

Columbia Law School

## Scholarship Archive

---

Sabin Center for Climate Change Law

Research Centers & Programs

---

4-2022

### Exploring the Bedrock for Earth Jurisprudence

Maria Antonia Tigre

Follow this and additional works at: [https://scholarship.law.columbia.edu/sabin\\_climate\\_change](https://scholarship.law.columbia.edu/sabin_climate_change)



Part of the [Environmental Law Commons](#), [Ethics in Religion Commons](#), and the [International Law Commons](#)

---

## EXPLORING THE BEDROCK FOR EARTH JURISPRUDENCE<sup>1</sup>

*Maria Antonia Tigre*

This article calls for a reassessment of our core beliefs on how we relate to the environment through a deep dive into the philosophical foundations of environmental protection. With this purpose, it shows how Earth-centered discourses have existed in human societies and civilizations for millennia. Different religious and philosophical underpinnings all share a view of humanity as an integral part of an organic whole, revering all living things. While recent developments in jurisprudence may appear novel, they are somewhat latent and emergent. Theories of land ethics, rights of nature, Earth-centered environmental ethics, wild law, and Earth jurisprudence all build on these philosophical crescendos and have proved influential at the international level. It is time to find new approaches to the law that rely on the value of nature. This article tells us the why and the how.

This article provides a survey of the jurisprudential background of environmental law and policy and asks what we can draw from religions,<sup>2</sup> Indigenous traditions, philosophy, natural law, ecological civilization, and emerging legal theories such as Earth Jurisprudence, ecological law, and harmony with nature. Some legal scholars might be skeptical of this research.<sup>3</sup> However,

---

<sup>1</sup> The author is thankful to Prof. Nicholas Robinson for expert guidance and advice, Prof. Mary Evelyn Tucker and Prof. James R. May for insightful comments and suggestions.

<sup>2</sup> The definition of 'religion' is highly contested. A traditional definition of 'religion' is 'a system of beliefs and practices that are relative to superhuman beings' Jonathan Z. Smith & William Scott Green, Definition of Religion 893 (Jonathan Z. Smith, et. Al eds., Harper Collins 1995). This definition rejects the notion of religion as a special kind of experience or worldview, thereby excluding much in human experience that could be illuminated with the lenses of religious studies.

<sup>3</sup> See scholars in positivist theory i.e., Maarten Boudry & Jerry Coyne, *Disbelief in belief: On the cognitive status of supernatural beliefs*, 29 PHILOSOPHICAL PSYCHOLOGY 601 (2016). HERMAN PHILIPSE, *GOD IN THE AGE OF SCIENCE?: A CRITIQUE OF RELIGIOUS REASON* (Oxford Univ. Press 2012). Realpolitik policymakers might also look at this theory with skepticism, and outright reject any attempt at a new framework agreement based on these premises. See i.e., Susan Biniaz, *10 Questions to Ask About the Proposed "Global Pact for the Environment"* <http://columbiaclimatelaw.com/files/2017/08/Biniaz-2017-08-Global-Pact-for-the-Environment.pdf> (for more on the immediate feedback to the draft Global Pact for

it is essential in understanding the general agreement on legal concepts through philosophical foundations. This backdrop surpasses religions, geographies, and moralities. The purpose of this research is not to provide a comprehensive overview of all ideological approaches<sup>4</sup> but to draw precise conclusions on the religious and philosophical foundations of environmental protection through specific examples of a jurisprudential crescendo. It draws on the philosophical foundations of human thoughts, which have, for centuries, afforded a moral compass for human behavior and the improvement of societies. Therefore, I ask: If citizens' commissions were convened to rethink our law and governance systems for the 21<sup>st</sup> century, where might the members begin? This article provides the answer to this question by showing that the foundation for shared legal principles already exists. This foundation can foster progressive development of international environmental law and a transition to a nature-guided future.

