

On “Consent of the Governed” and Other Frauds

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A couple of recent news items demonstrate once again — if such a demonstration is necessary — that “consent of the governed” as a source of legitimacy for representative democracy is absurd and impossible.

In North Carolina, governor Pat McCrory signed the Energy Modernization Act, which includes a provision criminalizing (reduced in the final version, due to public outcry, from a felony to a misdemeanor) to publicly disclose the chemicals used in hydraulic fracturing (“fracking”).

Meanwhile, the Obama administration has appealed to the Supreme Court to contest an interpretation of the Whistleblower Protection Act that protects government employees who leak information to the public.

If the North Carolina legislation sounds familiar, it should. It follows on the heels of legislation in other states that turns the filming of animal abuse and other unethical practices in the agribusiness industry into a criminal offense. You may also remember that BP, after the Deepwater Horizon disaster, refused to disclose the composition of dispersal agents it was dumping in the Gulf by the ton on “proprietary information” grounds.

Now, first of all the very concept of “proprietary information” is nonsense. And it’s nonsense many times over when a company can use it as legal cover to pump tons of potentially toxic chemicals into the ocean or into bedrock that may (make that “will”) leach into our groundwater, without telling us what they’re doing. Not only should it not be a crime to reveal such information, but in a free society local residents could — and should — demand immediate disclosure of the chemicals that energy companies were pumping into their air and water in a civil discovery process, shutting them down forthwith if they failed to comply.

The Obama Justice Department’s position should also sound familiar. Obama has a worse record of persecuting whistleblowers and passive-aggressive sabotage of Freedom of Information requests than George W. Bush, if such a thing is imaginable. Obama’s government also sentenced Chelsea Manning to thirty years in Leavenworth for revealing to the American people the war crimes and diplomatic skullduggery “our” government engages in, and is hounding Edward Snowden to the ends of the earth for similar revelations about illegal NSA surveillance.

An important concept in organization theory, in considering the power relationship between a principal and agent, is “moral hazard.” The less information the principal has about the actions

of the agent, the more room there is for moral hazard — that is, for the agent to take advantage of the principal's limited information and promote her own interests under cover of serving the principal. The less the principal knows about what the agent is doing, the less meaningful her actual status as principal becomes.

This moral hazard is a problem in all principal-agent relationships, and becomes more severe as the principal's knowledge of the agent's day-to-day activities is diminished. The result, in all ostensibly representative institutions, is what Robert Michels called the Iron Law of Oligarchy: The tendency for power to shift upward from the delegator to the delegate, from the principal to the agent, and from the elector to the representative. No matter who the acting leadership of an institution ostensibly represents — voters, shareholders, whatever — their superior access to inside information and control over the agenda will effectively nullify any real control by those on the outside they claim to represent.

And of course when the “agent” has the authority to decide what the “principal” is or is not allowed to know about the agent's activities, and punish the agent's subordinates for leaking information to the principal, the claim that the agent derives her authority from the principal becomes a complete and utter farce.

These recent news items demonstrate this in spades. As Marja Erwin argued, in response to claims that Chelsea Manning was a “traitor” for divulging government secrets to the public the government allegedly answers to, “consent requires equality. As long as the government keeps secrets from the governed and has power over the governed, it does not have consent, and does not have legitimacy” (“The persecution of Breanna Manning and the incoherence of American Centrist ideology,” April 25, 2012).

Short of a direct democracy in which all decisions are made directly by the governed themselves, it's impossible to conceive of a government or other representative institution that couldn't control the information available to those it “represents.” And the ultimate in direct democracy is a stateless society without hierarchical institutions, in which all decisions are made by individuals or by voluntary associations of those affected by the decision.

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