

Local Laws

How communities can fight corporations

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KAI HUSCHKE

PHOTO BY TRASK BEDORTHA

“We are screwed in all kinds of senses if we keep doing what we’re doing and don’t change course,” says Thomas Linzey, executive director of the Community Environmental Legal Defense Fund (CELDF). Linzey, an attorney, says that he had to be persuaded to come give a keynote talk at the Public Interest Environmental Law Conference (PIELC) because “we don’t see lawyers as change agents.” He adds, “I let them know up front that my talk would be based on why environmental law has failed.”

Linzey says that the environment is worse by every statistic than it was 40 years ago. “We rarely look in the mirror and say that to ourselves,” he says. “Rivers don’t catch on fire anymore. Well if that’s our standard then we have real problems.”

CELDF, which started off as a free and affordable public interest law firm in Pennsylvania but now works across the U.S. and abroad, believes that a right to self-government has to be asserted in the local communities that are facing the environmental impacts, such as counties in the Willamette Valley facing genetically modified crops. Local governments should be able to reject unsustainable economic and environmental policies set by state and federal governments, CELDF says.

But giving a small town the right to tell a multinational corporation that it can’t come in and frack natural gas wells, start a massive pig farm or put in a uranium mine isn’t easy. It’s not even legal.

NO (LEGAL) LOCAL LAWS

Linzey says, “If the courts don’t accord respect and recognition to the local rights network, the only option is to override those courts by making constitutional changes.”

CELDF now assists communities in writing legally binding laws in which they assert their right to self-govern. The organization advises and educates activists, community groups and local governments on how to move from just regulating corporate harms to stopping those harms by asserting local, democratic control directly over corporations.

CELDF encourages and helps communities to write community bills of rights as well as laws that change natural communities and ecosystems from being property under the law to being recognized as entities that have rights of their own — the rights of nature.

Kai Huschke, who works for CELDF out of Spokane, Wash., says under the current system, “We’re assigned a sandbox to play in, which is regulatory law.” Energy, he says, is being put into protesting the permitting of something that has already been deemed legal. At best, Huschke says, the system is set up to mitigate the destructive impact, not stop things like fracking, coal trains or genetically modified crops from coming into a community. “We at the local level have been disempowered to do anything about it,” he says.

Huschke gives as an example the threat of crops altered with genetically modified organisms (GMOs) in the Willamette Valley. Local vegetable seed farmers have been fighting the state to keep canola, which spreads like a weed and is easily GMO-contaminated, out of the valley. But despite the farmers’ efforts, Oregon recently expanded the area in which the weed-like crop can be planted, and farmers also face GM sugar beets, alfalfa and perhaps wheat.

“How do you actually call out the system if you are not calling out what allows the system to operate?” Huschke asks. “It’s not a sustainable food system problem, it’s a democratic decision-making problem,” he says.

Citizens in Benton County, with CELDF’s help, have drafted a “Food Bill of Rights” law that establishes a “right to sustainable food systems” for the community and prohibits activities — like the planting of GMOs — that would violate that right, and they are fighting to have the ordinance placed on the May ballot. Lane County farmers and activists are discussing similar measures. Huschke calls it “collective, non-violent, civil disobedience through local lawmaking.”

The structure of laws need to change, Huschke and Linzey say, and CELDF is picking that fight. “It doesn’t stop at Lane or Benton County or until there’s enough counties to challenge the state and the notion that corporations are people,” Huschke says.

The idea of corporate personhood goes back a lot further than *Citizens United*, Linzey says. CELDF teaches in its “Democracy Schools” just how the current system, which gives greater rights to corporations than to communities, came to be. They date corporate personhood back to an 1819 Supreme Court ruling that gave private corporations constitutional protection from government interference in internal governance under the Contract Clause of the Constitution. But CELDF says that the court

found no reason to also protect municipal corporations, such as cities and counties, from state interference with self-government.

“The Constitution doesn’t have a frame for protection of the environment,” Linzey says. Civil rights and environmental laws are under the authority of the Commerce Clause, and it’s the structure of the law itself that needs to change, he argues.

NO EASY FIGHT

Linzey and Huschke explain that communities face a number of barriers to being able to legislate sustainability. Linzey says that under current law sustainability is actually illegal.

Towns and counties are up against “four hammers” Huschke says. The first is Dillon’s Rule, which states communities can’t enact any laws unless state legislatures say they can. The second is legislatures, and sometimes Congress, banning communities from adopting certain kinds of laws. He says industries routinely ask state governments to draft laws that preempt communities from having decision-making authority over things like factory farming and GMOs.

Next, he says, communities face corporate personhood and the rights of corporations to override community lawmaking. The fourth hammer, Huschke says, is when corporations use civil rights laws, which were written to protect freed slaves, to demand monetary damages from citizens and local governments that challenge an industry’s authority or engage in other activities that could hurt the community. “The system is built to punish them,” Linzey says of the communities that fight back.

“Yes, it’s a big risk for communities to do this type of lawmaking,” Huschke says, but 150 communities in eight states have passed these types of laws and only five had any sort of legal challenge made against them. The work is relatively new out West, he says. The successes — communities that have staved off fracking or factory farming — are back East where Linzey and CELDF are based.

It’s a slow process, but Linzey isn’t worried. It took us 200 years to get where we are now, he points out. He says, “There can’t be sustainability without true local democracy.”

Thomas Linzey gives a keynote speech 12:15 pm March 2 in the EMU at the UO, followed by a panel with Linzey and Kai Huschke at 2:30 pm.