Since it was first reported to the World Health Organization (WHO), COVID-19, the disease caused by the SARS-CoV-2 virus, has altered lives and laws worldwide. Humanity, their social and environmental systems, have significantly shifted in 2020 because we failed to care for nature.<sup>5</sup> As COVID-19 is a zoonotic disease that spilled over from nature due to the destruction of the environment,<sup>6</sup> ecological concerns are deeply interwoven with the pandemic.<sup>7</sup> The pandemic has irrevocably taught us how human health and nature

---

the Environment, see MARIA ANTONIA TIGRE, GAPS IN INTERNATIONAL ENVIRONMENTAL LAW: TOWARD A GLOBAL PACT FOR THE ENVIRONMENT (Environmental Law Institute 2020).

<sup>4</sup> For comprehensive overviews, see, i.e., the work of Mary Evelyn Tucker and John Grim.

<sup>5</sup> The concept of nature is abstract and has shifted throughout its history. Yet the ambiguity of the semantic diversity is at the core of policy debates and constitutes an obstacle to the global conservation of 'nature;' once definitions are clearly stated, these can be complimentary and enlighten future policies. Frédéric Ducarme & Denis Couvet, *What does 'nature' mean?*, 6 PALGRAVE COMMUN 1 (2020). Nature often refers to what is opposed to humans when used in public policies, conservation science, or environmental ethics. For the purposes of this article, nature refers to the natural environment that has not been significantly altered by humans or persists despite human intervention.

<sup>6</sup> Environment is defined as the "circumstances, objects, or conditions by which one is surrounded" and "the complex of physical, chemical, and biotic factors (such as climate, soil, and living things) that act upon an organism or an ecological community and ultimately determine its form and survival." Other definitions include "the natural world." -*Environment*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/environment>.

<sup>7</sup> Thijs Etty, et al., *Indigenous Rights Amidst Global Turmoil*, 9(3) TRANS. ENV. L. 385 (2020).

are interconnected.<sup>8</sup> The coronavirus brings us to reconsider a new reality: it invites a holistic concept of peace that embraces present and future generations of humans and all other living beings.<sup>9</sup> This reinvention needs to be grounded in moral underpinnings that perceive humans as part of nature. What can we learn from our philosophical and religious roots about our relationship with the environment? How can law reflect this philosophical bedrock?

Amid the devastation caused by COVID-19, there has been an increasing awareness of the importance of a healthy environment in combating disease and preventing future pandemic outbreaks.<sup>10</sup> The pandemic provides the opportunity to reflect on the nature-society relationship and analyze how the constant pressure on the planet's limited resources has led to a planetary crisis (referred here as the Earth Emergency Crisis),<sup>11</sup> facilitating the spread of new viruses once controlled by natural barriers now weaker due to nature's destruction.<sup>12</sup> The environment-related adverse consequences derived from the current crisis shone a light

---

<sup>8</sup> Maria Antonia Tigre et al., *The Inter-American system during COVID-19: Development of Green Human Rights on Indigenous Cases*, 15 REVISTA DE DERECHO AMBIENTAL 7 (with A. Harrington et al.) (2021)

<sup>9</sup> Nicholas A. Robinson, *Global Health as a Foundation for World Peace: Preventing the "Next" Pandemic*, NCP BLOG (Apr. 15, 2020), available at <https://chairpeace.hypotheses.org/1365>.

<sup>10</sup> Sonia Altizer, et al., *Climate Change and Infectious Diseases: From Evidence to a Predictive Framework*, 341 SCIENCE 514 (2013); Patricia L Farnese, The prevention imperative: International health and environmental governance responses to emerging zoonotic diseases, 3(2) TRANS. ENV. L. 285 (2014).

