A piece called "Community Rights as an Organizing Strategy" appeared recently on the IOPS website (International Organization for a Participatory Society), co-authored by Sarah Owens, Sara Cromwell, and Michael Livingston: http://www.iopsociety.org/blog/community-rights. That same piece was also posted on Z-Net: http://zcomm.org/zblogs/community-rights-as-an-organizing-strategy/.

In it the authors take issue with community rights, community rights groups, as well as the Community Environmental Legal Defense Fund (CELDF), a public interest law firm that is assisting communities in a number of different states with grassroots organizing on a community rights platform.

The original piece by the authors did not provide a context for what is meant by community rights. Therefore, I am prefacing my response with some examples of what community rights looks like in the next section.

SNAPSHOT OF CURRENT COMMUNITY RIGHTS EFFORTS

NEW HAMPSHIRE - On March 11, 2014, three New Hampshire communities asserted their rights to ban an unsustainable corporate energy project, as well as assert the need for sustainable energy projects that will benefit the respective communities, without destroying local ecosystems. They did so through adopting Community Bills of Rights laws.

COLORADO - At the beginning of 2014, members of the Colorado Community Rights Network filed an initiative to amend their state constitution to recognize the right to local self-government. That amendment would authorize local governments "to enact local laws protecting health, safety, and welfare by recognizing fundamental rights of individuals, their communities, and nature." Such laws would be immune from state, federal or international preemption.

The proposed amendment also states, "local laws shall not restrict the fundamental rights of individuals, their communities, or nature secured by the Colorado constitution, the United States constitution, or international law," and "local laws shall not weaken protections for individuals, their communities, or nature provided by state, federal, or international law."

OREGON - Over the last 2 years, a number of Oregon communities have been moving forward with community rights work. In Josephine County, the group Freedom from Pesticides Alliance is actively petitioning to qualify a Freedom from Pesticides Bill of Rights that would protect the rights of people and nature to clean air, water, and soil, by prohibiting corporations and government from using certain toxic pesticides that have been poisoning that area for decades.

In Lane and Benton counties, local groups there are moving closer to petitioning for their own Community Bills of Rights. Their work is focused on protecting the right to a healthy, viable, local food system, one free from corporate control and the use of destructive agricultural practices like GMOs. Other counties, including Yamhill, Marion, Multnomah, Jackson, and Lincoln, are also using community rights in their organizing and educating locally around issues that are important to them.

ACROSS THE COUNTRY - The folks in New Hampshire, Colorado, and Oregon join others in Pennsylvania, Ohio, Maine, Illinois, Iowa, New Mexico, and Washington, in asserting that the rights of community, people, and nature, supersede corporate claimed privileges. These privileges include corporate claimed "rights" protections, and corporate wielding of state and federal law against communities, in order to force unwanted projects like GMOs, pesticides, fracking, factory farming, corporate water withdrawal, or corporate development, into communities.

It was unfortunate that none of authors reached out to the people in the communities affected by these corporate assaults to understand more clearly why they have chosen a community rights platform to deal with the threats they face, to establish a path for a viable community, and to push for a restructuring of law and governance that, at its core, is rights-based – not property and commerce-based.

TALKING DECLARATION VS. CONSTITUTION

Responding now directly to the authors' critique of community rights, it was unfortunate that in their quest to warn others of the misguided ways of CELDF, the authors missed very key points that have the potential to be explored in a more productive manner.

The first missed opportunity came in the mention of the Declaration of Independence vs. the US Constitution. The authors' focus in laying out what they did was to say that conventional law says the US Constitution is enforceable and the Declaration of Independence is not.

When the Declaration has been mentioned in the Community Rights Ordinances, it's been done so to point out the failure of documents like the US Constitution to live up to what the Declaration laid out, and to actually enforce what the Declaration espouses.

Said another way, what the Community Bills of Rights enforce is not the Declaration per se, but the unalienable rights that the Declaration mandates -- along with consent of the governed -- as the basis for legitimate government.

That the U.S. Constitution fails to live up to this mandate is no less consequential to the rampant violation of community rights than was the Constitution's legalization of slavery. Community rights advocates argue that institutionalized injustice, while technically "legal," as the authors might argue, is also illegitimate and subject to challenge and change by the people – who are the source of governing authority.

The Declaration of Independence laid out grievances against the British Empire, the first of which was an accusation that the central government in London "has refused…assent to laws, the most wholesome and necessary for the public good." These were not state laws: There were no states! These were not national laws: There was no nation!

