

EVOLVING FROM DOMINION TO COMMUNION: HOW LEGAL RIGHTS FOR NATURE CAN EXIST IN BALANCE WITH INDIVIDUAL PROPERTY RIGHTS IN A GLOBAL COMMONS

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The evolution of humankind has led many people in the developed nations to abandon their natural connections to the Earth as a living ecosystem that has sustained them, in favor of a desire for dominion over the Earth and all of its abundant resources. This impulse, which has been fueled by survival instincts, religious beliefs, and centuries of messaging, has had disastrous consequences for the entire system of Nature. The ecosystem has entered into a negative feedback loop, in the form of climate chaos, debilitating air and water pollution, vastly accelerated species extinction, and the dramatic loss of food and water resources to sustain all life on the planet. The roots of this disaster-in-the-making can be traced to the ancient perception that personal and collective survival depends upon the ability to exercise ownership and dominion over the Earth, instead of living in communion with Nature.

The late Thomas Berry, whose inspiration is the reason for this discussion, wrote the following passage in his book *The Great Work*:

To achieve a viable human-Earth situation a new jurisprudence must envisage its primary task as that of articulating the conditions for the integral functioning of the Earth process, with special reference to a mutually enhancing human-Earth relationship. Within this context the various components of the Earth—the land, the water, the air, and the complex of life systems—would each be a commons. Together they would constitute the integral expression of the Great Commons of the planet Earth to be shared in proportion to need among all members of the Earth community.

In this context, each individual being is supported by every other being in the Earth community. In turn, each being contributes to the well-being of every other being in the community. Justice would consist in carrying out this complex of creative relationships.²

First, I must say that I agree with Thomas Berry's vision of what needs to happen. However, for such a dramatic shift to occur, several dominant cultural themes, or beliefs, that govern the way we interact with Nature will have to give way to new, more conscious themes. For example, many Americans and others around the world still hold onto a deep-seated belief that humans have a divine right of "dominion" over the Earth, along with a reliance on individual

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² THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 61-62 (1999).

property rights as either a constitutional right or something to aspire to as part of “the American Dream.” Other dominant themes that must evolve to new forms include the *de facto* treatment of corporations as people, with the same rights, but not the same responsibilities, and a rejection of the commons as akin to socialism.

Modern history tells us that existential threats to a society’s way of life, or to life itself, have often led to the development of new legal structures to enable those societies to reduce the threat, even if the threat was not eliminated altogether. Each time this has happened, there has been a shift in collective consciousness to allow people to accept such changes in sufficient numbers so their living patterns could evolve. Now, all of humanity faces such an existential threat—to the survival of the species. If we can see that the perceived need for dominion over the Earth by nations and corporations is simply a by-product of ancient survival instincts, and that we no longer need to rely on those conditioned mechanisms, we may see that living in communion with the Earth actually enhances our survival.

I. THE PERCEIVED NEED FOR DOMINION OVER THE NATURAL WORLD HAS PUT HUMANITY ON THE PATH TO EXTINCTION

Perhaps the best place to begin is where we are. Most of us are aware by now of the serious peril we are in as the planet heats up from carbon emissions and greenhouse gases, oceans are dying as a source of food and atmospheric stability, and alarming numbers of animal species face extinction. The entire food supply is threatened by population overshoot, pollution, peak oil, the introduction of genetically engineered seeds, and the degradation or loss of productive topsoil. Water resources are depleted and fouled to the point that millions of people spend much of their days in search of enough water to survive. Wars for dwindling oil, mineral and water supplies are likely to become a first resort, not the last. The Deepwater Horizon offshore oil well blowout, in the Gulf of Mexico and beyond, killed at least eleven workers, and is causing vast devastation to wildlife populations, as well as to the economic and cultural way of life for many people along the American Gulf Coast. Enormous “dead zones” are being created or made worse in sensitive ecological areas that may be irreversible for generations.³ Nuclear proliferation adds an unpredictable source of ignition to this combustible mixture.⁴

A recent study by the Global Footprint Network warned that if humankind continues to use natural resources and produce waste at the current rate, “by the mid-2030s we will require

³ For a description of the potential ecological impact of this disaster, see, e.g., Terry Tempest Williams, *The Gulf Between Us*, ORION, Nov./Dec. 2010, <http://www.orionmagazine.org/index.php/articles/article/5931> (last visited Nov. 21, 2010) (first person account of devastation to environment and local communities); Greenpeace, *Offshore Disaster: Ecological Impacts of the BP Deepwater Horizon Oil Spill*, <http://www.greenpeace.org/raw/content/usa/press-center/reports4/impacts-gulf-oil-spill.pdf> (last visited Nov. 4, 2010) (discussing impact on turtles, marine mammals, brown pelicans, bluefin tuna and other species); see also Matthew Brown, *Scientists Warn of Unseen Deepwater Oil Disaster*, <http://abcnews.go.com/Business/wireStory?id=10791373> (last visited Nov. 4, 2010).

⁴ In addition to the potential for nuclear proliferation among terrorist groups, there were calls for the United States to shut down the Deepwater Horizon offshore well blowout using “controlled” underground nuclear blasts, like the blasts reportedly conducted by Russia and other nations in the former Soviet Union in the 1960s and 1970s. See, e.g., Julia Ioffe, *Nuke That Slick*, TRUE/SLANT, May 4, 2010, <http://trueslant.com/juliaioffe/2010/05/04/nuke-that-slick> (citing reports from *Komsomolokaya Pravda*, the best-selling Russian daily, of Soviet-era nuclear blasts to shut down offshore oil well leaks).

the resources of two planets to meet our demands," which may cause major ecosystem collapse.⁵ While it is disturbing viewing, to say the least, one of the better presentations of this epic mess we have created can be found in a film available online, titled *Home*.⁶

II. DOMINANCE OF THE VITAL ECONOMIC FUNCTIONS AND RESOURCES ON THE PLANET BY CORPORATIONS AND FINANCIAL ELITES HAS ACCELERATED THE DEGRADATION OF THE ECOSYSTEM

The rise to prominence of transnational corporations and their impact on the planetary ecosystem have been well documented, including by Thomas Berry in *The Great Work*.⁷ A recent example of the pervasive control exercised by transnational financial elites over the world's economic life has come to light, revealing what happened to trigger the banking crisis and financial meltdown we are still experiencing. On September 18, 2008, shortly after the decision to allow Lehman Brothers to go into bankruptcy, unknown, and unregulated, financial entities reportedly withdrew approximately \$550 billion from the U.S. banking system electronically in a matter of an hour or two.⁸ According to a Congressman who was involved in the discussions about that crisis, if there had been no intervention by the Federal Reserve to stop electronic transfers, it is estimated that "by 2pm that afternoon, \$5.5 trillion would have been drawn out of the money market system of the U.S., [which] would have collapsed the entire economy of the U.S., and within 24 hours the world economy would have collapsed. It would have been the end of our economic system and our political system as we know it."⁹

This reported manipulation of the world's economic systems by shadowy financial elites may have been a warning to politicians of an even greater economic weapon that could be triggered—the unregulated market for derivatives, such as credit default swaps. Famed investor Warren Buffett has called credit default swaps "financial weapons of mass destruction," that pose a "mega-catastrophic risk" for the world economy.¹⁰ The manipulation described above could be interpreted as a message to policy makers worldwide: if the government were to allow another major debtor like Lehman Brothers to go bankrupt, thereby triggering credit default swap liabilities for hedge funds and other major financial elites, they would collapse the entire world

⁵ Global Footprint Network, New Data Shows Humanity's Ecological Debt Compounding, http://www.footprintnetwork.org/de/index.php/blog/af/ab_new_data_shows_humanitys_ecological_debt_compounding (last visited Mar. 13, 2010).

⁶ HOME (Yann Arthus-Bertrand 2009), available at <http://www.youtube.com/homeproject>.

⁷ See *supra* note 3, at 117-35. See also HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES 253-95, 568-69 (Harper Collins Publishers 2003) (1980); see generally THE CORPORATION (Zeitgeist Films 2004), available at <http://www.thecorporation.com>.

⁸ See How The World Almost Came to an End at 2PM on September 18, <http://zerohedge.blogspot.com/2009/02/how-world-almost-came-to-end-at-2pm-on.html> (Feb. 8, 2009, 12:56 EST) (emphasis omitted) (reporting on description of this event by U.S. Representative Paul Kanjorski, who had been informed of this event by Secretary of the Treasury Henry Paulson in a closed session).

⁹ *Id.*

¹⁰ See BBC News, Buffett Warns on Investment 'Time Bomb,' <http://news.bbc.co.uk/2/hi/2817995.stm> (last visited June 21, 2010); see also PBS Frontline: *The Warning*, http://www.pbs.org/wgbh/pages/frontline/warning/view/?/?utm_campaign=searchpage&utm_medium=videosearch&utm_source=videosearch (last visited June 21, 2010) (describing the political machinations in the final days of the Clinton administration that led to deregulation of the derivatives market and its role in the financial system meltdown in 2008).

economy through an electronic “run on the banks.”¹¹ Whether the economic doomsday scenario would have played out that way or not, the fact remains that the world’s economic stability is controlled by corporations and individuals who are beyond the reach of any regulatory or law enforcement bodies.

