

Systemic Alternatives

THE RIGHTS OF MOTHER EARTH

Notes for the Debate



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Notes for the debate

The Rights of Mother Earth

"Nature is a subject and not a collection of objects."
-Thomas Berry

What are the rights of Mother Earth?

A new vision of our relationship with nature, a new legal framework, a set of ethical principles, a strategy with which to question the superpowers of transnational corporations?

The Rights of Mother Earth refers to all of these things and something more: it is a call to cast off the dominant anthropocentric paradigm and imagine a new Earth society. The Rights of Mother Earth is like a river made up of different streams that are flowing toward the ocean, but have not yet reached its shores.

The Indigenous Stream

The Rights of Mother Earth reflects the vision of indigenous peoples of many parts of the world and in particular of the Andean region of South America. This indigenous vision has a deep respect for nature. According to this vision, everything on Earth and in the cosmos has life (see "Notes for the Debate on *Vivir Bien*"). Humans beings are not superior to other beings such as plants, animals and mountains. Humans can "inter-be" with all of the non-human members of the Earth community. The division between living beings and non-living beings does not exist. In the Andean indigenous vision, everything has life including the hills, rivers, air, rocks, glaciers and oceans. All are part of a larger living organism that is *Pachamama*, or Mother Earth, which in turn interacts with the sun and the cosmos. Life cannot be explained without taking this into consideration. Humans are just one of the components of the Earth community. They do not own, nor are they masters of, the Earth or other beings. Human existence depends on harmony with nature. A balance that is not static, but dynamic; one that changes and moves in cycles, but when broken brings misfortune.

The Rights of Mother Earth are based on the indigenous premise that poses the questions: If we are all part of Mother Earth, why do some have to be more than others? Why do some enjoy protection and privileges, while others are relegated to the status of things?

In this vision of the Rights of Mother Earth, in order to flourish as an Earth community, we must give equal treatment and respect to all things, from glaciers, forests, animals, humans, plants, wind - all beings.

The indigenous stream does not speak of “rights” directly, as the legal concept of “rights” as such does not exist in indigenous cultures, but the essence of the indigenous vision underpins the whole approach of the Rights of Mother Earth. The concept of “rights” is a construction that comes from outside the indigenous context, and therefore the development of “rights” of Mother Earth or “rights” of nature in indigenous communities is expressed in different terms. The terms of “rights” are expressed more explicitly in the other streams.

The Scientific Stream

Different organizations of Earth scientists¹ have now stated that the Earth System behaves as a single, self-regulating system with physical, chemical, biological, and human components. The Earth system consists of the land, oceans, atmosphere and poles, and includes the planet’s natural cycles - the carbon, water, nitrogen, phosphorus, sulphur and other cycles - and deep Earth processes. The interactions and feedback between the component parts are complex and exhibit multi-scale temporal and spatial variability.² According to NASA (The U.S. National Aeronautics and Space Administration), life is an integral part of the Earth system. Life affects the carbon, nitrogen, water, and oxygen cycles as well as many other processes.

The Earth system now includes human society. Social and economic systems are now embedded within the Earth system, and the most significant finding is that in the last centuries “human activities are significantly influencing Earth’s environment in many ways in addition to greenhouse gas emissions and climate change. Anthropogenic changes to Earth’s land surface, oceans, coasts and atmosphere and to biological diversity, the water cycle and biogeochemical cycles are clearly identifiable beyond natural variability. They are equal to some of the great forces of nature in their extent and impact. Many are accelerating. Global change is real and is happening now.”³

This global change cannot be understood in terms of a simple cause-and-effect paradigm. Human-driven changes cause multiple effects that cascade through the Earth System in complex ways. These effects interact with each other and with local- and regional-scale changes in multidimensional patterns that are a challenge to understand and even more difficult to predict.

Human activities have the potential to switch the Earth System to alternative modes of operation that may prove irreversible and less hospitable to humans and other life. The probability of a human-driven abrupt change in Earth’s environment has yet to be quantified but is not negligible.

Critical thresholds and abrupt changes characterize Earth System dynamics. Human activities could inadvertently trigger such changes, with severe consequences for Earth’s environment and inhabitants.

