

Reinventing Rights in an Era of Fracking

It is important to note that the 21st century corporation, already the dominant force in the planet's political and ecologic landscape, has recently received an alarming mix of expanding legal powers in the American federal court system.

Burwell v. Hobby Lobby, decided in June by the US Supreme Court, creates an expanded definition of religious freedom for a fictional entity, the privately owned or "closely-held" corporation. This right was granted at the expense of the rights of individual people. Within days of that ruling, the Court further expanded its definition of religious freedom on behalf of another corporation, religion-based Wheaton College. Both decisions depart significantly from earlier case law on the rights of corporations. They follow a similar trajectory to the Court's 2010 decision in *Citizens United v. Federal Election Commission*, which struck down corporate spending limits on political action committees.



Yet, if there is now an unparalleled expansion of rights granted to corporations, there is reason to hope that a countervailing trend is developing at the state and local level. In late June, New York's highest court found that local communities have the right to ban fracking. In [this case](#), the towns of Dryden and Middlefield had amended their zoning laws in 2011 to prohibit hydraulic fracturing because it would threaten the health, environment and character of their communities. New York state law does not allow local regulation of the oil and gas industries, but the courts found that since an outright ban was not regulation, a ban was permissible. With this decision, New York has erected what has been hailed as the biggest barrier to fossil fuel energy development in national history.

There is an inherent tension when entities pursue different rights. With the rise of the American corporation, that tension has developed a surreal dimension. After all, corporations are fictional legal entities, designed to allow individual humans to facilitate the flow of commerce. Their goal is to maximize profits for humans. While the means to achieve that goal may involve tangential obligations – such as health and environmental regulations, which they often actively resist -- their ultimate goal remains unchanged.

Today, corporations own or control almost all the elements of Earth's surface, including the living and non-living components of land and water. Corporations do not, however, share a proportionate responsibility toward the public welfare and the common good. That corporate entities acquire new rights at the expense of the natural world and real-life, flesh and blood human beings is alarming.

Perhaps our present system of law, which tends to trade off between the rights of people and corporations, or between the rights of different groups of people, or even between different

corporations, is an integral part of the current problem. A [wider perception of rights](#), a view that sees that “rights originate where existence originates,” offers a vastly different approach.

While this approach is still largely unfamiliar, its premise is both simple and profound. How might a community, a state, a nation evolve if every being, not just every human being, were recognized as having the inherent “right to be, the right to habitat, and the right to fulfill its role in the ever-renewing processes of the Earth Community?”

This approach, articulated by the cultural historian Thomas Berry, is expanding our traditional understanding of rights in a radically significant way. It traces clearly the emergence of rivers and trees, rainforests and mountains, polar bears and monarch butterflies from the same common source, the Universe, from which everything has come into being. It also acknowledges the interdependent relationships that evolved in order to bring about the existence of each of them. What if this context was the foundation of our human understanding of rights?

Maybe this approach sounds unworkable or even ridiculous. But consider all the resources that are currently directed toward defending and expanding the rights of fictional corporate entities. Intentionally or not, large corporations are in the forefront in planning, manifesting, and creating a planet-wide ecological crisis that is threatening the very existence of life. The humans who run these corporations are largely shielded from scrutiny or judgment, and the consequences of their actions on the non-human world rarely considered. Surely our current legal structure, one that ignores natural rights but continues and even expands upon corporate power, at the expense of life itself, is the very definition of unworkable.



In the meantime, the [recent victory](#) for local rule in New York and perhaps other states has gained significant momentum. To date, over one-hundred eighty municipalities across New York state have adopted land use ordinances that ban fracking outright.

The movement for local rule, expertly advocated by the [Community Environmental Legal Defense Fund](#), [Earth Justice](#), and other groups, began as New Yorkers discovered that significant parts of their state lie over the subterranean Marcellus Shale region, which has already ignited [huge fracking operations](#) throughout Pennsylvania, Ohio, West Virginia, and Kentucky. New York is in the sites of the gas industry as well. Although Governor Cuomo has placed a moratorium on fracking in New York, many gas and oil companies have been negotiating leases with property owners in anticipation of its legalization.

There are many strong reasons to favor “local rule” ecological initiatives. Local communities usually embrace ideas that promote the health of their children and adults, the quality of life, the local economy, the health of their lands, air



and water, as well as the intangibles such as beauty, well-being, belonging, and spiritual, ethical and historical meaning. People bonded to their community are likely to defend its long-term interests over short-term gains. And those with an intimate knowledge and love for a local place are more likely to appreciate, defend and protect it.

Yet there are [limits](#) to what local rule can accomplish. A town that bans fracking within its borders has accomplished little if neighboring towns allow it. Furthermore, it's possible that fracking bans will be pursued only among communities and residents with the financial means to forgo potentially lucrative leases. Local rule may also give the governor the [political cover](#) to permit fracking, leaving the more difficult work of banning it to local citizens and officials. It is also unclear whether the state's public lands would be adequately protected under local rule. And finally, a victory for communities within a single state like New York may have little impact in any other state.

In *The Great Work*, Thomas Berry wrote that “Humans, through our scientific insight and our technological skills, have become a macro-phase power... yet we have only a micro-phase sense of responsibility or ethical judgment. We need to develop a completely different range of responsibility.” New York’s advance in local rule is a heartening victory. Local towns have taken a stand against a rich and powerful corporate industry, and they have won.

But can our sense of responsibility continue to evolve beyond the local, and beyond the human? Can we strive to perceive a vast network of community operating at micro, macro and planetary levels? As humans acknowledge the rights of other Earth communities to exist and to thrive, we will better align ourselves with the most fundamental principles of the planet, and better create the conditions upon which the future of life depends.

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