This corporate dominance of all the major activities on the planet has been achieved, in part, through the use of enormous political contributions and influence peddling, despite almost continual efforts to limit such influence through campaign finance reforms. For example, according to the Center for Responsive Politics, the oil and gas industry reported spending \$169 million in 2009, including \$16 million spent by BP, to lobby Congress and the White House.¹² These amounts do not include the enormous funds committed by corporations through political action committees and other avenues to influence elections. It is reasonable to assume that this largesse is not based on altruism. We are seeing the results of these lobbying efforts, through lax regulation and oversight of safety measures, play out in the Gulf of Mexico right now.

The recent decision by the Supreme Court in *Citizens United v. Federal Election Commission*¹³ has opened the floodgates to corporations’ use of their status as “persons” under the Constitution to exercise their First Amendment rights to “invest” *unlimited* corporate funds as campaign contributions, attack ads, and corporate propaganda in the guise of free political speech.¹⁴ Lobbying firms for these corporations are now free to influence elections through unlimited corporate campaign expenditures even if they represent subsidiaries of foreign corporations.¹⁵ The implications of this decision on the electoral process could be staggering. If the one hundred largest corporations decide to spend just two percent of last year’s profits (\$605 billion) on political campaigns, that would *double* the combined spending of all candidates in federal elections.¹⁶ The public has been left with a sense of powerlessness to combat these excesses.

Certainly, not all corporations take part in these excesses. Nor are corporations solely to blame for humanity’s dilemma. To quote Walt Kelly of *Pogo* fame: “We have met the enemy

¹¹ See Matt Taibbi, *The Great American Bubble Machine*, ROLLING STONE, July 2009, available at http://www.rollingstone.com/politics/news/12697/64796?RS_show_page=0 (describing the role of Goldman Sachs and credit default swaps in creating and exacerbating the financial bubbles that led to the meltdown in 2008-09); PBS Frontline: *Inside the Meltdown*, http://www.pbs.org/wgbh/pages/frontline/meltdown/view/?utm_campaign=searchpage&utm_medium=videosearch&utm_source=videosearch (last visited June 21, 2010) (detailing the events that led to the eventual bailout by the Federal Reserve of AIG, and ultimately the entire banking system in the United States, in part, to avoid the fallout from the major banks’ and hedge funds’ cascading credit default swap liabilities being triggered).

¹² See BP Enjoys Lobbying Strength, Close Ties to Lawmakers as Federal Investigation Looms, <http://www.opensecrets.org/news/2010/04/on-thursday-oil-giant-bp.html> (Apr. 30, 2010, 3:14 EST).

¹³ *Citizens United v. Fed. Election Comm’n*, 558 U.S. ___, 130 S. Ct. 876, ___ L. Ed. ___ (2010). See also FreeSpeechForPeople.org, How Did the *Citizens United* Case Happen?, <http://freespeechforpeople.org/node/12> (last visited Mar. 13, 2010) (describing the history of the commercial speech doctrine leading to corporate campaign donations as free speech).

¹⁴ See generally FreeSpeechForPeople.org, Reclaim Democracy for the People, <http://freespeechforpeople.org> (last visited Mar. 14, 2010) (favoring a constitutional amendment to ensure free speech for people and not for corporations).

¹⁵ See, e.g., David Edwards & Sahil Kapur, Transparency Groups Slam Lobbyists for Plotting “Sufficient Cover” to Buy Elections, <http://rawstory.com/2010/02/olbermann-corporations-buy-elections> (last visited Mar. 14, 2010) (including video download of Special Comment by Keith Olbermann on *Citizens United* ruling).

¹⁶ FreeSpeechForPeople.org, FSFP Submits Testimony to Today’s Senate Judiciary Committee Hearing on *Citizens United*, <http://freespeechforpeople.org/node/95> (last visited Nov. 9, 2010).

and he is us.”¹⁷ The evolutionary arc that led to this need for domination, in all of its forms, can be traced to the rise of human-centered consciousness as the reference point for the developed nations’ interactions with Nature, and the resulting estrangement from the Earth as co-creator of our collective destiny.

Laws were used to protect that individual “ego-centric” view of humanity’s right to exploit and control all the property and resources on the planet, through national or corporate power. The preservation of “individual rights” has become so paramount in the consciousness of most people in the developed countries that we have lost sight of the inherent rights to existence of every other living thing on the planet. To put it simply, we have allowed these developments to take place, and we need to own responsibility for finding the solutions. If we are to change course and avoid extinction ourselves, the law must reflect a new ethos, one that has the guiding principles of the Universe as its reference, and restores the rights of Nature in a balance with humans, so each member of the Universal family can play its intended role in life. However, laws rarely lead during times of evolutionary transition. Rather, cultural beliefs must shift first, with laws reflecting that changed ethos following not far behind.

As the crises facing humanity intensify, and political systems fail to provide a clear roadmap to a more sustainable world, there is likely to be increasing despair about whether the dominant cultural beliefs will shift in time to avert the ultimate disaster. This essay will attempt to show that such beliefs are already shifting to more conscious and sustainable beliefs that will support a balance between humanity and Nature.

III. MEMES FOSTERING HUMAN DOMINION VALUES MUST GIVE WAY TO NEW EARTH-CENTRIC MEMES THAT HONOR THE RIGHTS OF ALL LIVING THINGS IN THE ECOSYSTEM

Mememes can be described as the cultural stories, beliefs, and traditions we use to justify our current state of consciousness and that we transfer to others in our family, society and community so that we can further actions that fit our view of the world.¹⁸ In memetic theory, as originally espoused by Richard Dawkins, mememes evolve by natural selection, much as genes evolve according to Darwin’s principles of natural selection, through variation, mutation, competition and inheritance.¹⁹ Other theories of evolution would include cooperation in the list, perhaps at the head of the list, of ways that mememes evolve.²⁰ Whether by competition or

¹⁷ IGoPogo.com, “We have met the enemy . . . and he is us,” http://www.igopogo.com/we_have_met.htm (last visited Mar. 14, 2010).

¹⁸ Memes.org, Definition of Meme, <http://www.meme.org> (last visited Mar. 14, 2010). The term “meme” is defined in memetic theory as “a unit of cultural information, cultural evolution, or diffusion that propagates from one mind to another analogously to the way in which a gene propagates from one organism to another as a unit of genetic information and of biological evolution.” *Id.*

¹⁹ *Id.*; see also RICHARD DAWKINS, *THE SELFISH GENE* 189-201 (Oxford Univ. Press 2010) (1976). This analysis does not purport to be a scientific explanation of how these mememes have developed or evolved. It is simply my attempt to use Dawkins’s meme concepts to explain the cultural bases for the shift in consciousness that I see happening in the world.

²⁰ See Memes.org, The Suppressed Ideas of Kropotkin on Evolution, <http://memes.org/suppressed-ideas-kropotkin-evolution> (last visited Mar. 14, 2010). Russian revolutionary anarchist and evolutionary scholar Peter Kropotkin offered ideas contrary to the strict Darwinian “gladiatorial” theories of evolution, theorizing instead that the predominant way in which species achieve success is through cooperation, not competition. According to his theories, the survival of the fittest depends not so much on those organisms that are constantly at war with one another, but rather those that have acquired “habits of mutual aid.” *Id.*

cooperation, societal memes will often only evolve in response to existential threats to societies. This is because a meme, like a gene, is “selfish,” as Dawkins puts it, and otherwise “cannot be expected to forgo short-term selfish advantage even if it would really pay it, in the long term, to do so.”²¹

IV. EXISTENTIAL THREATS OFTEN CAUSE SOCIETIES TO SEARCH FOR NEW MEMES TO GOVERN LIFE AS A SURVIVAL MECHANISM

Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.

*Samuel Johnson, as reported by
James Boswell*²²

At several important junctures in American history, the perception (warranted or not) that the nation faced an existential threat has caused the leaders at that moment in time to initiate or acquiesce to changes in our legal structures to alleviate the threat. These changes in legal structures were typically preceded by changes in the once-dominant memes that applied to the rights at issue.

A. The Declaration of Independence Was a Shift from the Divine Right of Kings to the Unalienable Rights of All Men

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

*The Declaration of Independence*²³

One could view the American Revolution as the first national response to an existential threat, leading to the creation of the Declaration of Independence, with its expansion of rights for all men.

The Declaration begins with a passage that makes it clear that Jefferson viewed the “unalienable Rights” to “Life, Liberty and the pursuit of Happiness” as grounded in Natural Law, drawing on the “powers of the Earth.”²⁴ The principle that “all men are created equal” was a radical departure from the meme that governed life under the British system with the monarchy deriving its superior station in life over its subjects as a divine right. Thus, the meme of the Divine Right of Kings evolved for the settlers of the colonies into the unalienable rights of all men derived from the laws of Nature. This memetic evolution was triggered by the existential threat posed by the monarchy’s stranglehold on the colonists’ economic and religious freedom.

²¹ DAWKINS, *supra* note 20, at 200.

²² JAMES BOSWELL, *THE LIFE OF SAMUEL JOHNSON* 612 (Penguin Classics 2008) (1791).

