imbedded lever that guarantees corporations maintain a laser-focus on profits — is the stock option. When options first came into widespread use in the 1980s, CEOs had an unprecedented opportunity “to create fortunes on a scale hitherto reserved for industrial pioneers like Rockefeller, Morgan, and Gates,” John Cassidy wrote in the *New Yorker*.<sup>7</sup>

The result was a double revolution. Externally, corporations enjoyed deregulation by government. Internally, profit-seeking kicked into overdrive. With CEOs coming and going rapidly, profit-seeking also went on autopilot. The system had no levers where human beings could intervene to slow it down.

**Figure 1. Impenetrable Profit Feedback Loop**



## Understanding the System Design

The corporate system is like a furnace with a dial that can only be turned up. All the feedback loops say faster, higher, more short-term profits. And maximizing short-term profits leads to layoffs, fighting unions, demanding government subsidies, and escalating consumerist strains on the ecological system. It also leads to financial mis-reporting, options backdating, and other ethical misdeeds. Pressure to meet unrealistic business objectives is the top cause of unethical business behavior, cited in 70 percent of cases, according to a 2006 survey of managers by the American Management Association and the Human Resource Institute.<sup>8</sup>

To prevent overheating, the system needs consistent input mechanisms from other stakeholders, which can balance profit demands with demands from employees, the community, and the environment. Lacking these, the signals corporations listen to are determined by the formal elements of corporate design: the stock market, corporate governance, executive incentives, and financial statements. The combined force of these are depicted in Figure 1, the “Impenetrable Profit Feedback Loop.”

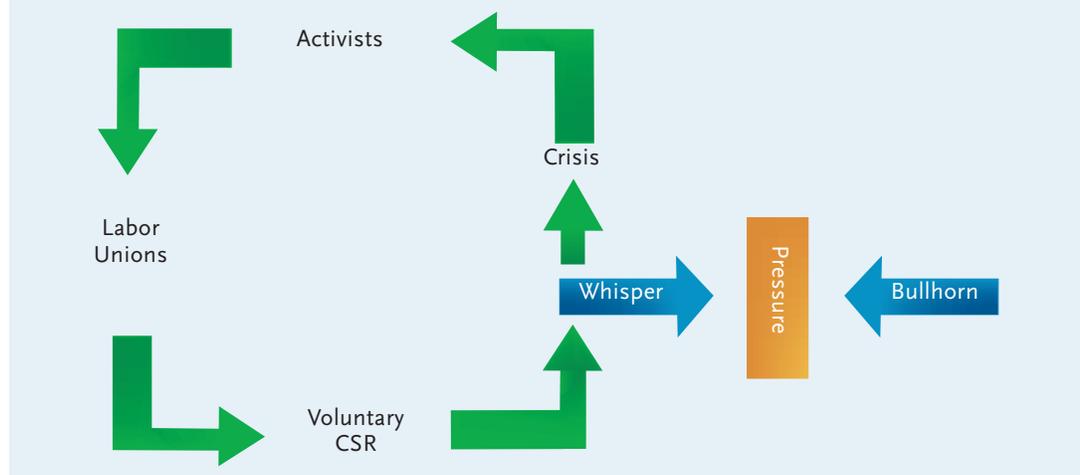
- 1. The stock market:** The key controlling element is the stock market, which evaluates companies on an hourly basis. The value of a company (market capitalization) is the sum of all outstanding stock. Stock price is expressed as a multiple of earnings (profits). If IBM has a price/earnings ratio of 25, that means, theoretically, that for every additional dollar of earnings, the stock price rises \$25. Cut \$1 dollar in wages, and you gain \$25 in market valuation.
- 2. Governance:** Stock price is the barometer of board performance, because only shareholders are represented on the board. Non-financial stakeholders are disenfranchised.
- 3. CEO pay:** The board hires and fires the CEO, and sets CEO pay — in theory. In practice, CEOs select their own boards and set their own pay, as long as stock price stays high.
- 4. Financial statements:** These statements implicitly define success. Income statements determine profit, derived by subtracting expenses from revenue — which treats employee income as an expense to be reduced. Environmental remediation is also defined as an expense, meaning it is to be avoided when possible.

The *balance sheet* — listing assets and liabilities — values assets owned by the corporation, and places zero value on public assets. If Texaco drills in Ecuador, dumping toxic drilling wastes into the Amazon River — as it did — this is of no consequence to Texaco’s balance sheet. Since the Amazon River is not an asset of Texaco, its damages need not be written off.

Non-financial stakeholders are massively impacted. But they cannot make demands, only suggestions, as we see in Figure 2, the “Stakeholder Suggestion Box.”

Activists, labor unions, voluntary social responsibility initiatives, and crises do speak — weakly. But non-financial stakeholders have no seat in the boardroom, and directors have no duty to consider their interests. Stakeholders speak with only a whisper.

Figure 2: Stakeholder Suggestion Box



The corporate system is like a furnace with a dial that can only be turned up.

We can see here, in tangible ways, how corporations are designed to concentrate wealth for the few, to minimize wages, and to externalize costs onto society and the environment. This 19th century design is no longer appropriate in the 21st century. It's time we began posing some new questions:

- ▶ What is the purpose of corporations?
- ▶ Whom should they serve?
- ▶ If we are to create a just and sustainable world, how should corporations be designed?

## Changing the System Design

With corporations today grown so large, able to slip the bounds of law by going overseas, external restraints in national law — like antitrust and minimum wage laws — cannot be wholly effective. We need new ways to intervene in companies' internal dynamics. Companies must be induced to take up concern for the public good as their own. And this will only happen when we redesign incentives and disincentives so uptake occurs naturally, in the pursuit of self-interest.

If we think of our aim as slowing down speeders, we might look at how that was done — literally — on 50th Street in Minneapolis. Instead of relying on a penalties-and-enforcement mechanism (more traffic cops and tickets) or voluntary change (yard signs pleading with speeders to slow down, which was attempted at first), the city chose a system design route. It redesigned traffic flows — narrowing the street from two lanes to one, installing lights timed to slow down traffic — which made it impossible to speed.

We see at work here a continuum of internalization. At one end we have voluntary behavior, at the other end, mandated behavior. In between is terrain we can label “facilitated internalization,” when we are effectively influenced to take something up as our own. That's the terrain we must navigate.

Ideally we should aim for integrated system constraints like these:

- ▶ New definition of directors' social responsibilities in law and charters.
- ▶ Louder stakeholder voices in boardrooms and other forums.
- ▶ Better measures of success through social reporting.
- ▶ Social rating system linked to government procurement and investment.
- ▶ Larger amounts of stakeholder and employee ownership and profit-sharing.
- ▶ Executive pay tied to social performance metrics.

## The Current Landscape — Who's Doing What

If these are theoretical solutions, how might such abstract concepts be enacted in the real world? How can civil society take steps to systematically intervene in the impenetrable profit feedback loop? Before turning to policy proposals, it is useful first to survey activity already underway that can offer models.

A key tool needed is the *circuit breaker*, which can break into the escalating profit-maximizing feedback loop, giving power to communities and labor. A circuit breaker opportunity arises any time a company needs government permitting or permission, as in permission to merge, or to acquire a land use permit.

A good example can be seen in the **Community Reinvestment Act (CRA)**, which requires banks to have good community-lending ratings in order to attain merger approval. A denial issued once — as happened with CRA — made the industry take note. The citizens' group **ACORN** has used the CRA to negotiate over \$1 billion in lending agreements for low-income neighborhoods in cities like New York, Minneapolis, Chicago, Boston, St. Louis, and Des Moines.

Another powerful example is the work of the **Los Angeles Alliance for a New Economy (LAANE)**

mentioned earlier in Section 6 on community rights, which uses **Community Benefit Agreements (CBAs)** to give community and labor groups a voice in shaping major, publicly subsidized development projects. In exchange for providing community benefits — quality jobs, training, affordable housing, green building practices, parks, and child-care centers — developers get community support for projects. Without this support, they may find building permits or environmental impact statements rejected, since these often require public input processes. LAANE Executive Director Madeline Janis-Aparicio is a member of the Los Angeles Community Redevelopment Agency, where she successfully advocated for living wage, worker retention, and responsible contractor policies for all subsidized projects, and the inclusion of CBAs in virtually all major projects approved by the agency.

This model is spreading across the nation, from Seattle to Boston, thanks to coordination by the **Partnership for Working Families** of which LAANE is a founding member, which provides a network for regional organizations to share best practices.

Another potential circuit breaker can be found in **government procurement policies**, the power of which is today diffused in small, piecemeal, uncoordinated efforts. For example, 47 states have purchasing preference laws for recycled goods; 19 states have soy, alternative fuel, and energy-efficiency preferences; at least a half-dozen states have buy-local preferences; and others give preference to small- or minority-owned businesses.<sup>9</sup> Coordination could bring much greater impact.

Another source of muscle is **state and local pension funds**, which have over \$2 trillion in investments, making them among the stock market's largest investors. Pension funds led the move to withhold votes from Disney CEO Michael Eisner, forcing him out of his role as chairman, leading him eventually to step down as CEO. **CERES** has led state treasurers and other institutional investors in urging companies to adopt policies to combat global warming. The **AFL-CIO Office of Investment** has a track record of working for shareholder resolutions urging companies to adopt global standards, rein in excessive CEO pay, and implement human rights policies. Another key group is Larry Beeferman's **Pension and Capital Stewardship Project at Harvard Law School's Labor and Worklife Program**.

In the search for more systematic ways corporate decision making can be reshaped, a group working on this broader vision is **Corporation 20/20**. Created by Allen White and Marjorie Kelly (a report co-author) at

### New Principles of Corporate Design

In the course of human events, seminal moments arise when it becomes imperative to redesign major social institutions. We face such a moment in the case of the corporation. Conceived in the era of kings, refashioned in the industrial era, corporations now wield dominant power over the lives of people and the quality of the environment. We face a moment of both urgency and opportunity to begin a transformation of this powerful institution, redesigning it to stand on a foundation of service to the public interest.

1. The purpose of the corporation is to harness private interests to serve the public interest.
2. Corporations shall accrue fair returns for shareholders, but not at the expense of the legitimate interests of other stakeholders.
3. Corporations shall operate sustainably, meeting the needs of the present generation without compromising the ability of future generations to meet their needs.
4. Corporations shall distribute their wealth equitably among those who contribute to wealth creation.
5. Corporations shall be governed in a manner that is participatory, transparent, ethical, and accountable.
6. Corporations shall not infringe on the right of natural persons to govern themselves, nor infringe on other universal human rights.

*Prepared by Corporation 20/20, Tellus Institute, Boston.*

CEOs should be accountable not only to stock market performance, but to the interests of other stakeholders as well.

the Tellus Institute, this three-year initiative has involved 150 leaders from business, law, government, labor, and civil society, focusing on corporate designs to integrate social and financial concerns. The group created six Principles of Corporate Design, to capture the emerging public consensus on expectations of business. The project will also put on a Summit on the Future of the Corporation in November 2007 in Boston.

Driving at the problem of transforming corporate purpose directly, the grassroots **Citizens for Corporate Redesign** in Minnesota drafted a **Bill for Socially Responsible Corporations (SRCs)**, introduced in the Minnesota Legislature in 2006 and 2007 by Sen. John Marty and Rep. Bill Hilty, to create a voluntary new corporate form, the SRC corporation. Corporations adopting the SRC charter would state a social purpose, have employee and public interest board members, train directors in the new purpose, and do social reporting. The bill protects companies from hostile takeovers and frivolous stakeholder lawsuits, and allows companies to brand themselves as SRC firms. A similar bill was introduced in Hawaii, where the legislature passed a bill to create a commission to study the issue, though this was vetoed by the Republican governor. In the wake of the 2006 elections, both houses in Minnesota became Democratic, which may give the bill there a better chance.

A key lever used by financial interests to enforce their primacy is the **takeover**, when corporations are required to be sold to the highest bidder. To allow directors to consider takeovers' impact on communities, employees, and the environment, some 40 states since the 1980s have adopted **stakeholder statutes**, which say companies need not be sold to the highest bidder, and directors can consider the interests of non-financial stakeholders. Though upheld by courts in key cases, these laws have been little used, in part because they lack supporting design levers like stakeholder voting rights. A constitution cannot function using a single element.

In the UK, the **Corporate Responsibility Coalition (CORE)**, representing 130 nonprofits and campaigning organizations, has worked to **expand directors' social responsibilities in law**. In late 2006 a Company Law Reform Bill was passed which for the first time mentioned duties to society as part of directors' duties, though the law's main focus was requiring social reporting if financial impact was involved. CORE has been pursuing amendments that would: 1) require directors to take steps to minimize harms to the local community and environment; and 2) give access to UK courts by those overseas who are harmed by UK companies and denied justice in their own countries.

Another approach to transforming corporate purpose is creating new models of company design. **Social enterprise, the "Fourth Sector," the "for-benefit corporation"** — these are proposed names for an emerging community of companies that combine social mission with profit. Most prominent in the public mind are emerging **social enterprises**, or for-profit charities. There is a great ferment of activity around social enterprise, with groups like the **Social Enterprise Alliance**, and new centers at business schools. Muhammad Yunus — founder of **Grameen Bank** and recent Nobel Prize winner — has called for a new social enterprise corporate form. The **Aspen Institute** has sponsored meetings on this, and **Investor's Circle** has explored the role of investors in supporting alternative company designs. Already many Fourth Sector companies exist, such as employee-owned firms, cooperatives, trust-owned companies, and nonprofit-owned firms, though they are not yet recognized as a distinct sector.

One aspect of transforming corporate purpose is **making social reporting mandatory**. The Corporate Sunshine Working Group, an alliance of investors, environmental organizations, unions, and public interest groups, led by **Friends of the Earth** — aims to have the Securities and Exchange Commission (SEC) enforce and expand social and environmental disclosure requirements. The **Global Reporting Initiative** has created standardized principles for social reporting, now used by hundreds of corporations worldwide.

In **union activity**, Ron Blackwell, chief counsel for the **AFL-CIO**, has emphasized **pension reform, strengthened shareholder rights, and constraints on stock options**. Mandating worker representation on boards that govern 401(k) investments is one approach. "These funds control so much of the money that's in capital markets," Blackwell told *American Prospect*. "If you want greater democracy over the markets, this is one place to start." Strengthening shareholder rights, by itself, could make companies more profit-focused, rather than less. But if shareholder rights are used to strengthen unions, they could be a step in the right direction. Blackwell has also recommended abolishing stock options.

A key lever keeping profit-maximizing foremost is **CEO pay**. A debate in Congress over reining in CEO pay is heating up, with legislation by **Rep. Barney Frank** on the table, focusing on allowing shareholders a nonbinding annual vote on compensation plans. No proposal under discussion on Capitol Hill drives to the core issue, requiring CEOs to be accountable not only to stock market performance, but to the interests of other

stakeholders. But CEO pay is attracting wide attention. For example, former SEC Chair Arthur Levitt, Jr., has said, “these compensation packages set up a system in which executives have I believe the wrong incentives.” The SEC is investigating more than 100 companies for options backdating. The **Institute for Policy Studies** and the **Center for Corporate Policy** are working to reform CEO pay.

Another promising area of concern is **short-termism**, which is widely derided in business circles today. Short-termism can be considered useful shorthand for the profit-maximizing focus of companies, because research consistently shows that in the long run, stockholder and stakeholder interests converge. Among those speaking out, as individuals, against short-termism are former Citigroup CEO John Reed, former Medtronic CEO Bill George, former Continental Airlines CEO Gordon Bethune, and DuPont ethics vice president Marjorie Doyle. One group working on short-termism is the **Aspen Institute**, which has a **Corporate Values Strategy Group**, aiming to create a standard of best practice based on management principles serving long-term value creation. At the Spring 2007 meeting of the **Council of Institutional Investors**, Al Gore spoke on short- and long-term pressures on investors. The **Business Roundtable Institute for Corporate Ethics** has sponsored a “Symposium Series on Short-Termism.” The **Conference Board** issued a report on its London Summit earlier in 2007 entitled, “Revising Stock Market Short-Termism.” Steve Lydenberg’s **Institute for Responsible Investment at Boston College** is exploring how to make long-term investing a reality. And the **United Nations Global Compact** released a recent study called “Investing for Long-Term Value.”

## 20-Year Vision

We might think of these activities as puzzle pieces. How can they be assembled into a transformative movement? A key element is a common vision of what we are aiming toward, if corporate purpose were to be transformed.

Within 20 years, the tide of public opinion will have turned against Corporate America’s penchant for short-term thinking. The public discourse on economics will no longer be dominated by free market fundamentalism. It will include talk about fair dealing, a moral bottom line, and a moral economy. Building on these values, the nation will address the structural issues keeping corporations tied to short-termism. It will be considered bad form to pay CEOs outsized compensation. It will be considered a violation of fundamental human rights to aggressively fight unions. Corporate boards will have worker and public interest directors, and company purpose will be legally broadened to include fair treatment of employees, the environment, and the community. It will be commonly accepted that healthy policies on the environment and human resources are a necessary part of a well-run company, because such policies are seen as the best foundation for healthy stockholder return in the long run.

But stakeholder concerns will no longer be left to voluntary initiatives. Instead, stakeholder well-being will be imbedded in social reports and pay tied to social metrics. It will also be enforced by external mechanisms, including social ratings used in government purchasing guidelines and capital investment policies, municipal ordinances, capital gains taxes on short-term trades, and periodic corporate charter review.

Such changes will be perceived as representing moral limits and embraced as legitimate. Responsible companies will find incentives work in their favor, while bad actors will find it increasingly difficult to do business. Companies that fail to deal with global warming impacts, or pay CEOs too much, will find themselves unable to get government contracts or subsidies, issue bonds, float new equity issues, or obtain development permits.

There will be growing recognition that corporate design — in law, charters, ownership, and governance — is a powerful tool for transforming corporate purpose. A movement for hybrid community-friendly, stakeholder enterprises will take off, with exciting experimentation. Media companies will embrace hybrid designs supporting their dual social and financial missions. Employee ownership will be as widespread as home ownership, thanks to government-chartered financing institutions. Such companies will be seen as representing a new sector beyond government, business, and nonprofits — a “Fourth Sector” equaling 20 to 30 percent of the business sector. Some companies will willingly cross over into this Fourth Sector, because of advantages in employee morale and customer loyalty. Over time, standards for corporate design excellence might evolve, similar to LEEDS standards for green building, with companies vying to meet the highest standards for social enterprise design.

# Short-Term Strategies

## Ending Short-Termism

A key aim is undermining the legitimacy of the current market framework. It is here that the question of values comes into play. As David Callahan of Demos wrote in *The Moral Center*, “It’s not enough to appeal to people’s economic *interests*; you need to connect with their economic *values*.”<sup>10</sup> Selfishness and greed are careening out of control. No one calls us to any larger purpose. Young Americans have lost any sense of purpose beyond becoming famous and rich. As a strong majority of Americans said in a 2005 poll, people are not as honest or moral as they used to be; young people have a weaker sense of right and wrong than 50 years ago.<sup>11</sup>

We need a narrative that lays these moral issues at the foot of free-market fundamentalism — the ethos that tells us self-interest is an appropriate central organizing principle for society. And we need an alternative vision of the Moral Economy, which de-legitimizes the current ethos — a new narrative of a “Moral Bottom Line” beyond which responsible companies simply do not go.

The biggest symbol of free market selfish excess is CEO pay. In system design terms, stock options are the linchpin that keeps companies focused on short-term profits. CEO pay and short-termism are thus one primary campaign that can tell the systemic story. The potential is huge, because of pent-up public outrage about CEO pay.

A campaign to end short-termism can marry vision, values, and policy, as Michael Shellenberger and Ted Nordhaus recommend in “The Death of Environmentalism.” Instead of one-off campaigns — where environmental, labor, and community issues are siloed — the Moral Bottom Line could tie a variety of issues together, providing a rallying point for new alliances to advance a transformative vision.

### Goals

- ▶ **Stigmatize exorbitant CEO pay** to tell the deeper, systemic story of the unethical effects of short-term thinking.
- ▶ **Create a coherent Moral Economy vision of company success**, with a clear Moral Bottom Line representing a bright line for unacceptable behavior.
- ▶ **Implement circuit breakers** that use this moral bottom line in areas like government procurement, investment policies, or municipal ordinances.
- ▶ **Use mobilized outrage for policy changes**, like creating a graduated capital gains tax, so short-term trades pay higher; or outlawing stock options.

As defined by American EnviroNics, a strategic initiative is one that elevates new frames — dividing opponents and putting them on the defensive — and should include a policy proposal, an alliance, a new language, and brand identity.<sup>12</sup> Ending short-termism is part of emerging new language, and the Moral Bottom Line might represent a brand identity. The elements of the campaign could include:

- ▶ A research agenda demonstrating how stakeholder and stockholder benefit converge over the long term.
- ▶ An ethical business council speaking out against short-termism.
- ▶ A grassroots alliance, with campaigns to stigmatize selected CEOs and implement circuit breaker policies.
- ▶ A capital component tying the Moral Bottom Line to investment policies or shareholder activism.
- ▶ A policy proposal to create “moral circuit breakers,” making government procurement, permits, and investments contingent on compliance with the Moral Bottom Line. Initially, this could be quite simple, with a handful of bright-line requirements drafted by the alliance. Requirements might include not paying CEOs more than 100 times average employee wage; not having an excessive number of felony convictions; not paying poverty wages or aggressively fighting unions; not refusing to deal with global warming impacts; not misrepresenting financial performance. Another policy proposal would be increased capital gains taxes on short-term trades.

