



The Call of the Wild

Cormac Cullinan*

“Wild Law” is a term which I coined in my 2002 book of the same name,¹ to refer to human laws which give expression to an eco-centric philosophy and approach to law and governance known as “Earth jurisprudence” (see the text box on the next page). Instead of regarding the human world as the sole reference for establishing systems to govern human beings, Earth jurisprudence recognises that human societies are embedded within natural systems of order and accordingly human societies will not flourish in the long-term unless they are aligned with that universal system of order. Wild laws would be designed to structure societies and regulate human conduct in a manner that ensures that humans pursue well-being by seeking to contribute to the health and integrity of Earth instead of by seeking to dominate and exploit it. This approach is consistent not only with many ancient wisdom traditions and the practices of indigenous peoples around the world, but also with contemporary understandings of quantum physics, ecology, and systems theory. All emphasise the interconnected of all aspects of Earth and that the behaviour of any part of an integrated system (like a human being) is significantly influenced by the entire

* Cormac Cullinan is a research associate of the Department of Public Law at the University of Cape Town, and a director of Cullinan and Associates Inc (a South African environmental and green business law firm) and of EnAct International (a governance consultancy). He led the drafting of the Universal Declaration of the Rights of Mother Earth which was proclaimed on 27 April 2010 by the People’s World Conference on Climate Change and the Environment in Bolivia (available at <http://climateandcapitalism.com/?p=2268>).

¹ C. Cullinan, *Wild Law: A Manifesto for Earth Justice* (2002) SiberInk, Westlake and (2003) Green Books, Devon. A revised and expanded second edition will be published in South Africa, the United Kingdom and electronically in early 2011.

system, instead of the functioning of the whole being merely the sum of its components, as is the case with a machine.

Legal systems structure the economic and political systems, establish fundamental norms of social behaviour and determine how power is exercised in society. They also reflect a society's beliefs, for example, regarding the role of humans and what is reasonable and just. Contemporary legal systems are based on the beliefs that human beings are the superior species on the planet and that human well-being is best achieved by dominating and exploiting Earth. Just as colonial powers introduced laws that denied the prior rights of indigenous peoples and facilitated the exploitation of them and their land, so most contemporary legal systems do not recognise that any other-than-human indigenous inhabitants are capable of having rights. The law defines land, water, other species, and even genetic material and information as "property" or "natural resources" to be "exploited", bought and sold just as slaves once were. In this way the law entrenches the same exploitative relationship between humans and Nature as existed between a slave owner and a slave.

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 habitat or a place to be, and to participate in the evolution of the Earth 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 ("the Great Jurisprudence") and are consequently illegitimate and "unlawful".
- Humans must adapt their legal, political, economic and social systems to be consistent with the Great Jurisprudence and to guide humans to live in accordance with it, which means that human governance systems at all times 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);
 - * 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.

Environmental laws can play an important role in reducing human impacts on Nature and on prohibiting the most egregious assaults on natural systems. However

because most legal systems are *designed* to entrench and facilitate the exploitation of Earth, environmental laws will never succeed in preventing on-going human degradation of Earth, nor in establishing human societies that live in harmony with Nature. Achieving that requires the redesign of governance systems to reflect the understanding that the role of the human is not to dominate, control and exploit the planet, but to contribute to the integrity, health and evolution of Earth by constantly seeking to establish mutually beneficial (and hence sustainable) relations with all beings who, together with human beings, compose Earth.

Legal systems use the notion of rights to strike a balance between the interests of different members of the human community. Since Nature has no rights, our governance systems are dangerously skewed. In many cases human actions that fundamentally damage Earth's climate and other systems on which life depends, are lawful. Perhaps most significantly, there is as yet no general recognition that if we humans are part of the Earth system, our self-regulating (or governance) systems also need to be integrated into planetary regulatory systems. Climate change is an obvious and dramatic symptom of the failure of human governance systems to regulate human behaviour in a manner that takes account of the fact that human welfare is directly dependent on the health of the biosphere and cannot be achieved by ignoring the fundamental laws of the biosphere or at its expense.

Wild Law seeks to explore what human law and governance might look like if it were designed to reflect the understanding that humans are an integral part of Earth and that human existence and well-being is derived from, and wholly dependent on Earth. If humans are quintessentially members of an Earth community - then the main purpose of human governance systems must be to ensure that we retain our place or "niche" within it. In order to do so we must regulate ourselves in a way that ensures that we satisfy human needs in a way that simultaneously benefits the Earth community as a whole. This means that individual and collective human rights must be contextualized within, and balanced against, the rights of the other members and communities that comprise the Earth community. Just as Cicero pointed out that each of our rights and freedoms must be limited in order that others may be free, the rights of humans must be limited in order to prevent humans unjustifiably preventing non-human members of the Earth Community from playing their part in the on-going story of evolution.

Any legal system designed to give effect to modern scientific understandings of how the universe functions (or indeed ancient wisdom traditions in many cultures) would have to recognize that if humans have inherent human rights then other members of the Earth community within which we evolved also have inherent “rights”, such as the right to existence and habitat and the freedom to play their role in the great evolutionary story.² This means that humans have a corresponding duty to ensure that they do not unjustifiably infringe on those rights. The concept of recognising all that has come into being (i.e. “beings”) as rights-bearing legal subjects makes little sense if the role of humans is to colonise and subjugate Earth. However it is fundamental for those who believe that, as Thomas Berry put it “The universe is a communion of subjects not a collection of objects”³ and that the role of the human is to play a beneficial role within that community.