²³ Para. 2 (U.S. 1776).

²⁴ *Id.* para. 1 (stating “[w]hen in the Course of human events it becomes necessary . . . to assume among the powers of the earth, the separate and equal station to which the *Laws of Nature and of Nature's God* entitle them” (emphasis added)).

Of course, the fact that slavery was allowed to continue in the new nation dimmed the beacon of Jefferson's lofty principle that "all men are created equal," but another existential threat—the Civil War—would push the nation to further expand the scope of that principle.

B. The Slavery Meme Evolved to the Emancipation Proclamation

Slavery had been a dominant meme in the colonies for nearly two hundred years prior to the Civil War.²⁵ Indeed, the right to own slaves was legitimized under several provisions of the original Constitution.²⁶ Even after 1808, when slavery could lawfully be abolished by Congress, the states were allowed to continue the practice under the holding in the infamous case of *Dred Scott v. Sandford*.²⁷ This decision made the Civil War inevitable.

It was the existential threat of having the nation come completely apart, and years of devastating, bloody war that killed at least 620,000 Americans, which created the final momentum for the abolition of slavery.²⁸ Certainly, the Abolitionist movement, which began to gain significant force in the Northern states in the early 1800s, was the beginning of the evolution of the slavery meme to the Emancipation Proclamation. The practices of the slavery industry were forcibly ended by the war, but the meme continued for a minority of citizens in the nation. Consequently, legal structures were needed to enact the new meme of unalienable rights for the former slaves.

The Thirteenth Amendment to the Constitution was enacted in 1865, abolishing slavery and involuntary servitude.²⁹ However, in 1865-66, southern states enacted "Black Codes" to restrict the political and social activities of the newly freed slaves. These codes deprived blacks of the right to own property, enter into contracts, assemble without the presence of a white person, travel freely, and bear arms, among other restrictions.³⁰ These codes were seen as an attempt to reinstate slavery by other means. Moreover, the holding in *Dred Scott*, that blacks were not citizens of the United States,³¹ threatened to make the provisions of the Thirteenth Amendment ineffective. As a further protection against the re-emergence of slavery by other means, the Fourteenth Amendment was ratified in 1868, prohibiting states from denying citizens equal protection of the laws or due process, and making freed slaves citizens of the United States as well as their state of residence.³² All of this momentous legal activity, addressing centuries of behavior and beliefs that were destructive to humanity, was carried out while the existential threat of the Civil War was still very real. This process also demonstrates the powerful effects of shifting memes even when the old meme continues to resist change among a significant portion of the population.

²⁵ See Ronald L.F. Davis, Slavery in America: Historical Overview, http://www.slaveryinamerica.org/history/hs_es_overview.htm (last visited May 6, 2010).

²⁶ U.S. CONST. art. I, § 9, cl. 1 (no power to ban slavery until 1808); U.S. CONST. art. IV, § 2 (slaves escaping into free states do not become emancipated); U.S. CONST. art. V (no constitutional amendment to ban slavery until 1808).

²⁷ 60 U.S. 393 (1857).

²⁸ Wikipedia, United States Military Casualties of War, http://en.wikipedia.org/wiki/United_States_casualties_of_war (last visited Nov. 9, 2010) (estimating Civil War deaths at approximately 625,000).

²⁹ U.S. CONST. amend. XIII, § 2.

³⁰ See United States History, The Black Codes, <http://www.u-s-history.com/pages/h411.html> (last visited Nov. 9, 2010).

³¹ 60 U.S. at 395.

³² U.S. CONST. amend. XIV, § 1.

C. World Wars Caused Shifts in the Meme of American National Sovereignty

The threat of extinction began in earnest for much of the world with the First World War. Best estimates put the number of deaths, military and civilian, in just four years of combat with “modern” weaponry, at around sixteen million.³³ Once again, legal systems evolved as a response to the existential threat that had been posed to large segments of humanity. International law began to take shape after World War I with the ban on chemical weapons and the creation of the League of Nations. While neither development achieved its stated purpose, they were radical departures from existing norms, and they led to other developments in international law: a relinquishing of national sovereignty that could not have been envisioned before the existential threat of the First World War.

The Second World War presented an even greater systemic threat to the survival of humanity, culminating in the unleashing of atomic bombs on Hiroshima and Nagasaki. This was the first time humanity was aware that we would soon possess the ability to destroy all life on the planet. One of the responses to the carnage of World War II, with an estimated sixty-two million dead,³⁴ was the creation of the United Nations. Again, the United States played a central role in the creation of this international legal system, relinquishing sovereignty to a greater extent than before over decisions affecting our nation. America’s desire for independence from any United Nations sanctions led to the creation of the Security Council, granting veto rights to the United States and the other leading powers, thereby ensuring the Security Council’s limited effectiveness at the time. However, the United Nations has remained a stabilizing force in the world and the memes of American sovereignty and dominance in world affairs have been reduced by these concessions to a wider body.

Recently, the United Nations has taken a greater role in the development of processes to address climate change, genocide, wars of aggression, and other threats to humanity. The memes of American sovereignty and dominance in world affairs, which have governed America’s actions toward the rest of the world for centuries, have not shifted completely. However, as global crises pose a more imminent threat to humanity, the role of the United Nations and other transnational organizations will likely exert greater influence, making it likely that those memes will continue to lose power.

D. The Existential Threat Posed by South Africa’s Apartheid System Shifted Centuries-Old Memes on Both Sides of the Struggle

A more contemporary example of entrenched memes evolving quickly in response to an existential threat is the South African apartheid system. The white minority government carried out a policy of racial segregation from 1948 to 1994, but segregation had been the cultural theme in South Africa since British colonialism in the 19th Century.³⁵ The main basis for the Afrikaner policy of segregation seemed to be the belief that blacks were inferior to whites. However, a

³³ See Wikipedia, World War I Casualties, http://en.wikipedia.org/wiki/World_War_I_casualties (last visited May 6, 2010).

³⁴ See Wikipedia, World War II Casualties, http://en.wikipedia.org/wiki/World_War_II_casualties (last visited May 6, 2010).

³⁵ See Wikipedia, South Africa Under Apartheid, http://en.wikipedia.org/wiki/South_Africa_under_apartheid#Precursors_of_apartheid (last visited Mar. 14, 2010) (discussing precursors of apartheid in South Africa).

deeper fear was also at work. Former president F.W. de Klerk, the man who set the end of apartheid in motion with the release of Nelson Mandela from prison, was described by one writer as having grown up “with Afrikaner fear in his DNA—the dread that after 400 years on the tip of Africa and the struggle against British colonial rule, his Huguenot descendants would be chased into the sea by the black majority.”³⁶

The existential threat that caused de Klerk to take the bold step of releasing Mandela and unbanning the African National Congress was the long period of violence and international sanctions that threatened the economic and social existence of the nation.³⁷ Upon his release from prison, Mandela had a choice of responses and could have stoked the almost universal meme of retribution. The desire for justice after centuries of oppression—an eye for an eye—is as old as recorded history. Instead, the Truth and Reconciliation Commission established under the newly elected black majority government was created “as a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation.”³⁸ There was a shift to higher consciousness on both sides. In the process, the rest of the world was shown new ways of seeking solutions to intractable problems.

E. The Election of Barack Obama Is Further Evidence of Evolving Memes

Perhaps the most recent example of how memes can shift in response to existential crises is the election of Barack Obama as President. Certainly, his message of hope was a strong force of “pull evolution” for many people. But it is probably no coincidence that the financial crisis of 2008, which threatened the end of our economy if emergency measures were not carried out immediately, happened with less than a month to go before the election. This crisis had a powerful “push evolution” effect for many people who otherwise might not have considered voting for a black man with Muslim heritage, named Barack Hussein Obama, because of old memes of racial and ethnic prejudice. Just as the jury was out for a time on whether Jefferson’s “all men are created equal” principle would result in a shift of the slavery meme, only time will tell if Obama’s election will result in a more permanent shift in the meme of ethnic discrimination (itself a derivative of the dominion meme). Nevertheless, there can be no doubt that some strong beliefs had to evolve for this development to occur in American politics.

These are examples of how centuries-old beliefs can shift dramatically as the circumstances require. As awareness grows of the global collapse in all of the systems needed to sustain our existence, there is growing evidence that many of the seemingly entrenched memes of our time are evolving in ways that will foster more Earth-centric policies and greater creativity to find the solutions to our crisis of existence.

³⁶ Alex Duval Smith, *Why F.W. de Klerk Let Nelson Mandela Out of Prison*, OBSERVER (London), Jan. 31, 2010, at Main 38, available at <http://www.guardian.co.uk/world/2010/jan/31/nelson-mandela-de-klerk-apartheid>.

³⁷ *Id.* De Klerk’s decision to end apartheid over time was based on this prediction: “If we had not changed in the manner we did, South Africa would be completely isolated. The majority of people in the world would be intent on overthrowing the government. Our economy would be non-existent—we would not be exporting a single case of wine and South African planes would not be allowed to land anywhere. Internally, we would have the equivalent of civil war.” *Id.*

³⁸ Truth and Reconciliation Commission, Welcome to the Official Truth and Reconciliation Commission Website, <http://www.justice.gov.za/trc> (last visited Mar. 14, 2010) (describing South Africa’s Truth and Reconciliation Commission).