The Earth System has moved well outside the range of the natural variability exhibited over the last half million years at least. The nature of the changes now occurring simultaneously in the Earth System, their magnitudes and rates of change, are unprecedented. The Earth is currently operating in a non-analogue state.⁴

James Lovelock's Gaia theory is part of this scientific stream with the particularity that it states that the Earth is a living organism.

The scientific stream has gone even further, and some of its members advocate for a kind of ethical framework to address the systemic crisis that we are facing. In 2001, scientists from the International Human Dimensions Programme on Global Environmental Change (IHDP), the International Geosphere-Biosphere Programme (IGBP), the World Climate Research Programme (WCRP), and DIVERSITAS issued the Amsterdam Declaration on Earth System Science. It states:

An ethical framework for global stewardship and strategies for Earth System management are urgently needed. The accelerating human transformation of the Earth's environment is not sustainable. Therefore, the business-as-usual way of dealing with the Earth System is not an option. It has to be replaced - as soon as possible - by deliberate strategies of good management that sustain the Earth's environment while meeting social and economic development objectives.⁵

Between 2001 and 2005, a group of 1,360 experts from 95 countries participated in the Millennium Ecosystem Assessment that was carried out at the request of the United Nations. One of their key conclusions was that species and ecosystems have "intrinsic value" that, according to their report, "is the value of something in and for itself, irrespective of its utility for someone else."⁶

In short, the scientific stream provides concrete evidence and facts to advance the proposal of the Rights of Mother Earth, which treats the planet as an Earth community.

The Ethical Stream

The ethical stream is very much linked to all the other streams of thinking on the Rights of Mother Earth. In some cases, it is impossible to disassociate them, in others, they are unique. Saint Francis of Assisi advocated for the equality of all creatures instead of man's domination over creation. He called the sun, the Earth, the water and the wind his brothers and sisters. Today, Pope Francis says, "This is our sin, exploiting the Earth and not allowing her to her give us what she has within her." Buddhism has even an stronger proposal for how and why to live in harmony with nature.

[The 14th Dalai Lama] First, it is important to realize we are part of nature... Among the thousands of species of mammals on earth, we humans have the greatest capacity to alter nature. As such, we have a twofold responsibility. Morally, as beings of higher intelligence, we must care for this world. The other inhabitants of the planet - insects and so on - do not have the means to save or protect this world. Our other responsibility is to undo the serious environmental degradation that is the result of incorrect human behavior. We have recklessly polluted the world with chemicals and nuclear waste, selfishly consuming many of its resources. Humanity must take the initiative to repair and protect the world.⁷

Aldo Leopold (1887–1948) proposed a “new ethic” that he called “land ethic” that was a body of self-imposed limitations on freedom, which derived from the recognition that “the individual is a member of a community of interdependent parts.”

[Aldo Leopold] The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land. (...) A land ethic changes the role of Homo sapiens from conqueror of the land-community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the community as such.⁸

The Earth Charter launched in the year 2000. Its first principle - “Respect Earth and life in all its diversity” - is also part of this ethical stream, along with the writings of its key proponent, Leonardo Boff.

The Juridical Stream

“Legislation may not change the heart but it will restrain the heartless.”
-Martin Luther King Jr.

The juridical stream takes into account all the elements mentioned before and adds a new one: law and governance are social constructions that evolve in time and change with new realities. In this regard, we need a new jurisprudence that is not human-centered, but instead, Earth-centered.

[Peter Burdon] Law is a social creation and a legal conclusion and as legal philosopher Philip Allot notes, ‘law cannot be better than society’s idea of itself.’ As a consequence, it should not be surprising that many aspects of our law reflect an anthropocentric view of the earth. (...) Law is a significant description of the way a society perceives itself and projects its image to the world. (...) As an evolving social institution, law needs to adapt to reflect this understanding.⁹

In other words, the key question is how to rethink law and governance for the necessary wellbeing of the Earth and all of its inhabitants. If nature has intrinsic value, how do our legal frameworks reflect that for the sake of the Earth community?