**We need a new narrative of a Moral Bottom Line, beyond which responsible companies do not go.**

Over time, a campaign like this could open space for broader work, like a comprehensive social rating system, or federal chartering of corporations. Or it might lead to campaigns to reform stock options, or to tie executive pay to metrics of stakeholder service.

### Challenges

- ▶ The laissez faire narrative is so deeply imbedded in economic thinking, it will be hard to de-legitimize it.
- ▶ Business proposals to end short-termism will be modest, centering on issues like not issuing quarterly earnings guidance or paying executives for long-term financial performance.

### Most Effective Strategies

- ▶ Emerging, legitimate, alternative economic theories should be put forth, like those of Nobel Prize winners Amartya Sen, Joseph Stiglitz, and John Nash.
- ▶ The campaign should put forth concrete proposals on ending short-termism, which make the link — backed by credible research — that good environmental and human resource policies benefit stockholders in the long run. At the same time, as Harvard's Larry Beeferman has suggested, we need to express new norms like "equality" and "enough" — asserting that returns beyond a certain point harm employees, and at a certain point enough is enough.
- ▶ The initiative should capitalize on trigger events, like the subprime mortgage meltdown. With predatory lending practices, companies harmed their customers, damaged share prices, and destabilized the economy. This should be publicly seen as economic immorality, resulting from short-termism.

## Additional Short-Term Strategies

### Making Social Reporting Mandatory

There is cultural support in U.S. business for transparency, so this goal is likely achievable — particularly in the wake of the Democratic capture of Congress, since liberal Barney Frank will now chair the relevant House committee. Also, it could be done via SEC rule-making with no legislation required.

Investors would likely be the ones to spearhead this campaign, though others might be attracted as well, as social metrics could create the foundation for changing CEO pay, or awarding government contracts.

### Creating Social Ombudsmen on Corporate Boards

Such moves could be part of long-term education about the need for new faces in corporate governance. These new faces on boards could provide openings for community, labor, and social investing advocates to be heard more consistently.

Creating board-level access for civil society voices could tie to virtually any initiative. Corporate campaigners could easily fit these demands into existing campaigns. Social investors and unions might make these requests part of shareholder resolutions.

## Long-Term Strategies

### Promoting Social Enterprise

While the ending short-termism campaign seeds awareness of the role of corporate design in unethical behavior, a campaign to promote social enterprise provides positive alternative conceptions of company design. It shows what companies can look like. As Shellenberger and Nordhaus have observed, the strength of a proposal "turns more on its vision for the future and the values it carries within it than on its technical policy specifications."<sup>13</sup> Like the Apollo Project, a social enterprise, Fourth Sector initiative can create an inspiring vision that sets the context for a myriad of national and local proposals.

**Demonstrating that other corporate designs are viable is a crucial part of education.**

The aim here is to create awareness that a new kind of corporation is possible: the “for-benefit” corporation that makes a profit but embraces social mission. Examples include:

- ▶ **Family-owned firms** like the New York Times, a \$1.4 billion company which is publicly traded but is protected by the family as an important cultural institution.
- ▶ **Cooperative firms** like Organic Valley, a \$300 million organic dairy cooperative owned by 950 organic family farms, a model for preventing the loss of family farms.
- ▶ **Trust-owned firms** like Grupo Nueva, a \$1 billion holding company in Latin America, owned by VIVA Trust (VIVA stands for “vision and values”) whose aim is a sustainable Latin America.
- ▶ **Employee-owned firms** like BNA in Washington, D.C., one of the rare publishing firms that has remained independent because employee owners refuse to sell.
- ▶ **Nonprofit-owned social enterprises**, like Greyston Bakery, a \$5 million firm in Yonkers, New York, launched by Buddhist priest Bernie Glassman, which hires the homeless.
- ▶ **Government-chartered firms** like community-owned electric companies, which are an alternative to investor-owned firms.

Demonstrating that other corporate designs are viable is a crucial part of education. It creates a voluntary pull to a new kind of economy, which works together with the push of government action. Whole new generations of companies have been birthed in the fields of organic and natural products, green energy, and green building. When these new-economy firms are sold, go public, or see their founders retire, it would be a tragedy of staggering magnitude to see them all become owned by public companies, prey to the short-termism mindset which squeezes out social mission. Yes this has happened already in many cases. Organic juice maker Odwalla is now owned by Coca-Cola, natural cereal company Kashi by General Mills, Stonyfield Yogurt by Dannon, Aveda by Estee Lauder, Ben & Jerry’s by Unilever, and the list goes on. Entrepreneurs in like-minded firms are actively looking for alternative design solutions, yet have nowhere to turn.

At the same time, there is an explosion of interest today in social enterprise firms, or for-profit charities, where leaders are also actively seeking design solutions.

Meanwhile, employee ownership has proven itself as a viable alternative model that promotes employee wealth, enhances productivity, reduces turnover and absenteeism, and leads to long-term good financial performance. It benefits not only employees but communities and the environment. For example, a recent Environmental Protection Agency study showed that absentee-owned chemical plants release three times the toxins of those whose ownership is locally rooted.<sup>14</sup> Yet employee-owned firms — over 10,000 in number — are hobbled by share repurchase obligations. Tax advantages of Employee Stock Ownership Plans (ESOP) have been reduced by legislation. And few ESOP firms practice democratic practices — sharing voting rights and board representation with employees — which have been shown to create high-performance companies. The sector could benefit from strategic direction.

Similarly, in the media sector — which naturally involves dual social and financial mission — firms like the New York Times and Washington Post have evolved successful new models of dual-class shares, which allow founding, mission-driven families to retain control without majority ownership. Yet this model is now under attack by Wall Street, where investors are amassing shares and openly challenging the Sulzberger family to abandon its dual-class structure. Virtually no one has come to the company’s defense.

In short, an emerging Fourth Sector holds enormous promise for transforming corporate purpose, yet it is little understood, lacks essential design tools, is under-resourced, and under attack.

## Goals

- ▶ Map the Fourth Sector and provide a census of activity, disseminating this analysis widely, via an Annual Report on the Fourth Sector.
- ▶ Sponsor trainings in hybrid design for entrepreneurs, lawyers, and consultants.
- ▶ Advance awareness through media coverage and community outreach — such as op-eds in support of the New York Times’ innovative design. A book on the Fourth Sector would also raise its visibility (Marjorie Kelly has begun work on this).

Promote a national policy of making employee ownership as widespread as home ownership, via a funding vehicle similar to Fannie Mae.

### Major Elements of this Strategy

- ▶ **Public policy** components, aiming to enhance tax advantages of employee ownership, or provide tax breaks for new hybrids.
- ▶ **Alliances** of cooperative, employee ownership, community development organizations, and nonprofits interested in advancing the Fourth Sector.
- ▶ **Business components** featuring a database of company profiles and guides for lawyers and consultants.
- ▶ **Capital components** encouraging new funding vehicles.
- ▶ **Grassroots components** to campaign for a national policy advancing employee ownership, as a powerful way to create wealth for the working and middle class; or to support Fourth Sector institutions, by getting NGOs, colleges, and municipalities to bank with local community banks or credit unions.

**Groups to involve** include the Democracy Collaborative at the University of Maryland, Business Alliance for Local Living Economies, Social Venture Network, Investors' Circle, Social Enterprise Alliance, and the National Center for Employee Ownership.

### Challenges

- ▶ Uniting disparate groups under one tent will be difficult.
- ▶ Conservatives may balk, as the Republican governor has in Hawaii, where he vetoed a bill to create voluntary new SCR corporations.

### Most Effective Strategies

- ▶ Emphasize that a unified Fourth Sector designation can benefit everyone.
- ▶ Tap the bridge appeal of employee ownership, popular with Republicans and Democrats. A 2001 bill on employee ownership was introduced by a Republican.

## Additional Long-Term Strategies

### Create a Nationally Integrated Social Ratings System for Business

Social and environmental ratings create a new definition of success and are already broadly popular in the U.S. This approach can be enacted with or without legislation. Study should be made of South Africa, where legislation requires all government purchasing to give preference to firms with a high Black Empowerment rating, administered by an independent firm. A sustainable business rating system for the U.S. is already under development, known as S-BAR, being developed by environmental journalist Joel Makower and environmental consultant Gil Friend.

### Expand Directors' Social Responsibilities in Law

Redefining core corporate purpose could be the holy grail of system redesign, as it will turn down the volume on capital demands and give greater voice to other stakeholders. A central aim is to allow civil society routine access to the boardroom. For example, a reform package might include mandatory public interest and employee directors, as well as annual stakeholder meetings. This approach could work synergistically with all other approaches, creating a boardroom sounding board for activist concerns as they arise over years to come. The short-termism strategy will create awareness about the importance of core design, which could lead eventually to a broad coalition similar to the CORE coalition in the UK, which involved representatives from 150 NGOs.

There are already indications of interest. The "Unity Coalition Declaration Post Enron," created by groups

**The aim is to design campaigns not just to modify corporate behavior, but to build electoral power around a new vision of the role of corporations in our society.**

like Greenpeace International, has called for corporate governance reform. The ultimate constituencies will ideally include labor, social investors, and activists of all kinds.

### Create CRA-Type Incentives for Other Industries

The Community Reinvestment Act offers a powerful model that could be extended to the mutual fund industry, and possibly other industries. Instead of relying on merger permissions, which fuels antitrust problems, social ratings might be used as circuit breakers for issuing bonds, obtaining permits, going public, and so forth. Government creates the framework, activists make the design function effectively, and society benefits. Groups like ACORN or LAANE might be the logical ones to pursue an expanded community benefit approach.

Over the long run, such approaches could work a powerful transformation in corporate purpose. For activists and campaigners, the aim is to design campaigns not just to modify corporate behavior, but to build electoral power around a new vision of the role of corporations in our society.

The moment is right. The need is great. Activists are the ones to lead. We must not step into this historical moment with old agendas, old fears, or small thinking. Fundamental, systemic change can indeed be within reach.

### Endnotes

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- <sup>2</sup> Simon Zadek, "Reinventing Accountability for the 21st Century," Dec. 9, 2005; [www.opendemocracy.net](http://www.opendemocracy.net).
- <sup>3</sup> Alperovitz, *America Beyond Capitalism*, p. 16.
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- <sup>14</sup> Don Grant, "Organizational Structures, Citizen Participation, and Corporate Environmental Performance," University of Arizona study of 2,000 chemical plants 2001 to 2002, National Center for Environmental Economics, U.S. EPA; <http://yosemite.epa.gov/ee/epa/funding.nsf/ecdcf15d986219bb852564c6007c157f/13b97e08b13fbb5685256df7004de40c!OpenDocument>

## Tame Giant Corporations

**“We stress the advantages of the free enterprise system, we complain about the totalitarian state, but in our individual organizations ... we have created more or less of a totalitarian system in industry, particularly large industry.”**

—General Robert Wood, former chair of Sears, Roebuck & Co.

The signs of concentrated corporate economic power are pervasive. Of the world’s top 100 economies, over half (53) are corporations, when measured by annual revenues versus countries’ gross national product.<sup>1</sup> Just ten groups account for half of all retail sales, with single companies often capturing more than 75 percent of particular product markets. Eight media conglomerates dominate the country’s television, film production, Internet, and most other forms of media production, and these corporate media have gutted investigative reporting and reduced local access to the airwaves, dramatically reducing the possibilities for democratic discourse. Between 2003 and 2005, the world’s top ten seed companies increased their control from one-third to one-half of the world’s global seed trade.<sup>2</sup> Wal-Mart controls 30 percent of sales for many goods in the U.S. and has wiped out thousands of smaller retailers and suppliers, crushing the local character of communities across the country. Yet none of this seems to concern policymakers.<sup>3</sup>

### The Problem

Early 20th century antitrust laws are still being used to deal with the vastly different challenges of the 21st century. In response to a tidal wave of mergers and acquisitions, antitrust enforcers over the last quarter century have responded by shunting aside the antitrust framework altogether. Even the relatively aggressive antitrust enforcement of the Clinton administration took on just one significant case (Microsoft), and otherwise stood watch over the greatest concentration of corporate power in history — asking for only a few tiny local market divestitures as the price of merger approval. Neither the Federal Trade Commission (FTC) nor the Department of Justice — the two enforcers of antitrust regulations — has challenged a merger in federal court in over three years, an almost unprecedented period of non-litigation.<sup>4</sup>

So focused are antitrust policies on what is called “competitive effects” and “efficiency” that they no longer address the broader consequences of concentrated economic power. As a result, markets across the U.S. economy have become extraordinarily concentrated.<sup>5</sup> The American Antitrust Institute recently suggested that merger enforcement standards have become so permissive, it is now common to see just two or three players in a market.<sup>6</sup> Sometimes it goes even further. A recent proposal to merge the top two military satellite launch contractor divisions (Boeing and Lockheed) was greeted with no objections by the FTC, and the proposed XM-Sirius satellite radio merger suggests that other industries feel they too can form monopolies with impunity.

In the mid-1970s, about 1,500 antitrust cases were filed per year in federal courts. The federal government has failed to file a single major case in years. At the same time, the number of cases filed by state attorneys general and civil plaintiffs has also declined precipitously. The courts rarely support the “incipiency

doctrine” anymore — a once-popular interpretation of the Clayton Act that allowed federal agencies to step in to prevent specific mergers likely to cause broader consolidation within a specific sector.

Much of the federal government’s regulatory self-restraint has been attributed to the power of the neoclassical Chicago School of law and economics, which has dominated antitrust policy over the past 25 years. In this period a precipitous rise in the value of corporate mergers and acquisitions has occurred — from less than \$2 trillion during the 1980s to \$11 trillion during the 1990s, and escalating to greater heights (\$7.6 trillion) during 2000-2003.

The grand achievement of the Chicago School was to establish the unassailable logic of the market as an organizing principle capable of providing a blueprint for the entire society. And the market, in the neoclassical view, is to be guided entirely by the invisible hand — that is, in *laissez faire* fashion — without oversight by government. As economist James Brock recently noted, “The notion of economics today has been twisted and confined and limited to represent one narrow, extreme ideological point of view, the *laissez-faire* point of view. It is not just economics, it is one particular ideology, masquerading as economic science, that has come to dominate the debate.”<sup>7</sup>

In the prevailing economic view today, proposed mergers are presumed to be a good thing. Why else, it is suggested, would companies want to merge unless it is to obtain greater efficiencies?<sup>8</sup> This framework turns common sense upside down. The suggestion that size may not equal efficiency is dismissed as a radical position. In fact, it is centrist: To the right of center stand Richard Posner and the Chicago School of neoclassical economics; further to the right is the libertarian view that antitrust laws should be dismissed altogether.

In contrast to market fundamentalism, real market theory makes clear that markets function efficiently only under conditions of perfect competition and cost internalization. Market fundamentalists stretch market theory beyond the breaking point when they claim market benefits for unregulated monopolies that avoid competitive discipline and freely externalize costs.<sup>9</sup> Libertarians at the Cato Institute may agree that corporate welfare is an illegitimate subsidy,<sup>10</sup> while failing to recognize that so many other policies — including weak antitrust laws and government protections for monopoly patents — are similar impediments to competition. As economist Dean Baker has suggested, “[T]here is nothing natural about patents and copyrights, they are relics of the Medieval guild system. They are state-granted monopolies, the exact opposite of a freely competitive market.”<sup>11</sup>

## History of Corporate Economic Concentration Policies

Educational campaigns — crucial to challenging the dominant pro-corporate ideology — can help build broad understanding of how important popular resistance to concentrations of economic power has been throughout American history since the early days of the republic when, in one of the first acts of civil disobedience, a bunch of fed up colonists and small merchants dumped an entire load of tea imported by the East India Company into the Boston Harbor.

Adam Smith, the economist and friend of some of America’s revolutionary leaders who is so often cited by market fundamentalists, was actually highly critical of corporations for reasons that will strike most Americans as relevant today. In *The Wealth of Nations*, published in 1776, he warned readers about the anticompetitive nature of corporations:

*It is to prevent this reduction of price, and consequently of wages and profit, by restraining that free competition that would most certainly occasion it, that all corporations, and the greater part of corporation laws, have been established.*

For decades after the new nation was formed, corporations were controlled through the chartering process. State legislatures were reluctant to grant charters to newly established American corporations because of the largely artisan and agrarian nature of the economy and fears that special advantages would be created through the corporate charters. For that reason, when charters were granted, they often came with significant restrictions. What was later accomplished through regulation — including restraints on corporate size and structure — was accomplished by design in those days through the chartering process. Corporations that violated their charters could be dissolved by an act of the legislature that created it. Yet by

**The bigger companies are the more they should be truly public, under government oversight.**

the end of the century, as corporations gradually shaped the courts' interpretation of the Constitution to their advantage, the chartering process was virtually defunct as an instrument of control.

Business consolidation — fueled by technology and the emergence of financial capital — roared along in the late 19th Century, crushing small businesses and tenant farmers, and ultimately spawning the largest democratic movement in American history, the populists.<sup>12</sup>

In 1890, public resistance to the giant trusts led to the Sherman Antitrust Act, passed by a Republican Congress, which remains the core of antitrust policy 117 years later. President Theodore Roosevelt later told Congress that, “The strengthening of the anti-trust law is demanded upon both moral and economic grounds...In the highest sense of the word this movement for thorough control of the business use of this great wealth is conservative...There is grave danger to our free institutions in the corrupting influence exercised by great wealth suddenly concentrated in the hands of the few.”<sup>13</sup>

Nevertheless, by then fundamental debates over competition and antitrust policy began to subside. The last time corporate size was a significant political issue was during the 1912 presidential campaign. In that campaign, Republican Teddy Roosevelt wanted the government to control the giants directly — through federal chartering and a federal Bureau of Corporations. Others, like the former judge William Howard Taft, wanted the courts to keep markets competitive. And a third force, led by Progressives Woodrow Wilson and Louis Brandeis, wanted an independent and expert regulatory commission with wide-ranging powers to play a leading role in maintaining free and fair competition. The election of Wilson led to the passage of two more antitrust laws in 1914 — the Clayton Act and the Federal Trade Commission Act — which together with the 1890 Sherman Act still constitute the essence of our national framework for dealing with giant corporations.

The new framework obviously did little to stop the growth of mega-firms. If anything, deft use of the framework by corporate attorneys has converted it into a tool of neoclassical economists who believe that “Big is Good,” while antitrust laws ensure that only the worst behavioral abuses are deterred. As Bert Foer, president of the American Antitrust Institute has suggested, the result is that industrial structure, as contrasted with behavior, has largely been removed from the antitrust agenda.

After the great stock market crash, the New Deal brought renewed acceptance of government intervention and involvement in the broader economy (i.e. Keynesian economics). Additional restraints were placed on corporations in specific sectors including electrical companies (e.g. Public Utility Holding Act), banks and other industries. But these laws were the target of an aggressive Right-wing attack during the 1990s, resulting in a new wave of mergers, and making a significant contribution to WorldCom, Enron, and other corporate scandals. The corporate economic ideology survived the scandals. Meanwhile, the threat of foreign competition has helped dampen regulatory concerns about the anticompetitive consequences of deregulation.

One issue worth noting in any history of this nature is the issue of federal chartering. It did receive serious consideration in 1938, when the Temporary National Economic Committee (TNEC), a joint Congressional-Executive Branch committee, was directed to study the concentration of economic power to make recommendations for legislation. Senator Joseph O'Mahoney, who headed up the TNEC, concluded in March of 1941 that in order to effectively regulate the economy it would be necessary to have “a national charter system for all national corporations.”

The TNEC's conclusion was largely forgotten until 1976, when the federal chartering proposal was revived by Ralph Nader, Mark Green, and Joel Seligman in their book, *Taming the Giant Corporation*. They proposed that a federal law require charters for large national businesses with more than \$250 million in annual sales or more than 10,000 employees.<sup>14</sup>

Size thresholds for federal chartering requirements provide a useful framework relating to a principle of “scale of regulation” — which recognizes that greater concentrations of market power require greater public disclosure and oversight. Although economies of scale are used to argue that large corporations are more efficient — a core argument for concentration — most of that turns out to be the economies of monopoly, including the power to buy special favors from politicians, to dominate markets with saturation advertising, and to bid down wages. Federal chartering requirements above certain thresholds would minimize the burden on smaller businesses, while recognizing that the bigger and more concentrated corporations become, the more they should be required to function like a truly public company, operating under governmental oversight in the public interest.<sup>15</sup>

Today, while the public discourse lacks discussion of federal chartering or economic concentration in general, populist forces are nonetheless beginning to organize. The media reform movement has successfully stopped the Federal Communications Commission from loosening media ownership rules. Consumer groups, Wal-Mart campaigners, and others have so far successfully resisted Wal-Mart's expansion into consumer lending. Both of these preemptive campaigns are fueled by latent public outrage over the existing size and power of giant corporations.