A significant milestone was reached in September 2008 when the people of Ecuador adopted a constitution that recognises that Mother Earth (*Pachamama*) has legally-enforceable rights. The constitution also commits the state and citizens to seeking well-being in a manner that is harmonious with nature. These remarkable provisions came into being as a result of the collaboration between indigenous people’s organization and environmental organizations in Ecuador, the Community Environmental Legal Defense Fund (CELDF) and certain key individuals in the Constitutional Assembly charged with drafting the new constitution. Ecuador changed the debate from whether or not it was possible to recognise rights for Nature to whether or not doing so would be effective.

On 22 April 2009, Bolivian President Evo Morales Ayma made a speech to the United Nations General Assembly⁴ in which he expressed the hope that, as the 20th Century had been called “the century of human rights”, the 21st Century would be known as the “century of the rights of Mother Earth”.⁵ He called upon the member states to begin developing a “Declaration on the Rights of Mother Earth” that, among other rights, would enshrine the right to life for all living things; the right for Mother

² Thomas Berry has formulated the basis of what he considers these rights to be. See: T. Berry *Evening Thoughts, reflecting on Earth as Sacred Community* (Mary Evelyn Tucker ed), (2006) Sierra Club Books, San Francisco, particularly chapter 9 “Legal Conditions for Earth Survival” and Appendix 2 “Ten Principles for Jurisprudence Revision”, at 149-150.

³ T. Berry, *The Great Work: Our Way into the Future* (1999) Bell Tower, New York, at x-xi.

⁴ UN General Assembly Session 63, Meeting 80 (available at http://www.undemocracy.com/A-63-PV.80/page_2).

⁵ Ibid.

Earth to live free of contamination and pollution; and the right to harmony and balance among and between all things.

Morales' call was followed on 17 October 2009 by a declaration of the nine countries of the Bolivarian Alliance for the Peoples of Our America (ALBA) supporting the call for the adoption of a Universal Declaration of Mother Earth Rights.⁶ The Declaration expresses the fundamental principles of Earth Jurisprudence with great clarity, stating:

“In the 21st Century it is impossible to achieve full human rights protection if at the same time we do not recognize and defend the rights of the planet earth and nature. Only by guaranteeing the rights of Mother Earth we can guarantee the protection of human rights. The planet earth can exist without human life, but humans cannot exist without planet earth.”⁷

On 22 April 2010 (Mother Earth Day), exactly a year after President Morales's speech to the United Nations, more than 32 000 participants in the People's World Conference on Climate Change and the Rights of Mother Earth held in Cochabamba, Bolivia proclaimed the Universal Declaration of the Rights of Mother Earth (“the Declaration”). The Declaration recognises that Earth is an indivisible, living community of interrelated and interdependent beings with inherent rights, and defines fundamental human responsibilities in relation to other beings and to the community as whole. (The Declaration uses the ancient term “Mother Earth” to refer to this community in order to emphasise that humans should relate to the being that gives them life in a deeply respectful manner and not as an inanimate “resource” to be managed.)

The Declaration recognises that all natural entities which exist as part of Mother Earth, including plants, animals, rivers and ecosystems, are subjects who have the inherent and inalienable right to exist and to play their role within the community of beings. The international community and most countries recognise and defend human rights but do not recognise that other beings also have inherent rights that

⁶ VII ALBA-TCP Summit: Special Declaration for a Universal Declaration of Mother Earth Rights
(available at <http://motherearthrights.org/2009/10/17/vii-alba-tcp-summit-special-declaration-for-a-universal-declaration-of-mother-earth-rights/>).

⁷Ibid.

humans must respect. This has created an imbalance in the relationships between humans and other beings and has led to the establishment of political, economic and legal systems that are designed to enable people to exploit other beings instead of to balance the interests of all beings in a way that maintains the integrity and health of the whole community. These exploitative relationships are unsustainable and have already damaged and disrupted ecosystems and natural cycles to such an extent that phenomena such as climate change now threaten the wellbeing and rights of many humans and other beings.

The 1948 Universal Declaration of Human Rights (UDHR) reflects the determination of the signatories to ensure that horrific treatment of human beings that occurred during the Second World War would be universally outlawed. The Declaration is a contemporary response to the abhorrent degradation of Earth which now threatens the future of many humans. It is intended to complement and contextualise the UDHR and expressly recognises that because humans derive everything necessary for a good life from the living communities within which we live, we cannot maintain human rights and the freedom to live well unless we respect and defend the rights of Mother Earth.

Contemporary civilization is unlikely to survive this century (as least in a form recognizable to us) unless we rapidly abandon the doomed imperial project of imposing human domination by force on the rest of the Earth community. Fortunately more and more people are responding to the call for law to be informed by the wild. The emerging movement in support of rights for Nature is now growing rapidly: annual Wild Law conferences are held in England, Scotland and Australia, there is a Center for Earth Jurisprudence in Florida, organisations such as Wild Law (UK) are being formed to join the Global Alliance for the Rights of Nature, and social movements throughout the world are embracing the Declaration as a unifying manifesto.