[Thomas Berry] All rights have been bestowed on human beings. The other than human modes of being are seen as having no rights. They have reality and value only through their use by the human. In this context the other than human becomes totally vulnerable to exploitation by the human.¹⁰

[Jules Cashford] A perspective centered exclusively on the human finds other modes of being inferior; they become ‘a collection of objects not a communion of subjects’; an ‘it’, not – as in earlier times and still today by indigenous people – a profoundly respectful ‘Thou’.¹¹

[Peter Burdon] We must question the values and legitimacy of any law that surpasses the ecological limits of the environment to satisfy the needs of one species. (...) Anthropocentrism encompasses the view that human beings are the

final aim and end of the universe and that the universe exists to satisfy the needs and desires of human beings.¹²

The dualism between subject and object is a key pattern in Western thought and civilization. It historically assigned value to subjects that are like “me” and deprived of rights all other things considered “objects.” Subjects are able to think and create, while the rest are only resources, instruments or the environment.

[Thomas Berry] To the industrial-commercial world the natural world has no inherent rights to existence, habitat, or freedom to fulfill its role in the vast community of existence. Yet there can be no sustainable future, even for the modern industrial world, unless these inherent rights of the natural world are recognized as having legal status. The entire question of possession and use of the Earth, either by individuals or by establishments, needs to be considered in a more profound manner than Western society has ever done previously.¹³

The Path of the Rights of Nature or Mother Earth

The proposal of the Rights of Nature began to be developed in North America and Europe in the mid 20th century from ethical perspectives like the one expressed by Aldo Leopold and animal rights advocates like Peter Singer, Tom Regan and others.

[Jeremy Bentham - 1948] The day may come when the rest of the animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny. (...) The question is not, can they (animals) reason? Nor can they talk? But can they suffer?¹⁴

The most advanced development on animal rights is the case of the Civil Code of Germany, promulgated in 2002, that states in Section 90a: “Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.”

In the 1970s, two key sources of the juridical stream developed in Europe and North America. One is Deep Ecology, promoted by Norwegian philosopher Arne Næss, and the other is Earth Jurisprudence or Wild Law, formulated by a Catholic priest from the United States named Thomas Berry.

Deep Ecology

Arne Næss (1912–2009) saw two different forms of environmentalism: the Deep Ecology that involves deep questioning, right down to fundamental root causes, and the Shallow Ecology that stops before the ultimate level of fundamental change, often promoting technological fixes (e.g. recycling, increased automotive efficiency, export-driven mono-cultural organic agriculture) based on the same consumption-oriented values and methods of the industrial economy. The Deep Ecology approach involves redesigning our whole systems based on values and methods that truly preserve the ecological and cultural diversity of natural systems.¹⁵

[Michael E. Zimmerman] Deep ecology is founded on two basic principles: one is a scientific insight into the interrelatedness of all systems of life on Earth, together with the idea that anthropocentrism – human-centeredness – is a misguided way of seeing things. Deep ecologists say that an eco-centric attitude is more consistent with the truth about the nature of life on Earth. The second component of deep ecology is what Arnie Næss calls the need for human self-realization (“re-earthing”). Instead of identifying with our egos or our immediate families, we would learn to identify with trees and animals and plants, indeed the whole ecosphere. This would involve a pretty radical change of consciousness, but it would make our behavior more consistent with what science tells us is necessary for the well-being of life on Earth. We just wouldn’t do certain things that damage the planet, just as you wouldn’t cut off your own finger.¹⁶

Næss rejected the idea that beings can be ranked according to their relative value. For example, judgments on whether an animal has an eternal soul, whether it uses reason or whether it has consciousness (or indeed higher consciousness) have all been used to justify the ranking of the human animal as superior to other animals. Næss states that from an ecological point of view, “the right of all forms [of life] to live is a universal right which cannot be quantified. No single species of living being has more of this particular right to live and unfold than any other species.”¹⁷

The critique of Deep Ecology has focused more on the proposal of advocates like Bill Devall and George Sessions who claimed: “The flourishing of human life and cultures is compatible with a substantial decrease of the human population. The flourishing of nonhuman life requires such a decrease.” The main argument of the critique is that promoting birth reduction as a key solution targets the poorest countries and leads to racist attitudes. Other Deep Ecology theorists like Warwick Fox in Australia affirm that it is necessary to distinguish between being *misanthropic* (hating humanity) and being *anti-anthropocentric*. Also, many social ecologists and eco-feminists agree that Deep Ecology does not include enough analysis of the social forces at work in the destruction of the biosphere.¹⁸ Finally, there is also the critique that deep ecologists sometimes attribute human characteristics to non-human organisms, falling into anthropomorphism.