<sup>11</sup> While 'environmental crisis' has been a term in customary use for decades, we now hear other terms including planetary crisis, global environmental emergency, among others. The Guardian no longer recommends using 'climate change,' as the term fails to reflect the seriousness of the situation accurately. Instead, it encourages the use of the words 'climate emergency, crisis, or breakdown.' The change in language reflects a sense of emergency, prompting humanity to reduce our myopia and paralysis and imagine a path forward. This article uses Earth Emergency Crisis as a term encompassing our multiple crises in biodiversity, pollution, climate, health, among others. Madhur Anand, *Language matters when the Earth is in the midst of a climate crisis*, THE CONVERSATION (Jun. 6, 2019, 5:26 PM), available at <https://theconversation.com/language-matters-when-the-earth-is-in-the-midst-of-a-climate-crisis-117796>; Damian Carrington, *Why the Guardian is changing the language it uses about the environment*, May 17, 2019, THE GUARDIAN (May 17, 2019, 5:39 PM), available at <https://www.theguardian.com/environment/2019/may/17/why-the-guardian-is-changing-the-language-it-uses-about-the-environment>; Matthew Schneider-Mayerson & Brent Ryan Bellamy, *An Ecotopian Lexicon* (Univ. of Minnesota Press 2019).

<sup>12</sup> Valentina Durán Medina, et al., *Reflexiones Sobre el Derecho Ambiental en Tiempos de Pandemia*, 13 REVISTA DE DERECHO AMBIENTAL 1 (2020).

on a long-debated dichotomy. Should we continue with the same practices where nature is primarily a commodity? Or should we transition towards a new reality, where established concepts are further developed and strengthened to expand protection of natural resources?

These questions necessarily rely on embedding the right to a healthy environment as a matter of law.<sup>13</sup> The global environmental crisis – now including the coronavirus pandemic – represent inescapable moral and ethical issues.<sup>14</sup> As we consider how states can recover from the devastating effects caused by COVID-19, we can draw essential lessons from centuries of a jurisprudential crescendo of religious and philosophical thought. The debate surrounding a green recovery is the perfect avenue to advance existing environmental goals, both at an international and national level.<sup>15</sup> In 2019, the U.N. General Assembly (UNGA) adopted Resolution No. A/RES/73/333.<sup>16</sup> The resolution set forth substantive and procedural recommendations for follow-up work for the progressive development of international environmental law and specifically called for adopting a political declaration to strengthen its implementation. The declaration shall be adopted in the context of the commemoration of the landmark 50<sup>th</sup> anniversary of the U.N. Conference on the Human Environment in 2022. The 50<sup>th</sup> anniversary of the Stockholm Declaration is the perfect opportunity to no longer put off environmental action. In 2021, the Human Rights Council (HRC) adopted Resolution No. 48/23,<sup>17</sup> recognizing the right to a safe, clean, healthy, and sustainable environment as a human right. The resolution definitively brings environmental concerns to the realm of human rights law. Yet while assessing our steps forward, it is essential to understand that environmental policy transcends the socio-political and economic processes and

---

<sup>13</sup> Esperanza Martínez & Alberto Acosta, *The Rights of Nature as a Gateway to Another Possible World*, 8(4) REVISTA DIREITO E PRÁXIS 2927 (2017); Lidia Cano Pecharroman, *Rights of Nature: Rivers that Can Stand in Court*, 7(1) RESOURCES 23 (2018).

<sup>14</sup> HAROLD G. COWARD & THOMAS HURKA, *Ethics and Climate Change: The Greenhouse Effect* (Wilfred Laurier Press 1993). White Paper on The Ethical Dimensions of Climate Change, <http://www.ipcc.org/wp-content/uploads/2016/10/edccwhitepaper.pdf>; The Collaborative Program on the Ethical Dimensions of Climate Change. (Nov. 8, 2006), [https://seors.unfccc.int/applications/seors/attachments/get\\_attachment?code=EJT13FSLDJ3ZESR02AJWPNJOG3BR6FIP](https://seors.unfccc.int/applications/seors/attachments/get_attachment?code=EJT13FSLDJ3ZESR02AJWPNJOG3BR6FIP).

<sup>15</sup> Medina, et al., *supra* note 12.

<sup>16</sup> GA, Res. No. 73/333 (Sep. 2019).