## 20-Year Vision

Although it is hard to predict how and where public backlash will grow in the future, it's likely that certain sectors will continue to be priority targets. Meanwhile, community-oriented companies — what Gar Alperovitz and others have called the community wealth sector, what we call in this report the Fourth Sector — will continue to grow, providing new, democratically accountable forms of community development that will increasingly displace corporations.

The shift we will likely see in the future will not be a pendulum swing back to old-style antitrust policy. Rather, the debate will shift from a strict focus on market rules and competition policies to considerations about the proper role of markets, where markets must be limited, and the shape of the broader political economy. This will open the door to broader concerns about privatization, community-based ownership, and other democratic forms of economic governance.

As a result, economic efficiency will become a secondary consideration to the protection of community rights, respect for environmental limits, and protection of the commons. Natural monopolies might even be accepted, so long as they are managed transparently and in the public interest (e.g. municipal utilities) under strict governmental oversight and regulation.

In those sectors that are primarily market-driven, aggressive competition rules will continue to be important. Yet even then, such policies might yet serve as an interim step toward full public control. For instance, a moratorium on mergers above a certain value (e.g. \$20 billion) could become a stop-gap policy, along with revival of the incipency doctrine, until the time is ripe for broader reforms. The trick will be to ensure that more fundamental reforms are not obstructed and delayed by enforcement of antitrust regulations.

Big Tobacco is an example of how fundamental the shift in the existing framework of law has to become in order to result in an effective outcome. More than 90 years after the tobacco trust was first convicted, the Big Four tobacco firms continued to account for 98 percent of U.S. cigarette sales. As economist James Brock has suggested, "In 1993, in a third major antitrust suit, the Supreme Court observed that 'cigarette manufacturing has long been one of America's most concentrated industries'; that it 'also has long been one of America's most profitable, in part because for many years there was no significant price competition among the rival firms.'" In short, the industry displays all the hallmarks of a concentrated, noncompetitive cartel. And yet, shortly after Brock published these observations, the Federal Trade Commission closed its investigation of the merger of RJR and Brown & Williamson, allowing the Big Four to reduce itself to three.<sup>16</sup>

Any campaign to control Big Tobacco will have to rely on more than traditional antitrust enforcement tools. After his tenure as head of the Food and Drug Administration, for example, David Kessler suggested chartering the production of tobacco under one national firm, so that direct restrictions on tobacco marketing could be enacted to reduce the industry's ability to replace the 400,000 customers that die each year with new, young smokers.<sup>17</sup> Kessler's federal chartering proposal could also facilitate the creation of transitional economic support for tobacco farmers, and allow the revenues to be used to offset public health costs such as treatment of the uninsured.

Consideration of imaginative remedies like this is unlikely in today's political climate, but may be possible in the future. Trigger events could provide an opportunity to raise bold public policy proposals tied to structural remedies.

The most important short-term task must be to lay the groundwork for the revival of public engagement with the issue of concentrated economic power.

## Short-Term Strategies

### Stigmatizing Corporate Concentration

Any strategic campaign initiative designed to address the question of concentrated corporate economic power must take into account the reality that there is currently little popular understanding of and organizing around these issues.<sup>18</sup> Nor is there much debate of these issues in Congress or discussion in the media.<sup>19</sup>

In earlier periods of American history, it was well understood that the gargantuan size of economic institutions translated into dangerous concentrations of political power, threatening democracy. In addition, the evidence suggests that large size carries with it significant inefficiencies and that an industry consisting of a small handful of giants is not likely to be sharply competitive or highly innovative.

While the power of giant corporations might be vaguely seen as a problem, there is little political organizing to limit corporate power in the marketplace or the courts. When the issue of antitrust and competition policy are discussed by the media at all, it is usually to note how weak the enforcement and application of the law has become.<sup>20</sup>

The most important short-term task must be to lay the groundwork for the revival of public engagement with the issue of concentrated economic power. We need strategies that educate the public and policymakers about the importance of the issue, and basic campaigns to confront further concentration of power.

#### Goals

- ▶ **Build broad understanding** of how the failure of antitrust affects all of us in our everyday lives.
- ▶ **Use corporate campaigns** to expose how the power of giant corporations leads to important societal problems not addressed by antitrust regulations (for example, Big Pharma monopoly patent claims on lifesaving medicines).
- ▶ **Promote emerging community-ownership models.**
- ▶ **Organize congressional hearings and investigations** to increase political engagement with the issue of corporate concentration.
- ▶ **Organize and frame local campaigns** to challenge corporate ownership of key services in local communities, especially media (broadcast radio).

While there will be efforts to leverage organized constituencies affected by specific industrial sectors, we expect consumer groups, labor, and competitors (including smaller corporations and community-based businesses) will play a key role. These are the groups that will be able to tie popular concerns (e.g. the lack of local media access, or the lack of affordable medicines) to the failure of regulatory policy.

During the early phase it will be important to develop tools for popular education and informed policymaking. This is something that groups like the American Antitrust Institute have begun to do, but could be greatly expanded.<sup>21</sup>

#### Organize Campaigns to Block Any New Mergers

The last time a major monopoly was challenged (Microsoft), it came about as the result of a campaign by Ralph Nader and his allies, who organized consumers and the company's competitors, before the Justice Department finally got on board.<sup>22</sup>

Any new proposed giant mergers having the potential to result in significantly greater concentration of economic power should be opposed through an aggressive campaign involving affected consumers, business competitors, industry watchdogs, and policy-oriented groups. In addition, legislation should be introduced that would cap any mergers above a certain amount (e.g. \$20 billion).

**We must drive corporations out of certain sectors entirely.**

## Organize Local Challenges to the Media Monopoly

The media is a key sector, currently one of the key activist targets. Communities across the country are increasingly discontent with corporate media's indifference to local issues and failure to provide access to leading community voices, and frustrated with the FCC's unwillingness to support challenges to broadcast licenses.

As part of the growing struggle for local democracy described in Chapter 6, local organizations and community-controlled governments are poised to challenge the rights of corporate broadcasters (i.e. force them to sell off local stations, in coordination with some of the national media reform organizations fighting for legislation/regulations that would roll back the percentage of corporate ownership in any community) and "take over" the local airwaves in order to provide a vehicle for democratic discourse.

## Corporate Campaigns

Corporate campaigns will continue to raise concerns about concentrated corporate ownership and the failure of competition policies. These groups should be encouraged to unite around a common agenda that challenges to concentrated corporate economic power. Fundamental demands should be raised which reframe the debate from technocratic concerns built into the antitrust regulatory framework to populist economic demands. The specific campaigns that have such potential include:

- ▶ The Wal-Mart campaign<sup>23</sup>;
- ▶ The media reform movement<sup>24</sup>;
- ▶ Campaigns that tie Big Oil to war profiteering and global warming<sup>25</sup>;
- ▶ Campaigns against corporate agribusiness<sup>26</sup>;
- ▶ Campaigns that challenge the big drug companies' monopolistic patent claims on essential medicines<sup>27</sup>;

The challenge will be to convince specific interest groups who all have their own agendas and organizational priorities to broaden the framework of their strategy in ways that might exceed their original campaign goals.

## Congressional Hearings and Investigations

It has been decades since Congress has conducted a comprehensive investigation of how concentrated economic power affects consumers, small business, communities, and democratic discourse. The most recent congressional initiative in the area of antitrust (begun in 2002, ongoing) — the Antitrust Modernization Commission (AMC) — is stacked with corporate lawyers without representation from labor, consumer groups, or small business associations. This bias led the commission to originally consider proposals to abandon criminal antitrust penalties entirely, and to have federal oversight preempt state enforcement powers. These proposals were dropped in the AMC's final report, which was issued after the 2006 elections.<sup>28</sup>

Congress should hold a series of hearings or investigations designed to raise the public's understanding of the broader consequences of concentrated economic power, and related remedies. As a leading expert on American antitrust policy has suggested, Congress intended for antitrust policies "to prevent an increase of the political power that inevitably comes with concentrated economic power."<sup>29</sup> Congress therefore has an obligation to address the failures of the existing framework of regulation.

To facilitate this process, a working group of experts and congressional staff concerned about concentration in specific sectors should be formed to plan such hearings.<sup>30</sup> Potential topics include:

- ▶ The adverse impacts of corporate concentration in key sectors: retail (Wal-Mart), media, defense, energy, healthcare/pharmaceuticals, agriculture, and automobiles, among others.<sup>31</sup>
- ▶ Explanations for the weak enforcement record.
- ▶ The challenge and potential for global competition rules.
- ▶ The impacts of deregulation on corporate concentration.
- ▶ The role of Wall Street brokers,<sup>32</sup> private equity funds,<sup>33</sup> and CEO bonuses in the irrational drive for more mergers and acquisitions.

**We must shift the debate from market efficiencies to community rights.**

- ▶ The adverse consequences of expanded intellectual property protections.<sup>34</sup>
- ▶ Private enforcement regimes.<sup>35</sup>
- ▶ The use of joint ventures, cross-sector ownership, and other means to circumvent traditional restraints on concentration.<sup>36</sup>
- ▶ International consolidation.<sup>37</sup>
- ▶ Incentives in the corporate system that drive mergers and monopolization, including stock options,<sup>38</sup> consulting fees for economists, and broker/dealmaker fees for lawyers and Wall Street.<sup>39</sup>
- ▶ The adverse consequences for investors of many mergers.<sup>40</sup>

### Long-Term Perspectives

We should resist the temptation to allow the debate over corporate economic power to be reduced to questions of antitrust and regulatory policy. Instead, it must first be recognized there are broader public interests at stake, and a legitimate case to be made for driving corporations out of certain sectors entirely, especially when it comes to managing public goods, areas of the commons, and essential services like electricity and transportation that are essential basic necessities. In such cases, we must shift the debate from market efficiencies to community rights.

It's worth noting that the call for expanding the public sector is not particularly radical when it comes to market logic. Gar Alperovitz has suggested that framing the question around community wealth and the public domain has great potential to make these issues transcend conventional ideological divisions that plague debates over regulation.

As Alperovitz points out in *America Beyond Capitalism*, conservative economists such as Henry C. Simons have concluded that regulatory strategies involve the worst of all solutions to the issue of power. Public ownership was better, Simons felt — even from the perspective of free-market economic theory — since it provided for public disclosure and open oversight. The state, Simons proposed, “should face the necessity of actually taking over, owning, and managing directly...industries in which it is impossible to maintain effectively competitive conditions.” According to Simons, likely candidates included railroads, utilities, oil extraction, and life insurance. For similar reasons Simons suggested that it might make sense for metropolitan governments to “acquire much or most of the land in their areas.”<sup>41</sup>

### Trigger Events

Possible future crises could create opportunities to advance the approaches suggested here. For decades, for example, the oil and automobile industries have inhibited the development of carbon-free technologies that might prevent the threat of global warming.<sup>42</sup> Instead of simply opening the market up to competition (certain to be resisted by the industry and unions alike), or bailing the industry out, a more aggressive response is needed, including the possible nationalization of these strategic sectors to bring about the necessary transition rapidly. If we believe that global warming poses a fundamental threat to our national security, as even the Pentagon itself has admitted,<sup>43</sup> and that we have just ten years to stabilize emissions,<sup>44</sup> then a proposal to nationalize the oil and auto industries is hardly radical, and might become more politically feasible in coming years.

In fact, proposals like this are not entirely new — even if they might seem so in a nation with a short historical attention span and timid political vision. For example, two decades after President Eisenhower alerted the nation to the perils of maintaining a permanent “military-industrial complex,” John Kenneth Galbraith suggested that it was time to recognize that big defense companies like General Dynamics and Lockheed, which do all but a fraction of their business with the government, are really public firms and should be nationalized.<sup>45</sup>

The point is not to focus here on specific sectors. Indeed, it may be far easier to nationalize the healthcare sector, force the divestment and federally chartering of tobacco companies, or force other sectors to dissolve or divest themselves of critical activities.<sup>46</sup> Rather, the point is that in the face of any crisis the worst thing we can do is limit our aspirations to the revival of old antitrust approaches. We must begin to recognize that for some sectors, the priority must be to drive corporations out entirely.

## Long-Term Strategies

### Bringing Media Under Public Control

Any number of sectors could be the focus of this initiative, including those that must be transformed to prevent catastrophes like global warming. Yet our work must not simply be crisis-driven. There are other criteria to consider in selecting specific targets for a long-term strategic initiative:

- ▶ The target sector or leading corporations should be a likely target of campaigners.
- ▶ Corporate concentration and size should be a key criticism of such campaigns.
- ▶ There should be significant public outrage over concentrated corporate control in the sector.
- ▶ The threats of corporate concentration should not be defined as simply economic (not limited to threats to consumers, suppliers, and competitors) — but also to broader public interests, including the communities and workers whose lives are disrupted in order to generate predatory profits.
- ▶ A key goal should be to fundamentally shift the debate from narrow questions of antitrust doctrine to broader considerations of the political economy.
- ▶ The goal should be to drive corporations that operate beyond effective public oversight out of the sector entirely, especially in sectors involving essential services, the commons, or boundary areas between the public and private sectors.
- ▶ Alternative growing institutions should be projected as ready to displace such corporations.
- ▶ This initiative should have great potential to reinforce other frames in the broader initiative.
- ▶ Ideally, the target should lend itself to global organizing.

Although there are numerous sectors that meet many of these criteria, we believe that the media sector in particular meets most of these criteria very well:

- ▶ Eight major media conglomerates dominate most of the world's major commercial media markets (i.e. the issue is global).<sup>47</sup>
- ▶ A large, well-organized movement has already begun to organize itself, and has stalled proposals to allow further media concentration, challenging the credibility of regulatory approaches and institutions.<sup>48</sup>
- ▶ The issue of corporate media ownership is inextricably tied to other parts of the Strategic Corporate Initiative as well as fundamental concerns over the health of our democracy. Concentrated corporate media ownership is cited as a major cause of the decline in investigative journalism, as well as biased coverage of major political events.
- ▶ New community-based technological platforms (WiFi) and corporate-free news programs have the potential to provide robust alternative models.
- ▶ A sophisticated legal case can be made against concentrated corporate ownership of the media.<sup>49</sup> In particular, this campaign poses a potentially powerful and fundamental challenge to broader legal frameworks concerning corporate claims to constitutional rights. Specifically, municipal and community claims to control the local broadcast spectrum represent an assertion of community rights to structure the public sphere in a manner that facilitates democratic discourse. As such, it poses a powerful challenge to the traditional interpretation of First Amendment rights as being about the “marketplace of ideas.”<sup>50</sup>

**Leading organizations in this initiative could include:** Free Press, the Center for Digital Democracy, Consumer Federation of America, FAIR, Common Cause, the Benton Foundation, numerous independent media outlets, academics, the online community, and local groups.

## Additional Long-Term Strategies

### Global Treaty to Regulate Business Practices

Antitrust laws are just over a century old. Now that we live in a world dominated by transnational corporations (with no allegiance anywhere), it makes sense to develop a global regime to regulate business practices like global cartels, forum shopping for the least restrictive jurisdictions, and other monopolistic practices.

A possible ultimate, long-term goal might be a treaty — organized by an international campaign alliance — to address the most destructive consequences of corporate concentration at the global level. Such a treaty might require nations to regulate price-fixing, exclusionary practices, export restraints, corporate forum-shopping for the purposes of tax avoidance, and property law (e.g. patent) abuses that infringe upon human and environmental rights. The scope of such a treaty could be developed by a global network of civil society organizations, under UN guidelines.

A preliminary campaign might be immediately organized to scope out support for such a treaty. The groundwork for this process could be organized by groups that have helped develop other UN treaties, groups that led the fight against corporate globalization, the WTO, MAI, NAFTA, etc., including labor, as well as an alliance of small business trade associations.

### Endnotes

- <sup>1</sup> Medard Gabel and Henry Bruner, *Globalinc.: An Atlas of the Multinational Corporation*, (New York: The New Press, 2003), page 2. Data taken from Fortune 500, July 23, 2001 and World Development Report 2001 (Washington, D.C.: World Bank, 2001) (used for country GNP).
- <sup>2</sup> The ETC Group, *Oligopoly Inc.*, 2005. At <http://www.etcgroup.org/upload/publication/42/01/finalnroligopoly2005.pdf>
- <sup>3</sup> Barry Lynn, "Wake Up to the Old-Fashioned Power of the New Monopolies," *Financial Times*, February 14, 2006.
- <sup>4</sup> Jason McClure, "Has the Antitrust Division Lost its Nerve?," *Legal Times*, January 11, 2007. At <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1168423328747>.
- <sup>5</sup> Amy Taub and Robert Weissman, "Oligopoly!: Highly Concentrated Markets Across the U.S. Economy," *Multinational Monitor*, November 1998. "Oligopoly Inc. 2005" available from the ETC Group, at [http://www.etcgroup.org/upload/publication/44/01/oligopoly2005\\_16dec.05.pdf](http://www.etcgroup.org/upload/publication/44/01/oligopoly2005_16dec.05.pdf)
- <sup>6</sup> Albert Foer, Testimony before the Senate Judiciary Committee, hearing on antitrust, March 2007.
- <sup>7</sup> James Brock, "Merger Mania and Its Discontents: The Price of Corporate Consolidation," *Multinational Monitor*, July/August 2005.
- <sup>8</sup> (The fall of Bernie Ebbers and the crash of WorldCom and other companies provides one answer — top executives and their Wall Street enablers were blinded by the possibilities of personal enrichment as a result of such deals.)
- <sup>9</sup> See David Korten, *When Corporations Rule the World*, Berrett-Koehler (2001), chapters 5, 6.
- <sup>10</sup> Cato Institute. <http://www.cato.org/pubs/handbook/hb108/hb108-33.pdf>
- <sup>11</sup> Dean Baker, *The Conservative Nanny State*. Available at <http://www.conservativenannystate.org/cns.html>.
- <sup>12</sup> See Lawrence Goodwyn, *The Populist Moment*.
- <sup>13</sup> Speech to Congress, 1918.
- <sup>14</sup> Although objections are usually raised that federal chartering is politically unfeasible, there are already a handful of federally chartered companies that provide an example of what could be done, including Amtrak and federal mortgage lenders Freddie Mac and Fannie Mae. Federal chartering has also been suggested as a solution to specific industrial planning problems by government officials and leading economists. Former FDA commissioner David Kessler suggested it as a way to control and gradually phase out tobacco (instead of regulation, which the industry supports), and John Kenneth Galbraith suggested in the 1970s that it would be an effective way to eliminate the destructive profit-seeking drive of the large defense contractors at the heart of the military-industrial complex. Federal chartering is a potentially useful instrument that could be used to address certain crises rooted in the power of corporations. As such it remains a potent vehicle for national policy and industrial planning, especially where market forces are incapable of addressing a problem adequately. See Charlie Cray and Lee Drutman, "Corporations and the Public Purpose: Restoring the Balance," *Seattle Journal for Social Justice*, Fall/Winter 2005. At <http://www.law.seattleu.edu/sjsj/2005fall/cray>
- <sup>15</sup> David Korten has proposed a similar concept for taxation policy: Above a certain size businesses should be required to pay a graduated tax based on total assets or perhaps percentage of market share.