Earth Jurisprudence or Wild Law

Thomas Berry (1914-2009) inspired the movement for Earth Jurisprudence, or Wild Law. His main point of reference was not the Earth, but rather, the universe.

[Thomas Berry] The universe is the only text without context. Everything else has to be seen in the context of the universe... The story of the universe is the story of each individual being in the universe’, and so the journey of the universe – forever evolving, continually emerging – ‘is the journey of each individual being in the universe’. We can read the story of the universe in the trees. Everything tells the story of the universe. The winds tell the story, literally, not just imaginatively. The story has its imprint everywhere, and that is why it is so important to know the story. If you do not know the story, in a sense you do not know yourself; you do not know anything.

The term Earth Jurisprudence was coined to highlight the need to overcome modern anthropocentric jurisprudence. Meanwhile, the term Wild Law expressed their vision that this was about bringing together and balancing two different parts of the whole: civilization and nature.

[Cormac Cullinan] I know that “wild law” sounds like nonsense -a contradiction in terms. Law, after all, is intended to bind, constrain, regularise and civilise. Law’s rules, backed up by force, are designed to clip, prune and train the wilderness of human behavior into the manicured lawns and shrubbery of the civilised garden. “Wild”, on the other hand, is synonymous with unkempt, barbarous, unrefined, uncivilised, unrestrained, wayward, disorderly, irregular, out of control, unconventional, undisciplined, passionate, violent, uncultivated, and riotous. (...) A wild law is a law to regulate human behaviour in order to protect the integrity of the earth and all species on it. It requires a change in the human relationship with the natural world from one of exploitation to one of democracy with other beings. If we are members of the earth’s community, then our rights must be balanced against those of plants, animals, rivers and ecosystems. In a world governed by wild law, the destructive, human- centred exploitation of the natural world would be unlawful. Humans would be prohibited from deliberately destroying functioning ecosystems or driving other species to extinction.¹⁹

Why “rights”?

*Why does nature has rights? What kind of rights?
Are they similar to human rights?*

The first and most comprehensive responses to these questions are found in the Ten Principles of Earth Jurisprudence written by Thomas Berry.

- 1) Rights originate where existence originates. That which determines existence determines rights.
- 2) Since it has no further context of existence in the phenomenal order, the universe is self-referent in its being and self-normative in its activities. It is also the primary referent in the being and the activities of all derivative modes of being.
- 3) The universe is composed of subjects to be communed with, not objects to be used. As a subject, each component of the universe is capable of having rights.
- 4) The natural world on the planet Earth gets its rights from the same source that humans get their rights: from the universe that brought them into being.
- 5) Every component of the Earth community has three rights: the right to be, the right to habitat, and the right to fulfill its role in the ever-renewing processes of the Earth community.
- 6) All rights are role-specific or species-specific, and limited. Rivers have river rights. Birds have bird rights. Insects have insect rights. Humans have human rights. Difference in rights is qualitative, not quantitative. The rights of an insect would be of no value to a tree or a fish.

- 7) Human rights do not cancel out the rights of other modes of being to exist in their natural state. Human property rights are not absolute. Property rights are simply a special relationship between a particular human 'owner' and a particular piece of 'property,' so that both might fulfill their roles in the great community of existence.
- 8) Since species exist only in the form of individuals, rights refer to individuals, not simply in a general way to species.
- 9) These rights as presented here are based on the intrinsic relations that the various components of Earth have to each other. The planet Earth is a single community bound together with interdependent relationships. No living being nourishes itself. Each component of the Earth community is immediately or mediately dependent on every other member of the community for the nourishment and assistance it needs for its own survival. This mutual nourishment, which includes the predator-prey relationship, is integral with the role that each component of the Earth has within the comprehensive community of existence.
- 10) In a special manner, humans have not only a need for but also a right of access to the natural world to provide for the physical needs of humans and the wonder needed by human intelligence, the beauty needed by human imagination, and the intimacy needed by human emotions for personal fulfillment.

From these principles, it is clear that the Rights of Nature is not about extending human rights to the entire natural world.

