

CHAPTER 7

Governing People as Members of the Earth Community

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The governance systems of today's dominant consumerist cultures are facilitating, rather than preventing, degradation of the natural systems that support life and are the foundation of human well-being. By defining all of nature (other than humans) as property, legal systems enable people and corporations to exploit and trade aspects of nature as if they were slaves. Economic systems reward those who extract natural resources and accumulate assets handsomely, and society rewards the financially wealthy with power and status.

Contemporary governance systems are creating incentives for and legitimizing human behaviors that are harmful to the common good. Climate change and the many other "environmental crises" that confront us are the symptoms of this failure of governance. The crucial questions are: why are our governance systems failing, and, what can be done about it?

Governance systems reflect a community's or a society's collective view about what it is, what it believes in, and what it wishes to become. Most governance systems today reflect the narcissistic belief that humans are exceptional beings who are superior to the rest of nature and who are not subject to its laws in the same way as other beings. The evidence, however, does not support the proposition that humans differ fundamentally from other species or that it is possible for us to transcend and escape the ordering principles that we observe throughout the universe. On the contrary, the more we discover, the more apparent it is that everything that exists is interrelated and forms a single reality that is ordered on the basis of consistent, universal principles.

Most contemporary governance systems do not account for the fact that they are established within a preexisting system of natural order that is binding on us all. To the contrary, they assume that these universal principles are not relevant to the design and functioning of our legal, political, and economic systems. Consequently, governance systems often function in ways

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that run counter to nature and that cannot be sustained. The overexploitation of a fish stock, for example, may be promoted by the political system, authorized by the legal system, and incentivized by the economic system, but all of these systems are powerless to prevent the ultimate collapse of the fish stock, which the laws of nature dictate. Sustainability depends on governance systems that ensure that people understand and comply with the laws of nature. The penalties that nature imposes for failing to do so are severe and nonnegotiable.

Most contemporary governance systems reflect the fundamental belief of consumerist societies that “more is better,” as well as the aspiration to enhance human well-being by amassing ever more material wealth and the technological power to transcend the limitations of nature. Consequently, these systems have been designed to facilitate human appropriation of ever increasing amounts of “natural resources” and “ecosystem services” to fuel infinitely increasing gross domestic product (GDP). Despite the logical absurdity of the goal of achieving infinite GDP growth and the abundant evidence that achieving it would require confounding natural principles of dynamic balance, this model informs most collective decision making.

Earth Jurisprudence

Earth jurisprudence, in contrast, is a philosophy or approach to governance that embraces the reality that humans are an integral part of the whole living community that we call “Earth,” and that, in order to flourish, we must govern ourselves in ways that accord with the laws of that community. Logically, if humans are part of a larger ordered universe (or Earth) without which we cannot exist, it must follow that we cannot flourish over any extended period of time unless the systems that we establish to govern human behavior are consistent with those that order the system as whole.

A subsystem based on principles that are entirely incompatible with those on which the whole system is based cannot persist for long. More importantly, if the forces that give us life and that enhance our well-being flow through the web of relationships that connect all that has come into being, then alienating humans from nature and establishing mutually antagonistic or competitive relationships between humans and Earth is entirely self-defeating.

The governance systems of industrial and consumerist societies are designed to legitimize and facilitate the exploitation of Earth on the basis that this is the best way of ensuring human well-being. *Earth jurisprudence*, on the other hand, seeks to guide humans to pursue their own well-being by contributing to the health, beauty, and integrity of the Earth communities within which they live.

One of the central premises of the Earth jurisprudence approach is that

long-term human well-being and survival (as with other species) depends on the extent to which we are adapted to our habitat. Thus, the primary goal of human governance systems should be to ensure that humans behave in a manner that enables them to thrive without degrading the Earth community that is essential to life. This means that human governance systems should be aligned with, rather than run counter to, the principles that we observe governing the ever-renewing communities of life.