- <sup>16</sup> James Brock and Walter Adams, *The Bigness Complex*, (revised edition: 2004).
- <sup>17</sup> See DAVID KESSLER, A QUESTION OF INTENT 391 (2001).
- <sup>18</sup> Notable exceptions include opposition to Wal-Mart's attempt to expand into consumer lending; the opposition to Microsoft, and global organizing in opposition to monopoly pharmaceutical patents.
- <sup>19</sup> A rare exception in recent months was published recently. See David G. Savage, "Antitrust Law Losing Its Teeth," Los Angeles Times, March 19, 2007.
- <sup>20</sup> David G. Savage, "Antitrust law losing its teeth," Los Angeles Times, March 19, 2007.
- <sup>21</sup> See, e.g. "Fair Fight in the Marketplace," <http://www.fairfightfilm.org/index.html>.
- <sup>22</sup> The early campaign was led by Ralph Nader and related organizations, including The Consumer Project on Technology and Essential Information.
- <sup>23</sup> For an exploration of the relationship between Wal-Mart and weakened Anti-trust policies, see Barry Lynn, "Wal-Mart: Breaking the Chain," Harpers, July 2006.
- <sup>24</sup> See Free Press. <http://www.freepress.net>. The Media Reform Movement in particular has made an important contribution to understanding how corporate concentration undermines democratic discourse.
- <sup>25</sup> See Tyson Slocum, Public Citizen, "Consolidation in the Energy Industry: Raising Prices at the Pump?", Testimony before Senate Judiciary Committee, 2/1/06.
- <sup>26</sup> See <http://www.agribusinessaccountability.org>.
- <sup>27</sup> To learn more see Essential Action, <http://www.essentialaction.org/access/> and the Consumer Project on Technology - <http://www.cptech.org/>
- <sup>28</sup> For a list of members, and their connections, go here: <http://www.corporatepolicy.org/issues/AMC.htm>.
- <sup>29</sup> Albert Foer, President, American Antitrust Institute. Testimony before the Senate Antitrust Subcommittee, March 7, 2007.
- <sup>30</sup> Another possible approach would be for Congress and the Executive to establish a special investigative commission, perhaps modeled after the 1938 Temporary National Economic Commission.
- <sup>31</sup> Each of these industrial sectors presents its own special concerns and remedies. Media concentration, for example, presents familiar problems of limited voices in public debate and questions of constitutional theory (different understandings of the First Amendment).
- <sup>32</sup> Allan Sloan, "Sweet deals: Bulk Up, Then Break Up", Newsweek, 1/23/06.
- <sup>33</sup> Private equity deals increased by over 15% in 2006, including five off the six largest private equity buyouts in history. The biggest equity firms, including Blackstone, KKR, Carlyle, and others, accounted for around \$400 billion of the announced \$1.5 trillion mergers and acquisitions. See Oligopoly Watch. <http://www.oligopolywatch.com/2007/01/02.html>
- <sup>34</sup> According to Robert Weissman, in sectors including software and pharmaceuticals/healthcare inventions patent thickets are interfering with research and development — even in the eyes of Big Pharma. The inappropriate extension of copyright is crowding out the public domain and exerting many pernicious effects.
- <sup>35</sup> The Chamber of Commerce is complaining that private enforcement of antitrust should be restricted; but in fact the problem is the opposite: with aggressive deregulation and weakened governmental authorities, there is a strong argument for more private enforcement. Instead, we have experienced over a decades-long push for "tort reform" laws that hamper the rights of victimized consumers and investors. These tort "reforms" were a major factor leading to Enron and the other scandals. See Prof. John C. Coffee, Jr., "Understanding Enron: It's About the Gatekeepers, Stupid".
- <sup>36</sup> Robert Weissman, "Divide and Conquer: Restraining Vertical Integration and Cross Industry Ownership," Multinational Monitor, Oct./Nov. 2002.
- <sup>37</sup> There is an issue of international cartels, the single area where the U.S. has done a decent enforcement job. But there is, beyond this, the broader issue of global consolidation and global oligopoly. The United Nations Commission on Trade and Development annual World Investment Reports occasionally delve into this area. See e.g. WIR 1997 — "Transnational Corporations, Market Structure and Competition Policy," and WIR 1995, "Transnational Corporations and Competitiveness." Available at [www.unctad.org](http://www.unctad.org)
- <sup>38</sup> Andrew Ross Sorkin, "Thos Sweet Trips to the Merger Mall," New York Times, April 7, 2002. <http://www.globalpolicy.org/soecon/tncs/mergers/mergermall.htm>
- <sup>39</sup> As a congressional committee pointed out in 1941, "Of foremost interest is the intimate relation of the distribution of income to monopoly and the effectiveness of competition in general. The distribution of income in recent times reflects the existing monopolistic elements in the economy and, through the transmission of wealth derived from earlier monopolistic situations, the elements of industrial monopoly that have prevailed in the past. Historically, public indignation concerning the large fortunes and hence large incomes which had as their source either a strategic control of an industry, a particular product, or a natural resource, provided much of the impetus for the enactment and

enforcement of laws designed to curb monopolistic practices. From what is known of the rise of great fortunes and incomes, very many, possibly the majority, resulted from the exploitation of circumstances in which strong elements of monopoly were present." See Temporary National Economic Committee, Monograph No. 4, Concentration and Composition of Individual Incomes, 1918-1937.

<sup>40</sup> "Sometimes Investors Should Just Say No", New York Times, 8/14/2005.

<sup>41</sup> Gar Alperovitz, *America Beyond Capitalism*, page 57.

<sup>42</sup> See Edwin Black, *Internal Combustion: How Corporations and Governments Addicted the World to Oil and Derailed the Alternatives*, 2006.

<sup>43</sup> Peter Schwartz and Doug Randall, "An Abrupt Climate Change Scenario and Its Implications for United States National Security," October 2003. Available here:  
[http://www.environmentaldefense.org/documents/3566\\_AbruptClimateChange.pdf](http://www.environmentaldefense.org/documents/3566_AbruptClimateChange.pdf)

<sup>44</sup> Jim Hansen, "Climate Change: On the Edge," available at: <http://www.commondreams.org/views06/0217-22.htm>

<sup>45</sup> John Kenneth Galbraith, *The Big Defense Firms Are Really Public Firms and Should be Nationalized*, N.Y. TIMES, Nov. 16, 1969, § (Magazine), at 50.

<sup>46</sup> The accounting industry is another sector that should be considered, especially as it is currently pushing for liability caps for failed audits. See Charlie Cray and Lee Drutman, "Corporations and the Public Purpose: Restoring the Balance," *Seattle Journal for Social Justice*, Fall/Winter 2005. At <http://www.law.seattleu.edu/sjsj/2005fall/cray>

<sup>47</sup> The eight are: Viacom; GE; TimeWarner; Disney; Bertlesmann, News Corp; VivendiUniversal and CBS. See <http://www.freepress.net/ownership/chart.php>

<sup>48</sup> For examples of such groups see the organizational directory maintained by Free Press here:  
<http://www.freepress.net/content/orgs>

<sup>49</sup> See Mark Cooper et al., *The Case Against Media Consolidation (2007)* available for download here:  
<http://www.fordham.edu/images/undergraduate/communications/caseagainstmediaconsolidation.pdf>

<sup>50</sup> See, e.g. "Separate Statement of Katherine Q. Abernathy," available at:  
<http://www.mediaaccess.org/programs/diversity/MOAbernathyStatement.pdf>



# 10

## Re-Direct Capital

In working to change the nature of the market system — protecting the commons, transforming corporate purpose, and addressing size — a fourth critical approach is re-directing capital toward responsible companies. The business executives interviewed for this project all endorsed the principle that government’s job is to set and enforce minimum standards companies must meet. They also endorsed the idea that soundly structured incentives could be a powerful complement to enforceable minimum standards, and capital has a key role to play in incentives.

As business people told us, you get what you reinforce. Susan Swenson, former COO for T-Mobile USA, remarked, “All these reform ideas sound good, but the thing that I think would have more impact would be to incentivize companies. Give government contract procurement or tax incentives to responsible corporations. At the end of the day, you change peoples’ behavior when they get motivated economically to do the right thing.”<sup>1</sup> Beth Sawi, CAO for Charles Schwab, concurred. “What capitalism does is set up an incentive that makes people behave in a certain way,” she said. “What the government can do is make changes that adjust those incentives.”<sup>2</sup>

A corporate ratings system could be a critical tool for rewarding companies for good behavior and punishing them for bad. Such a system could represent a positive vision for corporations in society, and serve as a tool for linking economic rewards and punishments. It could create powerful motivation for change.

In the current economic model, public companies are rewarded and punished primarily based on short-term stock performance. They then collectively spend billions to burnish their social and environmental image. Yet companies that are the most destructive environmentally are often the ones that invest most heavily in greenwashing. Ford, General Motors, and Toyota advertise their environmentally friendly vehicles, while they fight legislation to require higher fuel economy.<sup>3</sup> Wal-Mart aggressively promotes its new environmental agenda, while leading a race to the bottom in labor practices.<sup>4</sup>

In the belief that ratings represent an important step toward a transformed economy, we offer here a vision of how an independent corporate ratings system might work and how it could be used by activists to change government and consumer practices to favor responsible companies. We also look at how a ratings system could help redefine fiduciary obligation and thus redirect institutional investments toward responsible companies.

## 20-Year Vision

Our vision is that in 20 years, governments at the local, state, and national levels will provide strong procurement incentives, as well as tax and regulatory incentives, to give an advantage to companies with high social and environmental ratings, and disadvantage those with poor ratings. Social and environmental ratings will be embraced culturally as a new measure of risk and sustainability. As a result, all major pension funds, socially responsible investment funds, foundations, and a large percentage of mutual funds will invest primarily in companies that are highly rated socially, in much the same way they now invest in bonds that are highly rated.

This rating system would be based on a reliable, respected process which integrates the UN Principles for Responsible Investment — the best existing internationally recognized rating schemes — as well as new civil society ratings schemes currently in development.

**A corporate ratings system could be a critical tool for rewarding companies for good behavior and punishing them for bad.**

Corporations worldwide would ideally recognize the business benefits of scoring well in social and environmental terms, and would embrace the ratings as a new standard of excellence. Civil society organizations would be systematically empowered in the ratings process by their influence over the system and its evolution. Investors, government, and companies themselves would recognize that long-term financial performance is strongly correlated with social and environmental performance, and companies would welcome the opportunity to compete in a race to the top.

## The Current Landscape

In the institutional investing community, the preferred terminology today for integrating social issues is “ESG” — referring to environmental, social, and governance issues. The emergence of this term reflects a growing acceptance of such issues among institutional investors. At the same time, Corporate Social Responsibility (CSR) is increasingly embraced by corporations themselves. One study by a large public relations firm in 2004 found that fully 80 percent of companies undertook a corporate responsibility initiative in the previous two years.<sup>5</sup>

Commensurate with the growth of this movement is the growth of instruments by which to guide or evaluate companies' ESG performance. These instruments range from codes of conduct to investment screening mechanisms and benchmarks, all intended to encourage best practices.<sup>6</sup> Approaches range from voluntary reporting (e.g. Global Reporting Initiative (GRI)) to independent evaluation (e.g. KLD's Socrates database of public companies).

There are many host organizations for various ESG instruments, from mainstream financial institutions such as Dow Jones (e.g. Dow Jones Sustainability Index) and the Financial Times Stock Exchange (FTSE4Good), to socially oriented research providers (e.g. KLD, Calvert).

There are a wide range of ESG instruments. Some represent aspiration-type principles (e.g. U.N. Global Compact). Others are guidelines for management systems (e.g. ISO 14000 and the future ISO 26000 CSR guidance standard) and certification schemes (e.g. Forest Stewardship Council). And finally, there are accountability and reporting frameworks (e.g. Global Reporting Initiative, AA1000)<sup>7</sup> that can be used to provide consistent and comparable ESG information.

Mainstream Wall Street institutions like Standard & Poor's (S&P) and Moody's are increasingly including environmental and social criteria in their corporate governance ratings, although their criteria are considered weak by activist standards. S&P has the most developed initiative in this area and has partnered with the UN and SustainAbility on two distinct reviews of corporate ESG reporting.<sup>8</sup> Investors and research firms are also working together to develop dynamic screening tools and engagement strategies based on corporate reporting and transparency (e.g. Governance Metrics International, Trucost Plc).

Currently, a wide range of advocacy organizations use ratings to recognize good actors and penalize bad ones, in the hopes this will move markets — consumers, capital, and labor — away from persistent bad actors toward good ones. Yet the pace of change is retarded by the fact that companies are not rated on a standardized, consistent basis. This is in part because the rating field is saturated with providers vying for market share. With the Fortune 100 completing up to 1,000 social surveys each year, there is a growing demand for harmonized reporting.<sup>9</sup>

Most rating systems are used to assess risks to the financial bottom line. This narrow interpretation of fiduciary responsibility limits rating systems' utility for achieving significant social and environmental change. Mike Wallace of Wallace Partners notes that too few influential ratings systems currently use social and environmental factors. “But as fiduciary responsibility takes an increasingly long-term perspective,” he adds, “social and environmental performance becomes more relevant.”<sup>10</sup>

There is growing recognition that there is no legal reason fiduciary responsibility must be limited to the short-term interests of shareholders alone. Fiduciaries are only legally required to demonstrate that they acted rationally in the interest of shareholders.<sup>11</sup> The term “rationally” can be interpreted broadly. A legal report prepared for the UN Environment Programme concluded that institutional investors can, and in some cases must, consider environmental, social, and governance policies when deciding to invest in a

**There is no legal reason fiduciary responsibility must be limited to the short-term interests of shareholders alone.**

company. According to the report, U.S. law gives wide discretion to fiduciaries investing in pension funds, mutual funds, and university endowments.<sup>12</sup>

The theory of “universal ownership” seeks to expand the notion of fiduciary duties even further. According to this theory, a universal owner is a large financial institution — such as a pension or mutual fund — which owns securities in a broad cross-section of the economy. Because of this diversified portfolio, investment returns are affected by externalities generated by all the entities it is invested in.<sup>13</sup> For instance, short-term financial gain in a highly polluting sector (e.g. mining) may be detrimental to long-term performance in a sector negatively impacted by pollution (e.g. food and agriculture).

Bringing normative criteria into corporate rating systems would improve their utility for activists. It would also help to promote a social redefinition of fiduciary obligation. If the cultural assumptions that currently define fiduciary responsibility continue to evolve, potentially billions of dollars could be brought to bear on company behavior.

There is persuasive statistical evidence of the positive correlation between social and environmental practices and financial performance.

## How a Standardized, Normative Rating System Might Work

There are a number of challenges to be faced in creating a standardized corporate rating system. Among them: What are the criteria on which companies are evaluated? Are they fiduciary in nature, or normative? Are criteria qualitative or quantitative? How can NGO control be balanced with professional process? How do we avoid high scores in one issue arena from masking low scores in another?

Such questions will likely be resolved by a team of experienced advocates and ratings experts, and a number of proposed ratings systems are already in the works, including one by WiserBusiness, a project of the Natural Capital Institute.<sup>14</sup> Based on our research, the Strategic Corporate Initiative team suggests the following criteria for any such system:

- ▶ **Ratings should form a pyramid**, with specific issues forming the base of the pyramid (e.g. use of controversial chemicals, gay and lesbian policies, procurement from endangered forests, livable wages). These scores should be combined into mid-level ratings in issue arenas (e.g. environment, community, domestic labor, foreign labor, human rights, and government involvement). Finally, mid-level ratings should be combined to form an overall rating.
- ▶ **Threshold criteria and scores in each mid-level issue arena should be established** such that a significant failure in one area dramatically suppresses the overall score. This is necessary to recognize the interconnectedness of issues. The goal of this rating process is to create a system whereby companies feel pressure to increase their overall sustainability and realize tangible benefits from exceeding thresholds. It is also necessary to insure continued harmony among advocates across issue arenas.
- ▶ **Criteria should include both process criteria** (e.g. stakeholder engagement, independent directors, GRI reporting) **as well as performance criteria** (e.g. toxic emissions, employees on government social programs, number and amount of controversial chemicals used, contributions to political campaigns). Thus, evaluation would employ both qualitative and quantitative data.
- ▶ **Normative criteria must predominate.** Fortunately, there is persuasive statistical evidence of the positive correlation between social and environmental practices and financial performance.<sup>15</sup> The rating system must be defensible from a normative perspective to justify its use in grassroots advocacy. Over time, it would be strategically desirable if the correlation between normative ratings and financial performance could be continually developed and demonstrated.
- ▶ **Civil society organizations should control the rating system** and entities that manage it. An independent rating agency should be structured to ensure civil society governance across the issue continuum, and it should be international in nature to avoid capture by corporate-dominated governments, like the U.S.

- ▶ **The independent rating agency should create structures for consultation** with NGOs and progressive representatives of industry, as well as government, academic, and scientific organizations. Input from these and civil society organizations should be ongoing in data gathering and evaluation.
- ▶ **Ratings should evolve over time** from simple to more refined standards. If advocates are to place their faith in this process, they must believe that the rating system will become more sophisticated and that they will have influence over it. The challenge is to start with the “vital few” criteria and later add the “useful many.”

## Strategic Importance of Corporate Ratings

One of the strengths of a diverse, large-scale effort to change corporations' behavior is precisely the fact that it is diverse. Yet without commonality, this effort has little hope of becoming a focused movement. For a movement to emerge, it must share a broad vision of the role of corporations in the future and have a way of translating that vision into reality. An independent, evolving,<sup>16</sup> standardized system for rating corporations — combined with a strong and vibrant activist movement that incorporates it into its campaigns — may be one of the most effective vehicles for translating vision into transformation. Among the reasons ratings are strategically important:

### Corporate Behavior Is Influenced by Ratings

Opinion polls consistently suggest that most consumers hold pro-environmental and pro-health attitudes. Branded companies particularly are concerned to protect reputation, with Nike's experience offering an example of the risks of not responding to advocates' claims soon enough. That company's state of denial cost it hundreds of millions of dollars in lost sales, and it took years to repair its image.<sup>17</sup>

Business executives we interviewed consistently said that corporations are not inherently bad, but there are bad apples that must be separated from the rest.<sup>18</sup> Ratings could serve to offer advantages for high performers in taxation, government procurement, and investment, which could help offset the advantages “bad apples” have from externalizing costs. Ratings could thus attract support not only from activists but from progressive business as well.

### Company Ratings Could Help to Unify a Corporate Transformation Movement

An effective corporate ratings system that has the support of civil society, progressive corporations, and government leaders could play a central role in unifying a movement to transform the role of corporations in our society. The process of creating it would encourage a cross-section of civil society to discuss and concretize its vision. Such a system could also end the current fragmentation of issue areas, where an environmental organization may rate Wal-Mart high while labor groups condemn the company.<sup>19</sup> A rating system would encourage activists to think more holistically. Also, ratings advance the larger framework of a “moral economy.” Implicit in ratings is the notion that we should do business with good companies and shun those with irresponsible behavior.

### Advocates Could Leverage Corporate Ratings

Ultimately, companies respond to the marketplace. The challenge for advocacy organizations is to shift the marketplace with sustainable incentives. A standardized corporate rating system could be used in many ways to move capital towards good companies and encourage a race to the top.

**First, ratings could be used to redirect billions of investment dollars.** Research by the Natural Capital Institute found that socially responsible investment (SRI) funds held shares in many of the same companies as non-socially responsible funds.<sup>20</sup> Advocacy groups might use a ratings system to pressure SRI funds to raise their standards. They could also use ratings to lobby other mutual funds, as well as federal employee pension funds, to adopt higher standards. Similar tactics might be used with foundations, which often hold financial investments that contradict their program-area missions. The Gates Foundation is only the most recent one to be embarrassed by alleged hypocrisy.<sup>21</sup> Its rapid response suggests that foundations are sensitive to embarrassing public relations, even if, as in this case, they ultimately decide to stay the course.<sup>22</sup>

**Second, a new corporate rating system could be used to expand the definition of fiduciary responsibility.** Meta-analyses of studies over 30 years have demonstrated consistent positive correlations between socially responsible behavior and financial performance. A corporate rating system with a stronger normative orientation allows researchers to test this correlation. This, in turn, could provide advocates with strong quantitative evidence with which to encourage pension funds to embrace ESG ratings.<sup>23</sup>

**Third, a corporate rating system could empower internal corporate champions** who lobby higher management for better social and environmental practices, since the ratings would have impact on profitability. In essence, a corporate rating system with strong rewards and punishments can change the dynamics within corporate cultures.

**Fourth, ratings could be used by advocacy organizations to motivate companies** to continuously improve practices. As corporate campaigns have demonstrated, companies respond to positive and negative disclosures about their practices.<sup>24</sup> A credible rating system would provide corporate campaigners with even greater leverage.

**Fifth, ratings could be used to re-direct billions of dollars in government contracts and procurement** toward responsible companies. Many city, state, federal, and foreign governments now require preference be given to environmentally sustainable products, minority owned and local businesses, or sweatshop-free companies. But because these efforts are diffuse and uncoordinated, they lack clout. A standardized ratings system would allow procurement decisions to be systematically guided by social factors, creating dramatically larger impact.<sup>25</sup>

**Sixth, ratings could be used to re-direct corporate procurement dollars and change suppliers' behavior.** Companies can move faster than government. Corporations like The Home Depot, Wal-Mart, and other big box retailers have already been the target of campaigns to influence their suppliers' behavior.<sup>26</sup> This work could move to a powerful new level if advocates could press retailers not only to achieve a specific standard themselves, but to require the same from suppliers.<sup>27</sup>

Beyond these uses, there are many other possible applications of corporate ratings for advocacy purposes. College students could lobby to exclude low-rated companies from campus recruiting.<sup>28</sup> They could campaign for university endowments to adopt ratings standards. Banks could be pressured to avoid lending to low-scoring companies, unless projects are designed to raise those companies' scores. Shareholders could use ratings to challenge the fiduciary implications of a highly rated company merging with a poorly rated company that will pull down its scores.

*A corporate ratings system could become a self-fulfilling prophecy. As advocates link taxes, procurement, subsidies, and investments to higher scores, shareholders will have a financial basis for challenging companies to improve their ratings. Socially irresponsible actions could be shown to reduce shareholder value.*

## Short-Term Strategy

### The Corporate Ratings Initiative

Developing the ratings described here should be a key short-term strategy in movement building. Standardized ratings can have broad impact, and will provide a vehicle for unifying a fragmented movement.

#### Goals

- ▶ **Create a credible corporate rating system** based on the most important social and environmental criteria.
- ▶ **Use this rating system to influence corporate behavior**, by driving government procurement, tax incentives, business opportunities, and consumer purchases toward companies that reflect a sustainable vision of the future.
- ▶ **Introduce normative social and environmental standards** into decision making by governments and private institutions.

**Incremental change is not enough. Institutional investments must be re-directed in a coherent way.**

## Major Elements of the Initiative

The most challenging aspect of this initiative is not developing the criteria on which companies should be rated, as these are already in existence or are under development. The challenge will be to achieve sufficient consensus among civil society organizations, so they begin to promote this tool and incorporate its use. This initiative will aim to:

- ▶ Bring together leading NGOs in corporate ratings with advocacy organizations in issue areas (e.g. environment, social, labor, community, faith-based) to create a governing organization and protocols.
- ▶ Assemble a task force under the auspices of this organization to develop rating criteria which are carefully vetted with leading organizations.
- ▶ Partner with a socially responsible rating firm or NGO, or staff the aforementioned agency, to begin beta testing the ratings system. Revise the system based on results.
- ▶ Assemble a second task force of leading NGO and labor advocacy organizations to develop a strategy for re-directing investment, procurement, taxation, and subsidies toward highly rated companies.
- ▶ Launch campaigns implementing this strategy, likely starting at the municipal and state levels.
- ▶ Possibly also target “low hanging fruit” investor institutions like SRI funds and foundations, publicizing the incongruity between their missions and investment practices.