<sup>17</sup> Human Rights Council Res. 48/L.23/Rev.1, U.N. Doc. A/HRC/48/L.23/Rev.1 (Oct. 5, 2021).

includes development, equity, sustainability, uncertainties, and risk. For example, the “One Health” approach provides a pathway to environmental stewardship through a multifaceted and multidisciplinary approach.<sup>18</sup> The philosophical underpinnings noted in this article give us the moral reasoning to understand why we should care about environmental protection and how we should do it.

Without considering ethical questions, it is challenging to understand why our current actions in environmental degradation represent a problem.<sup>19</sup> Western theories of law are predominantly anthropocentric. However, what is the influence of nature in legal theory? Ethics is at the center of environmental law and policy as it accounts for our moral responsibility towards our environment, ourselves, and future generations. Frank and transparent discussions of our current Earth Emergency Crisis’ ethical dimensions are essential. As this article shows, an in-depth analysis of these roots illustrates how virtually all civilizations have traditionally displayed a grave moral obligation to care for the Earth. They provide a basis for understanding that we have a right to the environment<sup>20</sup> and, in some cases, that nature itself also has rights. Grim & Tucker further note:

---

<sup>18</sup> The World Health Organization, The UN Food & Agricultural Organization, and the World Organization for Animal Health issued guidelines similar to the Berlin Principles in 2019. See *Taking a Multisectoral, One Health Approach: A Tripartite Guide to Addressing Zoonotic Diseases in Countries*, <https://extranet.who.int/sph/docs/file/3524>. Robinson notes that “this guide reinforces the consensus that all nations had attained in 2015, in the 15<sup>th</sup> UN Sustainable Development Goal: ‘Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests combat desertification, and halt and reverses land degradation and halt biodiversity loss.’” Until SGD 15 is attained, the world of humans will be at heightened risk from zoonotic diseases.” Robinson, *supra* note 9.

<sup>19</sup> Stephen M. Gardiner, A Perfect Moral Storm: Climate Change, Intergenerational Ethics and the Problem of Moral Corruption, 15 ENVTL. VALUES 397; 398 (2006).

<sup>20</sup> There are many adjectives used to qualify the type of environment protected. See JAMES R. MAY & ERIN DALY, GLOBAL ENVIRONMENTAL CONSTITUTIONALISM (2015). The U.N. Special Rapporteur on human rights and the environment investigates human rights obligations related to a “safe, clean, healthy and sustainable environment.”, About human rights and the environment, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AboutHRAndEnvironment.aspx>. For a geographic-specific discussion on the adjectives used to qualify the environment, see Maria Antonia Tigre, *Implementing Constitutional Environmental Rights in the Amazon Rainforest*, in IMPLEMENTING ENVIRONMENTAL CONSTITUTIONALISM: CURRENT GLOBAL CHALLENGES (Erin Daly & James R. May eds., 2018).

*“The aim of the study of religious ecology is to retrieve, reexamine, and reconstruct these human-Earth relations that are present in all the world religions. This relationality with nature, both symbolically and practically, is one of the elements religions have in common as cosmological and ecological systems. Religions thus hold a promise of extending once again care and compassion to the planetary community of life.”<sup>21</sup>*

There are many advantages to inviting this ethical discussion. Philosophical debates attempt to provide answers that science still cannot postulate. For example, do we have a moral obligation to preserve the diversity of life forms on Earth? Do our unborn children have the right to hold us accountable for our failings in protecting the environment?<sup>22</sup> Can humanity be responsible for spreading disease due to increased deforestation and biodiversity destruction? Should environmental degradation be considered an international crime?<sup>23</sup> Despite variations in personal morality, there are ‘trans-cultural overlapping values’ and principles that might be understood to constitute a universal – rather than culturally or religiously specific – ethic.<sup>24</sup> Ethical considerations often help leaders seek common ground by identifying priorities and, more significantly, the reason why discussions can transcend parallel debates that fail to take into account core issues.<sup>25</sup> Additionally, vulnerable groups often lack a

---

<sup>21</sup> John Grim & Mary Evelyn Tucker, *ECOLOGY AND RELIGION* 42 (Island Press 2014).