From this perspective, the purpose of governance is to enhance our fitness to survive (in the Darwinian sense) by progressively fine-tuning our adaptation to Earth. This will require drawing on the best available understanding of how the universe orders itself to inspire the design of congruent human governance systems that regulate people in accordance with the reality that we are embedded within Earth communities. The purpose of legal, economic, and political systems would be to promote behavior that contributes to the ongoing evolution of a healthy Earth community and to discourage behavior that is “anti-social” from the perspective of the community of life.

Earth jurisprudence reflects a worldview that is profoundly different from the materialist worldview of most contemporary cultures. It therefore poses a significant challenge to contemporary governance systems. Earth jurisprudence is not simply another theory jostling with other jurisprudential approaches for attention with an agreed framework of reference. It challenges the framework itself and calls into question the very purpose of governance as currently understood. It is an aspect of a wider cultural shift in our understanding of the universe and our place within it.

Transforming Governance

An essential first step is creating a vision of what a governance system for an ecologically viable human society in the twenty-first century might look like. However, because governance systems are so fundamental to a society and reflect its worldview, values, and aspirations, transforming a governance system requires transforming the society, and *vice versa*. Fundamental social change may be catalyzed by a small group of determined people and inspired by new ideas, but history teaches us that achieving lasting structural changes in society requires the combined actions of many people acting in concert. How much impact the idea of Earth-centric governance will have is likely to be determined by whether it is adopted by enough people who are sufficiently organized to be able to sustain collective action over a long period of time. Change must be both fundamental and rapid because of the speed with which phenomena such as climate change are closing the window of opportunity.

Historically, widespread and fundamental changes in societal values have

occurred within relatively short periods of time, but usually by means that we would not wish to emulate. For example, religious and cultural values have been changed by conquering armies and expanding empires (such as the spread of Islam after the seventh century), the disintegration of governance systems (the collapse of the Soviet Union), and traumatic events (the Black Death plague, which killed 30–50 percent of Europe’s population). Yet significant changes in societal values and practices also have been achieved by social movements such as the U.S. civil rights movement.¹

The prospect of conquest or empire-building spreading ecocentric values during the twenty-first century appears remote. Disasters (such as the predicted avian flu pandemics or climate change-related natural disasters) may well play a role in changing values; however, trauma-driven change usually involves massive loss of human life and often causes negative changes in values, such as the persecution and killing of minority groups identified as scapegoats for the plague in Europe. A fear-based response is unlikely to increase empathy and to shift values toward the more inclusive and cooperative values that are central to an integral Earth-oriented approach.

It is also unlikely that such a transformation will be led by national governments, international institutions, businesses, or religious organizations, although all may play a role.

So far, only a few governments (Bhutan, Bolivia, Ecuador) have shown an appetite for fundamentally reconceptualizing their governance systems in order to steer their country toward ecological sustainability. Even in Ecuador and Bolivia, which recognize the rights of “Mother Earth” and profess a commitment to living well in harmony with nature, the governments have continued to authorize mining and infrastructural development projects that are difficult to reconcile with that commitment. Furthermore, the “Law of Mother Earth and Integral Development for Living Well,” promulgated by Bolivian President Evo Morales in October 2012, reflects a retreat from key elements of the philosophy that informed the declaratory “short law” adopted by the Bolivian congress in December 2010.²

At the international level, the ability of the United Nations or similar institutions to drive any such transformation will be limited until member states adopt these ideas on a broad scale. Moreover, experience shows that



The Secretary of the Bhutan Ministry of Information & Communications (left) inspects a low-cost XO computer.

such organizations have consistently failed to act decisively and effectively in response to phenomena such as climate change and the loss of biological diversity.

Corporations, too, are unlikely to drive the transformation of governance systems. Corporate laws and internal corporate governance systems create significant practical obstacles to corporate leadership in this area. Although addressing climate change would be in the commercial interests of some companies (such as insurers), most of the largest global companies derive the bulk of their income from the exploitation of oil, coal, gas, and minerals and are likely to oppose governance systems that would inevitably lead to restrictions on the activities of extractive industries. (See Chapter 20.)