These were local, community laws being "preempted" and vetoed by the central government that was listed as the very first grievance against the British Empire in the Declaration of

Independence. That this aspiration has not been achieved or honored by our current state and federal central governments is more than problematic.

The Declaration also called out the system of law and governance itself -- including the power of chartered corporations, such as the British East India Company, over the colonies.

The call to action was to embrace a very different concept of what government could be about: that government needs to be founded on rights of people and communities, and that if government fails to fulfill this charge, then the people have the right to alter, amend, or abolish such government.

We need to remember that neither the US Constitution nor state constitutions create rights, but that any legitimate constitution places upon government an obligation to protect already existing rights, which reside in the people – where they live.

Because the efforts of those advocating special privileges for wealthy minorities over the general rights of the majority have succeeded so well, we, here in the US, blur the aspirations of the Declaration and the stingily applied Bill of Rights and the Constitution together, so that we assume both democracy and rights are central to the Constitution. This isn't true, and it is not enough to demand strict adherence to that document if justice is the goal.

If we take a look at the main body of the US Constitution (not the Bill of Rights or other amendments), we see that its focus is on protecting property interests, and more specifically those property interests associated with commerce.

The Constitution, in many ways, is the main driving force of the endless production of more, which is grinding people and the planet into dust through such activities as fracking, factory farming, GMOs, pesticides, and control of workers.

Again, it is important not to conflate the Constitution with the fundamental rights claimed for people by the Declaration, and claimed – but not bestowed without social struggle – by the US Bill of Rights.

A major defect in the system we have today, as provided for by the Supreme Court's mutated interpretation of the US Bill of Rights, is that corporations can violate our rights at will, both individually and as a collective community. This is because property itself – i.e., corporations – were inserted without precedent or argument into the constitution as rights-bearing "persons."

You can read more about how that came to be on the CELDF website: http://celdf.org/celdf-model-brief-to-eliminate-corporate-rights.

The men who drafted the US Constitution needed a legal vehicle to best fulfill the goal of extracting natural resources (people's labor included) as quickly and smoothly as possible,

without democratic interference. It was necessary, in their minds, to subordinate unalienable rights to the privileges of property in order to build the great nation they envisioned.

Like the colonizing empires and like the English Common Law practices that those founding fathers adopted lock, stock, and barrel – despite the Revolution -- via the US Constitution, the sort of conquest of communities proceeds best when you can centralize, preempt, and privatize its power through law. Of course having a military force and economic means to enforce that centralization of governing authority is key. The tactics of the "founders" was to keep important decisions in the fewest number of hands possible: white, male landowners.

Jump to 2014, and it's not guys in powdered wigs calling the shots anymore. It's corporations (for the last 150 years) that use the constitutional structure against the will of people, communities, and nature.

Wealthy people hiding behind corporations, which were not even mentioned in the Constitution, found ways to adapt the legal structure to assume for corporations the power they have today.

This should help explain why communities take direct aim at the Constitution and embrace the main charges of the Declaration by adopting the community rights laws that they do.

LEGAL VS. ILLEGAL; LEGITIMATE VS. ILLEGITIMATE

One way of looking at things is to make a determination as to what is legitimate vs. what is illegitimate. For instance, just because something is legal does not make it legitimate.

Owning people (slavery) was legal for a good portion of this country's history. Along with being insane, let alone immoral, slavery was never legitimate. Justified and rationalized perhaps at the time by those who weren't slaves - but never legitimate.

Denying women rights of a person was legal, but never legitimate.

Destroying nature because nature is seen as property under the law is legal, but not legitimate.

Claiming lands that weren't your own and murdering the inhabitants that occupied those lands, was and remains an accepted legal doctrine (Doctrine of Discovery), but on moral, ethical and just grounds, this theory of law was never legitimate.

The authors attempt, with no evidence of honest curiosity, to discredit CELDF's mention of the association of community rights to past peoples movements – revolutionaries, abolitionists, suffragists, civil rights – as some strategic trick to get communities to "buy what they are selling." However, it's no trick and the parallels are real. Like those past peoples' movements, communities today cannot find the necessary remedy under the current structure of law, and so must challenge what more passive and less affected members of society continue to accept.

Challenging the oppressive legal doctrines is necessary to change the structure. Like other peoples' movements did, it rejects the illegitimate elements of law and governance and endeavors to establish the legitimate ones for the rights and survival of people and the planet.