<sup>22</sup> Michael B. McElroy, *Perspectives on Environmental Change: A Basis for Action*, 130(4) *DAEDALUS* 31 (2001).

<sup>23</sup> Philippe Sands, et al., *Defining Ecocide: An interview with Philippe Sands* (2021), *VOLKERRECHTSBLOG* (MAR. 21 2021), <https://voelkerrechtsblog.org/defining-ecocide/>.

<sup>24</sup> Paula J. Posas, *Roles of Religion and Ethics in Addressing Climate Change*, *ETHICS IN SCIENCE AND ENVIRONMENTAL POLITICS* 31 (2007).; See UNESCO, *Universal Ethics Project* (1999).

<sup>25</sup> <sup>25</sup> Paula J. Posas, *Roles of Religion and Ethics in Addressing Climate Change*, *ETHICS IN SCIENCE AND ENVIRONMENTAL POLITICS* 31 (2007); See the timeline of pertinent milestones to international climate change ethics. For an excellent early discussion of climate change ethics; see Coward & Hurka, *Ethics and Climate Change: The Greenhouse Effect* (1993). For a primer on climate change ethics that chronicles relevant historical context, see E. Wesley & F. Peterson, *The Ethics of Burden-Sharing in the Global Greenhouse*, 11 *J. AGRIC. & ENVTL. ETHICS* 167 (1999); Stephen M Gardiner, *Ethics and Global Climate Change*, 114 *ETHICS* 555 (2004).

voice in significant policy negotiations and could arguably advance ethical arguments to pursue their often overlooked agenda.

To positively respond to the current state of the world in its environmental, social, and economic distress, we shall appreciate the Earth as the center of law and governance. Earth-centered philosophy relies on an 'old,' traditional thinking of human societies and nature. Nevertheless, it provides the necessary backdrop into new Earth-oriented concepts and rules of law that proactively respond to current and future crises. Only by delivering broad-ranging answers can we better prepare for imminent challenges. What are the fundamental principles of environmental ethics that govern the Earth? What can we learn from them to develop progressive new legislation? The jurisprudential reasonings that provide a moral standing on environmental protection are essential to comprehend the 'why' of international environmental law's progressive development. For example, these different metaphysical approaches have overlapping appreciations of the right to the environment. More specifically, there is a deep care for water as a sacred symbol or ceremonial source, exemplified by how different religions celebrate water as integral to life.

Section A underscores scholars' significant expansion of religious texts' theoretical contributions and traditions to the environment. While religions have had a role in aggravating the environmental crisis, a recent movement in their 'greening' has helped understand a common foundation that applies to all faiths. The section begins by acknowledging the role of religions in promoting environmental disruption. Before exploring how religions have guided humankind into ecological protection, it is essential to understand its negative influence. The promotion of environmentally destructive behavior by religions is vital to understand its then shift into the advancement of 'greening' theologies, contributing to spreading deep care for the Earth by reimagining traditional teachings. Through examples from a series of religious traditions, I draw on existing scholarship on religious ecology to illustrate the role of religion in environmental protection. The greening of religious thoughts is exemplified by using sacred water as a profound symbol of faith. Finally, I draw on the developments from early American conservationists, who advanced the protection of nature from religious beliefs, leading to emerging legal theories. The section shows how religions have shaped views of nature by transforming interactions with landscapes and the life we can find there through religious cosmologies. These same

teachings can propel us to a new era in environmental protection – one that is Earth-centric.