V. THESE OLD MEMES ARE ON THEIR WAY OUT

A. Individual Property Ownership Is an Inalienable Right

Under the old European feudal system, property ownership by kings, lords, and masters was often associated with royal bloodlines and divine right, in order to give them legitimacy. Individuals in “civilized” regions had no rights, except those granted by the sovereign to its subjects. Civilization created a value system that ceded control over all the resources needed for survival to these “superior beings” in exchange for some perceived measure of protection from the forces of the Universe. Of course, apart from this illusion of divine right, the monarch’s only real claim to the land and its life-giving resources often lay in the power of the sword. After many generations of this imbalance, consciousness evolved to the point that enough of the subjects saw through the illusion and collectively began demanding the individual right to own property for their own survival. This transfer of rights to ownership of property from the monarchy to the individual did not shift the dominant meme that the Earth exists to be owned by humans. If anything, the rise of individual rights as a meme has reinforced the existing meme of dominion over the Earth as the property of humans.

Legal principles and structures have, at various junctures in human evolution, played a major role in the development and maintenance of this delusion that property rights can be exalted above all other rights, with impunity. For example, the United States enshrined property rights in its Constitution, with no fewer than five of the amendments in the Bill of Rights based at least partly on protection of property rights.³⁹ Patent rights, which have been used in the last few decades to control genes and seeds, the sources of life and its necessary biodiversity, are explicitly protected in the Constitution.⁴⁰ Many other provisions in the Constitution are implicit protections of property rights, including rights against taxation without representation, ex post facto laws, protections against seizure of property, and the like.

The Framers of the Constitution deemed the right to own property at least as important as other “inalienable” human rights. For example, *Federalist No. 54*, authored by Alexander Hamilton or James Madison, stated unequivocally: “Government is instituted no less for the protection of the property, than of the persons, of individuals.”⁴¹ John Locke had taken the principle even further, noting that “government has no other end but the preservation of property.”⁴² Madison later explained, in his address at the Virginia Convention, that “[t]he personal right to acquire property, which is a natural right, gives to property, when acquired, a

³⁹ U.S. CONST. amend. II (concerning “the right of the people to keep and bear Arms”); U.S. CONST. amend. III (prohibiting the quartering of soldiers in any house without the consent of the owner); U.S. CONST. amend. IV (protecting the right of the people to be secure in their houses, papers, and effects against unreasonable searches and seizures); U.S. CONST. amend. V (“No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.”).

⁴⁰ U.S. CONST. art. I, § 8, cl. 8 (“The Congress shall have power . . . [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries . . .”).

⁴¹ The Library of Congress, *The Federalist Papers*, http://thomas.loc.gov/home/histdox/fed_54.html (last visited May 21, 2010).

⁴² TWO TREATISES OF GOVERNMENT 185 (C. Baldwin 1824) (1690), available at <http://books.google.com/books?id=KIUBAAAAYAAJ&printsec=frontcover&dq=two+treatises+of+government&cd=1#v=onepage&q&f=false>.

right to protection, as a social right.”⁴³ Of course, all of these statements express liberty rights as well, but they have been mixed together with other themes to create an exaltation of individual rights to property that has far-reaching effects on the planet.

Without doubt, there are still deep-seated beliefs for many Americans in the unfettered right of the individual to own property, particularly among adherents of libertarian political philosophy. However, that constitutes a narrow minority of Americans. Most people in America understand that this right has limits. As millions of people have migrated from farms and small villages to cities, their connection to the land has been severed. As family farms have been lost to corporations or government foreclosure, and fewer people have land to pass from one generation to the next, this meme loses some of its power. That process will accelerate as the exigencies of our planetary crises become clear.

B. Humans Have a Divine Right to Exercise Dominion over the Earth

Broadly speaking, Dominion Theology is a religious view that God's will grants complete dominion to humans over all living organisms, and that all of the food, water, and mineral resources on the planet are here for human enjoyment and sustenance. Those who embrace Dominion Theology primarily base it on a passage in Genesis:

And God said, Let us make man in our image, after our likeness:
and let them have dominion over the fish of the sea,
and over the fowl of the air, and over the cattle,
and over all the earth, and over every creeping thing
that creepeth upon the earth.⁴⁴

This version of Dominion Theology has taken on renewed force following the Industrial Age and the rise of powerful new technologies, utilized by corporations and governments to extend humanity's exploitative reach over all living things to the entire planet, the air, and space. In Biblical times, humanity was virtually impotent to protect itself from the vast powers of the natural world, much less exercise dominion over it. Dominion theologians have used the evolution of mankind's technical and industrial capacities to remake the vision of humanity's place in the Universe to fit a completely human-centered position. With that reframing, the primal fear of the natural world is replaced by a feeling of domination, justified by God's original creation mandate.

For a significant portion of American religious congregations, this Dominion Theology has been reinforced by End-Times prophecies.⁴⁵ With the end times in sight, there is apparently less of a need for care of the natural world. In the past three decades of American politics, extreme Dominion Theology advocates slowly but surely aligned themselves with certain conservative politicians and began to dominate important constituencies in the Republican

⁴³ Founders Early Access, Speech in Virginia Convention (Dec. 2, 1829), <http://rotunda.upress.virginia.edu/founders/default.xqy?keys=FOEA-print-02-02-1924> (last visited May 21, 2010).

⁴⁴ *Genesis* 1:26 (King James).

⁴⁵ See, e.g., Left Behind, Are You Ready for the Moment of Truth?, <http://www.leftbehind.com> (last visited Mar. 14, 2010). The “Left Behind” series of books, movies, and other related products has sold many millions of copies. This is not a commentary on whether the value of those beliefs to religious congregations is right or wrong. Rather, the purpose of this discussion is simply to identify a dominant meme for significant segments of the population, and the impact such a meme has on the health of the ecosystem.

Party.⁴⁶ Thus, what had been a privately held view of the world was being advocated for public policy.

For example, these groups also disavow any interest in science-based explanations for the effects of climate change, pollution, or resource depletion. When Republicans won a majority in the U.S. Senate after the 2002 elections, Senator James Inhofe of Oklahoma became chair of the Committee on the Environment and Public Works. One of his first acts upon becoming committee chair was to rail against the international scientific community's warnings on the dangers of climate change, calling their research "phony science" and just a fundraising ploy, and suggesting human-made global warming is "the greatest hoax ever perpetrated on the American people."⁴⁷

Certainly, there are religious groups who have taken the same Biblical texts and derived from them a moral responsibility to act as stewards of God's Creation. For example, the Evangelical Environmental Network has the following call to action in its *Evangelical Declaration on the Care of Creation*:

We and our children face a growing crisis in the health of the creation in which we are embedded, and through which, by God's grace, we are sustained. Yet we continue to degrade that creation.

These degradations of creation can be summed up as 1) land degradation; 2) deforestation; 3) species extinction; 4) water degradation; 5) global toxification; 6) the alteration of atmosphere; 7) human and cultural degradation.

Many of these degradations are signs that we are pressing against the finite limits God has set for creation.⁴⁸

There have been efforts taken by some in the scientific community, such as the eminent biologist E.O. Wilson, to bridge this gulf between the stewardship advocates and the fundamentalist dominion groups.⁴⁹ This religious and scientific philosophy of stewardship has not gained as much political power, through organized political action and corporate alliances, as that of the extreme dominion theology, in part because the stewardship advocates also typically believe in the separation of church and state. However, the majority of Americans still hold the belief in responsible stewardship, even if they have not been as vocal about those beliefs.⁵⁰

⁴⁶ See Theocracy Watch, *The Rise of the Religious Right in the Republican Party*, <http://www.theocracywatch.org> (last visited Mar. 14, 2010).

⁴⁷ James M. Inhofe, U.S. Sen. (R-Okla.), *The Science of Climate Change*, U.S. Senate Floor Speech (July 28, 2003), available at <http://inhofe.senate.gov/pressreleases/climate.htm>; see also Glenn Scherer, *Christian-Right Views Are Swaying Politicians and Threatening the Environment*, GRIST, Oct. 27, 2004, <http://www.grist.org/article/scherer-christian> (describing the views and rise to power of fundamentalist Christian politicians to positions of influence in the Republican Party and in Congress).

⁴⁸ Evangelical Environmental Network, *On the Care of Creation*, <http://www.creationcare.org/blank.php?id=39> (last visited Nov. 10, 2010).

⁴⁹ See generally E.O. WILSON, *THE CREATION: AN APPEAL TO SAVE LIFE ON EARTH* (2006).

⁵⁰ See, e.g., Barna Group, *Evangelicals Go "Green" With Caution*, <http://www.barna.org/barna-update/article/13-culture/23-evangelicals-go-qgreenq-with-caution%3E> (last visited Nov. 10, 2010) (presenting findings from studies of Christians' attitudes about the environment, stewardship, and specific issues such as climate change, and noting that seventy-eight percent of self-identified Christians agree they would like to see their fellow Christians take a more active role in caring for God's creation).