[Christopher D. Stone] To say that the environment should have rights is not to say that it should have every right we can imagine, or even the same body of rights as human beings have. Nor is it to say that everything in the environment should have the same rights as every other thing in the environment.²⁰

[Peter Burdon] It is plainly nonsense to speak of nature holding duties or to suppose that rights exist between one part of nature and another. The concept applies only in the context of human interaction with nature and would place duties only on human beings... earth rights generate reasons for action for people who are in a position to help in the promoting or safeguarding of the underlying right.²¹

[Ben Price] Instead of defining Rights as inherent aspects of living beings, or as licensed privileges that elevate the "rights" of charter and title holders above the community at-large, let's postulate Rights as a socially beneficial relationship between society and its instrument, government, and those beings entitled to obligatory respect.²²

[Shannon Biggs and Mari Margil] Under existing environmental laws, a person needs to prove "standing" in order to go to court to protect Nature. This means demonstrating personal harm from logging, the pollution of a river, or the extraction of water. Damages are then awarded to that person, not to the ecosystem that's been destroyed. In the wake of the BP oil spill, the only damage deemed compensable by the legal system is the financial damage caused to those

who can't use the Gulf ecosystem anymore. (...) Under a rights-based system of law, a river has the right to flow, fish and other species in a river have the right to regenerate and evolve, and the flora and fauna that depend on a river have the right to thrive. It is the natural ecological balance of that habitat that is protected. Just as the lion hunts the antelope as part of the natural cycle of life, recognizing Rights of Nature does not put an end to fishing or other human activities. Rather, it places them in the context of a healthy relationship where our actions do not threaten the balance of the system upon which we depend.²³

The Path of Legal Texts

In the 21st century, the proposals of Earth Jurisprudence began to be incorporated into legal texts. In 2006, with the help of the Community Environment Legal Defense Fund (CELDF), the town of Barnstead in the U.S. State of New Hampshire passed an ordinance that says:

All residents of the Town of Barnstead possess a fundamental and inalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town. Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Town of Barnstead. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.²⁴

Similar ordinances have been adopted in other towns in the United States. These municipal ordinances are focused on specific areas of nature and are not of general application. They empower local communities to assume the role of guardian for nature, and damages are measured with reference to the actual harm caused to the ecosystem, rather than to a human property owner.

The Constitution of Ecuador

The most important achievement in terms of legal texts is without a doubt the Constitution of Ecuador in 2008. Chapter seven of the Constitution details the Rights of Nature:

Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature.

Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

Article 73. The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles. The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

The text is clearly the result of the combination of the indigenous stream with the juridical stream. It speaks about nature as a synonym of *Pachamama*, which we will see has a different approach in the Bolivian case, and recognizes specific rights for nature like the right to exist, the right to integrity, to maintain vital cycles, to regenerate, and be restored. The Constitution of Ecuador doesn't include mechanisms for enforcing these rights, however. It gives the state the flexibility to interpret these regulations for national interests. Therefore, much of the enforcement of the Rights of Nature depends on the will of the government and an active civil society.

The Case of Bolivia

The Constitution of Bolivia does not include the concept of the Rights of Nature and is more concerned with environmental rights for the benefit of present and future generations of humans (Art. 33). The most advanced development is that "any person, in his own right or on behalf of a collective, is authorized to take legal actions in defense of environmental rights" (Art. 34). This is something also found in the Ecuadorian Constitution.

The most important development for the Rights of Mother Earth in Bolivia came after the adoption of the Constitution, and is directly linked to an international response to the global climate change crisis. At the 2010 "World's Peoples Conference on Climate Change and the Rights of Mother Earth" in Cochabamba, Bolivia, with the participation of 35,000 participants, delegations from more than 100 countries drafted the Proposal for a Universal Declaration on the Rights of Mother Earth.

This Universal Declaration states "that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny" and that "in an interdependent living community, it is not possible to recognize the rights of only human beings without causing an imbalance within Mother Earth."

Furthermore, it asserts: "to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her."

The approach sees humans and nature as part of the Earth community, and therefore claims that we must see these rights as the rights of the whole and all its beings, and not only of the non-human (nature) part.

For this declaration, "the inherent rights of Mother Earth are inalienable in that they arise from the same source as existence." Rights are held by all "organic and inorganic beings... that are specific to their species or kind and appropriate for their role and function within the communities within which they exist."