This means that if any widespread shift in values and worldviews—and significant reorientation of governance systems—is to occur, it is most likely to be driven by civil society organizations. There is now some evidence that this is beginning to happen.

Progress to Date

Numerous articles and books have outlined the philosophy and broad framework of what a governance system could look like that recognized and protected the rights of the whole Earth community. These ideas continue to spread. “Wild law” conferences are held annually in England, Scotland, and Australia. Organizations that are members of the Global Alliance for the Rights of Nature are actively involved in promoting and developing these concepts in Australia, Italy, Ecuador, the United Kingdom, and the United States, among other countries.³

The idea of shifting the purpose of governance systems to ensure that humans live harmoniously within an Earth community in which all members have legal rights is no longer “unthinkable.” As this approach infuses civil society organizations around the world, and as the use of language regarding the rights of nature and Mother Earth increases, it is beginning to shift the global discourse about governance.

Existing social movements have increasingly taken up these ideas since April 2010, when the 35,000-strong World People’s Conference on Climate Change and the Rights of Mother Earth convened in Cochabamba, Bolivia, to proclaim a Universal Declaration of the Rights of Mother Earth (UDRME). The declaration recognizes that Earth is an indivisible, living community of interrelated and interdependent beings with inherent rights, and defines fundamental human duties to other beings and to Mother Earth as a whole. The reasons for its adoption are reflected in the resulting People’s Agreement: “In an interdependent system in which human beings are only one component, it is not possible to recognize rights only of the human part without provoking an imbalance in the system as a whole. To guarantee hu-

man rights and to restore harmony with nature, it is necessary to effectively recognize and apply the rights of Mother Earth.”⁴

The People’s Agreement adopted at Cochabamba has created a common manifesto for many civil society organizations throughout the world. Since 2010, for example, the peasant’s organization La Via Campesina has made statements showing that it regards mobilizing to defend the rights of Mother Earth as an integral part of strategies to defend the rights of exploited groups such as peasants and women. Faith communities and indigenous peoples are adopting this language in public declarations, and the UDRME has sparked numerous other initiatives, including one to develop a global Children’s Charter for the Rights for Mother Earth.⁵

Initially, some indigenous people’s organizations had concerns about using non-indigenous concepts such as “rights” to express indigenous perspectives, and about whether advocating rights for nature might undermine efforts to enhance the rights of indigenous peoples. Indigenous peoples from South America’s Andean region have helped to allay these concerns, and indigenous organizations in North America speak increasingly of the importance of defending the rights of Mother Earth. Indigenous peoples’ activists in Africa and Australia also are beginning to explore the relevance of this discourse to their culture and political struggles.

The language of the rights of nature and Mother Earth is penetrating international discourse as well. The United Nations General Assembly has convened several discussions on “living in harmony with Nature,” and references to the rights of nature are found in several reports of the UN Secretary-General as well as in both the official declaration from the 2012 World Summit on Sustainable Development (“Rio+20”) and the declaration of the parallel People’s Summit.⁶

The most significant example of the application of these ideas to date is Ecuador. In September 2008, a referendum of the people of Ecuador approved the adoption of a constitution that explicitly recognizes that nature, or *Pachamama* (Mother Earth), has legal enforceable rights that every Ecuadorian person must respect and that the state has a legal duty to uphold. (See Box 7–1.) Significantly, this recognition of the rights of beings other than humans is characterized as part of a wider project of building a new social order in which citizens will seek to achieve well-being in harmony with nature.⁷

Bolivia has since adopted a law recognizing the rights of nature as well. Both countries are now grappling with how to reconcile the socioeconomic demands of their electorates, the ambitions of extractive industries, and the rights of Mother Earth, with mixed results. In Ecuador, for example, a lawsuit in the name of the Vilcabamba River was successful and the provincial government was ordered to rectify damage caused by the tipping of soil and

Box 7-1. Extracts from the Constitution of Ecuador

Preamble

"We, the sovereign people of Ecuador... celebrating Nature, the Pachamama [Mother Earth] of which we are part and which is vital to our existence, ... decided to build a new order of cohabitation for citizens, in its diversity and in harmony of nature, to achieve el buen vivir, sumak kawsay [well-being]."