The organizations involved in this initiative would include leading ratings development NGOs (e.g. Natural Capital Institute), major labor organizations (e.g. SEIU), leading environmental organizations (e.g. NRDC), leading human rights organizations (e.g. Amnesty International), as well as leading organizations in the areas of faith, women, people of color, communities, and indigenous peoples. This must be an international effort, although U.S. and European Union civil society organizations would likely take the lead.

Among the challenges to be faced is agreeing on a set of rating criteria. NGOs all have varying standards of acceptable corporate behavior. Meeting this challenge may require adopting a limited but core set of criteria on which there is agreement and allowing the system to evolve over time.

A second ongoing challenge will be creating a governance structure that coordinates disparate groups and maintains credibility. There is much that could be learned from the GRI experience in this regard.

## Long-Term Strategy

### The Institutional Investor Initiative

As discussed earlier, institutional investors who control trillions of dollars of capital have not been a major driver of positive social and environmental change. Instead, in the name of fiduciary responsibility, pension funds and foundations often invest in companies whose practices threaten the livelihoods of those they are supposed to support. Thus far reform efforts have taken an incremental approach, aiming to slowly re-direct these investment dollars. But in the face of looming crises linked to global warming, economic change, the end of cheap oil, and other resource shortages, more rapid and radical transformation is now required. Institutional investments must be re-directed in a coherent way.

#### Goals

- ▶ **Expand the definition of fiduciary responsibility** such that major institutional investors re-direct capital toward highly rated companies.
- ▶ **Produce a broad public upwelling of pressure** on institutional investors to re-direct capital toward responsible companies.
- ▶ **Create capital market conditions** that force recalcitrant companies to bring practices into alignment with the rating criteria.

Poor corporate ratings could become material to fiduciary decisions if they threaten corporate reputations and brand image.

## Major Elements of the Initiative

This initiative is purposely positioned as a long-term effort, although research, media promotion, and strategy work should begin in the short-term. The proposed corporate ratings initiative is designed to lay the groundwork for this by actually changing the fiduciary calculus. If civil society can coalesce around a harmonized corporate rating system and shift government policies to favor highly rated companies, this creates a fiduciary rationale for re-directing investments, which in turn will change corporate practices. Poor corporate ratings could become material to fiduciary decisions if they threaten corporate reputations and brand image. The aim here is to create a short-term initiative that lays the grassroots foundation for this longer-term initiative, by building alliances that create pressure on institutional investors. This initiative will aim to:

- ▶ Conduct ongoing research by the previously established corporate rating agency that demonstrates the correlation between social, environmental, and long-term financial performance.
- ▶ Promote the ratings through the media to build their credibility and acceptance by consumers. Use targeted activist efforts to threaten the brand image of the worst-scoring companies.
- ▶ Create an activist task force in the U.S. and Europe to develop a joint strategy for pressuring institutional investors to adopt the ratings as their investment standard, including a U.S. campaign targeting the employee pension funds of California, New York, and other states.

The organizations involved in this initiative would be similar to those involved in the short-term effort. It will also be critical for labor organizations to demand changes from their pension funds, and for activist organizations to generate pressure on elected officials.

Among the challenges this initiative will face is the financial pressure pension funds face to focus on high returns to fund their members' retirement. It will be important to establish the link between social responsibility and financial success and use this to activate pensioners to lobby for changes by their fund managers. Also, labor unions and other NGOs already have their preferred strategies for influencing corporate behavior. They will need to be convinced that this new coordinated strategy is worthy of their time and financial resources. Finally, many activists in the investment arena are wedded to an incremental approach based primarily on financial impact, and introducing truly normative criteria will represent a significant change.

Overcoming these challenges will be worth it, because redirecting trillions of dollars in investments is a potent tool. Leveraging this tool effectively means knitting together the current uncoordinated social and environmental standards into a standardized ratings system — under the ongoing influence of civil society — and using these standards to drive financial decision-making. This has the potential to significantly improve the environmental and social practices of corporations, and ultimately to help transform the role of corporations in society.

## Endnotes

<sup>1</sup> Susan Swenson, Personal Communication, Interviewed on June 1, 2006.

<sup>2</sup> Beth Sawi, Personal Communication, Interviewed on June 13, 2006.

<sup>3</sup> National Environmental Trust along with other organizations have criticized Toyota for not extending hybrid engines to their other lines and for joining the U.S. auto industry in challenging California attempts to legislate mandatory increases in fuel efficiency.

<sup>4</sup> Liza Featherstone, "A Good Switch or a Bad Switch? Wal-Mart's eco-announcements generate a clash among activists," *Grist*, November 22, 2005.

<sup>5</sup> Hill and Knowlton's Corporations' Reputation Watch Study, 2004. A summary of this study can be found at: <http://www2.hillandknowlton.com/crw/intro.asp>.

<sup>6</sup> "Mapping Instruments for Corporate Social Responsibility, Employment and Social Affairs, Industrial Relations and Industrial Change Division, European Commission, Directorate-General for Employment and Social Affairs, April 2003.

<sup>7</sup> *Ibid*, "Mapping...." April 2003.

<sup>8</sup> <http://www.sustainability.com/insight/research-article.asp?id=865>

- <sup>9</sup> Jay Whitehead, "CRO POV: Corporate Survey Fatigue?" *Corporate Responsibility Officer*, January 31, 2007. New requirements, such as the Global Reporting Initiative, are attempting to simplify the plight of the corporate reporting process by being one single repository for standard results. One Report is a new company trying to do the same.
- <sup>10</sup> Mike Wallace, Personal Communication, Interviewed on November 3, 2006.
- <sup>11</sup> Chuck O'Kelley, Professor of Law, University of Georgia, Presentation on Stakeholder Governance, Corporation 2020 Conference, San Francisco, November 2006.
- <sup>12</sup> Anna Oberthur, Daily Journal Staff Writer, "Socially Responsible Investing Does Not have to be a Liability," May 12, 2006.
- <sup>13</sup> [http://www.stmarys-ca.edu/academics/undergraduate/programs\\_by\\_school/school\\_of\\_economics\\_and\\_business\\_administration/centers/fidcap/chapter.php?hr=universal\\_20060410](http://www.stmarys-ca.edu/academics/undergraduate/programs_by_school/school_of_economics_and_business_administration/centers/fidcap/chapter.php?hr=universal_20060410)
- <sup>14</sup> The authors are indebted to Paul Hawken whose work to develop a corporate rating system through the WiserBusiness project shaped not only the idea for this proposal, but the rationale, and broad strokes of the initiatives presented herein.
- <sup>15</sup> Marjorie Kelly, "Holy Grail Found: Absolute, definitive proof that socially responsible companies perform better financially," 2005. "The most impressive of these [studies] is the rigorous and groundbreaking study that in October won the Moskowitz Prize of the Social Investment Forum, awarded for outstanding research in social investing. It was conducted by Marc Orlitzky of the University of Sydney, Australia, and by Frank Schmidt and Sara Rynes from the University of Iowa. Their meta-analysis, "Corporate Social and Financial Performance," was a study of 52 studies over 30 years. They thus reviewed in one fell swoop three decades of attempts to answer the perennial question. And they proved that a statistically significant association between corporate social performance and financial performance exists, which varies "from highly positive to modestly positive," *Business Ethics Magazine*, Vol. 18, #4, Winter 2004.
- <sup>16</sup> A decade ago, HIV/AIDS was not on the business agenda. Today, it is integral, especially in certain sectors such as mining and transport. If the ratings system is to resillient in the face of new issues, the ratings systems will need a credible governance structure for the long-term to adjudicate what issues, metrics and weights apply.
- <sup>17</sup> Confidential communications with a director inside Nike Corporation in Spring 2005.
- <sup>18</sup> Harry Lonsdale's comment was typical "...the rare totally bad actor needs to be put out of business. It only has to happen once a year and the word gets around. I'm not talking about putting ten percent of American corporations out of business. I'm talking about getting the rotten apples out, throw them out, and the barrel gets better." Interviewed on April 28, 2006.
- <sup>19</sup> On September 26, 2006, The National Fish and Wildlife Foundation (Foundation), one of the nation's leading conservation organizations, announced it will recognize Wal-Mart for its environmental leadership at the third annual "Celebrating the Great Outdoors" event, held Wednesday, September 27, 2006 in New York City's Central Park.
- <sup>20</sup> Paul Hawken, "Socially Responsible Investing: How the SRI Industry has failed to respond to people who want to invest with conscience and what we can do about it." Published by the Natural Capital Institute, October 2004.
- <sup>21</sup> Charles Piller, Edmund Sanders and Robyn Dixon, Staff Writers, "Dark Cloud over Good Works of Gates Foundation," *Los Angeles Times*, January 7, 2007. The authors write "Some foundation trustees shun ethical investments out of concern about inferior returns. But several studies conducted over the last decade by financial analysts have eased that worry. Despite some exceptions, many mutual funds, for instance, that consider the social and environmental impact of their investments compete well against standard funds.
- <sup>22</sup> Charles Piller, Staff Writer, "Gates Foundation to reassess investments," *Los Angeles Times*, January 11, 2007
- <sup>23</sup> Allen White, "Note that there are two schools of thought on the fiduciary duty question. The first is "enlightened shareholder value" which would not change the primacy of shareholders, but would expand the definition of "materiality" to include ESG issues, exemplified by the recent developments in the UK.. The second, a more fundamental shift, would raise the interests of non-shareholders to a level equivalent to shareholders in relation to fiduciary duty. This is a deeper, more systemic shift than the first. Politically, the first could be precursor, or stepping stone, to the second," Personal communication, January 16, 2007.
- <sup>24</sup> The Home Depot, Lowe's, Citigroup, Staples, Victoria's Secret, and Wal-Mart adopted environmentally friendly policies when threatened with negative exposure in the marketplace. Kaiser Permanente, Dell Computers, Safeway, Trader Joe's, and others adopted new health friendly policies when threatened. Nike, Gap, Disney, Wal-Mart, K-Mart, and others adopted new supplier labor and human rights policies when their reputation was threatened for sweatshop operations overseas.
- <sup>25</sup> San Francisco's City Council was recently lobbied by Global Exchange to require that contractors adopt sweatshop standards for their overseas operations. Organic Consumer Association joined the effort because such an effort would equalize product costs and encourage local purchasing, for which it also wanted San Francisco to specify a preference. If these requirements were extended to all companies wishing to locate in San Francisco, it would dramatically affect labor, environmental, human rights, community, small business, and minority advocates' work. This is an analog for what a unified corporate rating system could help to achieve.
- <sup>26</sup> These campaigns have actually resulted in suppliers being dropped because they refused to meet new standards for

environmentally sensitive products. Many companies are now adopting scorecards that include a variety of social and environmental criteria for screening suppliers and giving preference to those with the highest scores. In essence, companies are starting to use their own rating systems to encourage a race to the top by their suppliers.

<sup>27</sup> Imagine a fully functioning and cross industry rating that let Home Depot or Wal-Mart provide a product rating based on the ratings of all their suppliers? "This product has an average X rating across the 12 suppliers involved in its production and distribution to the end user."

<sup>28</sup> Finding ways to activate college students is not only strategic in that they could effectively hinder companies' ability to recruit top candidates on campus, but also lobby their administration and trustees to divest from low rated companies.



## Create Conceptual Frames

With these various strategic approaches in hand, the next task is to bring them together into a unified movement. Central to this is developing conceptual frames that serve to unify reform efforts that now seem disparate.

The intellectual leader of framing work is George Lakoff, whose book *Don't Think of an Elephant! Know Your Values and Frame the Debate*, published during the 2004 election cycle, brought the idea of framing to the fore. It showed progressives that our electoral failures were not due merely to a lack of message, but to our lack of deep, value-based frames. Since the book's release, "framing" has become common parlance in progressive circles, and few now leave strategy meetings without discussing the need to develop good frames — though unified progressive frames are not yet universally agreed upon.

### Understanding Framing

As we explore how to develop these unified frames, it's critical to begin by understanding what framing is. As Lakoff writes in his most recent book *Thinking Points: Communicating Our American Values and Vision*, it's far more fundamental than simple political messaging. Frames are the mental structures that allow human beings to understand reality — and sometimes to create what we take to be reality.<sup>1</sup>

Many confuse "message" and "frames." Lawrence Wallack of the Longview Institute explains, "The message is the final step, not the first step. It is the product that should be a natural extension of stories and frames, not the basis."<sup>2</sup> Thus, to successfully advance any issue — be it universal health care, environmental protection, or changing the role of corporations in society — we must start with proper framing. Message will follow.

We struggle now in telling the story of corporations having too much power. Too often that story gets told as isolated, discrete examples of misbehavior by a particularly bad corporate actor like Enron, rather than as a systemic problem in which the rules and laws in place not only permit, but in fact promote, corporate exploitation and control of our government, communities, the commons, workers, and the environment.

An analysis of the media's coverage of corporate behavior is revealing. Much in the way that the media relays the news is through human interests stories focused on a particular person without telling us why he or she is facing their problem, and they do the same when it comes to corporations. The media will tell the story of a particularly good or bad corporation, rather than digging deeper into how and why corporations are allowed to behave that way.

We see this in the ongoing coverage on Wal-Mart and its sustainability initiatives. Recently, CEO Lee Scott traveled to London to speak to a gathering including Prince Charles and some of Europe's top business leaders. Media reports on Scott's speech were overwhelmingly favorable. *Reuters* reported that Wal-Mart had set a goal to "sell 100 million compact fluorescent light bulbs by the end of the year...a feat equal to taking 700,000 cars off the road."<sup>3</sup>

What we do not find in this article and so many like it is that the company emits more than 200 million tons of greenhouse gases each year through its operations and supply chain<sup>4</sup>, more than many countries. It does not tell us that despite the threat of global warming, and Scott's acknowledgment of the company's responsibility to address it, the company's emissions continue to increase each year. Or furthermore, that the company contributes

heavily to political candidates who actively work against efforts to address global warming.

Perhaps more fundamentally, what is not addressed in this article is the big why — why is a corporation like Wal-Mart even allowed to exist? Should one company be allowed to have this much power, concentration of wealth, and negative impact on the environment, workers, communities, and small businesses? We don't ask these questions today because we accept the frame business has sold us, which is that big companies, free from government regulation, will be more competitive, more profitable, and generate greater wealth for all.

## Effective Frames

Good framing is powerful and can move mountains, politically speaking. Some recent examples help us see the power of good framing.

### Abortion

Anti-abortion advocates continually seek to chip away at *Roe v. Wade* by limiting who may have and when abortions may be performed. A key initiative by anti-abortion advocates is the Partial-Birth Abortion Ban Act, first introduced in 1995.

By framing “late-term” abortions as “partial birth” abortions, the Right struck gold. Despite the fact that it's misleading and only involves a fraction of abortions performed each year, it has proven a very difficult frame to fight.

Lakoff tells us that effective frames drive at core values and our views of the world. He writes, “Framing is about getting language that fits your worldview. It is not just language. The ideas are primary — and the language carries those ideas, evokes those ideas.”<sup>5</sup> Partial-birth, as a frame, is far more powerful than late-term as it evokes ideas of brutality which can conflict with the values of even those who are pro-choice.

As the Act was being debated, passed by Congress, and finally upheld by the U.S. Supreme Court this Spring, pro-choice advocates struggled against the “partial-birth abortion” frame. Planned Parenthood often referred to the law as the “so-called Partial Birth Abortion Ban Act.”<sup>6</sup> This language violates a chief tenet of Lakoff's, “Do not use their language. Their language picks out a frame — and it won't be the frame you want.”<sup>7</sup>

NARAL Pro-Choice America takes a stronger tack, referring to the law as the “Federal Abortion Ban” which avoids the imagery of “partial birth” and suggests that all abortions have been banned, which is something many Americans oppose.<sup>8</sup> Still, this is more of a messaging strategy than a deeper re-framing of the issue around core values.

### Marriage

In 1996, the Defense of Marriage Act passed through the Congress and was signed into law by President Clinton. The Act defined marriage as between one man and one woman. Eight years later, with the Massachusetts Supreme Court expected to legalize same-sex marriage, President George W. Bush called for a federal amendment to the U.S. Constitution to ban same-sex marriage. In a review of the conservative organizations that support a constitutional ban, we find consistent language driving their position forward.

The Family Research Council, at the heart of the Right-wing Christian lobby, tells us that we must “protect,” “preserve,” and “defend” marriage.<sup>9</sup> This frame invokes the idea that there is an enemy we must fight. According to the Council, that enemy is the “homosexual lobby.”<sup>10</sup>

The conservative Heritage Foundation also tells us that we must “protect” and “defend” marriage.<sup>11</sup> Heterosexual marriage, the Heritage Foundation tells us, “is a fundamental social institution, providing the foundation of family life and the basic building block of society.”<sup>12</sup> This, we're told, is under threat.<sup>13</sup> Those who oppose same-sex marriage effectively frame the issue as one in which we are threatened by an enemy who wishes to upend the very bedrock of our society, which is a frightening prospect.

The media does not address the big why — why a corporation like Wal-Mart is even allowed to exist.

On the other side of the issue, the leading gay rights advocacy group, Human Rights Campaign, uses the frame of “marriage equality” to advance the fight for same-sex marriage.<sup>14</sup> Human Rights Watch also frames the issue as about “equality.”<sup>15</sup> Advocates have effectively used frames and messages to drive at core values of equality and fairness.

Today, many states have banned same-sex marriage, but progress continues to be made. Recently the state of New Jersey passed civil union legislation “giving gay couples all the rights and responsibilities of marriage allowed under state law — but not the title.”<sup>16</sup> And in New York, new governor Eliot Spitzer recently introduced legislation to legalize same-sex marriage in the Empire State.

## Current Frames From the Right

With the disappointing outcome of the past several presidential elections, many advised the Left to take a close look at the Right and learn from its successes (even if it offends their sensibilities to do so). The same advice should be applied to framing.

We see above that what the Right does so well — here with respect to abortion and marriage — is use frames to evoke the idea that its position is the status quo. And by using words like “defend” it implies that the majority is on its side.

In the world of corporate power, we must develop frames that are powerful and tap into peoples’ value systems — carrying forward the idea that corporations are a creation of society for the purpose of generating greater wealth and well-being for all. The Right is cognizant of this underlying value and has developed frames such as “ownership society” and “shareholder democracy” that seem to advance this purpose. In truth these frames actually subvert broad well-being by reinforcing the notion of “corporations as private property.” The underlying “private property” frame is fundamental to a philosophy based on empowering the few. The Right is masterful at framing our economy as if the majority of people have a meaningful ownership stake, when in fact most corporate equity is held by a tiny elite.

Our challenge is to find a frame that trumps the traditional business frame. We need a frame that advances a completely different concept of the role of business in our society, one that can evolve over time to promote a more sophisticated concept of corporations. We need a frame where corporations serve, not dominate; where they are the creations of citizens, not citizens in themselves; where they are expected to act morally, rather than amorally as we allow them to behave today.

Fred Block of the Longview Institute offers a compelling analysis of the framing put forward by the Right and Corporate America, which he calls Market Fundamentalism, described as “a dogmatic belief in the power of Adam Smith’s “invisible hand” to create prosperity.”<sup>17</sup> Through this frame, those on the Right — in the conservative political, business, and religious communities — are joined together in a shared story.

Block explains that Market Fundamentalism “was embraced by the Right wing in the U.S. in the 1970s to help paper over divisions between different constituencies. Market Fundamentalism appeals to large sections of the business community for reasons that are mostly cynical. While businesses lobby continually for different kinds of government assistance — contracts, subsidies, support in foreign markets, protection of their “property” rights, and so on — they switch to Market Fundamentalism when they want to oppose taxes, regulations, and other government measures that constrain their behavior. Embracing Market Fundamentalism helps them get the benefits of government assistance without having to pay the costs.”<sup>18</sup>

Lakoff writes that the Market Fundamentalism economic theory is captured in the Free Market frame.<sup>19</sup> This is the frame conservatives use which conveys the idea that everything will be solved by the market, such that markets “maximize efficiency and wealth for all.”<sup>20</sup> This is both a business and, implicitly, a moral argument.

Those who embrace the frame of the Free Market believe that, Lakoff explains, “The market is a competitive system where the disciplined are rewarded through profit, and the undisciplined (and hence immoral) are punished through poverty. The market is an instrument of morality.”<sup>21</sup> Whether or not they truly believe in a free market economy — which with monopoly corporate power and billions in government corporate subsidies is unlikely — it still proves an effective frame for pushing forward their interests: increasing their short-term bottom line by all possible means.

