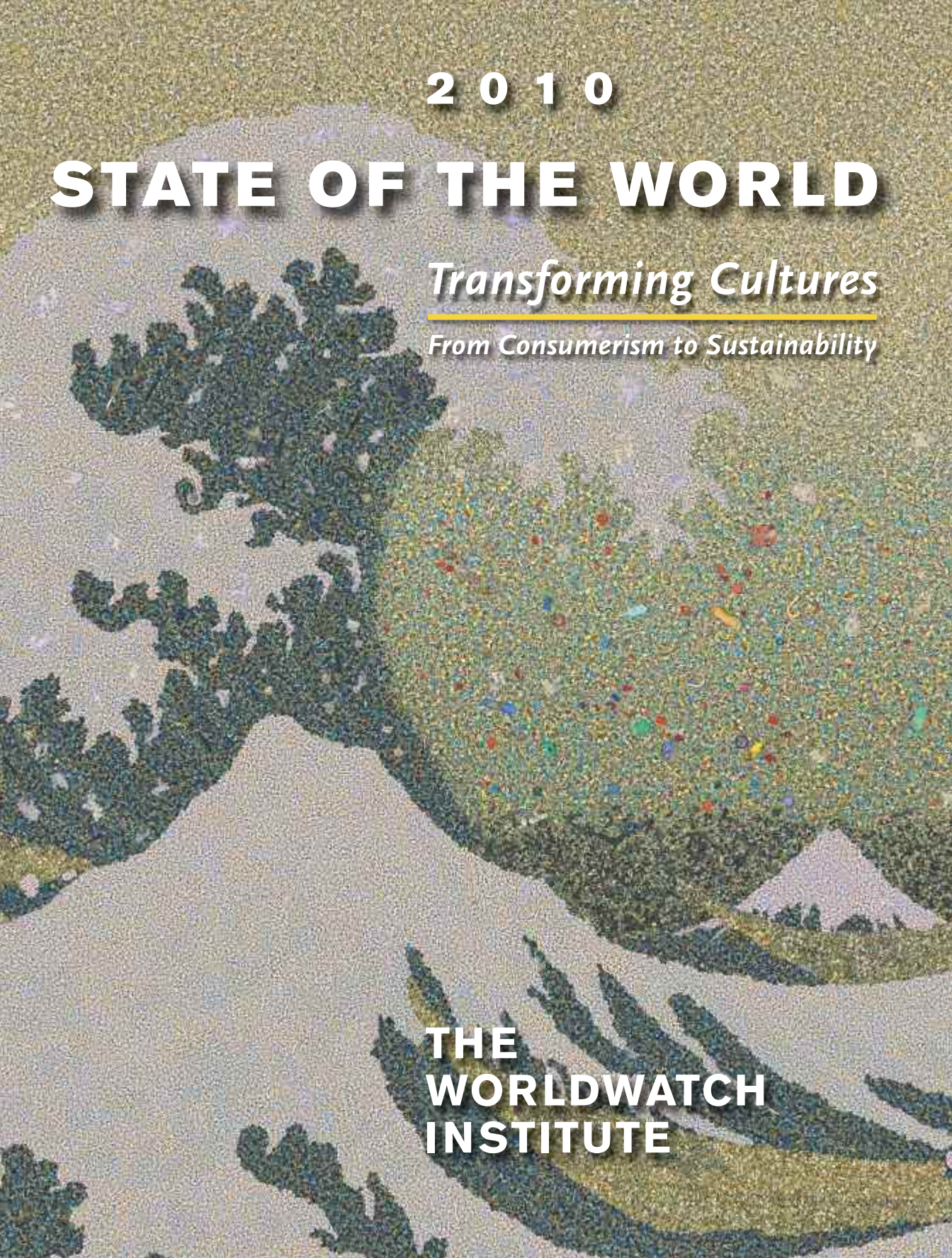

2010

STATE OF THE WORLD

Transforming Cultures

From Consumerism to Sustainability

THE WORLDWATCH INSTITUTE

2010
STATE OF THE WORLD
Transforming Cultures
From Consumerism to Sustainability

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Earth Jurisprudence: From Colonization to Participation

Cormac Cullinan

"If we have our land and clean air and water, our communities can have *sumak kawsay*—the good life," the indigenous leader said with calm conviction. "I don't know why you are calling this a new development model—we have always lived this way. The duty of the state is to ensure that these fundamental rights are protected in order to safeguard the well-being of our people."[1]

The leader was speaking to legislators, politicians, lawyers, and activists gathered in Quito in November 2008 to discuss how best to implement the provisions in Ecuador's new constitution that recognize that nature has rights that must be enforced by law. The constitution sets the achievement of well-being in harmony with nature (*el buen vivir* or *sumak kawsay*) as a fundamental societal goal. Inclusion of these provisions was achieved in a remarkably short time by the collective efforts of indigenous peoples' representatives and environmental nongovernmental organizations (NGOs) supported by lawyers from the Community Environmental Legal Defense Fund (CELDF) of the United States.[2]

In a world where almost all legal systems define nature as property and "natural resources" as available for state-sanctioned exploitation and where the highest goal of government is the pursuit of an ever-growing gross domestic product, Ecuador's constitution is a strong indicator that a centuries-old log-jam in legal and political thinking and practice is beginning to break up. Legislators are starting to recognize that human well-being is a consequence of the well-being of the Earth systems that sustain us.