RIGHT TO LOCAL SELF-GOVERNMENT

There is not much to say in response to the authors attempt to dismiss the right to local self-government. That right is innate in people, and if people believe that all political power is inherent in the people – well then, the act of practicing self-government is sacrosanct. More, the right to self-determination is a mere concept, an American fairy tale, if it cannot be exercised in real places – in the communities where real people live.

The frame of course is that the act of local self-government is justified by the inherent authority of the people to protect their rights without interference from other interests and powers. The community rights movement is not theoretical. It takes on the real world and the real oppressions confronting our communities today, as the Colorado amendment lays out, or as the community rights laws recently adopted in New Hampshire (by town hall style vote), or the ones proposed for Oregon.

Again, all are about protecting rights from powers and privileges aimed at taking rights away.

The community rights work is about making sure that constitutions – state and federal – recognize that the right to local self-government is not denied either directly or procedurally.

CHANGING HOW WE TALK

Part of what community rights work is about is changing the way we talk about things.

Corporations and governments, for instance, do not have rights. People who benefit from limited liability privileges and who profit from the immense wealth and legal advantages of corporations have gamed the system to increase their powers and privileges.

Rights for corporations do not exist. They are each and all chartered by state legislatures in the name of the people they then "legally" oppress. That is an illegitimate outcome regardless of how Supreme Court decisions have gone down or what constitutions may be said to say.

If we stay locked into legalistic thinking ("what does the lawyer say?") in our activism, we merely validate what is vs. working towards what needs to be. We continue to feed the already powerful system vs. weakening its oppressive aspects by no longer seeing them as legitimate.

The balance, then, is how to contend with building a new system by utilizing the existing system? How do you stress it, break it, and fix it all at the same time so that it is about something very different than what it is focused on today?

CAN'T DO THIS BECAUSE IT'S ILLEGAL AND UNCONSTITUIONAL

The authors' central question, used to passively reject CELDF's community rights strategy, is this: Why engage in community rights if what is being proposed is illegal and unconstitutional?

I've heard it from many folks I work with who are driving forward with community rights say, "That is exactly why these community rights laws need to be driven into the law." Most of the harmful things people using corporations do to our communities are both "legal" and constitutional. But they are neither just nor legitimate.

Challenging existing law is not a new strategy. The Suffragists did so over 460 times. Those folks passed local and state laws recognizing women's right to vote against what federal law said. Oregon was one of two states that did so through citizen initiative. It took five attempts.

Other rights efforts today have also done the same. Gay rights would not be at the national level today if it wasn't for the activism and law-making at the local level first and continuously.

So where do the community rights laws sit today, and can they be defended?

Let's start with some statistics:

- As of today there are over 150 communities who have adopted some version of a community rights law.
- As of today none of those laws have really been tested. Some have been challenged on the basis of state preemption of the ordinance's prohibitions, but none have been tested on their own terms as local civil rights laws.
- Of the five communities that have been sued either by corporations or their own state government, a few succumbed to the financial pressure of protracted legal battles and rescinded their laws. One prevailed in county court. The litigation over Community Bills of Rights is inconclusive, but the effectiveness of such laws is not.
- Of the local rights-based laws that are still on the books, all have protected their communities against the corporate threats they prohibited.

Mora County, New Mexico is involved in lawsuits today dealing with fracking. In Mora County they banned all hydrocarbon extraction via a Community Bills of Rights.

The battle there is about the rights of the community vs. the power and privileges of corporations.

On paper, as the law works today, you'd probably pick the corporation to win this challenge. The Suffragists were advised they had no chance either. And it wasn't the lawsuits that settled the question – it was the culture.

Community rights work is about being prepared for both a short term loss and win, with a clear understanding that the structure is what it is and will validate what it does through current legal

doctrines – and at the same time it needs to be challenged directly in order to dismantle and rebuild it.

If we don't test it, we don't know what can happen.

It is by confronting it that we actually open up the possibility of changing it. The other option is staying obedient to the structure as it is.

SO, WHAT'S AN ALTERNATIVE?

In all the critique of community rights and CELDF in their piece, the authors offer no real solutions or even new directions, even though when you read through the IOPS website it proclaims to have a revolutionary edge to it. Revolution suggests a change in the status quo, but that seems to be the very thing these authors object to in the CELDF strategy: that it would dare color outside the lines of constitutional and statutory law.