Moreover, it appears that the influence of this dominion theology in national politics reached its zenith around 2004 and has been on the wane since then.⁵¹ The 2006 and 2008 elections signaled a major reduction in the power of this meme in the national political arena.⁵² While the seemingly sudden rise of the Tea Party movement in the 2010 elections appears to be a resurgence of the dominion theology, in reality it is a creation of corporate interests that are primarily aligned with an extreme libertarian philosophy that continues to echo in a sect of the Republican Party.⁵³ The Biblical right of dominion still remains a powerful meme for some very prominent conservative religious groups, and certain states will continue to push these principles into the public arena. However, as awareness grows about the destructive effects of this theology when implemented by government, there is a greater likelihood that this will remain in the realm of the personal belief, not national policy.

C. Achieving “the American Dream” of Owning a Piece of the Earth Is the Key to a Better Life

The dominion mindset is, of course, not limited to religious followers. Since at least the early colonial period in America, we have been encouraged to believe in the dream that owning a piece of land at just about any cost in money, blood, sweat and tears was the key to the opportunity of a better life. The control over property by the crown was ostensibly rejected in the premises of the American Revolution and the ratification of the U.S. Constitution. In reality, however, the new American government simply replaced the king as the feudal landlord, granting land rights to new areas of the country for settlement as if it had the divine right of the king to override any prior use of the land by Native Americans, who occupied their ancestral homeland not for the purposes of dominion, but for living in communion with Nature.

The now-ubiquitous phrase “the American Dream” may not have become a popular term until it was used around 1931 by the writer James Truslow Adams,⁵⁴ but it surely was in the minds of those early settlers who scrambled and endured tremendous hardship in the great land rushes that were opened to the West by the American government in the mid-to-late 1800s. After “the American Dream” entered the lexicon in a more prominent way in the 1930s, that term has been used relentlessly by corporate advertising interests, politicians, banks and real estate agents to sell land and homes to Americans, often without regard for their ability to afford the price. Home buying became a patriotic act and the key to economic independence. Thus, the

⁵¹ See Theocracy Watch, *supra* note 47.

⁵² See *id.* (describing how “[b]efore the midterm elections of 2006, dominionists controlled both houses of the U.S. Congress, the White House and four out of nine seats on the U.S. Supreme Court” and noting that five of the Republican senators who lost their seats in the 2006 elections had received one hundred percent scores from the Family Research Council and Focus On The Family voter scorecards). In the 2008 election, approximately seventy-five percent of Evangelicals voted for John McCain and Sarah Palin, and yet Barack Obama and Joe Biden won the election by a landslide. See Steve Schifferes, Who Voted for Obama?, http://news.bbc.co.uk/2/hi/americas/us_elections_2008/7709852.stm (last visited Mar. 14, 2010).

⁵³ See Jane Mayer, *Covert Operations, The Billionaire Brothers Who Are Waging a War Against Obama*, NEW YORKER, Aug. 30, 2010, http://www.newyorker.com/reporting/2010/08/30/100830fa_fact_mayer?currentPage=all (last visited Nov. 21, 2010) (describing the covert funding of the Tea Party by the billionaire Koch brothers and Koch Industries).

⁵⁴ THE EPIC OF AMERICA 404 (Simon Publ'ns 2001) (1931); Wikipedia, James Truslow Adams, http://en.wikipedia.org/wiki/James_Truslow_Adams (last visited Mar. 14, 2010).

meme of the individual right of home and land ownership as not only the key to a better life for the homebuyer, but for the nation as well, became entrenched in the psyches of most Americans.

While individual property rights and the power of home ownership have become dominant themes in American life, the truth is that most property is still controlled by the government (a collective entity that is analogous to the commons). For example, the power of eminent domain has always been reserved to the government (as a representative of the commons), to seize any property within its boundaries for public uses, such as for railroads or utilities.⁵⁵

Even more pervasive control over the commons is exercised through the taxing powers of the government, at all levels, which enable politicians to impose a covenant on all property. If taxes are not paid on time, the land can be seized and sold at auction to a new tenant who agrees to obey those covenants. Corporations have now stepped into the shoes of the government, in maintaining control over substantial portions of the land, water, air, and mineral resources of the nation, while fostering the belief in private ownership. This is the culmination of the American version of the “fencing of the commons” for private use and wealth.

Thus the modern version of the American Dream, the right and ability to own a home and the land on which it sits, is nothing but a convenient illusion, just a meme that has been perpetuated to support the deeply held values of American individualism, while the commons continues to exist under the surface for political or private interests. However, more people have begun to see the illusion for what it is. In 2008, there were more than three million home foreclosure filings, up a record eighty-one percent, and nearly a million families lost their homes.⁵⁶ The third quarter of 2009 was the “worst three months of all time” for foreclosures.⁵⁷ As a result, with the implosion of the housing market in the United States, the American Dream has been shown to be a nightmare for millions of Americans. This will have the effect of reducing the power of this meme for the foreseeable future.

D. What Is Good for the American Corporation Is Good for America

Since at least the early 1900s, American workers have had a love-hate relationship with American corporations—actually it was mostly hate.⁵⁸ The labor struggles with corporations, over working conditions, wages, and class division in general, continued for the most part throughout the 20th Century.

However, for much of the post-World War II period in America, corporations have used their resources and influence to pursue a more subtle form of influence over the memes that most other Americans adopt, by marketing incessantly to the general public with the message that

⁵⁵ In 2005, the Supreme Court broadened the power of eminent domain to allow confiscation by government for *private commercial development*, as long as community benefit was at least a small part of the government’s purpose. See *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005); see also Juan Gonzalez, Democracy Now!, Eminent Domain Outrage in Connecticut: Pharmaceutical Giant Pfizer to Leave New London, Site of Major Housing Battle, <http://www.democracynow.org/2009/11/13/eminent> (last visited Mar. 17, 2010) (describing how eminent domain was used to condemn neighborhoods to benefit Pfizer, only to have Pfizer abandon the development a few years later).

⁵⁶ Stephanie Armour, USA TODAY, 2008 Foreclosure Filings Set Record, http://www.usatoday.com/money/economy/housing/2009-01-14-foreclosure-record-filings_N.htm (last visited Nov. 10, 2010).

⁵⁷ Les Christie, CNNMoney.com, Foreclosures: “Worst Three Months of All Time,” http://money.cnn.com/2009/10/15/real_estate/foreclosure_crisis_deepens (last visited Mar. 17, 2010).

⁵⁸ See, e.g., ZINN, *supra* note 8, at 321-57. As Zinn points out, the First World War swelled patriotism and quelled class struggle, but that respite from the battles between labor and corporations was short-lived. *Id.* at 376.

what is good for the American corporation is good for America in general. For a significant portion of the 20th Century, General Motors was the largest corporation in the United States.⁵⁹ By the 1950s, most Americans were familiar with the phrase “As General Motors goes, so goes America.”⁶⁰ This belief in the shared interests of the leading corporations and the nation was symbolized by the fact that the CEOs of General Motors and Ford, Charles Wilson and Robert McNamara, both became Secretary of Defense under the Eisenhower and Kennedy administrations, respectively.⁶¹ The marketing of corporations since the 1950s, at least, created a meme that, as the major corporations succeed, so does the nation, without regard for the means of success employed. As American jobs became more dependent upon the fortunes of these giant corporations, this meme became even more prominent in the American belief system.

This marketing has been combined with the creation of the “materials economy,” with planned obsolescence built in, producing a steady stream of consumer products designed to encourage ever-increasing consumption for convenience and pleasure, without much regard for the economic or environmental costs of such consumption to the world’s poorest populations or the ecosystem.⁶² This emphasis on consumption and convenience was also the subject of very sophisticated advertising on a massive scale, further cementing the belief that life in America is always improving, with the help of American corporations. Cheap oil, brought to you by the American oil industry, was at the core of this belief.

Many Americans have become more aware of the problems associated with this economy built on consumption and waste, but corporations use their economic clout to combat that growing awareness. Each time it appears that the attitudes of the public are starting to shift toward more sustainable practices—for example, as the need for alternative clean energy has entered the consciousness of larger segments of the population—corporations use their financial control over the major media resources and advertising to market themselves as if they are in alignment with the newly emerging values (a practice known as “green-washing” their operations), without actually altering their exploitative activities in any significant way.⁶³ Whenever events point to the imminent threat of environmental collapse, some corporations have pushed “alternative” science into the media, to “manufacture doubt” about widely accepted science, or to deny the threat even exists.⁶⁴

⁵⁹ See Wikipedia, General Motors Company, http://wikicars.org/en/General_Motors (last visited Mar. 17, 2010).

⁶⁰ Posting of Tom Englehardt to THE NATION, <http://www.thenation.com/blog/gm-goes-so-goes> (Feb. 23, 2009).

⁶¹ *Id.* When Wilson was nominated for the cabinet in 1953, he was asked if, as Secretary of Defense, he would have difficulty making decisions that might conflict with GM’s interest. He replied that he could not conceive of such a thing “because for years I thought what was good for the country was good for General Motors and vice versa.” Later, shorthand for this statement became “What’s good for General Motors is good for the country.” *Id.*

⁶² THE STORY OF STUFF (Free Range Studios 2007), available at <http://www.youtube.com/watch?v=9GorqoigqM>.