**The underlying “private property” frame is fundamental to a philosophy based on empowering the few.**

**Ninety percent of Americans believe corporations have too much influence over government.**

The Left holds a more historic view that corporations should serve the public interest. Corporations were historically chartered for limited public purposes, to build a railroad or a bridge, for example. During the course of the 1800s, this changed radically. The shift began with the Supreme Court 1819 *Dartmouth* decision, which found that corporations and the state chartering them are both private parties to a contract, conceptually moving corporate design from the public to the private sphere. The shift took a dramatic step further toward the private sphere with the Court's 1886 *Santa Clara* decision, which found that corporations are persons entitled to protections under the 14th Amendment.

## The Public View of Corporations

Unlike 200 years ago when state legislatures debated whether or not to grant a charter, today chartering is no more than a paper exercise. This lack of consideration given to the granting of charters goes hand in hand with how we view the role of corporations in society today. While public opinion polling shows the public believes corporations have too much power, they are at the same time viewed as private entities with their own rights. The reality is that corporations are creatures of law. They are public entities from conception. Yet the legal theory of corporations has moved so far from public to private — so far removed from the idea that corporations exist to serve the public interest — that the very idea now seems impossible.

A case in point can be seen in research on consumer attitudes about Wal-Mart conducted in 2005 by Celinda Lake of Lake, Snell, Perrin, Merrin Decision Research. She found little traction among consumers for arguments that Wal-Mart was accountable to its workers and communities, “because people say all corporations act this way.”<sup>22</sup> Like Lakoff, she recommends using messages and frames that drive at people's values. As she puts it, “Many voters are longing for reconnection to community and some sanctuary from the crudity and greed in popular culture.”<sup>23</sup>

Other illuminating research on Wal-Mart was commissioned in Spring 2006 by Wal-Mart Watch. It found that Americans believe that if a corporation makes even a small gesture of goodwill — like sponsoring a Little League team — it can be enough to support the corporation's plans to locate in a community, because the public does not expect good corporate behavior.<sup>24</sup>

While the public expects little of corporations, it also doesn't much like them. Public opinion research by the Pew Research Center for the People and the Press has found a downward trend in American attitudes toward corporations. Pew reported in October 2005 that nearly half of Americans have a negative image of corporations, a significant change since the mid-1980s. According to Pew, “The erosion in perceptions of corporations has come among most demographic and political groups.”<sup>25</sup>

The *New York Times* reported in December 2005, “More than ever, Americans do not trust business or the people who run it.”<sup>26</sup> In citing a Harris poll — which found that public opinion is even more negative when considering the corporate role in government — the paper reported that 90 percent of those polled “said big companies had too much influence on government.”<sup>27</sup> In this light, it is no surprise that John Kerry often referred to the excessive power of large corporations in his 2004 presidential bid. It is possibly why John Edwards continues that theme in his current campaign. Yet arguably, neither has found a frame in which to cast these arguments based on progressives' deepest values.

## Current Frames to Change Corporations

Translating negative opinion into action is difficult. It takes good framing to motivate people, framing that goes to core value systems. Several frames are often invoked by activists seeking to change how corporations behave. *End Corporate Personhood* is one of them. There are also the more mainstream frames of *Corporate Reform*, *Business Ethics*, and *Corporate Social Responsibility (CSR)*, the latter now co-opted by corporations themselves.

Of these frames, the CSR frame is perhaps the most well known, largely because it is compelling, embraced by companies, and can enhance corporations' image without threatening their fundamental purpose. Many corporations now have CSR officers and internal divisions devoted to the matter. The frame is effective for

The frame of **Community** directly challenges the supremacy of “individualism” inherent in the conservative frame.

corporations in part because it's positive. It includes the word “responsibility,” which is a value-driven term. Joined with the word “corporate,” the phrase implies all the activities of a corporation are responsible.

Yet the CSR frame does not imply a need for major changes in corporate behavior, or changes in the balance of power between people and corporations. This frame takes us in the opposite direction, putting forward the idea that there is no need for deeper change since corporations are behaving responsibly on their own accord. *Business Ethics* is similarly problematic, as it has evolved to mean little more than “compliance” with governmental regulations.

*End Corporate Personhood* is a frame that is immediately problematic. It's negative, focused on “ending” something, without offering an alternative vision. For many it quickly causes confusion as the idea of corporate personhood is not readily understood. Perhaps most damning, this frame does not activate deeper core values of a broad cross-section of society. It is a strategy more than a frame.

*Corporate Reform* is a broader frame and a more positive one as well. It has a “feel good” sensibility to it. But like *End Corporate Personhood*, it doesn't drive at a set of core values. It suggests changing corporate behavior, but not changing the fundamental role of corporations in society. It is not a vehicle for conceptualizing deeper change. While the term “reform” does imply something is wrong, as in the case of “tax reform,” it doesn't telegraph what is wrong relative to our deeper values. It lacks specificity. What kind of reform? This frame lacks the paradigmatic and motivational boldness that could propel a broad people's movement to achieve a radical redefinition of the role of corporations in society.

## New Frames to Explore

In *The Great Turning*, corporate theorist David Korten offers two frames which he describes as “contrasting models for organizing human affairs,” *Empire and Earth Community*.<sup>28</sup> He explains them this way:

*Empire organizes by domination at all levels, from relations among nations to relations among family members. Empire brings fortune to the few, condemns the majority to misery and servitude, suppresses the creative potential of all, and appropriates much of the wealth of human societies to maintain the institutions of domination.*

*Earth Community, by contrast, organizes by partnership, unleashes the human potential for creative co-operation, and shares resources and surpluses for the good of all. Supporting evidence for the possibilities of Earth Community comes from the findings of quantum physics, evolutionary biology, developmental psychology, anthropology, archaeology, and religious mysticism. It was the human way before Empire; we must make a choice to re-learn how to live by its principles.*<sup>29</sup>

His frame of *Community* has surfaced over and over throughout this Strategic Corporate Initiative report. It is a term used often by various issue and demographic sectors: the environmental community, the labor community, the religious community, communities of color. Even businesspeople refer to “the business community.” The term *Earth* has been politically charged in the past, but is today increasingly embraced regardless of political, demographic, or religious affiliation. As we face growing ecological crises, *Earth* is likely to evolve into a term that could have potentially important framing value in the future.

We believe that *Community* is a frame warranting serious examination, if we can find the right modifier to accompany it, and in the process advance the notion of fundamentally changing the role of corporations in our society. Lakoff talks about “healthy communities.” Other phrases include “livable communities,” “community-based economics,” “community rights,” and “community self-determination.”

The frame of *Community* directly challenges the supremacy of “individualism” inherent in the conservative frame. It forces an examination of how business impacts communities. *Community* welfare becomes the standard by which acceptable business practices are judged, and communities themselves the arbiters of whether standards have been met. A *Community* frame also helps with movement building, since movements begin in communities. This is a frame that deserves further research.

Earlier we shared Fred Block's analysis of the frame put forward by conservatives, that of *Market Fundamentalism*. He writes that this frame emerged following the decline of the Democratic frame advanced in the 1930s to help bring us out of the Great Depression. Democrats, according to Block, “employed a

narrative in which an activist government overcomes the weaknesses of an unregulated market economy to achieve stability and renewed economic growth.”<sup>30</sup> This worked well as the country struggled to regain its economic footing, and it persisted over the next thirty years. But with the war in Vietnam, civil rights struggles, conflicts over gender and the environment, Block writes, this frame began to unravel. Republicans were able to put forward the idea of Market Fundamentalism, implying that “the triumphant individual can be set free of government restrictions and the liberal elites can be dismantled.”<sup>31</sup>

The counter frame Block suggests is the *Moral Economy*. He notes that economic frames need not begin with economists, but can be grounded in moral arguments:

*It is useful to remember that Franklin Roosevelt developed and mobilized the language of activist government well before Keynes and others came up with an economic justification for it. Roosevelt made the initial break with Market Fundamentalism on his own, and it was only later that the Keynesian revolution in economics legitimized his path. Similarly, it was not the economic research of men like Friedrich von Hayek and Milton Friedman that made the revival of Market Fundamentalism possible. It was the fact that their economic ideas could be easily expressed in familiar and simple moral terms. In both cases, the key to changing the dominant story has not been economic theory but the power of a moral language.*<sup>32</sup>

The frame of the Moral Economy, Block says, allows us to tell the story of the need for change achieved through “sustainable prosperity...built on strong moral foundations.”<sup>33</sup> It also sets the question of “corporations” aside, which is powerful, in that it invites the invention of new economic institutions, rather than trying to alter current institutions to perform in a manner for which they were not designed.

The term *Moral* warrants further examination for possible use as a frame. If there is an implied conservative morality in the frame of Market Fundamentalism, using the term in the frame of Moral Economy potentially performs an aikido move, bringing progressive morality into economic thinking. By modifying *Economy* with the term *Moral*, this frame lays out a positive vision that activates deeper values shared by a broad section of the public. It activates the Judeo-Christian aspect of our culture and invites the use of iconic touchstones such as the 10 Commandments and the Sermon on the Mount. Yet it is also non-denominational, potentially activating the core principles of all religions such as not doing harm to others, not telling lies, not stealing, honoring commitments, taking care of those most in need, protecting children, and so on. These are principles understood and embraced by the public, and easily applied to evaluate and reform corporations.

Moral Economy as a frame forces a standard of accountability the business community has assiduously resisted, with the current assumption that “business is fundamentally amoral.” It brings “good” and “evil” into the debate about business practices. For example, it forces us to re-examine the justifications of an industry like Big Tobacco that is responsible for 400,000 deaths a years. It puts the firing of thousands of employees and simultaneous award of multi-million dollar bonuses to executives in a moral context.

It also invites advocacy groups to rethink how they have framed their own issues. This kind of rethinking occurred, for example, after Bartholomew I, patriarch of the Eastern Orthodox Church, proclaimed that “harming the earth was a sin.” This led Carl Pope, executive director of the Sierra Club, to acknowledge that environmentalists had missed a huge opportunity by framing their debates in amoral, scientific terms, instead of strong moral terms. The potential here for powerful reframing — not only by environmentalists but by labor and other issue advocates — is enormous and largely untapped.

The frame Moral Economy also allows the progressive community to claim ownership of the critical linguistic device of “morality.” As Lakoff has noted, conservatives have been allowed to claim ownership of many powerful terms in our social lexicon, including “morality,” “life,” “freedom,” “family,” and “values.”<sup>34</sup> With a Moral Economy frame, we reclaim the primacy of morality, redirect its application to the economy, and invite into our fold those who are drawn to moral framing. An effective frame in the context of a strategic initiative, as Lakoff notes, is one that immediately puts the opponents (amoral business advocates) on the defensive, invites multiple alliances (e.g. with more conservative groups), and allows for multiple objectives.

Lakoff offers his own ideas for possible framing of a campaign to change the imbalance of power between corporations and the public good. He writes, “On issue after issue, the counterpoints to the conservative principle of the free market are the progressive principles of *human dignity* and the *common good*. We are interested in a market that serves human values, not humans who serve a market.”<sup>35</sup>

Lakoff's frame of the *Common Good* overlaps with another set of frames advanced by Peter Barnes, *the Commons*. In this report we advocate that protection of the commons is critical. In many ways, *the Commons*, along with the notion of community, captures the essence of our vision of the role of corporations in the future — a vision in which corporations must serve communities, and the commons is protected from corporate encroachment.

Barnes advanced this frame in his book *Capitalism 3.0*. He explains that the big idea advanced in his book is that:

*[W]e need to fix our economic operating system before it destroys the planet, and the way to do that is by rebuilding the commons. Our commons — air, water and ecosystems of all sorts, plus our great cultural and information commons, and all of the things that bind us together as a community, everything from streets to the Internet and the airways — all of these things are under attack. They're under attack by private corporations that want to enclose them or take valuable stuff from them or dump waste into them.<sup>36</sup>*

*The Commons* or *Common Good* succinctly capture the essence of the progressive philosophy. They are closely aligned with the notion of Community, because Community is about individuals acting in their common interest. The challenge for subsequent research is to determine how well these terms re-shape our thinking and motivate a citizen movement. It may be that this is a semantic derivative of a Moral Economy, that is, an economy where what belongs to all is not stolen by a few for their personal gain. Perhaps the Moral Economy frame could evolve at a later stage in a people's movement, when the public has already accepted the underlying principles on which it rests.

As we examine these three major frames — Community, the Commons, and Moral Economy — it is also possible that hybrids may be effective. Perhaps “a moral economy for the common good” or a “community-driven moral economy” represent effective framing hybrids. Such questions must be explored more systematically before launching a major movement, because they are critical to the movement's potential for success.

## The Need for Framing Research

In Section 1 of this report, *A Call for a Global Movement*, we write:

*The main components of a movement to bring corporations back under citizen control already exist in the U.S. and around the world — including organized labor, environmentalists, religious activists, shareholder activists, students, farmers, consumer advocates, health activists, indigenous and community-based organizations...All these movements are advocating for healthy communities, for a moral economy, for the common good. Added together, these various movements possess enormous collective power. Yet the whole is less than the sum of the parts. Despite our many achievements, the gap in power between corporations and democratic forces grows wider each year.*

We need to develop a shared ideology among these movements which unifies them. We believe powerful frames are key to this ideology. It is with a common ideology, within which we are able to recognize that different constituencies are all striving for a common world view, that we will build a common movement for change. Powerful frames are the guide.

Lakoff says that to develop good frames, we must use language that evokes ideas that resonate with our core value systems. In developing new frames, he writes, “Always start with values...”<sup>37</sup> Some core values that he suggests are trust, opportunity, fairness, and community.<sup>38</sup> Another value that the Strategic Corporate Initiative team considers critical is “fundamental rights,” such as the right to clean air and drinking water, food, and freedom from abuse.

In considering new framing, we also are aware of the need to avoid using language that is easily co-opted. Perhaps the most striking example of co-opted language is Corporate Social Responsibility, now widely used by corporations to paint themselves as environmentally or worker-friendly even when their behavior shows otherwise.

**We need to develop a shared ideology among these movements which unifies them.**

## Frames for Consideration

The Strategic Corporate Initiative team considered a number of possible frames to unite these many movements. They fall into one of two thematic categories: the *economy*, or *communities* and *democracy*.

Possible frames with the *economy* theme include:

- ▶ Moral Economy
- ▶ Healthy Economies
- ▶ Living Economy
- ▶ Economic Fairness
- ▶ Fair Economy

Possible frames with *community* and *democracy* as themes include:

- ▶ Healthy Communities
- ▶ Community Control
- ▶ Democratic Control of Corporations

Hybrid combinations of these themes might include:

- ▶ Community-Driven Moral Economy
- ▶ Moral Economy for the Common Good

We achieved no consensus on which of these is best. *Economy* raised concerns as it may not resonate with environmentalists or public health advocates, for example, who may not consider their work to be economic in nature. *Community* may not resonate with advocates who work at the international level to change global trade rules, or with human rights advocates whose concerns focus on wide scale abuses. *Democracy* is a word that drives at core problems, but many don't currently consider their work as being rooted in democratic governance issues.

Another key consideration is whether this language connects with the idea of universal rights. That is, in this report we write frequently about the legal rights that corporations have which undermine our ability to make progress on the issues that we care most deeply about. Communities can't say no to a factory hog farm. The electorate is losing the attention of elected officials as wealthy corporate interests stand in the way. Workers face corporate anti-labor activities that have successfully turned "union" into a dirty word.

While not without challenges, the proposed frames do invoke many key values Lakoff describes, including *Fairness* and *Community*. These are values that resonate across the spectrum of our movements that need to be unified under a common ideology.

If the final answer is not yet within our grasp, the key pieces — recommended by Fred Block, David Korten, George Lakoff, Peter Barnes, and the Strategic Corporate Initiative — may now be on the table. What we do know is that frame development takes time and resources. Lawrence Wallack notes that frames are not made in a day. He writes, "The road to meaningful framing may require a longer journey than most of us wish, but it's the trip we need to take in order to reach our final destination."<sup>39</sup>

To successfully move toward an economy and society where community and human rights are favored over the "rights" and interests of corporations, we need a unifying ideology to bring movements together. Proper framing will help catalyze this.

## Endnotes

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- <sup>3</sup> "Wal-Mart Launches New Environmental Initiative," Reuters as reported on the New York Times Online, February 1, 2007.
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- <sup>6</sup> Planned Parenthood press release, <http://www.plannedparenthood.org/news-articles-press/politics-policy-issues/abortion-lawsuit-12313.htm>
- <sup>7</sup> "Don't think of an Elephant!," George Lakoff, 2004, Page 3.
- <sup>8</sup> NARAL Pro-Choice America press release [http://www.prochoiceamerica.org/news/press-releases/2006/pr11072006\\_scotus\\_fab.html](http://www.prochoiceamerica.org/news/press-releases/2006/pr11072006_scotus_fab.html)
- <sup>9</sup> Family Research Council website: <http://www.frc.org/file.cfm?f=KEYWORD&key=DO>
- <sup>10</sup> Family Research Council website: <http://www.frc.org/get.cfm?i=WAo6J63#WAo6J63>
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- <sup>24</sup> Wal-Mart Watch, 2006.
- <sup>25</sup> Pew Research Center for the People and the Press, October 25, 2005, "Public Sours on Government and Business" <http://people-press.org/reports/display.php3?ReportID=261>
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- <sup>37</sup> "Don't think of an Elephant!," George Lakoff, 2004, Page 116.

<sup>38</sup> "Don't think of an Elephant!," George Lakoff, 2004, Page 13.

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## Turning SCI into a Movement

With various strategies and possible frames outlined, the next step is creating action — turning this Strategic Corporate Initiative into a movement. This begins with cultural readiness, which is already in evidence. There is an emerging consensus in civil society that corporations have become too powerful and must be brought back in service to and under the control of civil society and governments. Public opinion polls consistently show that American perceptions of corporations are at an all-time low.<sup>1</sup> Global public opinion polls on corporations are similarly low.<sup>2</sup> Many reformers have pinned their hopes on the evolution of existing movements that are challenging corporate power,<sup>3</sup> but in their current form these disparate movements show little promise of achieving truly transformative change.

The components of a global citizens' movement do already exist, in the form of numerous campaigns and strategies. Yet the full conditions for a unified movement are not yet in place. In large part, this is because the constituents are not connected by a broadly shared ideology, vision, frame, and strategy. With these in place, the conditions will be ripe for capitalizing on triggering events to mobilize a diverse, international effort. When the many streams of civil society actions flow into a single river, we can begin to create a global economic transformation toward a moral economy, driven by community-based democratic decision making, protection of the commons, and fundamental changes in the nature of corporations.

### Historical Background

The existing movement is often characterized as an anti-corporate globalization movement. While this draws from many different constituencies, it stands on the shoulders of a century of movement-building by labor activists. For over 100 years, from the late 1800s to the 1990s, the major organized countervailing power to excessive corporate power was organized labor. Labor unions in the United States and around the world fought for a series of basic worker rights that put constraints on corporate power. Organized labor won a series of huge legislative victories in the 1930s, and they were again the key pressure group for gains in subsequent decades.

Today, the organized labor movement is still extremely strong in some countries, particularly in Northern Europe, and in countries like Brazil, South Africa, and South Korea. Over 200 million workers belong to trade unions around the world, and many of them coordinate through international trade union secretariats and congresses. Yet, almost everywhere, trade unions are weaker than they were two decades ago, because global corporations have used their power to play workers off against one another in different countries to bargain down wages and working conditions in many parts of the world.

By the 1990s, most unions concluded that they alone could seldom win major gains from global firms, and many sought active coalitions with other social movements. In the U.S., Canada, and Mexico, unions were the anchor of a remarkable coalition that fought the North American Free Trade Agreement, drawing together environmentalists, farmers, religious activists, students, women, and activists who work on health, genetically modified foods, and related issues. These groups again came together in a highly visible fashion in November 1999 in Seattle, when the so-called “Seattle Coalition” shut down a ministerial meeting of the World Trade Organization.

In the ensuing years, these groups achieved other important international victories that included blocking progress at subsequent WTO meetings in Cancun and Doha, as well as helping to diminish the status of the IMF and World Bank. Other movement threads developed, such as the fight against GATT and water privatization and the campaigns for essential medicines like AIDS drugs. Similar coalitions have taken on Wal-Mart and other big box stores, as well as other corporations. We have

**Table 1: Elements of the Existing Corporate Reform Movement**

Movement Infrastructure	Corporate Campaign Strategies	Corporate Campaign Issue Clusters	Convergent Corporate Campaigns	Potential Trigger Events
Think Tanks	Multi-Issue	Labor Campaigns	Climate Change	Climate Events
Funder Networks	Single-Issue	Environmental Campaigns	Resisting Privatization	End of Cheap Oil
International Networks	Corporate Social Responsibility	Animal Rights Campaigns	Big Box Transformation	Corporate Scandals
Labor unions	Community-Based Public Policy	Public Health Campaigns	Universal Healthcare	Retirement crises
Leading NGOs	Changing International Rules	Human Rights	World Trade Agreements	Economic Crisis
Social Movements	Alternative Structures	Community Rights		Political Scandals
Training Centers	Corporate Governance	Peace and Justice		Political Changes
Research		World Trade Campaigns		
Media		Media Reform		
Community-Based Groups		Electoral Reform		

entered an era when controlling corporations requires cross-issue, cross-strategy, and cross-border collaboration.