From Colonial Law to Earth Jurisprudence

Almost all of the "environmental crises" that threaten contemporary industrialized civilization are caused by ecologically unsustainable and harmful human practices. Since these practices reduce the prospects of our descendants surviving and thriving, from an evolutionary perspective—as well as from ethical, spiritual, and pragmatic perspectives—they are contrary to the interests of the species. The fact that many of these practices are allowed to continue and even receive incentives indicates that today's governance systems are dysfunctional.

Legal systems are failing to protect the

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Earth community in part because they reflect an underlying belief that humans are separate from and superior to all other members of the community, and that the primary role of Earth is to serve as "natural resources" for humans to consume. These beliefs are demonstrably false. Humans are, of course, but one of many species that have co-evolved within a system they are wholly dependent on. In the long term humans cannot thrive in a degraded environment anymore than fish can survive in polluted water.

Just as colonial laws did not recognize the rights of indigenous peoples and facilitated the exploitation of them and their land, most contemporary legal systems do not recognize that any indigenous inhabitants other than humans are capable of having rights. The law defines land, water, other species, and even genetic material and information as "property," which entrenches an exploitative relationship between the owner (a legal subject with rights) and the property (legally speaking, a "thing" incapable of holding rights). Most legal systems also grant human beings legal rights to exploit all aspects of the Earth community (through mining, fishing, and logging concessions, for example), with predictably dire consequences for the integrity and functioning of indigenous communities.

One of the most exciting developments in law today is the emergence on several continents of initiatives to bring about a fundamental change in human legal systems. These all share the belief that a primary cause of environmental destruction is the fact that current legal systems are designed to perpetuate human domination of nature instead of fostering mutually beneficial relationships between humans and other members of the Earth community. They all advocate an approach known as Earth jurisprudence. (See Box 18.) According to this philosophy, human societies will only be viable and flourish if they regulate themselves as part of the wider Earth community

Box 18. Principles of Earth Jurisprudence

- The universe is the primary law-giver, not human legal systems.
- The Earth community and all the beings that constitute it have fundamental "rights," including the right to exist, to have a habitat or a place to be, and to participate in the evolution of the community.
- The rights of each being are limited by the rights of other beings to the extent necessary to maintain the integrity, balance, and health of the communities within which it exists.
- Human acts or laws that infringe these fundamental rights violate the fundamental relationships and principles that constitute the Earth community and are consequently illegitimate and "unlawful."
- Humans must adapt their legal, political, economic, and social systems to be consistent with the fundamental laws or principles that govern how the universe functions and to guide humans to live in accordance with these, which means that human governance systems at all times must take account of the interests of the whole Earth community and must:
  - determine the lawfulness of human conduct by whether or not it strengthens or weakens the relationships that constitute the Earth community;
  - maintain a dynamic balance between the rights of humans and those of other members of the Earth community on the basis of what is best for Earth as a whole;
  - promote restorative justice (which focuses on restoring damaged relationships) rather than punishment (retribution); and
  - recognize all members of the Earth community as subjects before the law, with the right to the protection of the law and to an effective remedy for human acts that violate their fundamental rights.

and do so in a way that is consistent with the fundamental laws or principles that govern how the universe functions.[3]

This approach requires looking at law from the perspective of the whole Earth community and balancing all rights against one another (as is done between humans) so that fundamental rights like the right to life take precedence over less important ones such as the right to conduct business. Currently the rights of humans, and particularly of corporations, automatically trump the rights of all others. This also means that while a fox eating a rabbit could be seen as a violation of the rabbit's right to life, it does not violate the laws that govern the universe because the maintenance of predator-prey relationships is fundamental to preserving the integrity of the whole community. Killing to survive serves the greater good in a way that killing for sport does not.