Section B looks explicitly at Indigenous beliefs, which reinforce the principle of ‘harmony with nature’, inspiring innovative legal theories in environmental protection. The Indigenous cosmologies have, like most religions, a special relationship with water as a sacred way for spirituality. A recent attempt at restoring the traditional knowledge of Indigenous peoples and urban communities has led to the international recognition of their rights. The section identifies the foundations of Indigenous environmental cosmologies and how it has affected the environment in practice through the special protection of water. The Section then shows how these cosmologies have furthered environmental protection through the advancement of Indigenous rights at the international level and the particular protection of their human rights in international courts and tribunals.

Section C discusses the ‘ecological civilization’ concept recently developed in China, rooted in traditional religious and philosophical thinking. The idea of ecological civilization practically shows how a country can build on philosophical thought to develop innovative legal protection of nature. Given its quick expansion throughout the Chinese legal system, the government is currently pushing for its adoption internationally.

The philosophical foundations illustrated indicate how the anthropocentric discourse of nature as a service provider is now shifting to an Earth-centered dialogue of nature as a free and autonomous agent that is independent of humans. The reinterpretation of these traditional theories provides an innovative exchange that contributes to a different framing of human-Earth relationships in law and policy debate. Based on this jurisprudential crescendo, Section D addresses new emerging legal theories based on an ecosystem’s approach and an Earth-centered perspective. It invites a reinvention of international environmental law based on norms of ecological civilization and harmony with nature. The section begins with natural law as the underlying basis for the development of these theories. It then focuses on Earth Jurisprudence and ecological law as emerging legal theories that provide possible answers to the challenge of transforming these moral roots into progressive environmental law. Based on an ethical foundation with religious underpinnings, Earth Jurisprudence promotes a vision that reconfigures our legal system and governance structure to support the integrity of the Earth community. Ecological law favors ecocentrism and emphasizes

alternative concepts such as eco-constitutionalism and the rights of nature. Finally, it addresses the U.N. Harmony with Nature (HwN) Programme, grounded in Indigenous cosmivision.

Section E concludes that we now have the philosophical foundation to adopt an Earth-centered new agreement that provides Earth justice and relies on the lessons from the past decades to look into a green future. As diplomats gather to negotiate a new political declaration on environmental protection, this contribution provides a unique perspective: one that investigates how, despite all of our differences, we share deep care for our natural environment in ways that should finally be reflected in international environmental law.

#### **A. RELIGIOUS FOUNDATIONS OF EARTH CONSERVATION**

Over the past centuries, humanity has irreversibly changed the global environment without concern for the consequences to present and future generations. As we now grapple with the magnitude of this destruction, religions can help answer moral principles' fundamental challenges. As "key shapers of people's worldviews and formulators of their most cherished values," religions have traditionally acted as catalysts for coping with change.<sup>26</sup> Like its contribution to human rights development, religions can address the Earth Emergency Crisis by articulating and transmitting rituals and ethics based on virtues, values, duties, customs, compassion, or sacred law. Tucker & Grim, two of the most critical scholars in religious ecology, cite religions' moral authority and institutional power as the attributes most likely to affect changes in attitudes, practices, and public policies by providing humankind with the most potent source of ethical guidance.<sup>27</sup>

As we re-envision the role of international environmental law in responding to current global challenges, this article draws on the role of religions and spiritual traditions and asks: How can they offer moral and ethical values for reflecting environmental concerns? Additionally, why is this perspective relevant to the progressive development of the law? Spiritual teachings can help answer some of the most challenging questions related to the environmental crisis. These include how humans perceive nature, why the problem has reached its tipping point, and how to shape contemporary relations.<sup>28</sup> Theoretically, how has the interpretation and use of religious texts and traditions contributed to human

---

<sup>26</sup> Mary Evelyn Tucker & John A. Grim, *Introduction: The Emerging Alliance of World Religions and Ecology*, 130(4) DAEDALUS 1, 13 (2001).