## The Existing Corporate Reform Movement

Table 1 above provides one way of categorizing the major components of the existing corporate reform movement. The first critical cluster is *movement infrastructure*, showing the institutions and resources necessary to carry on campaign work, such as think tanks, funder networks, media, community groups, and so on. The second cluster is *corporate campaign strategies* which represent the differing approaches to controlling corporate behavior, such as single-issue, public policy, corporate social responsibility, and so on. The third cluster is *campaign issues* which represent the most pressing concerns of most corporate campaigners, such as animal rights, public health, peace and justice, and so forth.

The fourth cluster shows *convergent campaign issues* which represent areas where there is potential to align different constituencies. Our analysis identified five points of convergence: climate change, revisiting privatization, big box transformation, universal healthcare, and international trade agreements. The final column describes the possible *trigger events* that might provide circumstantial opportunities to advance these issues, such as the end of cheap oil or political changes.

The greatest challenge to turning the existing movement into a global citizens' movement involves finding strategies that unify the various corporate campaign strategies listed in the second column above. Figure 1, below, provides a simple taxonomy of types of corporate campaign strategies. Some of these overlap, as in the case of multi-issue corporate campaigns on Wal-Mart and community-based site fights to block Wal-Mart. In general, however, these constituencies operate independently with only occasional collaboration. Their relative impact also varies. In years past, policy campaigns predominated. As governments became increasingly captive of corporations, single-issue marketplace campaigns emerged. As big box retailers came to dominate the marketplace, multi-issue campaigns became more important. And as climate change and other corporate responsibility issues arose, investor strategies became increasingly important.

**Figure 1. Taxonomy of Current Corporate Strategies**



## The Stages of a Movement

How might these diverse strategies be knit together into a movement? First, we must acknowledge that a movement cannot be created by fiat or controlled from above. It must evolve organically. But forces that are already emerging can be shaped via conceptual alignment. Existing organizations can provide much of the leadership, and where gaps exist, new organizations can be created.

Understanding how movements evolve is critical. Drawing on the seminal work of Bill Moyers,<sup>4</sup> Chuck Collins (a co-author of this report) suggests movements have three general stages: *preparation*, *agitation*, and *consolidation*.<sup>5</sup> Table 2 outlines the characteristics of these stages.

Recognizing these stages, this report has divided its strategic recommendations into two broad clusters: short-term and long-term. The short-term strategies are those most appropriate to the preparatory stage, while the long-term strategies are more appropriate later in the agitation and consolidation stages.

**Table 2: Stages of Social Movements**

Movement Infrastructure	Preparation	Agitation	Consolidation
	<ul style="list-style-type: none"> <li>« Business as usual</li> <li>« Failure of established channels</li> <li>« Ripening conditions</li> </ul>	<ul style="list-style-type: none"> <li>« Takeoff</li> <li>« Perception of failure</li> <li>« Winning over majority</li> </ul>	<ul style="list-style-type: none"> <li>« Achieving alternatives</li> <li>« Consolidating and moving on</li> </ul>
Power-holders	<ul style="list-style-type: none"> <li>« Promoting the status quo — organizing counter-movements</li> </ul>	<ul style="list-style-type: none"> <li>« Organizing backlash to movement — discredit/repress leaders and organizations</li> <li>« Allies and whistle-blowers support movement goals</li> </ul>	<ul style="list-style-type: none"> <li>« Accommodation of movement demands</li> <li>« Cooptation of leaders</li> <li>« Acceptance and integration</li> </ul>
Public	<ul style="list-style-type: none"> <li>« Moves from dormancy to high levels of sympathy</li> </ul>	<ul style="list-style-type: none"> <li>« Moves to near majority support</li> <li>« Wide public involvement</li> </ul>	<ul style="list-style-type: none"> <li>« Accommodation of movement demands</li> <li>« Cooptation of leaders</li> <li>« Acceptance and integration</li> </ul>
Social Change Organizations	<ul style="list-style-type: none"> <li>« A few infrastructure groups exist</li> <li>« Catalyst groups form</li> </ul>	<ul style="list-style-type: none"> <li>« Formation of mass organizations and coalitions</li> <li>« Splits in tactics</li> </ul>	<ul style="list-style-type: none"> <li>« Long-haul compliance organizations emerge</li> </ul>
Activities	<ul style="list-style-type: none"> <li>« Cultural work</li> <li>« Research</li> <li>« Grassroots education</li> <li>« Independent media</li> <li>« Leader development</li> <li>« Small actions</li> </ul>	<ul style="list-style-type: none"> <li>« Trigger events</li> <li>« Mass protest</li> <li>« Electoral work</li> <li>« Initial legislation</li> <li>« Mainstream media</li> </ul>	<ul style="list-style-type: none"> <li>« Policy gains</li> </ul>
Funders	<ul style="list-style-type: none"> <li>« Shoestring operations</li> <li>« Visionary entrepreneurial social change funders</li> <li>« Social change foundations</li> </ul>	<ul style="list-style-type: none"> <li>« Public dues</li> <li>« Centrist foundations</li> <li>« Individual contributions</li> </ul>	<ul style="list-style-type: none"> <li>« Sustainer dues and memberships</li> <li>« Mainstream foundations and institutional funders</li> <li>« Individual bequests</li> </ul>

Source: United for a Fair Economy (2004) adapted from Bill Moyers.

## Preparatory Stage: Laying the Foundation

Currently, the economic transformation movement is in the preparatory stage. Conditions are ripening. Public sympathy is rising. Catalyst groups are forming, taking small actions and developing leaders. Funding is limited. The infrastructure is being created that can serve as the foundation for a broad citizens' movement. The need at this time is for strategies that elevate the debate, create ideological convergence, create a core activist infrastructure, and engage powerful constituencies.

To build a movement, there is a need, first, for *process elements* (such as networks, centers, databases,

discussions, and shared vision), and second, for strategy elements (the actual campaign activities to mobilize around). We'll look at these in order. We begin with process elements.

Developing the processes appropriate to the preparatory stage is initially about gathering leaders and civil society groups to discuss and refine a common vision. They explore and agree on common priorities for action and determine what kind of strategic relationships they desire. They begin to adopt framing language. Strategic segments begin to coalesce (grassroots activists, writers, strategists, funders, legislators, lawyers, etc.). They set up linking systems to facilitate communication and, when necessary, joint decision making. They begin to take initial actions and may even achieve some early victories. Think tanks begin to produce reports describing the extent of the problems and propose alternatives for further research and consideration.

## Foundational Infrastructure

We should not assume that movement infrastructure will organically emerge. Some components do exist, but in other cases we can find models to emulate.<sup>6</sup> Here are some of the key infrastructure components:

- ▶ **A National Community Rights Network** would be built to create infrastructure to facilitate legal challenges, education, support, and strategic campaigns in communities as well as to recruit community leaders into its network. It would organize and lay the foundation for a people's movement by educating and engaging people and communities that face corporate assaults on how to change the underlying rules that prevent them from having power over corporate decisions. The Network is discussed in more detail in Section 6, *Elevate Community Rights*.
- ▶ **A Center for a Strategic Campaigns** would be established to catalyze the Strategic Corporate Initiative debate, facilitate high-level strategic discussions, and report on progress (e.g. successes, barriers, emerging opportunities). Additionally, the center would aggressively organize and potentially supervise "meta-campaigns" around key issues that unite movement players.
- ▶ **An International Network of Networks** would link corporate campaign groups together. Hubs need to be established on each of the major continents with systems for facilitating communication and collaboration.
- ▶ **Lead civil society groups** for various constituencies (e.g. environment, labor, human rights) or for the highly strategic collaborative campaigns (e.g. climate change, water privatization, healthcare) need to be identified and invited into this process from the beginning so they can shape the process and own the results. Regional meetings would provide an important opportunity to refine strategy and define complementary roles.
- ▶ **A Corporate Legislative Caucus** could be formed as a subcommittee of the Progressive Legislative Action Network, which was set up to counter the work of the American Legislative Exchange Council. The latter boasts a membership of almost a third of all state legislators and is dedicated to advancing the corporate agenda at the state level.
- ▶ **A Corporate Transformation Funders' Network** should be created with its own staff to begin educating funders about this movement and their collective potential for fostering its evolution and success.

## Foundational Discussions

- ▶ **Sparking the debate.** Articles need to be produced calling for an evolution of the corporate reform movement into a deeper transformation movement. This debate needs to be fostered among activists and foundations.
- ▶ **Producing a shared vision.** A common vision like the one advanced in this report needs to be further vetted with leading activists and theorists. It needs to be transformed into a series of formats that can be circulated widely, with feedback to create a shared vision that could be refined over time.
- ▶ **Developing a shared set of strategic priorities.** Leading civil society groups will need to work together to develop strategies that reflect their agreed upon priorities. A condensed Strategic

There is a generalized belief among the public that corporations have become too powerful and their power is threatening.

Corporate Initiative report could be distributed among these core constituencies so the recommendations could be debated and refined. There may be several different organizations that work in collaboration to convene these forums.<sup>7</sup>

## Foundational Research

- ▶ **Refining and incorporating the framing.** To develop greater uniformity in advancing a framework and story that promotes people's control of their governments and governments' control of corporations, various frameworks need to be tested. It is possible we may need a sequence of evolving frameworks, setting up a more powerful frame that the public is not yet ready to accept, but could later accept. Different countries may need variants of the framing.
- ▶ **Preparing for triggering events.** There have already been a number of triggering events in recent years, starting with the Enron, WorldCom, Tyco, and other scandals. These were largely missed opportunities. We need to identify the most likely future triggering events and prepare messaging, mobilization strategies, and specific proposals and legislative champions.
- ▶ **Opposition research.** It would be helpful to identify the most likely opponents and strategies they may employ — focusing on specific industry sectors (e.g. oil) as well as trade associations and the U.S. Chamber of Commerce. Opposition research also needs to identify influential opponents in state and federal legislatures and work with others to challenge their re-election.

## Foundational Tools

- ▶ **A Movement Database:** The Natural Capital Institute has produced the WiserEarth database, a relational database that can be accessed on-line by activists anywhere in the world. It already profiles over 100,000 civil society organizations. This tool can enable an International Network of Networks to identify potential member organizations, facilitate cross-border communication, and provide a vehicle for educating activists about vision, framing, and priority initiatives. This database needs to be supported, promoted, and used.
- ▶ **A Corporate Wikipedia:** Organizations like CorpWatch have proposed developing this tool, which would entail identifying the largest corporations in the world and collecting research on them to document their wrongdoings. Activists would be encouraged to contribute findings directly.
- ▶ **An On-Line Campaigners' Toolkit:** A number of activist websites include toolkits to help organizers and campaigners. Some, like the Business Ethics Network, provide case studies of successful campaigns. To build an international movement, we need an organizer's toolkit that educates corporate campaigners about the larger issues involved and shows how these issues can be incorporated into their immediate issue campaigns. The toolkit could also provide practical advice on corporate campaigning, from organizing and creating demands to media and negotiations.

## Preparatory Stage: Developing Strategies

In addition to foundational infrastructure and research, a unified movement needs unified strategies. In previous chapters we have proposed a series of short-term priority strategies that can serve to build a broad movement. These strategies are one of several factors that theorists consider essential to movement building.

Other factors identified by movement theorists as critical exist already.<sup>8</sup> First, in most countries the social, political, and communication systems are conducive to people coming together. Second, as polling suggests, there is a generalized belief among the public that corporations have become too powerful and their power is threatening. Third, a broad range of constituencies of change are actively engaged in efforts to rein in corporations. Fourth, triggering events have and will continue to occur around which mobilization could

**Communities must be a key focal point for movement building.**

occur. Fifth, constituencies have been mobilized to fight international corporate threats (e.g. anti-globalization movement) or are beginning to mobilize around urgent international issues (e.g. climate change). Sixth, governments and corporations are responding to these mobilization efforts, either by allowing or blocking them.

In selecting strategies, the Strategic Corporate Initiative Working Group has relied on key criteria such as these:

- ▶ Capitalizing on likely public outrage.
- ▶ Activating powerful constituencies, especially community-based grassroots.
- ▶ Carrying the overall movement frame well.
- ▶ Building movement strength and infrastructure.
- ▶ Capitalizing on trigger events.
- ▶ Reasonable likelihood of success.
- ▶ A wedge issue that sets up future action.

In the following section, we will briefly discuss each of the proposed strategies.

## Domestic Short-Term Strategies

### Separating Corporation and State

Nearly everyone we interviewed — activists and corporate executives alike — agreed that the first step to restoring people's control over their government, and ultimately over corporations, was to end companies' ability to influence elections. While efforts to achieve this have seen mixed success, we believe that a more concerted effort that joins legal, community, and marketplace activists could finally produce results. As noted earlier, several groups already play a leading role in this arena and they will be well positioned to capitalize on a major trigger event we consider likely (i.e. Democratic control of the presidency, Senate, and House after the 2008 election). This initiative has a reasonable likelihood of success given current discussions in the Congress, and it is critical for weakening the political power of corporations to block subsequent initiatives we propose.

### Elevating Community Rights

Communities must be a key focal point for movement building, since the over-arching goal is to elevate the rights of communities over those of corporations. To achieve this goal, we must promote healthy, livable communities that have the right to control commerce within their jurisdictions. This initiative represents the nexus for many of the initiatives in this report. It incorporates the community action components of each initiative into one cohesive assertion of community rights to self-determination. It re-frames communities' thinking about their position in the democratic pecking order. They are asserting the top position is theirs. This initiative capitalizes on the inevitable local public outrage (e.g. when big box stores are proposed). It activates local grassroots, as well as a broad range of community members, cutting across political lines (e.g. small business, farmers, concerned neighbors). Finally, it is a foundational strategy that sets up more future legal assertions of community rights. This initiative carries the healthy and democratic communities frame well by giving them power to determine their future. It also carries the moral economy frame well by emphasizing people and communities' rights over amoral corporations' rights.

### Corporate Ratings

This initiative is designed to change a core driver of the current corporate system—capital markets. Its goal is to lay the foundation for re-directing trillions of dollars away from the bad companies and towards the good. It builds on a strategy that is already used by corporate campaigners — getting state and municipal governments to set procurement standards to govern all corporate contracts. As a movement strategy, it has several positives. It potentially unites disparate issue advocacy groups. It adds a political activist contingent to the existing investment activist contingent. It capitalizes on public outrage over a wide range of trigger

events such as global warming, resource shortages, corporate scandals, human rights abuses, etc. It also creates opportunities for good companies to distinguish themselves in the marketplace from bad ones, and be rewarded for doing so. This initiative also carries the moral economy frame well in that it sorts good from bad companies and rewards accordingly.

### Ending Short-Termism

One theme that was consistent throughout our research and interviews was the need to end “short-termism.” This initiative is designed to capitalize on trigger events associated with events like the predatory lending crisis, severe drops in the stock market, scandals over CEO pay, and corporate abuses such as misreporting earnings or backdating options. This initiative would include policy options — like using capital gains taxes to discourage speculative investing — and would aim to develop standards that guide municipal and state purchasing and investment decisions. It draws new constituencies into this arena. Marketplace campaigners could elevate this issue and stigmatize corporate brands. Labor activists could join with other community interests to support “circuit breaker” ordinances that link municipal and state procurement, taxation, subsidies, and business zoning approvals to bright-line criteria (such as CEO pay ratio, fighting unions, criminal convictions, and environmental violations). This initiative not only joins powerful constituencies, but it carries the moral economy frame well, capitalizes on egregious corporate misbehavior, and has a reasonable likelihood of success. It is also a wedge initiative in that sets up the possibility of further “circuit breakers.”

### Taming Giant Corporations

In our interviews, theorists emphasized the importance of corporate size, since it will be difficult to ever control global companies that eclipse the size of governments. We suggest elevating an emerging ideology that aims to restrict markets and advance the public sphere and “Fourth Sector” community-based businesses. This initiative could unite corporate campaigns — like challenges to Big Pharma monopoly patents on life-saving medicines — with policy approaches, such as organizing congressional hearings. While public outrage is somewhat dormant on this issue, its embers can be fanned as Americans share a broad historical distrust of concentrated power. Stigmatizing size carries the moral economy frame well. And pointing to the need for alternative company designs — cooperatives, employee ownership, municipal utilities, and so forth — dovetails nicely with other community oriented initiatives such as elevating community rights, corporate ratings, and protecting the commons. From a movement point of view, this initiative’s major contribution is a powerful vision of an alternative economy that can activate the grassroots and build movement strength.

## International Short-Term Strategies

### Creating Water Trusts

Water is emerging worldwide as one of the most critical battles for the commons. This initiative could link international campaigns across all the major continents, showcasing the battle between community rights and corporate power. It is heavy in symbolism (i.e. water is essential for life) and is an excellent vehicle for educating the public on the concept of the commons. We propose this initiative because it has already achieved significant victories and is already building cross-strategy, cross-border alliances. And it is likely to become increasingly contentious under pressures of population growth and climate change. This is not a new initiative, but it has momentum and strong movement-building potential. Equally important, it establishes the link between essential services, community and human rights, and the expansion of the public management of the commons. It carries the moral economy (no one should be denied the essentials of life for lack of money) and healthy and democratic communities frames well. We believe that it needs to be better funded and to become even more proactive in achieving local, state, national, and regional declarations against privatization.

### Fair Trade Movement — Moving from Defense to Offense

Now is an important time to advance alternative models for trade agreements. Fast track legislation in the U.S. Congress is up for renewal in July 2007, which could provide an opportunity to bring international pressure to bear to not only block the renewal of this authority, but to begin debating alternatives. The power shift in Washington, D.C., may also be a trigger opportunity. Additionally, this initiative is intended to encourage a shift from a predominantly reactive to a predominantly proactive campaign model, by galvanizing

**It will be difficult to ever control global companies that eclipse the size of governments.**

support for alternative models. The infrastructure for movement collaboration exists. We believe it needs to have a more proactive focus. This, in turn, would help further establish the anti-globalization movement as a powerful core constituency in an international citizens' movement. As more and more countries begin to question the success of the free trade strategy, and as industrialized economies are increasingly disrupted by their excessive interdependence with less stable economies, these may provide trigger opportunities to advance alternatives. Also, as our other proposed initiatives empower localities to exercise control over corporate activity, this initiative should gain support from a new constituency — communities.

## The Agitation Stage: Developing Strategies

In the agitation stage of movements, conflict builds. There are more demonstrations, national days of action, full-page ads confronting corporate and government targets, and increasing investigative media work. The corporate and legislative opposition initially sees the problem as likely to pass, but starts to realize that it is building instead. It begins to organize the backlash not only to vilify movement leaders, but to threaten and “chill” NGOs and their supporters. In the early phase of agitation, the movement may appear to be failing or losing steam, but triggering events not only create new momentum, but new allies. Larger coalitions emerge that include previously resistant, moderate NGOs or legislators. More legislation is introduced and passed. The public begins to accept the framing of the movement and power holders seek ways to co-opt the movement by creating the illusion of meeting its objectives while protecting their interests. The movement may even split as moderate advocates believe they have achieved enough and radical advocates pursue a deeper agenda.

The process elements are already largely in place from the preparatory stage. However, as the movement builds through the agitation stage, there will be an increasing need for **monitoring and evaluation** to assess what is working. Which short-term initiatives have been successful? Which are making progress and which are stalled? What new opportunities have arisen as a result of unanticipated trigger events that warrant new initiatives or changes in old ones?

There will also be a need for intra-movement **structures for resolving conflicts**. There are always disagreements among civil society organizations about the adequacy of various solutions. Large organizations with more conservative memberships are often more comfortable accepting what smaller, more radical organizations consider unacceptable compromises. These differences usually remain submerged, but in the context of a larger international movement to achieve deeper change, these differences need to be anticipated and resolved. Organizations that contemplate undercutting the overall goals of the movement will need to be challenged, if not publicly threatened, by their movement cohort.

As short-term initiatives advance, and long-term initiatives are introduced, there will need to be more connectedness among infrastructure organizations. The proposed National Community Rights Network, Center for Strategic Campaigns, International Network of Networks, Corporate Legislative Caucus, Corporate Transformation Funders' Network, and lead civil society groups will need to establish nodes or opportunities for regular communication. They will need to have individuals dedicated to tracking research, thinking strategically, and acting in a “boundary scanning” capacity to ensure their role and objectives are well synchronized with those of others. Also, as communities become more clearly the front lines of this movement, networks that facilitate their collaboration and mutual support will need to be strengthened.

Finally, we want to emphasize that most of the short-term initiatives that are started now are likely to carry into the agitation stage. They are designed to build the movement's strength, to alter the fundamental debate around corporations, and to lay the social, political, and legal foundation for long-term initiatives that on first review, are much more difficult to understand, let alone sell and enact. We fully expect that hybrid frames will need to arise to set the stage for these longer-term initiatives which in many constitute the endgame for the Strategic Corporate Initiative.

**Successful movements culminate in the achievement of rights.**

## Domestic Long-Term Strategies

### Limiting Corporate Speech Rights

Ultimately, any attempt to rein in corporate power must pre-empt the First Amendment rights that they have acquired. Corporations must no longer be able to participate in the electoral process, control the media, use SLAPP suits to control opposition, advertise without limits, and restrict the speech rights of employees. They not only have excessive rights in this arena relative to natural citizens, but their exercise of them in many instances precludes the exercise of these rights by citizens. Restricting and eliminating this right is critical to institutionalizing a long-term movement victory. This is an initiative that will require time to build the necessary social, legal, and legislative consensus. It brings the progressive legal community fully into this movement to generate the body of legal research and challenges required.