"El buen vivir requires that individuals, communities, peoples and nationalities shall effectively enjoy their rights, and exercise responsibilities within the framework of inter-culturality, respect for their diversity and harmonious cohabitation with Nature" (article 275).

Individuals and communities have the right to benefit from the environment in order to enjoy buen vivir (articles 73 and 74).

"Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structures, functions and its processes in evolution" and empowers every person or community to

demand the recognition of these rights before public bodies (article 72).

All Ecuadorian women and men must respect the rights of nature, preserve a healthy environment and use national resources in a rational, viable and sustainable manner (article 83(6)).

The state must –

1. guarantee the rights of nature as well as of individuals and groups, (article 277(1));
2. promote forms of production which will ensure quality of life for the people and discourage those which threaten those rights or those of nature (article 319);
3. guarantee a sustainable model of development which protects biodiversity and the natural capacity of ecosystems to regenerate (article 395(4));
4. apply any ambiguous legal provisions relating to the environment in the way most favourable to the protection of nature (article 395(4)).

Source: See endnote 7.

earth from a road-widening project into the river. Subsequent litigation to prevent major mining projects has been unsuccessful, however.⁸

In the United States, a quiet grassroots revolution among local communities continues to gather momentum. Since 2006, when the Pennsylvania-based Community Environmental Legal Defense Fund first helped the Borough of Tamaqua pass a local ordinance recognizing the rights of nature, scores of local communities (and even cities like Pittsburgh) have claimed their right of self-determination by enacting local legislation that protects the health of local ecosystems. This legislation recognizes that local ecosystems have a right to thrive and flourish that must take precedence over corporate interests and rights.⁹

New Zealand provides one of the most interesting examples of how indigenous understandings of the interrelation between human well-being and nature can influence the development of legal systems. In 2012, after protracted litigation, the government signed an agreement with the Whanganui iwi, a Maori tribe with strong cultural ties to the Whanganui River, acknowledging that the river would be recognized as a legal person, called

Te Awa Tupua. The agreement recognizes the Whanganui River as an indivisible and living whole, from the mountains to the sea, incorporating its tributaries and all of its physical and metaphysical elements.¹⁰

The agreement provides for the appointment of two persons (*Pou*) of high standing to play a guardianship role, one appointed by the Crown and the other appointed collectively by all iwi with interests in the Whanganui River. Significantly, the guardians are regarded as being accountable to the river and not to their appointors. In the coming years, all parties with an interest in the river—including iwi, central and local government, commercial and recreational users, and other community groups—will collaborate to develop a “whole of river” strategy for the river’s management and use.¹¹

Winds of Change

Several factors are combining to create a climate that is more conducive for civil society organizations to take up ecocentric governance ideas. First, acceptance of the need for fundamental changes to our governance systems is growing. Dissatisfaction among many people is rising as their overall well-being declines in response to population growth, the intensifying impacts of climate change and other forms of environmental damage, the rising cost of extracting “natural resources,” the growing concentration of wealth, and slowing economic growth. It is increasingly apparent that existing international and national governance systems are incapable of responding effectively to these challenges.

Second, public faith in the development models and solutions that governments and the international community have proposed to address these challenges effectively is declining. For example, the civil society organizations participating in the 2012 Rio+20 conference rejected in its entirety the summit’s main declaration, *The Future We Want*, which proposed a “green economy” based on commoditizing and trading ecosystem services. This rejection demonstrated that most civil society organizations do not believe that the significant challenges of the twenty-first century can be addressed by employing the same market-oriented thinking that created them, and exposed the gulf between the aspirations of civil society and those of governments and business.¹² (See Chapters 13 and 15.)