⁶³ See, e.g., Fred Pearce, *Greenwash: BP and the Myth of a World “Beyond Petroleum”*, GUARDIAN (London), Nov. 20, 2008, <http://www.guardian.co.uk/environment/2008/nov/20/fossilfuels-energy> (exposing BP’s advertising of its clean energy programs); Bryan Walsh, *Exposing the Myth of Clean Coal Power*, TIME, JAN. 10, 2009, <http://www.time.com/time/health/article/0,8599,1870599,00.html> (revealing the “clean coal” advertising myth).

⁶⁴ See Chris Mooney, *The Manufacture of Uncertainty*, AMERICAN PROSPECT, Mar. 28, 2008, http://www.prospect.org/cs/articles?sessionid=anjGFkx1cf95IxGn6P?article=the_manufacture_of_uncertainty.

This discussion does not imply that all corporations are irresponsible or fail to grasp the implications of the dominance described here. However, many corporate CEOs understand the battle over consciousness that is being waged and the effects shifting memes could have on their way of conducting business, so they have continued to use sophisticated forms of messaging to maintain the meme that allows them to continue business as usual.

Over the past decade, however, many people have awakened to the underside of international trade agreements such as NAFTA, where jobs have been exported to countries engaged in a race to the bottom in terms of wages, labor standards and the like. The fraud scandals involving Enron and other major corporations further eroded trust in corporate executives. With the financial collapse of 2008-09, the bank bailouts and highly publicized, obscene bonuses for Wall Street and health insurance industry executives, in the midst of a collapsing economy, many more people are also seeing the excesses of multinational corporations' dominance of the planet. General Motors' descent into bankruptcy in 2009 is a powerful symbol of the decline of the American corporation as a source of national pride and shared interests.⁶⁵ There is also a growing movement to challenge corporations' status as "persons" and to remove their right to influence government with unlimited campaign funding.⁶⁶ These developments are all a reflection of the fact that far fewer Americans still hold the belief that America's corporations have the same interests as those of the nation.

While these once powerful memes are fading in strength, new, more conscious memes are emerging that could have profound effects in a positive direction for humanity and Nature.

VI. THESE NEW MEMES ARE ON THEIR WAY IN

Thomas Berry laid out a vision for humanity to recover its connection to "the obscure regions of the unconscious where the primordial archetypal symbols function as ultimate controlling factors in human thought, emotion, and in practical decision-making, [where] a profound reorientation toward this integral human-Earth relationship is gradually taking place."⁶⁷ Among these archetypal symbols are 1) the journey of the Universe, encountered as the journey of each individual; 2) the maternalism of the Universe as symbolized by the Great Mother; 3) our sense of the Cosmic Tree and the Tree of Life, where harm to the Tree affects the entire organism of life, including the human; and 4) the Death-Rebirth symbol, constituting the cosmic process of continuing transformation.⁶⁸

The "new memes" described below can be viewed as a bridge to those ancient archetypal symbols, enabling humanity to gradually return to its core human values as an integral part of the human-Earth relationship, but in a modern context. These "new memes" have the potential to act together in a shift of consciousness. If that happens, then new legal standards and procedures envisioned by Thomas Berry could establish that shift in consciousness as a shared framework for acting in communion with Nature.

⁶⁵ See MSNBC.com News Services, Humbled GM Files for Bankruptcy Protection, <http://www.msnbc.msn.com/id/31030038> (last visited Nov. 10, 2010).

⁶⁶ See, e.g., <http://www.movetoamend.org>; see also <http://www.freespeechforpeople.org>. Both organizations call for a constitutional amendment to make it clear that corporations are not persons with First Amendment rights, in response to the recent Supreme Court decision in *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S. Ct. 876, ___ L. Ed. ___ (2010).

⁶⁷ BERRY, *supra* note 3, at 69.

⁶⁸ *Id.* at 69-70.

A. We Are All Part of One Integrated Ecosystem, and What Happens to the Nonhuman Happens to the Human

In *The Great Work*, Thomas Berry made a seemingly simple, but actually quite profound observation: “We see quite clearly that what happens to the nonhuman happens to the human. What happens to the outer world happens to the inner world.”⁶⁹ This quote describes an understanding of the interconnected nature of life in the material world and at a quantum level. Yet, for centuries, science only focused on the material world and objectively measurable effects of human actions.⁷⁰ Given this centuries-old premise that “only matter matters,” it is no wonder that a new meme describing the completely interconnected nature of the Universe, and unseen effects on non-local entities, has been slow to develop.

Science is now proving the interconnected nature of all life at the core energy level through the disciplines of quantum physics, biology, astronomy, and medicine.⁷¹ Unified Field research is an extension of the principles expressed by Einstein, as embodied in his famous quote that “[t]here [is] no place, in our new physics, for both field and matter, field being the only reality.”⁷² As discussed further below, expert proof of the principle that “what happens to the nonhuman happens to the human” at the level of the Field may be increasingly used in legal proceedings, particularly injunctive relief proceedings, to establish the standing of humans to remedy injury to Nature that has effects on a wide scale.

There are indications that this new meme, which I would label “unity consciousness,” has been adopted by thousands of groups and organizations, and possibly millions of individuals around the world who are working on sustainability issues, as well as in the realm of spirituality and conscious evolution.⁷³ For example, the organization called Wiser Earth touts “[t]he world's largest free and editable international directory of non-governmental organizations (NGOs) and socially responsible organizations.”⁷⁴ It has at least 110,000 organizations of that character listed in its directory.⁷⁵ This example is, undoubtedly, the tip of the iceberg. Leading “world citizens” such as Archbishop Desmond Tutu, His Holiness The Dalai Lama, Dr. Ervin Laszlo, Barbara Marx Hubbard, and others are building alliances and communications capabilities to further this

⁶⁹ *Id.* at 200.

⁷⁰ See generally BRUCE H. LIPTON & STEVE BHAERMAN, SPONTANEOUS EVOLUTION: OUR POSITIVE FUTURE (AND A WAY TO GET THERE FROM HERE) 91-107 (2009) (describing “Myth-Perception One: *Only Matter Matters*”).

⁷¹ See, e.g., LYNNE MCTAGGART, THE FIELD: THE QUEST FOR THE SECRET FORCE OF THE UNIVERSE (2001); Tim Folger, *Does the Universe Exist If We're Not Looking?*, DISCOVER, June 2002, at 44-48, available at <http://discovermagazine.com/2002/jun/featuniverse> (Princeton University physicist John Wheeler's description of “The Participatory Universe”); The Resonance Project, About Us, <http://www.theresonanceproject.org/about.html> (last visited Mar. 17, 2010) (quantum physicist Nassim Haramein's work on The Resonance Project); Triumph of the Spirit, <http://bolstablog.wordpress.com/2009/12/06/braden-video> (Dec. 6, 2009, 12:02 EST) (Greg Braden's video description of research into non-local effects in the Unified Field).

⁷² ALBERT EINSTEIN & LEOPOLD INFELD, THE EVOLUTION OF PHYSICS: FROM EARLY CONCEPTS TO RELATIVITY AND QUANTA 243 (Simon & Schuster 1967) (1938).

⁷³ See, e.g., the trailer for the Foundation for Conscious Evolution's new movie, titled *Visions of a Universal Humanity*, available at <http://www.visionsthemovie.com> (describing the unity consciousness shift that the author believes is underway).

⁷⁴ WiserEarth, About WiserEarth, <http://www.wiserearth.org/article/About> (last visited Mar. 17, 2010).

⁷⁵ WiserEarth, Organizations, <http://www.wiserearth.org/organization/search?language=en> (last visited Nov. 10, 2010).

“unity consciousness” vision.⁷⁶ The Earth Charter Initiative is another expression of this meme that has gained widespread acceptance around the world.⁷⁷

Further, as this new meme takes hold, the dominion meme will begin to fall away for all but the most fervent supporters, because it will be clear that harming Nature harms humans, even when the threat to humans is not readily apparent. If this new way of looking at humanity’s place in the Universe truly becomes established in consciousness, it may also make it easier for the recognition of legal rights for Nature to develop as a governing principle for nations and communities.

B. Every Being in Nature Has Rights

The principle that every being in Nature should have legal rights and standing to sue for injury to those rights has its genesis in the U.S. public policy sphere through the pioneering work of Professor Christopher Stone at Stanford, in his 1972 article titled *Should Trees Have Standing? Toward Legal Rights for Natural Objects*.⁷⁸ Just days after it was published, Stone’s article was cited by Supreme Court Justice William O. Douglas in his dissent in the case of *Sierra Club v. Morton*.⁷⁹ However, the proposals to grant legal standing to Nature failed to gain much greater legal support and this meme appeared to be dormant following its initial expression.