### Elevating Community Rights

Communities must have the power to control who does business within their jurisdiction and how. In the Preliminary Stage of this movement this means adopting municipal ordinances and instituting home rule. In the Agitation Stage it will involve re-writing state constitutions where dozens of communities have adopted these laws and directly challenged corporations' claims to constitutional "rights" and other legal protections. In the later Agitation Stage, this may mean amending the federal Constitution. This effort will parallel the previously discussed long-term initiative. Successful movements culminate in the achievement of rights and this is no exception. This initiative is a critical component for building movement in the Agitation Stage and for laying the foundation for the Consolidation Stage described by Collins.

### The Institutional Investor Initiative

In the short-term corporate ratings initiative, we propose developing a system for distinguishing between good and bad companies. Advocates then begin to change the fiduciary calculus by getting state and local governments to adopt policies that financially reward good companies. They also use the ratings to strengthen or damage corporate reputations. In this initiative we join investment advocates with grassroots and political advocates to begin shifting even larger blocks of capital away from bad companies. The targets of these campaigns become state governments, pension funds, foundations, SRIs, and even mainstream investment institutions. In the long-term, if we cannot move capital away from bad companies so it advantages good companies, we cannot hope to change a marketplace driven by the maximization of profit. This initiative attacks the fiduciary underpinnings of the existing system and as such is critical to our long-term movement success.

### Promoting Social Enterprise

This initiative complements the previous three long-term initiatives we've proposed. By elevating community rights, reducing corporate rights, and re-directing capital to companies that meet certain social and environmental standards, we create an opening for building and supporting an alternative economic model to the existing maximum-profit, public corporation. This initiative is designed to promote community-friendly companies that are exemplars of redefined company purpose. As noted earlier, there are many different forms of companies that would fit within this sector including: cooperatives, employee-owned companies, and municipally chartered companies. New forms will emerge such as social enterprises owned by nonprofits, trust-owned companies, and other new hybrids that combine social mission with profit. This long-term initiative invites collaboration between communities, civil society organizations, and the business community. It is an initiative that overlaps with the others in this section in that these new forms would voluntarily restrict their exercise of rights and, by their nature, be committed to the very practices and structures that result in higher corporate ratings. As such, they would be advantaged in terms of taxes, government procurement, subsidies, regulatory requirements, etc.

### Bringing the Media Under Public Control

Research has consistently demonstrated the power of media to shape our values, culture, and lives. Therefore, an independent media is an essential complement to the other proposed long-term initiatives.

**If corporations control the media, we are unlikely to achieve our movement goals.**

Corporations must be limited in their ability to use media to maintain their economic and political supremacy. The media reform movement, which is already well advanced, can be used as a critical wedge into broader challenges to corporate power and concentration. This initiative challenges the credibility of current regulatory approaches and institutions like the Federal Communications Commission. Its goal is to create new community-based technological platforms (WiFi); to expand corporate-free broadcasting; and to re-frame the First Amendment around the right of people and communities to democratic discourse. As such this initiative provides a strategic wedge into a broader challenge to corporate rights. But it also is essential to the preservation of the movements' achievements. If corporations control the media, they control information, and ultimately we are unlikely to achieve our movement goals or see those we do achieve endure.

## International Long-Term Strategies

### Creating an International Court for Corporate Crimes

Ultimately, systems must be created at the international level to hold transnational corporations accountable even if their national governments do not. Following the precedent of the International Criminal Court, a similar mechanism should be established to punish corporate criminals, either through an expansion of the ICC's mandate or through an independent entity. Ideally, this court would have the authority to investigate the entire range of wrongdoing by transnational corporations under international law. Initially, it may be more realistic to focus on the most egregious corporate crimes, such as slave labor and the worst forms of child labor. There are a number of information-gathering activities that could lay the foundation for a movement for binding international standards. For example, the UN could develop a database that tracks corporate crimes, industry consolidation, and financial involvement in political processes.

### Creating the Sky Trust

The climate and global warming crisis will be a major driver of a deeper understanding of corporate encroachment on the commons and the need to create mechanisms to defend the "sky commons." In the coming years, governments will be designing carbon-reduction programs. The value of the sky will either be given to historic polluters — or we could recognize that we all own the sky as a commons and direct rents to common good purposes. This campaign could further unify the various constituencies working on global warming issues to support a Sky Trust, a cap-and-trade system chartered by government in which initial carbon emission rights are assigned to a nonprofit trust or quasi-public agency. The trust would establish a gradually declining cap for CO<sub>2</sub> emissions and auction tradable emission permits to corporations. Revenue from the Sky Trust could be rebated to all citizens on a per capita basis, be used to fund education, or go toward public goods such as energy conservation, renewable energy development, and carbon offsets. Once the Sky Trust is institutionalized, we believe it provides a conceptual and experiential foundation for advancing other commons trusts to protect other vital resources.

## The Consolidation Stage: Institutionalizing Achievements

In the consolidation stage, which is probably 20 years away, the conflict subsides, although it never completely dissipates. The key goals have been achieved or are sufficiently achieved to satisfy the majority of the grassroots. The public now accepts the framing as the dominant story for this aspect of their culture. Movement leaders may shift into institutional leadership roles. The conflict-oriented activist is joined by the implementation-oriented advisor/consultant and enforcement-oriented regulator. In this stage the challenge is to consolidate and institutionalize victories to make them as difficult to overturn or undercut as possible. Here are some of the activities we envision in this stage:

### Activist Coalitions are Institutionalized

Coalitions that emerge to fight a particular battle, often dissolve once its objectives are achieved. In the earlier

stages of this movement we suggested that a NGO Network of Networks be created to build capacity, collaboration, and to focus diverse efforts towards common goals. This network needs to persist. It needs to continue, if not improve, cross-issue, cross-strategy, and cross-border collaboration. While their activism will remain focused on keeping large corporations under control, they must also now focus on maintaining control of the institutions created to regulate corporations (e.g. corporate rating systems, the international court).

### Rating, Monitoring, and Enforcement Entities Institutionalized

Many of the solutions we propose involve creation of new institutions or expansion of existing ones. We discussed the National Community Rights Network, the International Court for Corporate Crimes, the Corporate Rating System, the Corporate Wikipedia, the Corporate Transformation Funders' Network, the Corporate Legislative Caucus, and other institutions to further link communities together. The challenge will be to retain their edge and independence. New financing mechanisms that are not captive of corporate interests must be developed.

### Educational Institutions Embed the Cultural Shift

The infamous Powell Memo to the U.S. Chamber of Commerce was smart to recognize the power of academia and the importance of bringing it under control.<sup>9</sup> We strongly support the principle of an independent academia and we recognize that to the extent it relies upon corporate largess, it will never be truly independent. Perpetuating the achievements of this movement will require a weakening of corporate influence over academia. Government and foundations must take the lead in this regard.

### Institutionalize and Continue to Promote the Frame

One of the reasons the political Right has been so successful advancing its framework is that it permeates the thinking and messaging of its organizations and leaders. Conservative think tanks not only have a frame, but they devote a good deal of resources to promote it constantly. A set of NGOs and think tanks need to have as part of their mission the perpetuation and evolution of the new framework. They need to monitor campaigns, legislation, initiatives, and the groups advancing them to make sure they incorporate the framework into their work. They need to seize high visibility media opportunities to advance the frame and generate studies and reports that reinforce the validity of the frame. Likewise, they need to attack whatever new conservative frames emerge by exposing the manipulative intention of conservative groups using it. As Lakoff argues, they need to produce studies and reports that directly challenge their validity.

### Endnotes

- <sup>1</sup> Celinda Lake, Lake, Snell, Perry, Mermin, Survey of 1000 Adults in January 2005, "Public opinion on corporations and corporate responsibility," Presented to the Business Ethics Network, July 21, 2005.
- <sup>2</sup> A 2005 GlobScan survey for the World Environmental Forum concluded that when asked who they trusted most, respondents consistently ranked corporations below NGOs, national governments, local corporations, and the U.N.
- <sup>3</sup> Such as the Corporate Social Responsibility (CSR) or Environmental, Social, and Governance (ESG) movements.
- <sup>4</sup> Bill Moyer, "Map Training Manual" (1990) and "Practical Strategist" (Social Movement Empowerment, 1990).
- <sup>5</sup> From Chuck Collins and Felice Yeskel, *Economic Apartheid in America: A Primer on Economic Inequality and Insecurity* (New Press, 2005).
- <sup>6</sup> This subsection will be addressed in greater detail later in the report.
- <sup>7</sup> C-Change, a collaborative of international NGOs that emerged from the Conference on Re-Inventing Globalization (December 2005) is one entity whose vision and efforts parallel SCI. They are seeking funding to convene international meetings on the major continents in 2008 expressly for the purposes described in this section. The World Social Forum, Transnational Institute, or Bridge Initiative are other entities that could be involved in this effort.
- <sup>8</sup> The six factors mentioned here were first identified by Neil Smelser, and U.C. Berkeley Sociologist, *Theory of Collective Behavior*, 1962.
- <sup>9</sup> In 1971, Lewis F. Powell, then a corporate lawyer and member of the boards of 11 corporations, wrote a memo to his friend Eugene Sydnor, Jr., the Director of the U.S. Chamber of Commerce. The memorandum was dated August 23, 1971, two months prior to Powell's nomination by President Nixon to the U.S. Supreme Court.

## A

## Methodology

There are literally thousands, if not hundreds of thousands of different efforts around the world to block, modify, or adapt to the activities of corporations. Our mission was to develop a long-term roadmap comprised of the most promising strategies for bringing corporations back in service to and under the control of citizens and their elected governments. We tried to approach this task with a degree of methodological rigor, but we acknowledge from the outset that in the end, the perspectives and recommendations in this report are not only the result of our research and interviews, but of our individual campaign experiences and observations. We did make every attempt to vet our views and recommendations internally and with outside experts.

### Phase 1: Mapping the Corporate Reform Playing Field

The first step in this process was to invite a cadre of leading corporate reformers and activists to a two day meeting in November 2005. The purpose of the meeting was threefold: First, to obtain their insights into the vision of the role of corporations in the future; second, to map the major arenas of corporate engagement and range of initiatives under each; third, to get their views on which of the initiatives might provide the greatest opportunity for reining in corporate power. The common themes and areas of agreement that emerged helped guide this process forward over the next year and a half. Participants included:

- ▶ Fred Azcarate, then with Jobs with Justice
- ▶ Fred Block, University of California, Davis and Longview Institute
- ▶ Mike Brune, Rainforest Action Network
- ▶ Sonya Carlson, Mari Margil, and Michael Marx, Corporate Ethics International
- ▶ Michelle Chan-Fishel, Friends of the Earth
- ▶ Michael Conroy, then with Rockefeller Brothers Fund
- ▶ Charlie Cray and Jonathan Frieman, Center for Corporate Policy
- ▶ David Korten, Author: *When Corporations Rule the World* and *The Great Turning*
- ▶ Larry Litvak, Working Assets
- ▶ Jerry Mander, International Forum on Globalization
- ▶ Jeff Milchen, Reclaim Democracy
- ▶ Kirsten Moller, Global Exchange
- ▶ Hans Schoepflin, Panta Rhea Foundation
- ▶ Damon Silvers, Senior Legal Counsel, AFL-CIO
- ▶ David Sirota, Author: *Hostile Takeover*

- ▶ Joel Rogers, University of Wisconsin
- ▶ Lori Wallach, Public Citizen's Global Trade Watch
- ▶ Robert Weissman, Multinational Monitor

## Phase 2: Expert Interviews

In early 2006, Corporate Ethics International convened the Strategic Corporate Initiative Working Group. Members of the team include: John Cavanagh, Sarah Anderson, and Chuck Collins of the Institute for Policy Studies; Marjorie Kelly of the Tellus Institute; Charlie Cray and Jonathan Frieman of the Center for Corporate Policy; and Michael Marx and Mari Margil of Corporate Ethics International. Over the course of 2006 and the first half of 2007, the Working Group convened in-person and by regular conference calls.

The Working Group developed a plan for research, analysis, and writing of this report during the first quarter of 2006. During that Spring, we began a series of interviews with leading campaigners, theorists, and corporate executives on the role corporations play in society and how it needs to change. A standardized questionnaire was developed for the interviews which were then transcribed and shared amongst the Working Group. Interviews were conducted with:

- ▶ Gar Alperovitz, Author: *America Beyond Capitalism: Reclaiming our Wealth, Our Liberty, and Our Democracy*
- ▶ Ron Blackwell, Chief Economist, AFL-CIO
- ▶ Fred Block, University of California, Davis and Longview Institute
- ▶ Carl Boggs, Author: *The End of Politics: Corporate Power and the Decline of the Public Sphere*
- ▶ David Bollier, Author: *Silent Theft: The Private Plunder of Our Common Wealth*
- ▶ David Cobb, Democracy Unlimited
- ▶ Lisa Danetz, National Voting Rights Institute
- ▶ Bill George, CEO Medtronic Corporation
- ▶ Richard Grossman, Community Environmental Legal Defense Fund
- ▶ Jeffrey Hollender, Seventh Generation
- ▶ Scott Klinger, Corporate Accountability International
- ▶ David Korten, Author: *When Corporations Rule the World* and *The Great Turning*
- ▶ Larry Litvak, Working Assets
- ▶ Harry Lonsdale, Retired President of Bend Research, Inc.
- ▶ Nell Minow, The Corporate Library
- ▶ Stacy Mitchell, Institute for Local Self-Reliance and Author: *Big-Box Swindle*
- ▶ Peter Montague, Rachel.org
- ▶ Ted Nace, Author: *Gangs of America*
- ▶ Marcus Raskin, Institute for Policy Studies
- ▶ Beth Sawi, CAO, Charles Schwab & Co.
- ▶ Jerre Sears, Venture Capitalist
- ▶ John Sellers, Ruckus Society
- ▶ Sean Sweeney, Cornell Global Labor Institute
- ▶ Susan Swensen, COO, T-Mobile USA

- ▶ Mike Thomas, formerly with Granite Construction
- ▶ Michael Wallace, Wallace Partners LLC, Consultant, TruCost, UK

Based on these interviews, the Working Group began to identify key themes and tracks which we believe are central to changing the imbalance of power between corporations and people and communities. We did this by drawing on these interviews and additional research, discussion, and the findings from the November 2005 meeting. We began to discuss the need for drawing this work together into a movement, which would push activists beyond their current work. We especially considered corporate campaigners, who are working to change the behavior and practices of corporations, and the need for their work to go beyond a particular target corporation or industry to the root causes of their concerns — that corporations have too much power as conferred upon them under our legal and political systems.

To that end, the Working Group drafted a paper aimed at activists and vetted it through a series of meetings with activists in Boston, Washington, D.C., and San Francisco in the Fall 2006. We also spoke with George Lakoff about how to frame a broader movement. The resulting paper formed the basis for our *Call for a Global Movement* in Section 1 of this report and articles currently on the drawing board with *The Nation* and *Yes! Magazine*.

## Phase 3: The Deep Dive into the Strategic Tracks

In Phase 3 the team assembled a set of criteria to guide its selection of short-term and long-term strategies. The 10 criteria that were selected are as follows:

The strategy...

- ▶ actually limits corporate power;
- ▶ is a wedge issue that is synergistic with other issues and creates a ripple effect;
- ▶ capitalizes on existing or likely public outrage;
- ▶ activates powerful constituencies, especially grassroots;
- ▶ carries the overall framing well;
- ▶ has clearly defined goals;
- ▶ builds movement strength and infrastructure;
- ▶ has a reasonable likelihood of success;
- ▶ advances one or more of our seven strategic tracks; and
- ▶ takes advantage of trigger events (e.g. global warming, elections).

Individual members of the Working Group were responsible for in-depth research into a particular strategic track, preparing an analysis of the current landscape, a 20-year vision for the future, and a priority short-term and long-term initiative. Each was responsible for conducting further expert interviews, attending opportune meetings of activists in their strategic arena, and scheduling and facilitating conference calls to vet their chapter and recommendations with leading experts. This was an iterative process in that team members each produced an initial draft. These drafts were then vetted within the team and with outside experts. Each team member produced a second draft, which was again vetted within the team and with outside experts. This process was repeated several times over several months until the final drafts were accepted by the team.

In addition to these section, we conducted research and drafted a section on framing for a movement and a separate section on movement building itself.

During the Winter 2006-2007, we also developed a preliminary plan to conduct outreach on our findings with the activist and funding communities, as well as the media.

In late Winter 2006-2007, the Working Group met in Washington, D.C., for a day and a half retreat to finalize our thinking on the key tracks and the themes that brought them together. We invited in several outside experts to use as a sounding board. During the late Winter and into the Spring 2007, we've worked to finalize the report and develop an accompanying presentation for funders.

The final draft of the report was completed in the Spring 2007.

## Phase 4: Vetting the Entire Report

In the fourth phase of this research we will vet the entire report to a small sample of experts. Initially we will vet this report with experts who we believe have the ability to view this effort as an entirety apart from their individual area of expertise. Our goal in this stage of the project is to attempt to build as much thematic and strategic integrity into the report as possible.

Also in this phase of the project we will vet the report at various gatherings of corporate reform activists to solicit their reactions and suggestions. We see this activity as really the final stage of the report preparation and the first stage of implementation. Our hope is that the report will spark a debate and a re-evaluation of the current state of the movement.



## Report Authors

**Sarah Anderson** directs the Global Economy project at the Institute for Policy Studies, and is co-author (with John Cavanagh and Thea Lee) of *Field Guide to the Global Economy* (New Press, 2004). She has written numerous studies, articles, and books on global corporations and the social and environmental impacts of trade and investment liberalization. She sits on the steering committee of the Alliance for Responsible Trade and served on the staff of the International Financial Institutions Advisory Commission (Meltzer Commission), which presented their recommendations for World Bank and IMF reform to the U.S. Congress in 2000. Prior to coming to IPS in 1992, Anderson was a consultant to the U.S. Agency for International Development (1989-1992) and an editor for the Deutsche Presse-Agentur (1988). She holds a Masters in International Affairs from The American University and a B.A. in Journalism from Northwestern University.

**John Cavanagh** has been director of the Institute for Policy Studies since 1998. In this capacity, he oversees programs, outreach, and organizational development. He has a B.A. from Dartmouth College and a Masters from Princeton University. He worked as an international economist for the United Nations Conference on Trade and Development (1978-1981) and the World Health Organization (1981-1982). He directed IPS's Global Economy Project from 1983-1997. Cavanagh is the co-author of 10 books and numerous articles on the global economy, including *Global Dreams: Imperial Corporations and the New World Order* with Richard J. Barnet, (Simon & Schuster, 1994); and *Alternatives to Economic Globalization*, with 20 co-authors, (Berrett-Koehler, 2004).

**Chuck Collins** is a senior scholar at the Institute for Policy Studies and directs IPS's Program on Inequality and the Common Good. He is an expert on U.S. inequality and author of several books, including *Economic Apartheid in America: A Primer on Economic Inequality and Insecurity* (New Press, 2005). He coordinates a national effort to preserve the federal estate tax, our nation's only tax on inherited wealth. Collins co-authored with Bill Gates Sr., *Wealth and Our Commonwealth*, a case for taxing inherited fortunes. In 1995, Chuck co-founded United for a Fair Economy (UFE) to raise the profile of the inequality issue and support popular education and organizing efforts to address inequality. In 1997, he co-founded Responsible Wealth, a project of UFE to bring together business leaders and investors to publicly speak out against economic policies and corporate practices that worsen economic inequality. Collins was executive director of UFE from 1995-2001 and program director until 2005.

**Charlie Cray** is a policy analyst and the director of the Center for Corporate Policy in Washington, D.C., a non-profit, non-partisan public interest organization working to curb corporate abuses and make corporations publicly accountable. He is also the co-author of *The People's Business: Controlling Corporations and Restoring Democracy* (Berrett-Koehler). Cray is the former director of the campaign for corporate reform at Citizen Works and former associate editor of *Multinational Monitor* magazine. He worked for Greenpeace USA between 1988 and 1999.

**Marjorie Kelly** is a senior associate at Tellus Institute in Boston and co-founder of Corporation 20/20, a project to create the vision and chart the course for the future corporation. Kelly for 20 years was co-founder and editor of *Business Ethics*, a national magazine on corporate social responsibility she launched in 1987, known for its annual listing of the "100 Best Corporate Citizens." She is author of the book *The Divine Right of Capital* (Berrett-Koehler, 2001), which *Library Journal* named one of the best business books of the year. The book has been translated into three languages, and is used in numerous college classrooms. Kelly's writings have appeared in publications like the *Harvard Business*

*Review, Utne Reader, Chief Executive, Tikkun, E Magazine, Boston Globe, Minneapolis Star-Tribune, San Francisco Chronicle, and St. Louis Post-Dispatch.* She chairs the advisory board for Citizens for Corporate Responsibility in Minnesota, working to create directors' social responsibilities. Kelly has a bachelor's in English, cum laude, and a Masters in Journalism from the University of Missouri School of Journalism.

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