Some of what is offered by the authors is to work through existing law (primarily regulatory law) and to channel energy into supporting elected officials to do your bidding for you.

The authors seem not to have considered the possibility that playing by the rules as defined by the system makes us predictable, and ultimately, even with best of intentions, leads us down the path of continued ecological degradation, dismissal of people as stewards of their own communities and environment and destruction of peoples' rights and the living systems of this planet.

When we play by the existing rules of the power structure, we are unable to have the real, necessary discussions in the community and with the community, because we are locked into a discussion in which we, the community, are told we're not the experts, have no legal agency, and no role in the deliberative process about what will occur, where we live.

In regulatory fights, the question of whether the legal corporate activity is allowed to go forward isn't at issue. That decision has already been made by the central government. A state or federal permitting process is about permitting something – not about allowing a community to say no, nor about protecting the rights of people or nature.

The permitting process defaults to placing property interests and commercial pursuits above preservation of the environment and protection of community health and safety, and acts as a veto over local governing authority. That means rights and protections for people and nature either have no play at all, or if they are considered, they are secondary at best.

Spend some time reading regulations and it's right there in black and white. It's also important to keep in mind that regulations are more often than not written by the very industry that is ostensibly to be regulated.

Alternatively, the industry will draft new preemptive law that state legislatures then adopt. Any question of who has authority on a particular corporate practice is removed procedurally by the state by stripping power from the municipal corporation (i.e., the community), and creating plausible deniability that the right of the people living in that jurisdiction to exercise self-government has not been violated by the state.

The recent preemptive law adopted in Oregon around agriculture seed (SB 863) is a case in point, demonstrating how that relationship between corporations and the state ultimately leaves those affected – our communities – out in the cold.

Thus the whole fight within the existing rules is about how to make things less bad –if a community is even able to achieve that.

In this system, there is no discussion of who should be deciding in the first place, let alone if what is being proposed should be happening at all, let alone what benefits does it really provide for people, let alone what cost in destruction of nature can be expected when that activity (e.g., fracking) is legalized – without the consent of the governed.

The real issues are not even in the equation if we keep walking into the abyss that is the existing structure of law and governance. Seeking protection and remedy there is a fool's errand.

Changing the rules to ones based fundamentally on rights places communities on very different ground, even in a court of law.

WHAT COULD THE COURTS BEGIN TO SAY?

A recent case in point as to what is possible through the courts to further the cracking of the existing structure, which is necessary to its dismantling so a new system can emerge, came out of a ruling in Pennsylvania (handed down in 2013) dealing with a settlement between a fracking company and a family harmed by fracking.

President Judge O'Dell-Seneca of the Washington County Court of Common Pleas declared that:

"[I]n the absence of state law, business entities are nothing…. It is axiomatic that corporations, companies, and partnerships have no 'spiritual nature,' 'feelings,' 'intellect,' 'beliefs,' 'thoughts,' 'emotions,' or 'sensations,' because they do not exist in the manner that humankind exists...They cannot be 'let alone' by government, because businesses are but grapes, ripe upon the vine of the law, that the people of this Commonwealth raise, tend, and prune at their pleasure and need."

The courts are not the endgame, but they are viable places to make a stand, necessary for raising community and societal awareness of what's gone haywire. And it's always helpful – though not imperative – when the courts catch up to the people advocating for community rights. After all, unless you believe in crypto-monarchical government, it's not the courts who have the final say, but the people.

WHAT COULD OUR ELECTED OFFICIALS DO FOR COMMUNITY RIGHTS?
The last point to be made here in in response to the question, where can our elected officials stand in regards to this fight for community rights?

The authors cite City Councilmen Lilliquist from Bellingham. Though having gone through a CELDF Democracy School and feigning support for the local community rights group who petitioned to place a Community Bills of Rights on the ballot in 2012 to protect the rights of the community against coal trains headed for a proposed shipping terminal north of town, Councilman Lilliquist had no problem leading the charge in the legal fight to deny even the right to vote on the matter.

The community rights folks in Bellingham opposed the coal trains for a whole slew of reasons: from the impacts to the community and nature at the point of extraction, to the local impacts in Bellingham, to the recognition that mining and burning more coal is counterintuitive to the need to stop using fossil fuels for global ecological reasons.

For all that hard work – to call out the rottenness of the existing system, to stand on the grounds of rights, to actually confront the life-critical issue of climate change head-on – those folks in Bellingham were rewarded with a lawsuit from the Bellingham City Council and BNSF railroad – the corporate interest poised to profit from the shipping of coal via its trains.