The Evolution of Earth Jurisprudence

A few prescient commentators have for several decades drawn attention to the need for legal systems to take an evolutionary leap forward by recognizing legally enforceable rights for nature and other-than-human beings. One of the best-known articulations of this position is that of Christopher Stone, who in 1972 published a seminal article entitled "Should Trees Have Standing? Towards Rights for Natural Objects." He pointed out that the widening of society's "circle of concern" had led to the recognition of more extensive legal rights for women, children, Native Americans, and African Americans. There was no good reason, he argued, why increasing public concern for the protection of nature could not lead to the recognition of nature's rights. This would allow legal suits on behalf of trees and other "natural objects" and would mean that damages could be recovered and applied for their benefit.[4]

As Chilean lawyer Godofredo Stutzin pointed out in 2002, one practical advantage of recognizing rights for nature is that anyone seeking to alter or destroy any aspect of it would have to put forward reasons to justify why this should be permitted, instead of making people who wish to prevent destruction prove why nature should be conserved.[5]

Perhaps the clearest calls for the development of a new jurisprudence have come from Thomas Berry, eminent American cultural historian, religious scholar, and philosopher. He maintains that the legal systems in countries such as the United States legitimized and facilitated the exploitation and destruction of Earth. Berry has argued that "we need a jurisprudence that would provide for the legal rights of geological and biological as well as human components of the Earth community. A legal system exclusively for humans is not realistic. Habitat of all species, for instance, must be given legal status as sacred and inviolable."[6]

In April 2001 the Gaia Foundation of London convened a meeting of lawyers, eco-psychologists, wilderness experts, anthropologists, and environmentalists to begin the process of developing this new jurisprudence. And immediately before the World Summit on Sustainable Development in 2002, *Wild Law: A Manifesto for Earth Justice* was published, articulating an Earth-centric approach to law and governance. The term "wild law" refers to laws that articulate and give effect to Earth jurisprudence by fostering mutually beneficial instead of exploitative relationships between human beings and other members of the Earth community.[7]

Wild Law proposed that the primary purpose of legal and political systems should be to ensure that human beings act as "good citizens" of an Earth community rather than merely defining antisocial behavior in relation to other human beings. This would require recognizing that the other members of the Earth

community also have rights that must be balanced against human rights. The precise nature and way in which Earth jurisprudence was expressed would vary according to the particular context, but all would be consistent with the fundamental principles on which the Earth community is ordered.[8]

In some cases the alignment of laws with the fundamental principles of the natural system of order has been happening for pragmatic reasons as lawmakers and officials seek to create more effective governance systems. For example, the widespread adoption of the "ecosystem approach" in relation to fisheries and the conservation of wild species and places can be seen as pragmatic recognition that it is impossible to manage human impacts on an ecosystem successfully by looking only at a part of that system, such as a particular fish stock. Similarly, concepts like intergenerational equity recognize the need to align human legal systems with the far longer time scales on which nature operates, while moves toward bioregional planning reflect a growing acceptance of the fundamental natural principle of diversity and the benefits of shortening feedback loops by allow for more local decisionmaking.[9]

Helping Local Communities Change the Rules

In the United States, much of the pioneering work in Earth jurisprudence has been undertaken by the Community Environmental Legal Defense Fund, founded and led by Thomas Linzey. For many years the CELDF successfully represented communities that wished to prevent or challenge authorizations for corporations to undertake a range of environmentally destructive activities, such as the disposal of sewage sludge on land, the establishment of massive pig farms, or mining. Initially the CELDF used the conventional legal strategy of attacking deficiencies in the authorization processes. Despite initial successes, however, Linzey soon realized that the victories were short-lived because the corporations simply repeated the process in a manner that complied with all legal requirements—and eventually triumphed.

Communities could not protect themselves and the ecosystems within which they lived because the rules of the legal system as a whole were skewed in favor of both corporations and property owners. In fact, environmental laws mainly regulate how quickly natural communities are destroyed rather than preventing the destruction. A fundamentally new approach was required.[10]

The first step was to expose the limitations of existing regulatory systems and how corporations have shaped the law so that it allows commercial interests to

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Energy landscape: Open-pit coal mining in western Germany.

override the interests of local communities and facilitates the lawful degradation of nature. To do this, CELDF and Richard Grossman (co-founder of the Programme on Corporations, Law and Democracy) established the Daniel Pennock Democracy School, which runs intensive short courses around the United States for communities that organize themselves to resist environmentally and socially harmful activities in their areas.[11]

The second step was to empower local communities to use legal systems proactively to support the establishment of sustainable, local economies. Realizing that local communities could not secure their own well-being without protecting the integrity and functioning of the ecological communities within which they lived, the CELDF developed a strategy of assisting communities to draft local ordinances that:

- re-assert their right to prohibit activities harmful to their well-being,
- recognize rights for natural communities,
- enable local governments and individuals to sue for damages to be used for the restoration of any damage to ecological communities, and
- strip away the legal personality of corporations who contravened the ordinances (and hence their right to benefit from the civil rights in the U.S. Constitution).[12]

If corporations and state governments take legal action to challenge the validity of these ordinances, they simply further expose the extent to which the legal system has been hijacked by vested interests.