Undoubtedly, the most problematic issue for cases involving the rights of Nature continues to be the question of whether U.S. constitutional standing requirements can be met under Article III, Section 2.⁸⁰ As Mary Munson, Legal Director of the Center for Earth Jurisprudence, wrote recently, there is a possibility that, due to the lack of language in the Constitution limiting standing to bring claims in federal court to humans, non-human plaintiffs could be granted standing on different terms by Congress or a state legislature.⁸¹ Then, a

⁷⁶ See, e.g., Beyond Sustainability—Malama Ola, Beyond Sustainability, <http://www.beyondsustainability.org> (last visited Mar. 17, 2010) (promoting a community of leadership to effect transformational change, with Archbishop Desmond Tutu as one of the organizers); Foundation for Conscious Evolution, What is Conscious Evolution, <http://www.barbaramarxhubbard.com/con/node/8> (last visited Nov. 10, 2010) (providing resources to support individual and worldwide efforts to increase awareness and its application to human progress, founded and led by Barbara Marx Hubbard); Global Oneness Project, About the Project, <http://www.globalonenessproject.org/about-project> (last visited Mar. 17, 2010) (exploring the application of interconnectedness and mutual responsibility in today’s world); His Holiness the 14th Dalai Lama of Tibet, Environment, <http://www.dalailama.com/messages/environment> (last visited Mar. 17, 2010) (providing links to the Dalai Lama’s messages and speeches on Nature, the environment and universal responsibility); WorldShift Network, Mission, <http://www.worldshiftnetwork.org/action/index.html> (last visited Nov. 10, 2012) (describing the mission and work of Ervin Laszlo and the Club of Budapest to promote multi-cultural social consciousness).

⁷⁷ See The Earth Charter Initiative, History, <http://www.earthcharterinaction.org/content/pages/History.html> (last visited Mar. 17, 2010) (describing organizational and individual support of the global principles in the Earth Charter).

⁷⁸ 45 S. CAL. L. REV. 450 (1972).

⁷⁹ 405 U.S. 727, 741 (1972) (Douglas, J., dissenting). Justice Douglas had written a book titled *A Wilderness Bill of Rights* nearly a decade earlier, setting out proposed legal protection for wilderness areas as “rights,” but it was not until the *Sierra Club* case that he set out the proposition that the wilderness has inherent rights that third parties should be able to enforce in court proceedings.

⁸⁰ U.S. CONST., art. III, § 2, cl. 1; see also *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180 (2000) (describing standing requirements).

⁸¹ See generally Mary Munson, *Nature’s Day in Court*, GROUNDSWELL, Fall 2009, at 1, available at <http://www.stu.edu/portals/law/cej/dec16-7.pdf>.

guardian or trustee could be appointed to represent Nature in legal proceedings. That avenue is certainly worth pursuing through legislative action and court proceedings.

However, before that can have any relevance, more people will need to come to the realization that all beings are essentially part of a single interconnected web of energy, and all beings deserve the protection that legal rights afford human beings. Therefore, the emerging meme of interconnectedness or “unity consciousness” is likely to be a precursor to the reemergence of the meme that all beings in Nature have rights.

A positive development in that direction has come from Ecuador, which recently approved a new constitution with legal rights for Nature and standing to enforce those rights granted to any citizen.⁸² Beyond the obvious value of providing direct protection for Nature, there is another benefit of this process in Ecuador. It starts the discussion at a global level of the need for such protection.

As noted earlier, once the “unity consciousness” meme evolves and exhibits what Dawkins would call “survival value,”⁸³ the standing questions might also be addressed using cutting edge expert testimony from the disciplines of quantum mechanics, biology, and Unified Field research, to establish adverse impact to humans from actions that have an adverse effect on Nature.⁸⁴ This approach would appear to have some potential value in situations (particularly injunctive relief actions) where harm to Nature affects the ecosystem at a macro level, such as clear-cutting of rain forests, actions leading to species extinction, actions causing harm to the environment through climate change, and other acts that have foreseeable effects at a global or at least a regional level.

For example, the eminent biologist E.O. Wilson recently gave the following summary description of the harm from loss of biodiversity:

Loss of many of the biological “genetic encyclopedias” millions of years in the making is one consequence. Loss or erosion of ecosystems due to destabilization caused by erasure of links in food webs is another. Also, loss of opportunities in medicine, biotechnology, and agriculture; and not least, loss of a major part of the greatest national and global natural heritage, permanently. Even just one of the consequences just listed—and all will occur together—is a tragedy.⁸⁵

Surely there is a scientific, or economic, evidentiary basis for showing harm to humanity from some or all of these natural consequences of harm to Nature.

Ecuador’s experience with its new constitution will also serve as a laboratory for how the rights granted to Nature can be defined and enforced. This process could have educational value for judges and attorneys around the world as they grapple with the standing questions described above. The rights granted to Nature by Ecuadorans include “the right to exist, persist, maintain

⁸² Press Release, Cmty. Env’tl. Legal Def. Fund, Ecuador Approves New Constitution: Voters Approve Rights of Nature (Sept. 28, 2008), available at <http://celdf.org/article.php?id=302> (describing approval of Ecuador’s new constitution).

⁸³ DAWKINS, *supra* note 20, at 193. Dawkins defines “survival value” as the aspect of a meme that gives it “stability and penetrance in the cultural environment”; an example would be a meme’s “high psychological appeal.” *Id.*

⁸⁴ See *supra* notes 72-78 and accompanying text.

⁸⁵ Interview by UNESCO Media Services with Edward O. Wilson, Professor, Harvard Univ. (Feb. 10, 2009), http://www.unesco.org/new/en/media-services/single-view/news/edward_o_wilson_the_loss_of_biodiversity_is_a_tragedy (last visited Mar. 17, 2010) (describing the crucial importance of biodiversity and the effects of its loss).

and regenerate its vital cycles, structure, functions and its processes in evolution.”⁸⁶ Thomas Berry stated the principle that every component of the Earth community has three rights: “[t]he right to be, the right to habitat . . . and the right to fulfill its role in the ever-renewing process of the Earth community.”⁸⁷

The meaning and scope of these formulations for the rights of Nature will be worked out through community debate, litigation, negotiation, and scholarly dialogue, just as all novel legal concepts find their definition. Laws implementing these rights will need to foster a balance between these rights for Nature and the rights of humanity. Cormac Cullinan’s “Wild Law” concepts, using a “mutually beneficial” standard for laws to achieve this dynamic balance, are a good start.⁸⁸

The outcome of the processes described above, to define the rights of Nature and appropriate dispute resolution techniques, is less important than the fact that the dialogue and tension will change the memes that have governed societies’ actions toward the environment and the ecosystem as a whole.⁸⁹ As those memes evolve to higher consciousness, the legal standards and mechanisms for resolving disputes will evolve from existing paradigms, or new ones will emerge that maintain a better balance between the rights of Nature and the rights of humanity.

As Thomas Berry proposed, individual ownership of property need not be radically changed immediately to accommodate legal rights for Nature. Covenants imposing guardianship responsibilities can be instituted by governments at all levels, just as covenants to pay taxes on individually owned property run with the land. Once that regime is brought into existence as a public policy structure, private associations, land trusts and other community land organizations will include such covenants in their bylaws (as perhaps some already do) and the meme will be reinforced through a variety of sources.

A constitutional amendment granting rights to Nature in the United States may ultimately be necessary, but the more promising approach may be to educate local communities about the need for these changes and bypass the national solution. That is the process being proposed by the Community Environmental Legal Defense Fund and others, as a way of changing the dynamics of the debate and public policy formulation in this area. Ultimately, as Cullinan suggests in his book *Wild Law*, we must move away from viewing land as property.⁹⁰ As the borders between individual property rights and rights of Nature are probed and the debate intensifies over these issues, we get closer to this vision as well. The very fact that we are having this discussion in a global forum is an indication that this new meme has not only been revived, but is expanding in consciousness.

⁸⁶ Press Release, *supra* note 83. The text of Ecuador’s new constitution (Spanish language only) can be found at http://www.eltelegrafo.com.ec/files/Asamblea/Nueva_Constitucion_del_Ecuador.pdf (last visited Mar. 17, 2010).

⁸⁷ Thomas Berry, *The Origin, Differentiation and Role of Rights*, in CORMAC CULLINAN, *WILD LAW* 115 (2003). Berry’s outline of rights is also available at <http://www.earthjuris.org/viewpointdocuments/origin.htm> (last visited Mar. 17, 2010).

⁸⁸ CULLINAN, *supra* note 88, at 91-2.

⁸⁹ See, e.g., Heath Urie, *Boulder Board Approves Tree Ordinance*, DAILY CAMERA (Boulder, Colo.), Nov. 19, 2009 (page number unavailable online), http://www.dailycamera.com/archivesearch/ci_13829621#axzz0ggO9dasM (last visited May 27, 2010) (discussing City of Boulder, Colorado’s ordinance protecting trees on public and private property).

⁹⁰ CULLINAN, *supra* note 88, at 169-70.

C. The Commons Is a Legitimate Way of Managing the Resources of the Planet at a Scale Determined by the Users of Those Assets

There has been a great deal of academic discussion over the past decade of the need for a global commons to manage the finite resources of the planet and to reverse the destructive phenomenon labeled the “fencing of the commons.”⁹¹ The natural tendency (at least for some) is to see the result of the “global commons” as coming only at a global level, from international bodies like the United Nations or some special organization of leading nations akin to the World Trade Organization. As some commentators have stated, however, these super-national organizations are actually ill-equipped to manage global resources, due to the fact that they continue to be influenced by the “political compulsions of sovereign states, rather than the people who actually use these resources on a local basis.”⁹² Moreover, looking to some as yet undefined global convention or meta-organization to create a structure for managing these resources leads to inertia and a sense that the global power structure is a barrier to effective change.

