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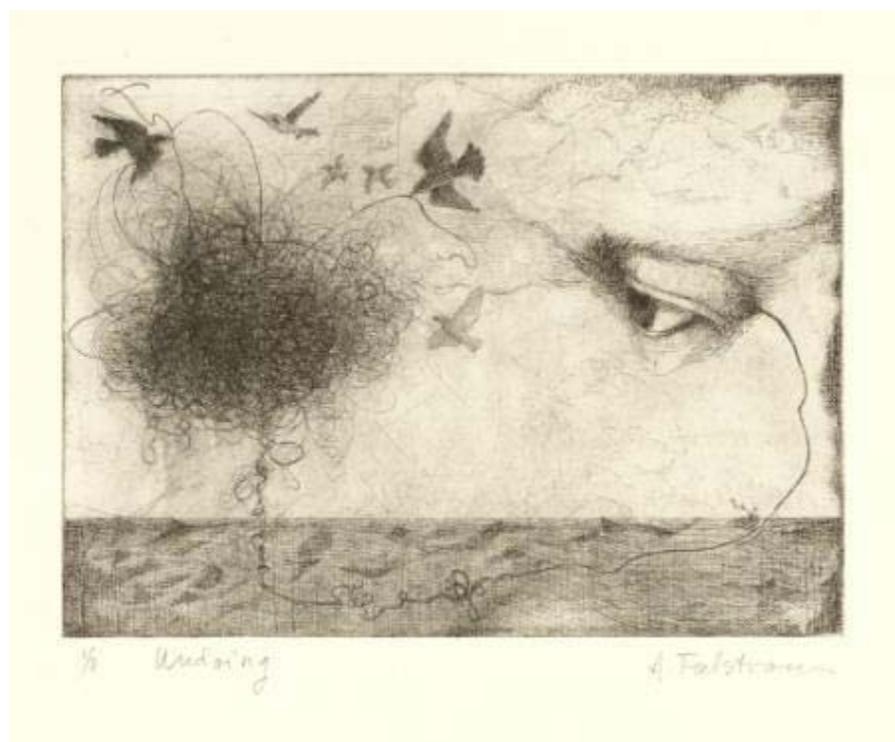
If Nature Had Rights

What would people need to give up?

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Read an extract from the author's book *Wild Law*.

IT WAS THE SUDDEN RUSH of the goats' bodies against the side of the *boma* that woke him. Picking spear and stick, the Kenyan farmer slipped out into the warm night and crept toward the pen. All he could see was the spotted, sloping hindquarters of the animal trying to force itself between the poles to get at the goats—but it was enough. He drove his spear deep into the hyena.

The elders who gathered under the meeting tree to deliberate on the matter were clearly unhappy with the farmer's explanation. A man appointed by the traditional court to represent the interests of the hyena had

testified that his careful examination of the body had revealed that the deceased was a female who was still suckling pups. He argued that given the prevailing drought and the hyena's need to nourish her young, his behavior in attempting to scavenge food from human settlements was reasonable and that it was wrong to have killed her. The elders then cross-examined the farmer carefully. Did he appreciate, they asked, that his killings were contrary to customary law? Had he considered the hyena's situation and whether or not she caused harm? Could he not have simply driven her away? Eventually the elders ordered the man's clan to provide compensation for the harm done by driving more than one hundred of their goats (a fortune in that community) into the bush, where they could be eaten by the hyenas and other wild carnivores.

The story, told to me by a Kenyan friend, illustrates African customary law's concern with restorative justice rather than retribution. Wrongdoing is seen as a symptom of a breakdown in relationships within the wider community, and the elders seek to restore the damaged relationship rather than focusing on identifying and punishing the wrongdoer.

The verdict of a traditional African court regarding hyenacide may seem of mere anthropological interest to contemporary Americans. In most of today's legal systems, decisions that harm ecological communities are likely to be challenged primarily on the basis of whether or not the correct procedures have been followed. Yet consider how much greater the prospects of survival would be for most of life on Earth if mechanisms existed for imposing collective responsibility and liability on human communities and for restoring damaged relations with the larger natural community. Imagine if we had elders with a deep understanding of the laws of the wild who spoke for the Earth as well as for humans. If we did, how might they order us to compensate for, say, the anticipated destruction of the entire Arctic ecosystem because of global climate change, to restore relations with the polar bears and other people and creatures who depend on that ecosystem? How many polluting power plants and vehicles would it be fair to sacrifice to make amends?

“SO WHAT WOULD A RADICALLY DIFFERENT law-driven consciousness look like?” The question posed over three decades ago by a University of Southern California law professor as his lecture drew to close. “One in which Nature had rights,” he continued. “Yes, rivers, lakes, trees. . . . How could such a posture in law affect a community's view of itself?” Professor Christopher Stone may as well have announced that he was an alien life form. Rivers and trees are objects, not subjects, in the eyes of the law and are by definition incapable of holding rights. His speculations created an uproar.