The specific rights that are recognized for Mother Earth as a whole and to "all beings of which she is composed" are the rights to life and to exist; to be respected; to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions; to maintain its identity and integrity as a distinct, self-regulating and interrelated being; to water; to clean air; to integral health; to be free from contamination, pollution and toxic or radioactive waste; to not have its genetic structure altered; and to full and prompt restoration.

This Universal Declaration on the Rights of Mother Earth was presented to the United Nations and the UNFCCC negotiations, and at the end of 2010, the text was incorporated and adopted as Law 71 of the Plurinational State of Bolivia.

The Bolivian Law on the Rights of Mother Earth incorporates a new advancement by creating an Ombudsman for Mother Earth (*Defensoría de la Madre Tierra*) whose mission is to look after compliance and enforcement of those rights. This Ombudsman, however, has yet to be put in place in Bolivia.

The Future of the Debate on the Rights of Mother Earth

Sometimes the inclusion of legal text about Rights of Nature/Mother Earth make us forget that the aim is much bigger. To reduce the issue of Rights of Nature to legal texts is a mistake. We need and we have to continue with the task of pushing for more articles and laws in relation to the rights of Mother Earth but we must not lose the horizon. The inclusion of legal texts on the Rights of Nature or Mother Earth into current “modern” anthropocentric jurisprudence has two functions. First, it raises awareness in society, and second, it provides legal arguments with which to fight against the depletion of nature, especially by big corporations. We will not transform the current anthropocentric model jurisprudence by just simply adding the Rights of Nature into current legislation. What will happen at some moment is that the inclusion of Rights of Mother Earth language will expose and trigger the contradictions of the current anthropocentric legal system, allowing an integral revision that can lead to the emergence of a comprehensive Earth Jurisprudence.

Implementation and Compliance

After the experiences of the TIPNIS in Bolivia²⁵ and Yasuni ITT in Ecuador,²⁶ there is no doubt that the issue of compliance mechanisms to guarantee the enforcement of rights is just as important as the rights themselves. The governments of Ecuador and Bolivia have lost an historical opportunity to show in practice what could have been positive examples of the implementation of the Rights of Nature/Mother Earth, with these projects that have contradicted the Rights of Nature. The contradictions of their own discourse, however, have not closed all doors to developing these rights further. As in the history of all struggles for rights, social pressure is what moves things forward.

The Rejection of Payment for Environmental Services

In the broad movement for the Rights of Nature, there is a discussion in relation to the issue of the Payment for Environmental Services (PES). It is one thing to use the term environmental services to things like cleaning the streets and public parks, and another thing to use the term to refer to the functions of nature that are now trying to be isolated, measured and priced in order to be brought into the market as “environmental services.”

Those that promote the financialization of nature under the name “green economy” use the findings of the scientific stream to arrive at the conclusion that, in order to guarantee the “intrinsic value” of nature, it is necessary to put a price on their “services.”

[Maude Barlow] There is the Payment for Ecological Services, which puts a price tag on ecological goods – clean air, water, soil etc, - and the services such as water purification, crop pollination and carbon sequestration that sustain them. A market model of PES is an agreement between the “holder” and the “consumer” of an ecosystem service, turning that service into an environmental property right. Clearly this system privatizes nature, be it a wetland, lake, forest plot or mountain, and sets the stage for private accumulation of nature by those wealthy enough to be able to buy, hoard, sell and trade it. Already, northern governments and private corporations are studying public private partnerships to set up lucrative PES projects in the global South.²⁷

Projects like REDD (Reduction of Emissions from Deforestation and forest Degradation), Climate Smart Agriculture (CSA), Biodiversity Offsetting and others are part of this new scheme that is being pushed by corporations and the United Nations through what is called the Sustainable Development Goals (SDGs) and other instruments with the aim of establishing targets that can allow for the development of these new market mechanisms around environmental services.

Sustainable Development and the Rights of Mother Earth

There is a need to develop a discussion about how to approach the issue of development in general and sustainable development in particular. Many advocates of the Rights of Mother Earth (especially from governments) do not question - and even support - the expansion of extractive industries and mega-projects that harm nature. Having the clear and urgent warning from scientists that we must leave at least two thirds of known fossil fuel reserves under the soil to avoid a very dangerous increase in greenhouse gas emissions, it is necessary to move away from resource extractivism by placing bans on all new exploration and exploitation of oil, bitumen sands, oil shale, coal, uranium, and natural gas. It should also be clear that nuclear projects are a violation to the Rights of Mother Earth.