The CELDF has helped more than 100 local governments in the United States pass local ordinances with one or more of these features. In the process of drafting "home-rule" charters, local communities such as Spokane in Washington State and Blaine Township in Pennsylvania are accepting that the only way to fulfill their role as trustees of natural communities is to create legal mechanisms that will enable local people and communities to enforce the inalienable and fundamental rights of natural communities as well as their own rights to a healthy environment.[13]

In South Africa, the 2008 National Environmental Management: Integrated Coastal Management Act now requires decisions about the coastal zone (which includes the 200-nautical-mile exclusive economic zone) to be made in the interests of the "whole community," which includes more than just humans.[14]

Teaching Wild Lawyers and Civil Servants

Conventional law schools are being challenged to identify how natural systems function and how the interests of other-than-human members of natural communities should be taken into account in decisionmaking. The Center for Earth Jurisprudence (CEJ) was established in 2006 by two Catholic Universities in Florida in order to re-envision law and governance in ways that support and protect the health and well-being of the Earth community as a whole. Inspired primarily by the works of Thomas Berry, the CEJ adopts a multidisciplinary approach and seeks to train a new breed of lawyers who are equipped to deal with the reality of regulating human behavior in a highly interdependent Earth community. In the United Kingdom, the UK Environmental Law Association has established a standing Wild Law working group and hosts annual Wild Law Weekends in the countryside at which members explore and develop these concepts.[15]

In Africa, when Mellese Damtie introduced his students at the Ethiopian Civil Service College to the book *Wild Law*, they were particularly enthused by the suggestion that African customary law—long ignored as "primitive"—could be a source of inspiration for contemporary governance systems. Field research by government administrators studying at the college revealed that a rich heritage of cus-

tomary laws and cultural practices designed to ensure respect for nature had survived among rural communities in Ethiopia. For example, in areas where reverence for rivers means that people remain silent or speak only in hushed tones when crossing them, the watercourses are in a far better condition that elsewhere.[16]

Future Prospects

The view that the long-term viability of human societies cannot be attained at the expense of the Earth community is supported both by the teachings of many ancient traditions and religions and by the findings of physics and ecology—all of which point to the interconnectedness of everything and the futility of attempting to understand any part of a system without reference to its context. Achieving widespread acceptance of this perspective in a consumerist world presents a major challenge, particularly in the face of corporations and persons with a vested interest in maintaining the exploitative status quo.

The rapidly intensifying challenge of climate change has exposed how ineffective international and national governance regimes are in dealing with the side effects of consumerism and the excessive use of fossil fuels. But there are still major differences regarding how best to respond. Most governments today favor a combination of new technology and better application of existing regulatory systems. Ecuador is exceptional in opting to make a fundamental change to the architecture of its governance system by recognizing the rights of nature and redefining its concept of development. There, the existence of a large number of people who had not wholly adopted western consumerist values appears to have been a crucial factor in securing the recognition of the rights of nature in the constitution. And in a speech to the U.N. General Assembly in April 2009, President Evo Morales of Bolivia called for a Universal Declaration of the Rights of Mother Earth, indicating the potential for these ideas to spread rapidly.[17]

At present the most promising prospects for promoting "eco-centric" law and governance appear to be at the local level, where appeals to traditional values and cultures of resistance have increasing resonance. The CELDF's democracy schools in the United States reconnect people with activist movements of the past, including abolitionists and suffragists. In India, Navdanya—an organization founded by environmental activist Vandana Shiva—is a prime mover in the Earth democracy movement that has succeeded by building on existing cultural understandings of the sacred dimensions of seeds, food, water, and land and on traditions of resistance to colonial authority.[18]

In Africa and Colombia, the Gaia Foundation and local organizations have been working with traditional communities and elders to develop a similar approach, which they term "community ecological governance." Reconnection with elders and the rediscovery of the wisdom in customary law systems has also inspired Kenyan lawyers and activists from the NGO Porini to go to court to win the right for local communities to assume custodianship of sacred hills and groves and to begin restoring them.[19]

The speed and the extent to which existing environmental and social justice organizations and networks adopt this perspective is likely to be a crucial factor in determining the impact of eco-centric governance initiatives. If these organizations realize that they could greatly enhance their effectiveness by collaborating on the basis of the common understanding that sustaining human well-being requires protecting the whole Earth community, this eco-centric approach would spread rapidly through the web of relationships that already connects them. This could foster a rapid uptake of this approach of Earth jurisprudence.

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Earth Jurisprucence: From Colonization to Participation

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