

Legal Conditions for Earth Survival

The present legal system in the United States is supporting exploitation rather than protecting the natural world from destruction by a relentless industrial economy. The difficulty became critical in the last decades of the nineteenth century. At that time we moved from an organic, ever-renewing, land-based economy to an extractive, nonrenewing, industrial economy. This industrial economy, supported by the political power of United States, has become a controlling presence throughout the entire planet.

With devastating force, the industrial way of life has invaded every aspect of human existence, including its political, legal, educational, and religious functioning. So extensive is this control that we must now speak of ourselves as living in an industrial civilization. The difficulty is that the industrial process, based on nonsustainable use of the Earth, is so destructive throughout the natural world that we begin to envisage a terminal extinction for many of those life-forms on which humans most depend. The future of the human species itself is brought into question.

We are told by biologists that we are extinguishing living species of the natural world at a rate unequalled since the last great extinction, some 65 million years ago. Lester Brown of the Worldwatch Institute tells us, "We are losing the war to save the Earth." Vandana Shiva observes, "Humanity seems to be in a free fall towards total disaster." The Union of Concerned Scientists reports that the human disturbance of the natural life systems of Earth is putting the human project itself into serious peril.

Yet those in control of our industrial civilization continue to insist that the survival and well-being of humans can be achieved only through nonrenewing industrial processes carried out by globalizing institutions such as the World Bank, the International Monetary Fund, the World Trade Organization, and the multitude of transnational, multinational, and global corporations that have been actively engaged in extending the industrial way of life throughout the planet.

Since the continuation of our industrial processes depends directly on the legal system authorizing these processes, we must reconsider our legal system in its deepest foundations. Critics of the present situation in the United States have consistently found that our existing legal structures cannot protect the natural world. The federal judiciary has so undermined the Endangered Species Act and the regulations of the Environmental Protection Agency and other regulatory agencies established by Congress and the presidency that many people are concluding that the environmental movement in the United States is under attack. An account of our legal institutions' antagonism toward our efforts to preserve the natural world can be read in a document published by the Natural Resources Defense Council, the Alliance for Justice, and the Community Rights Council titled *Hostile Environment: How Activist Federal Judges Threaten Our Air, Water, and Land* (July 2001).

We clearly need a more viable basis of human presence to the natural world than currently exists. It seems that such considerations of the basic function of law have not been a concern in recent times. The authors of the American Constitution were so preoccupied with their escape from the authoritarian controls of European monarchies over human life that their main objective was to establish a new range of personal human rights, especially rights to own and use property without restriction by government.

This granting of protection for individual human rights was later extended to industrial-commercial corporations plundering

not survive if the conditions of life itself are not protected. So, too, what humans do affects every other being. If we cut the rainforest, then the land turns into desert, so that the entire planetary process is disturbed.

Not only our physical being but also our souls, our minds, imagination, and emotions depend on our immediate experience of the natural world. There is in the industrial process no poetry, no elevation or fulfillment of mind or emotions comparable to that experienced in response to the magnificence of the sea, the mountains, the sky, the stars at night, the flowers blooming in the meadows, the flight and song of the birds. As the natural world diminishes in its splendor, so human life diminishes in its fulfillment of both the physical and the spiritual aspects of our being. This is the case not only with humans but also with every mode of being. The well-being of each member of the Earth community is dependent on the well-being of the Earth itself.

Within this context, then, I make the following set of proposals expressed in terms of rights that should be recognized in national constitutions and in courts of law. Whether simply from consideration of survival and the well-being of humans or from concern for the larger destiny of the Earth, we are faced with legal issues that can no longer be avoided. I propose that we recognize and accept the following statements concerning the origin and nature of the rights of the natural world.²

1. The natural world on planet Earth has rights that come with existence itself. These rights come from the same source from which humans receive their rights, from the universe that brought them into being.
2. 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.

the Earth, with no recognition of the inherent rights of nature and no defense of the natural world from abuse by these corporations. Indeed, it can be said that a basic purpose of government and the legal system in the United States has been to assist and even subsidize the industrial corporations in their exploitation of the land. The well-being of the corporations came to be identified legally with the well-being of the people. Morton Horowitz, professor of the history of law at Harvard University, observes, "As political and economic power shifted to merchant and entrepreneurial groups in the post-revolutionary period, they began to forge an alliance with the legal profession to advance their own interests through a transformation of the legal system."¹

Many people now depend for survival on having a job within the industrial-commercial corporation or its associated establishments. We now live and breathe and have our being in the world of industrial production and consumption more than in the natural world. Citizen rights no longer have meaning apart from the world of the corporation. It is not a question of choice. It is a question of survival without concern for the larger consequences of what is happening.

Not only the industrial empires of the nineteenth and twentieth centuries but also the entire industrial civilization achieved its juridic foundations within this context. For this reason, any effort to diminish the devastating consequences of the industrial age might begin with discussion of this question of rights, their origin, their distinction, their role, and especially their function in human-Earth relations.

The primary supposition here is that the interdependence of every mode of being on every other mode of being requires humans to recognize that every being has rights derived from existence itself. This interdependence is immediately evident. We cannot have well humans on a sick planet. We cannot have a viable human economy by devastating the Earth economy. If the soil is poisoned so that food does not grow, we die. If the climate is altered so that the rainfall and the sunlight are affected, there are serious consequences. We can-

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3. In the nonliving world, rights are role specific; in the living world rights are species specific. All rights are 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.

4. 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.

5. Since species exist only in the form of individuals, rights refer to individuals and to those natural groupings of individuals into flocks, herds, and packs, not simply in a general way to species.

6. These rights as presented here are based on the intrinsic relations that the various components of Earth have with each other. The planet Earth is a single community whose members are 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 predator-prey relationships, is integral with the role that each component of the Earth has within the comprehensive community of existence.

It is clearly a challenge to envision just how these six principles can be incorporated into the structure of our legal system, but some progress is being made in environmental law. The difficulty lies mainly in historical developments since the Enlightenment period in the eighteenth century, the period when modern nationalism came into being. The independent nation, with the people as the supreme

rulers over themselves, recognized no authority beyond itself, neither in heaven nor on Earth, neither in the realm of nature nor in the realm of humans.

This isolation of nations within themselves was altered significantly in the period after World War II by establishing the United Nations and by creating the associated economic and social organizations. Yet the dominant postwar movement has been the expansion and centralization of power of the industrial establishment, so that it controls the entire planet—both its human and its other-than-human forms.

Beyond having an effect on humans, the deleterious consequences of industrial civilization are found now in the chemical and biological functioning and even in the genetic processes of the life systems of the planet. These systems are now being invaded so extensively that the human community must have foreboding as regards its future. The industrial project seems determined to assume control, in a few decades, over the natural processes and interrelations that took the Earth billions of years to establish. The consequences are evident in the devastation that follows wherever the industrial establishment has taken control and the environment is ignored.

Such is the challenge before us—in every aspect of our lives. Such is the basis of the proposals that I have presented here as fundamental to our human survival and the survival of that great community of living beings in the florescence that they once knew. Humans will always make significant demands on the surrounding world. Yet a more mutually beneficial situation must be found. The legal profession needs to cease its subservience to the industrial corporations to fulfill its larger responsibilities for the survival of the Earth in the fullness of its grandeur

NOTES

1. Morton Horowitz, *The Transformation of American Law: 1780–1860*, vol. 1 (Cambridge, Mass.: Harvard University Press, 1977), p. 253.

2. See the further elaboration of these principles in appendix 2.