Fortunately, there are many local organizations and associations that are not waiting for international governments to come to the rescue. These community activists have sometimes been called “Commoners” as a means of recognition for their efforts at fashioning local, regional, or global commons through loose associations of shared resource users. Examples of ways these “Commoners” are taking matters into their own hands to advance sustainable, democratic, regenerative models for preserving and sharing common assets include: organic urban agriculture movements; open source software developers; energy cooperatives; organizations dedicated to intellectual property sharing protocols such as the Creative Commons License; land trusts; and a host of activist organizations working to preserve the Earth’s water and food resources against corporate interests.⁹³ As David Bollier, the editor of OntheCommons.org, put it:

Look closely, just below the radar of mainstream media, and you will see a messy, uncoordinated, bottom-up movement in the throes of inventing itself. A teeming constellation of Internet users, environmentalists, librarians, academics, media reformers, software programmers, local currency fans, community gardeners, Slow Food aficionados, indigenous peoples, and others, are beginning to see the practical political value of the commons paradigm.⁹⁴

This is an example of cooperative evolution at work—it is organic, creative, rejects proprietary ownership models, and does not resist change, making it an accelerated form of evolution. These individual commons approaches are evolving into what I would call Thomas Berry’s “Great [Collective] Commons of the Planet Earth.” As these organizations gain strength

⁹¹ See discussion *supra* p. 14-15.

⁹² James Bernard Quilligan, *Global Commons Goods: Civil Society as Global Commons Organizations*, KOSMOS J., Fall/Winter 2008 (page number unavailable online), <http://www.kosmosjournal.org/kjo2/library/kosmos-articles/global-commons-goods.shtml> (last visited May 27, 2010).

⁹³ Among the many examples of common efforts are the Colorado Coalition of Land Trusts (<http://www.cclt.org>), the Colorado Water Trust (<http://www.coloradowatertrust.org>); Feed Denver (<http://www.feedenver.com>), and the Land Trust Alliance (<http://www.landtrustalliance.org>).

⁹⁴ David Bollier, *A New Politics of the Commons*, RENEWAL, Dec. 17, 2007, at 6, available at <http://www.bollier.org/pdf/Renewal%20Essay%20Dec%202007.pdf>.

and the best models rise to the top, the international community may find it necessary to “catch up” and create models for asset classes that defy local or regional commons approaches. If that happens, the global commons will reflect targeted approaches that should prove easier to administer at the largest scale. The important point is that the meme of the commons as a legitimate, effective, and just means of preserving resources that are the Earth’s inheritance is expanding into consciousness very rapidly, in a viral manner, and governments will either work cooperatively with this meme or be left behind.

D. What Is Good for the Earth Is Good for Corporations

Socially responsible investing entered the lexicon of investors in a major way in the 1980s, with the movement to boycott South African businesses and products as a way of protesting the apartheid policies of the minority white government. The phenomenon expanded beyond specific targets for avoiding investments to a more systematic approach to grading investments according to the social responsibility of the corporation’s management, products, and commitments to sustainable processes. As this form of investing took on a well-defined character, some corporations saw opportunities to respond to a new market opportunity by reorienting their business processes. However, the number of investors willing to forego higher profits for a different kind of value related to the health of the planet remained relatively small.

As the concept of triple bottom line accounting (“people, planet, profit”⁹⁵) has been adopted in the private sector by leading corporations, the expansion of corporations’ beneficiaries from simply shareholders to a wider group of stakeholders has begun to drive not just publicity, but profits as well. Unlike the early model of socially responsible investing, the movement toward more sustainable business practices has come primarily from socially responsible executives and employees seeking a more holistic and sustainable approach to business.

One of the most prominent corporate executives advocating sustainability values above short-term profits is Ray Anderson, founder and chairman of Interface, one of the world’s largest carpet manufacturers. His goal for Interface is Mission Zero—zero waste, zero pollution, zero use of fossil fuels, and zero use of materials from the Earth that cannot be renewed rapidly and naturally. While Anderson calls himself a “radical industrialist,” he contends that sustainability “has proven to be the most powerful marketplace differentiator I have known in my long career.”⁹⁶ His company’s sustainability initiatives have been so successful that he started a sister company called InterfaceRAISE which offers sustainability advisory services to other corporations.⁹⁷

Other examples of this type of corporate “awakening” include the companies that are part of the Ceres network, which identifies corporations that “are able to achieve competitive advantages by integrating environmental and social performance into their business strategies[,] . . . understand that environmental and social issues pose potential risks for their businesses and

⁹⁵ See Wikipedia, Triple Bottom Line, http://en.wikipedia.org/wiki/Triple_bottom_line (last visited Mar. 17, 2010).

⁹⁶ Marc Gunther, GreenBiz.com, Ray Anderson: Radical Industrialist, <http://www.greenbiz.com/print/27990> (last visited Nov. 21, 2010).

⁹⁷ See generally InterfaceRAISE, The Endless Possibilities of a Sustainable Business, <http://www.interfaceraise.com> (last visited Mar. 17, 2010) (supporting companies during their transformation to sustainability).

are committed to addressing them.”⁹⁸ Another organization dedicated to improving corporations’ sustainability practices is Business for Social Responsibility (BSR).⁹⁹ As an example of the mutual sustainability challenges facing the planet and corporations, BSR recently studied the five-year journey of The Coca-Cola Company, from a “major reputation crisis” for destructive water stewardship policies in 2002 to proactive programs working toward “water neutrality” in 2007.¹⁰⁰

These are merely steps in the right direction, but the number of companies taking those steps is increasing rapidly. Frankly, some of the world’s leading corporations are finally responding to their own existential crises as the planet’s resources are depleted and polluted to the point approaching irreversible loss.

As awareness grows about the negative effects on the planet from the excesses of the corporate economy, a new meme is developing that calls for sustainability, accountability, and integrity in corporations as creations of the commons, not rulers of it. All of these changes emerging from inside and outside the corporate culture are a reflection of this new meme that the health of the planet is of paramount importance.

E. Communities Are the Real Agents of Change in the World, and Cooperative Evolution Is Their Method of Transformation

The unmistakable message coming out of all the other changes that are taking place is that communities, whether in the form of local governments, citizen groups, or associations connected by specific issues around the world, are going to be the most effective agents of change for virtually all of the critical problems facing the planet. This is more than just a reaction to the failures of national governments to solve these problems; it is an adoption of a cooperative evolution model. This community model is a form of meta-meme that is the yeast for all of the other new memes described above.

CONCLUSION

Thomas Berry inspired me to look at the crises facing humanity, and the potential responses, from an evolutionary perspective. These problems will be addressed, if at all, by an evolutionary shift in consciousness, as expressed in the dominant memes of society. As Richard Dawkins puts it in *The Selfish Gene*:

[E]ven if we look on the dark side and assume that individual man is fundamentally selfish, our conscious foresight—our capacity to simulate the future in imagination—could save us from the worst selfish excesses of the blind [meme] replicators. We have at least the mental equipment to foster our long-term selfish interests rather than merely our short-term selfish interests. We can see the long-term benefits of participating in a ‘conspiracy of doves’, and we can

⁹⁸ Ceres, Coalition and Companies, <http://www.ceres.org/Page.aspx?pid=426> (last visited Mar. 17, 2010) (listing companies that comply with the Ceres guidelines).

⁹⁹ See Business for Social Responsibility, BSR Report 2008, <http://www.bsr.org/about/bsr-report.cfm> (last visited Mar. 17, 2010) (outlining guideposts for sustainable business success and BSR's most significant 2008 successes).

¹⁰⁰ BUSINESS FOR SOCIAL RESPONSIBILITY, DRINKING IT IN: THE EVOLUTION OF A GLOBAL WATER STEWARDSHIP PROGRAM AT THE COCA-COLA COMPANY 1 (2008), http://www.bsr.org/files/bsr_report_2008.pdf.

sit down together to discuss ways of making the conspiracy work. We have the power to defy the selfish genes of our birth and, if necessary, the selfish memes of our indoctrination.¹⁰¹

New memes are emerging that have the potential, at least, to bring about that “conspiracy of doves” and to foster humanity’s long-term selfish interests in the integral human-Earth relationship that Berry envisions as the key to survival. The methods of implementing the changes brought about by new memes in the existing legal environment may not be entirely clear. Nevertheless, it is time for members of the legal profession to use every ounce of creativity they can muster to make the case for Thomas Berry’s vision of Earth Jurisprudence.

¹⁰¹ DAWKINS, *supra* note 20, at 200. The term “a conspiracy of doves” refers to cooperative evolution and the tendency of doves not to attack others for scarce resources as a selfish means of short-term survival, but instead to cooperate in sharing those resources as a means of long-term survival. *See, e.g.*, Posting of Richard B. Hoppe to The Panda’s Thumb, <http://pandasthumb.org/archives/2006/05/the-evolution-o-4.html> (May 4, 2006, 19:40 EST) (describing research into cooperative evolution strategies in certain animal populations).