[Leonardo Boff] The earth has arrived at the limits of its sustainability. Our task is not to create sustainable development, but a sustainable society - human beings and nature together.²⁸

Earth Democracy

The aim of the Rights of Mother Earth movement is to create Earth governance systems at all levels. In other words, an Earth Democracy that takes into account nature as well as humans and that connects the particular to the universal, the diverse to the common, and the local to the global. This living democracy grows like a tree from the bottom up.

[Vandana Shiva] People who are grounded in a place, who know the plants and animals, seasons and signs, ecosystems and processes of that place on Earth are in the best position to speak and care for the lands, waters, and beings of that community. Earth Democracy is guided by the principle of subsidiarity, calling for decisions to be made at the lowest appropriate level of governance.²⁹

The challenge is how to strengthen and spread these diverse experiences of local governance and to imagine the forms that Earth Democracy will have at national, regional and global levels.

Rights of Mother Earth and Globalization

Thomas Berry wrote that “nature abhors uniformity,” and globalization is a process of uniformization of the planet under the rules of transnational corporations and capital. So far, there has been very little analysis of globalization and deglobalization from the perspective of the Rights of Mother Earth.

The Deep Debate: Anthropocentrism and Property

One of the main manifestations of anthropocentrism in law is the notion of property. Long before the concept of human rights was adopted, the legal concept of property rights was established and enforced: property rights over land, houses, animals, machines, tools, and even other humans. Property can be sold, borrowed, gifted, split, inherited, and so on. In order to have property, the object of possession has to be identified as a “thing” that has no rights, or has less rights than its owner. Property between citizens that have equal rights was not acceptable even in Ancient Greece. In order to become an object of property, the other human had to be dispossessed of his or her rights through war and conquest, or be born a slave.

Even today, the dominant legal relationship between humans and nature is through the rubric of property. Laws are established to guarantee property rights over land, mineral resources, oil, animals, water, etc. Property can be private, state-owned or public, but it is always property of certain humans over certain “things” of nature. Not everything in nature has yet been made into property because, in order to become property, it must be delimited, isolated, scarce and able to be brought to the market.

Property fragments nature into “things” that in reality are never dissociated: the forest from the soil, groundwater from biodiversity, land from minerals. There can be different kinds of owners and property rights over all these elements of nature, but it is always a relationship of dominance.

[Eric T. Freyfogle] When lawyers refer to the physical world, to this field and that forest and the next-door city lot, they think and talk in terms of property and ownership. To the legal mind, the physical world is something that can be owned.³⁰

In reality, the main contradiction is not between human rights and the Rights of Mother Earth, but between the Rights of Nature and property rights that benefit mainly a small fraction of humanity.

[Peter Burdon] In western society, property law provides some of the most foundational ideas about the land and about our place in the environment. Many of these ideas are so ingrained that we rarely give them second thought. The common ‘idea’ of private property is individual or absolute entitlement over a

thing (what Blackstone called 'sole and despotic dominion'), which is protected by the will of the state. Our home is our castle, our zone of personal influence 'where we make the rules'. Our legal conception of property also tells us that the land can be divided into discrete and distinct bundles of legal relations, which individuals hold in relation to each other.³¹

This debate has to go deeper in the broader Rights of Mother Earth Movement. In order to have a new legal framework that is not anthropocentric, we need to overcome, redefine and limit the concept of property. Earth Jurisprudence can only flourish if property rights are constrained, and if we have a new eco-society that is not ruled by capital. In the case of Ecuador and Bolivia, there were important changes with the addition of new rights related to nature, but there was no significant change with regard to property rights.

[Peter Burdon] The implementation of earth rights cannot be sensibly restricted to the juridical model to which it is frequently confined.

Imagination: Beyond Rights

"Loss of imagination and loss of Nature are the same thing. If you lose one you lose the other." -*Thomas Berry*

Thomas Berry has said that he was not entirely happy with the language of rights, "but it was the best we had to be going on with." At present, this approach is useful for challenging the property rights of corporations and elites, but once this is achieved, the concept of "rights" will probably be replaced by another concept that can better reflect the need for Earth Jurisprudence.