<sup>27</sup> *Id.*

<sup>28</sup> Mary Evelyn Tucker, *Religion and Ecology: Survey of the Field*, in THE OXFORD HANDBOOK OF RELIGION AND ECOLOGY 399 (Roger S. Gottlieb ed. 2006).

attitudes regarding the environment? Furthermore, how do humans ethically value nature and create moral grounds for protecting the Earth for future generations?<sup>29</sup>

In his 2015 encyclical on climate change, Pope Francis calls into question some of our ethical obligations using the right to water as an example. He posits that the human right value of water necessarily supersedes other values, such as the need for economic development.

*“In any discussion about a proposed venture, a number of questions need to be asked in order to discern whether or not it will contribute to genuine integral development. What will it accomplish? Why? Where? When? How? For whom? What are the risks? What are the costs? Who will pay those costs and how? In this discernment, some questions must have higher priority. For example, we know that water is a scarce and indispensable resource and a fundamental right which conditions the exercise of other human rights. This indisputable fact overrides any other assessment of environmental impact on a region.”<sup>30</sup>*

Pope Francis’s interrogations bring a moral perspective to the previously unquestioned right to development, showing that we can no longer act without thinking about the consequences to the environment. His orientation proposes a change of perspective from previous teachings, which Catholicism shares with several religious traditions. In the past, religions articulated their philosophies to further the disregard for nature. Understanding the harmful impact religions have had is an essential starting point of this examination. Subsection 1 begins by briefly acknowledging religion’s role in furthering the environmental crises we currently face. Through examples from religions of Abrahamic tradition,<sup>31</sup> the section draws on outstanding scholarship that relied on a traditional interpretation of the human-nature relationship and provocatively

---

<sup>29</sup> *Id.*, at 406.

<sup>30</sup> Pope Francis, Encyclical Letter *Laudato Si'* of the Holy Father Francis on Care for Our Common Home ¶185 (2015).

<sup>31</sup> Abrahamic religions share a descent from Abraham and basic theological commitments. These designate Judaism, Christianity, and Islam. While several other religious traditions have also advanced the human-nature relationship, this analysis is limited to these religious traditions.

called out the promotion of anthropocentric attitudes and environmentally destructive behaviors.

A recent ‘greening’ of religions has contributed to spreading more in-depth care for the Earth. Pope Francis’s teachings illustrate a profound concern related to the costs involved in each transaction, consolidating a progression of thought from previous decades. These transcend the economic aspects, encompassing social and environmental considerations for present and future generations. Pope Francis thus calls for a perspective based on the right to a healthy environment, following a movement that has spread worldwide through the adoption of environmental constitutionalism. Subsection 2 provides examples across religious traditions that refer to the care for nature and use religions as a moral compass for the human-nature relationship. Through a survey and comparative review of religions, it is clear that there is shared support for the right to the environment.

This survey illustrates religion’s role in environmental protection. It neither comprehensively engages with all religious traditions nor exhaustively analyzes the ones encompassed here. Multiple scholars have already extensively researched the relationship between religion and ecology, ensuring a vast bibliography on the topic.<sup>32</sup> A great deal could be said, for example, about Judaism, which links nature and the moral conduct of humans,<sup>33</sup> or about Evangelicalism, which recently called for action on climate change.<sup>34</sup> This selective analysis is narrowly focused on

---

<sup>32</sup> See i.e. *The Forum on Religion and Ecology at Yale* (2020), <http://fore.yale.edu/publications/>; *Emerging Earth Community, Forum on Religion and Ecology at Yale*, <http://emergingearthcommunity.org/forum-on-religion-and-ecology/>; GRIM & TUCKER, *supra* note 21; WILLIS J. JENKINS, ET AL., ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY (Routledge 2017). See also the peer-reviewed journals, *Worldviews: Global Religions, Culture, and Ecology* and *Journal for the Study of Religion, Nature, and Culture*.