Stone stepped away from that lecture a little dazed by the response from the class but determined to back up his argument. He realized that for nature to have rights the law would have to be changed so that, first, a lawsuit could be brought in the name of an aspect of nature, such as a river; second, a polluter could be held liable for harming a river; and third, judgments could be made that would benefit a river. Stone quickly identified a pending appeal to the United States Supreme Court against a decision of the Ninth Circuit that raised these issues. The Ninth Circuit Court of Appeals had found that the Sierra Club Legal Defense Fund was not “aggrieved” or “adversely affected” by the proposed development of the Mineral King Valley in the Sierra Nevada Mountains by Walt Disney Enterprises, Inc. This decision meant that the Sierra Club did not have

“standing” so the court didn’t need to consider the merits of the matter. Clearly, if the Mineral King Valley itself had been recognized as having rights, it would have been an adversely affected party and would have had the necessary standing.

Fortuitously, Supreme Court Justice William O. Douglas was writing a preface to the next edition of the *Southern California Law Review*. Stone’s seminal “Should Trees Have Standing? Toward Legal Rights for Natural Objects” (“Trees”) was hurriedly squeezed into the journal and read by Justice Douglas before the Court issued its judgment. In “Trees,” Stone argued that courts should grant legal standing to guardians to represent the rights of nature, in much the same way as guardians are appointed to represent the rights of infants. In order to do so, the law would have to recognize that nature was not just a conglomeration of objects that could be owned, but was a subject that itself had legal rights and the standing to be represented by the courts to enforce those rights. The article eventually formed the basis for a famous dissenting judgment by Justice Douglas in the 1972 case of *Sierra Club v. Morton* in which he expressed the opinion that “contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of legal standing upon environmental objects to sue for their own preservation.”

Perhaps one of the most important things about “Trees” is that it ventured beyond the accepted boundaries of law as we know it and argued that the conceptual framework for law in the United States (and by analogy elsewhere) required further evolution and expansion. Stone began by addressing the initial reaction that his ideas are outlandish. Throughout legal history, as he pointed out, each extension of legal rights had previously been unthinkable. The emancipation of slaves and the extension of civil rights to African Americans, women, and children were once rejected as absurd or dangerous by authorities. The Founding Fathers, after all, were hardly conscious of the hypocrisy inherent in proclaiming the inalienable rights of men while simultaneously denying basic rights to children, women, and to African and Native Americans. “Trees” has since become a classic for students of environmental law, but after three decades its impact on law in the United States has been limited. After it was written, the courts made it somewhat easier for citizens to litigate on behalf of other species and the environment by expanding the powers and responsibilities of authorities to act as trustees of areas used by the public (e.g., navigable waters, beaches, and parks). Unfortunately, these gains have been followed in more recent years by judicial attempts to restrict the legal standing of environmental groups. Damages for harm to the environment are now recoverable in some cases and are sometimes applied for the benefit of the environment. However, these changes fall far short of what Stone advocated for in “Trees.” The courts still have not recognized that nature has directly enforceable rights.

COMMUNITIES HAVE ALWAYS USED LAWS to express the ideals to which they aspire and to regulate how power is exercised. Law is also a social tool that is usually shaped and wielded most effectively by the most powerful. Consequently, law tends to entrench a society’s fundamental idea of itself and of how the world works. So, for example, even when American society began to regard slavery as morally abhorrent, it was able to peaceably end the practice because the fundamental concept that slaves were property had been ha

wired into the legal system. The abolition of slavery required not only that the enfranchised recognize that slaves were entitled to the same rights as other humans, but also a political effort to change the laws that denied those rights. It took both the Civil War and the Thirteenth Amendment to outlaw slavery. The Thirteenth Amendment, in turn, played a role in changing American society's idea of what was acceptable thereby providing the bedrock for the subsequent civil rights movement.

In the eyes of American law today, most of the community of life on Earth remains mere property, nature "resources" to be exploited, bought, and sold just as slaves were. This means that environmentalists are seldom seen as activists fighting to uphold fundamental rights, but rather as criminals who infringe upon property rights of others. It also means that actions that damage the ecosystems and the natural processes which life depends, such as Earth's climate, are poorly regulated. Climate change is an obvious and dramatic symptom of the failure of human government to regulate human behavior in a manner that takes account the fact that human welfare is directly dependent on the health of our planet and cannot be achieved at its expense.

In the scientific world there has been more progress. It's been almost forty years since James Lovelock first proposed the "Gaia hypothesis": a theory that Earth regulates itself in a manner that keeps the composition of the atmosphere and average temperatures within a range conducive to life. Derided or dismissed by most people at the time, the Gaia hypothesis is now accepted by many as scientific theory. In 2001, more than a thousand scientists signed a declaration that begins "The Earth is a self-regulating system made up from life, including humans, and from the oceans, the atmosphere and the surface rocks," a statement that would have been unthinkable for most scientists when "Trees" was written.