[Cormac Cullinan] Wild law tends to focus more on relationships and on the processes by which they can be strengthened (...) It aims to encourage creative diversity rather than to impose uniformity. Wild law opens spaces within which different and unconventional approaches can spring up, perhaps to flourish, perhaps to run their course and die.³²

As a final word of caution: There is no certainty that if humanity overcomes capitalism, productivism and patriarchy, we will overcome anthropocentrism.

Endnotes

1. IHDP - International Human Dimensions Programme on Global Environmental Change, IGBP - International Geosphere-Biosphere Programme, WCRP - World Climate Research Programme and DIVERSITAS - an integrated programme of biodiversity science.
2. <http://www.igbp.net/globalchange/earthsystemdefinitions.4.d8b4c3c12bf3be638a80001040.html>
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4. Challenges of a Changing Earth: Global Change Open Science Conference Amsterdam, The Netherlands 13 July 2001. <http://www.igbp.net/about/history/2001amsterdamdeclarationonearthsystem-science.4.1b8ae20512db692f2a680001312.html>
5. Ibid. n. 4
6. Millennium Ecosystem Assessment, 2005. Ecosystems and Human Well-being: Synthesis. Island Press, Washington, DC.
7. Politics and Environment: An Interview to Dalai Lama <http://www.dalailama.com/messages/environment/politics-and-environment>
8. Aldo Leopold, A Sand County Almanac. Oxford University Press, New York, 1949.
9. Peter Burdon, Exploring Wild Law, The philosophy of Earth Jurisprudence, 2010.
10. Thomas Berry, The Great Work, 1999.
11. Ibid. n. 10.
12. Ibid. n. 9.
13. Thomas Berry, The Great Work, 1999.
14. Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, 1948
15. Alan Drengson, Some Thought on the Deep Ecology Movement, Foundation for Deep Ecology. <http://www.deepecology.org/deepecology.htm>
16. Michael E. Zimmerman Introduction To Deep Ecology.
17. Arne Næss, The Shallow and the Deep, Long-Range Ecology Movement. 1973.
18. Ibid. n 16.
19. Cormac Cullinan, Wild Law: A Manifesto for Earth Justice, 2011.
20. Christopher D. Stone, Should Trees have Standing?, Third Edition, 2010.
21. Peter Burdon, Earth Rights: The Theory, 2011.
22. Ben Price, What are Rights, and how can Nature “have” Rights?
23. A New Paradigm for Nature – Turning our Values into Law by Mari Margil and Shannon Biggs 2010.
24. Ibid. n 9.
25. In 2011 the government of the Plurinational State of Bolivia tried to build a road that was going to cut the “Isiboro Ségure Indigenous Territory and National Park”, TIPNIS in Spanish. Thanks to the resistance of indigenous people and the mobilization of many sectors of the society the government has put on hold this project after acts of repression and violence from the police against the indigenous people that were marching to the city of La Paz and failed attempts to revive the project of the road through this National Park.
26. The Yasuni-ITT Initiative was an initiative by which the government of Ecuador will refrain to exploit the oil reserves of the Ishpingo-Tambococha-Tiputini (ITT) oil field within the Yasuni National Park. In 2013 the government of Correa announced that they will exploit the oil in that area because there has not being enough economic support from the international community and initiatives to have a national referendum on this issue have being blocked by the authorities in Ecuador.
27. Maude Barlow, Building the Case for the Universal Declaration of The Rights of Mother Earth.
28. Thomas Heyd, Encountering Nature, Toward and Environmental Culture, 2007.
29. Ibid. n. 9.
30. Ibid. n. 9.
31. Ibid. n. 9.
32. Ibid. n. 19.

systemicalternatives.org

Systemic Alternatives is a initiative that aims to build an interactive dialogue to deepen the analysis and strengthen the alternatives that are being developed by grassroots movements and thinkers to overcome the capitalist system. Our goal is to compile information about key alternatives such as *vivir bien* ("living well"), the commons, degrowth, deglobalization, ecosocialism, the solidarity economy, ecofeminism, food sovereignty and others, and to produce a constructive debate about their strengths, weaknesses, limitations and contradictions. We examine systemic alternatives in a holistic way, focusing on various dimensions, including: the environment, economy, inequality, cultural diversity, gender, and discrimination.



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