Though Lilliquist has formulated his own opinion about how community rights promotes "hyper localism" as a reason to levy the lawsuit against people who put him in office (however, if you actually read these Community Rights Ordinances, including the one from Bellingham or the Colorado state initiative, you would see that if they have any "hyper" mentality about them, it is to uphold and expand rights protections – not undermine them), his view is really less about some unfounded fear of community rights gone sour, and more about fear of greater democracy and self-determination interfering with corporate privilege.

Putting aside Lilliquist's fears, and getting at what actually transpired in Bellingham, it's clear that Lilliquist made a choice. He chose to stand with the law as he saw it – that is, in simple terms, that Bellingham as a municipal corporation, subordinate to the state, doesn't have the authority to do anything about coal trains, and so neither do the people living in Bellingham.

His choice was about validating state and federal preemptive law, even though it undermines the rights of the community. His choice was about protecting corporate "rights" over community rights. His choice was about standing up for the US Constitution and its goal of property and commerce endeavors being paramount in a manner in which those priorities can be wielded against the health of the community – a community he was elected to protect.

Councilman Lilliquist chose to uphold one half of his oath as an elected official.

Lilliquist could've chosen the road less traveled, the one where he swore an oath to protect the health, safety, and welfare of the residents of Bellingham, and even more specifically the 10,000 people who signed the petition to have the Community Bill of Rights go to the people of Bellingham to decide – not the city council and the courts – about protecting rights vs. protecting corporate profiteering from coal trains.

Flash forward to 2014, and you have a very different scene unfolding in Mora County, New Mexico. County Commissioner John Olivas, under tremendous pressure from within the local government and from an international oil and gas corporation, is standing with the people and the Community Bill of Rights passed in that community about a year ago.

Olivas has been presented the same legal arguments that Lilliquist was. Olivas, though, understands that to follow the path Lilliquist chose means surrender, a sell-out to the illegitimate system that is threatening the health, livelihood, and cultural make up of his home and that of the ecosystems living in what is already an environmentally stressed area of the world.

Olivas is standing on his oath to protect the health, safety, and welfare of the residents of Mora County, even if doing so challenges current law. He says this: "We call on you to join the people of Mora in our resistance to a system of law and governance that bears almost no resemblance to 'we the people' and 'consent of the governed.' Only then will we begin to build the world and communities that we so desperately need."

Olivas also puts the corporate lawsuits levied against the people of Mora in perspective when he says, "We see these lawsuits as merely a beginning – of a waking up that must occur across our communities and the country to understand that we are caught within a system that virtually guarantees our destruction."

You can read his full statement about the situation in Mora County here: http://celdf.org/john-olivas-statement-march-2014

SO WHAT ARE WE TO DO?

As County Commissioner Olivas points out, Mora County's fight is everyone's fight. That means we need to support them directly and indirectly. We support them directly with our words, influence, and dollars if you have some. We support them indirectly by taking up the fight in each of our own communities in the way that Mora County has.

It's unfortunate that the authors linked to IOPS, which purports to espouse revolutionary change, chose to undermine revolutionary efforts through the form of community rights, while at the same time recommending obedience to the existing system.

It is very clear that nothing will develop nor evolve in regards to securing rights for people, communities, and nature, and containing corporate and economic power, if the focus is put on IOPS or CELDF or any other organization.

The fight for rights has always been about each of us liberating ourselves first and then taking that liberation on the road. From there we each can make our own decisions on what or who to associate with, or building the necessary means to fight for rights.

Clarity of what we are up against is critical to formulating the direction we go. That means taking a look in the mirror as well as the evidence around us.

Those who are committed to community rights, I believe, have done both, and are acting in a manner that is opening up viable pathways for others to join them.

Those viable pathways have taken the form chosen by the communities in New Hampshire, Mora County, New Mexico, multiple Oregon communities, and the other 150 communities who asserted their right to local self-government in a manner that protects the rights of people and nature, along with rejecting powers aimed at violating those rights.

All those necessary local actions, and the thousands more needed, then establish viable pathways toward state and federal constitutional change, where the people then insist that those levels of government must recognize the right to local self-government in order to protect and enhance rights protections for individuals, their communities, and nature, along with eliminating "rights" or other powers of corporations that would interfere with protecting the fundamental rights of individuals, their communities, and nature.

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