The acceptance of Lovelock's hypothesis can be understood as part of a drift in the scientific world away from a mechanistic understanding of the universe toward the realization that no aspect of nature can be understood without looking at it within the context of the systems of which it forms a part. Unfortunately, this insight has been slow to penetrate the world of law and politics.

But what if we were to imagine a society in which our purpose was to act as good citizens of the Earth as a whole?

What might a governance system look like if it were established to protect the rights of all members of a particular biological community, instead of only humans? Cicero pointed out that each of our rights and freedoms must be limited in order that others may be free. It is far past time that we should consider limiting the rights of humans so they cannot unjustifiably prevent nonhuman members of a community from playing their part. Any legal system designed to give effect to modern scientific understandings (or, indeed, to many cultures' ancient understandings) of how the universe functions would have to prohibit humans from driving other species to extinction or deliberately destroying the functioning of major ecosystems. In the absence of such regulatory mechanisms, an oppressive and self-destructive regime will inevitably emerge. As indeed it has.

In particular, we should examine the fact that, in the eyes of the law, corporations are considered people : entitled to civil rights. We often forget that corporations are only a few centuries old and have been continually evolving since their inception. Imagine what could be done if we changed the fiduciary responsibilities of directors to include obligations not only to profitability but also to the whole natural world and if we imposed collective personal liability on corporate managers and stockholders to restore any damage that they cause to natural communities. Imagine if landowners who abused and degraded land lost the right to use it. In an Earth-centered community, all institutions through which humans act collectively would be designed to require behavior that is socially responsible from the perspective of the whole community. A society whose concern is to maintain the integrity or wholeness of the Earth must also refine its ideas about what is “right” and “wrong.” We may find it more useful to condone or disapprove of human conduct by considering the extent to which an action increases or decreases the health of the whole community and the quality or intimacy of the relationships between its members. As Aldo Leopold’s famous land ethic states, “What is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.” From this perspective, individual and collective human rights must be contextualized within, and balanced against, the rights of the other members and communities of Earth.

ON SEPTEMBER 19, 2006, the Tamaqua Borough of Schuylkill County, Pennsylvania, passed a sewage sludge ordinance that recognizes natural communities and ecosystems within the borough as legal persons for the purposes of enforcing civil rights. It also strips corporations that engage in the land application of sewage sludge of their rights to be treated as “persons” and consequently of their civil rights. One of its effects is that the borough or any of its residents may file a lawsuit on behalf of an ecosystem to recover compensatory and punitive damages for any harm done by the land application of sewage sludge. Damages recovered in this way must be paid to the borough and used to restore those ecosystems and natural communities.

According to Thomas Linzey, the lawyer from the Community Environmental Legal Defense Fund who assisted Tamaqua Borough, this ordinance marks the first time in the history of municipalities in the United States that something like this has happened. Coming after more than 150 years of judicially sanctioned expansion of the legal powers of corporations in the U.S., this ordinance is more than extraordinary—it is revolutionary. In a world where the corporation is king and all forms of life other than humans are objects in the eyes of the law, this is a small community’s Boston tea party.

In Africa, nongovernmental organizations in eleven countries are also asserting local community rights in order to promote the conservation of biodiversity and sustainable development. Members of the African Biodiversity Network (ABN) have coined the term “cultural biodiversity” to emphasize that knowledge and practices that support biodiversity are embedded in cultural tradition. The ABN works with rural communities and schools to recover and spread traditional knowledge and practices.

This is part of a wider effort to build local communities, protect the environment by encouraging those communities to value, retain, and build on traditional African cosmologies, and to govern themselves as part of a wider Earth community.

These small examples, emerging shoots of what might be termed “Earth democracy,” are pressing upward despite the odds. It may well be that Earth-centered legal systems will have to grow organically out of human-scale communities, and communities of communities, that understand that they must function as integral parts of wider natural communities. In the face of climate change and other enormous environmental challenges, our future as a species depends on those people who are creating the legal and political space within which our connection to the rest of our community here on Earth is recognized. The day will come when the failure of our laws to recognize the right of a river to flow, to prohibit acts that destabilize Earth climate, or to impose a duty to respect the intrinsic value and right to exist of all life will be as reprehensible as allowing people to be bought and sold. We will only flourish by changing these systems and claiming identity, as well as assuming our responsibilities, as members of the Earth community.

Read an extract from the author’s book *Wild Law*.

To buy that book, go [here](#), which is reported to be the ONLY in-stock source for *Wild Law* in North America.

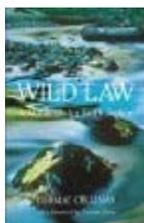
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Cape Town–based environmental attorney Cormac Cullinan is the author of *Wild Law: A Manifesto for Earth*

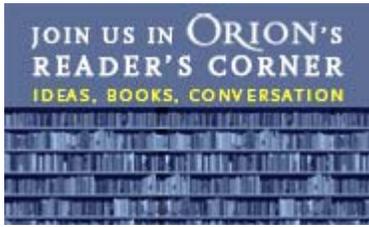


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