Third, the increasing discourse around the rights of nature and Mother Earth is helping to break down the debilitating barriers between social justice organizations and environmental organizations. For centuries, movements for social change have articulated their concerns in the language of rights, justice, and freedom. Yet until now, few environmental activists used these terms because the law defines nature as a collection of objects that are by definition incapable of holding rights or volition. Climate change activists and the UN Human Rights Commission have made significant progress

in shifting climate change discourse from a predominantly scientific, technological, and economic debate to one about human rights (although not yet about rights of nature).¹³

On the other hand, local communities (particularly indigenous peoples) increasingly are using the language of rights to reassert their worldview that Earth is animate and sacred. In India, the Dongria Kondh tribespeople, who recognize that their livelihoods and well-being are dependent upon the Niyamgiri Hills, met with determined opposition a project by Vedanta Resources to establish an open-pit bauxite in their territory. After the tribespeople framed their efforts as protecting the rights of the hills as a sacred natural person, in April 2013 the Supreme Court of India upheld the religious and cultural rights of the most-affected villages to prevent the mining.¹⁴

Fourth, as “natural resources” become scarcer, corporations are intensifying their attempts to exploit areas that local and indigenous communities value highly or regard as sacred. Because existing governance systems are designed to facilitate activities such as mining and because the tax revenues from extractive activity encourage governments to authorize it, these communities are increasingly exploring other means to protect their interests. For example, the rising worldwide use of hydraulic fracturing (“fracking”) to extract oil and natural gas from subterranean shale rock has intensified conflicts between local communities and large corporations (usually supported by governments). In the United States, many communities have responded by adopting local ordinances and charters that assert community rights of self-determination, recognize the rights of nature, and, in some cases, provide that if corporations infringe those rights then their status as separate legal persons holding legal rights will no longer be recognized.¹⁵

Prospects

Over less than a decade, the idea of expanding notions of governance to recognize the rights of all aspects of Earth to self-expression—and imposing legally enforceable duties on humans and corporations to respect those rights—has gained a significant foothold in global discourse. The adoption of an Earth jurisprudence approach is no longer unthinkable or laughable, and countries like Ecuador and Bolivia are grappling with how to implement it in practice. People around the globe are now using this language to express their understanding that their well-being, rights, and freedoms cannot be maintained without recognizing and protecting the rights and freedoms of all beings that collectively constitute the Earth community that enfolds and sustains us all.

At present, the societal forces that wish to maintain current approaches to governance remain formidable, and for many people the prospects of shifting to governance based on Earth jurisprudence seems implausible. Yet be-

cause industrialized civilization is demonstrably unsustainable in its current form, fundamental change is inevitable. Only the nature and direction of that change remains to be determined. The factors that appear to be driving the move toward a more integral approach to governance are all strengthening, and they will likely become increasingly powerful in the future. At the same time, the solutions proposed from within the industrialized worldview (such as increased commodification of ecosystem services and better technology) lack conviction and would exacerbate many problems, such as the yawning chasm between the very wealthy and everyone else.

If ecocentric approaches to governance are to gather force during the next few decades, activists and opinion makers that are currently active in a wide range of realms—animal rights, human and civil rights, indigenous peoples' rights, conservation, environment and climate change, youth, faith, labor, and women—will need to recognize that they would all benefit by collaborating on a common agenda. This agenda would recognize the rights and freedoms of all beings as the basis for a new form of society and as a means of counteracting the property-based powers of corporations and the public institutions that advance their interests.

Global society may already be in the early stages of a tectonic shift in thinking that will fundamentally change the terrain on which the future direction of society will be contested. If the trends discussed above continue, concepts like living well in harmony with nature will begin to replace economic growth as the primary goal of societies, and impairments of ecosystem functioning will be regarded as unlawful unless there are exceptional circumstances justifying a temporary infringement. Communities will see their primary allegiances as being to the places that they love and that sustain them, rather than to political parties or nation states, and will assert their rights to self-determination increasingly strongly. We may then begin to use our creativity in ways that are consciously aligned with the wild creativity that animates the unfolding of the universe, and our civilizations may recover a sense of belonging and purpose.

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