<sup>33</sup> For an annotated bibliography, see Mark Jacobs, *Judaism and Ecology Bibliography* (2017), [http://fore.yale.edu/files/judaism\\_annotations\\_11-3-2017.pdf](http://fore.yale.edu/files/judaism_annotations_11-3-2017.pdf). See also Rose Aubrey, *Judaism and Ecology* (Cassell 1992); Ellen Bernstein, *Ecology and the Jewish Spirit: Where Nature and the Sacred Meet* (Jewish Lights Publishing 1998); MANFRED GERSTENFELD, *JUDAISM, ENVIRONMENTALISM, AND THE ENVIRONMENT: MAPPING AND ANALYSIS* (Rubin Mass 1998); Hava Tirosh-Samuelson, *Judaism and Ecology: Created World and Revealed Word* (Harvard University Press 2003).

<sup>34</sup> See *The Forum on Religion and Ecology at Yale*, EVANGELICAL ENVIRONMENTAL NETWORK (EEN) (2020), [http://fore.yale.edu/religion/christianity/projects/evangelical\\_envt/](http://fore.yale.edu/religion/christianity/projects/evangelical_envt/); Shay Meinecke, *God and the Earth: Evangelical Take on Climate Change*, DW, Jul. 03, 2019. 2019; Katharine Jefferts Schori, *Comprehensiveness and the Middle Way:*

the hypothesis that most religions have congruent feelings about Earth's care. In particular, the evolution of Catholicism is exemplified through the lens of Pope Francis and fundamental thinkers for religious ecology like Thomas Berry.

The section reinforces the argument made by Grim & Tucker on the recognition that religions have shaped views of nature for millennia while being simultaneously transformed by their interactions with landscapes and the life therein through religious cosmologies.<sup>35</sup> Religion grounds humans in nature's rhythms and the Earth's abundance.<sup>36</sup> Based on a call to protect God's creation, religions' moral authority and institutional power may alter attitudes, practices, and public policies through a 'religious ecology.'<sup>37</sup> There is an awareness of the interdependence of life in religious ecology's divine reality, as the natural world provides a source of teaching, guidance, creative inspiration, revelation, or power. Most spiritual traditions have developed attitudes of respect and reverence. They care for the natural world, thus providing a cross-cutting foundation that prescribes principles for the human relationship with a Supreme Power, other humans, the Earth's creatures, and the Earth itself.<sup>38</sup> This foundation relies on the spiritual protection of the elements of nature, the right to the environment, or the duty to care for it.

The hypotheses developed here are illustrated through the underlying use of water. Subsection 3 exhibits how religious beliefs have specifically fostered the care for water as a concrete example of environmental responsibility. Virtually all religions cherish water as a profound symbol of religious significance which requires special protection. Water best illustrates the religious foundations of policymaking and the law.<sup>39</sup> Subsection 4 depicts some of the developments from early conservationists in the United States, who, based on holy scriptures, have further advanced a

---

Anglican Perspectives on Religion and Ecology (The Forum on Religion and Ecology at Yale, Aug. 12, 2015).

<sup>35</sup> GRIM & TUCKER, *supra* note 21, at 1-2.

<sup>36</sup> Tucker, *supra* note 28, at 400-401.

<sup>37</sup> Tucker and Grim, *supra* note 26, at 4. Tucker and Grim define 'religious ecology' as a cultural awareness of kinship with and dependence on nature for the continuity of all life, providing a basis for exploring diverse cultural responses to the varied earth processes of transformation.; The study of religious ecology can give us insight into how particular environments have influenced the development of cultures. *Id.*, at 15; *See also* Grim and Tucker, *supra* note 21, at 35-37.

<sup>38</sup> Tucker and Grim, *supra* note 26, at 3.

<sup>39</sup> Other examples have also been proposed, including the use of food. *See* Grim and Tucker, *supra* note 21.

philosophical ground for environmental protection. It draws on lessons from leading voices that called upon natural law to promote the preservation of nature, definitively coupling the theological argument with the practical conservation of ecosystems and species. Finally, Subsection 5 builds on these developments through the lessons from Thomas Berry and his legacy. Berry ultimately drew on Catholic teachings to rethink humanity's relationship with nature.

The current environmental crises show how the Earth is suffering from humanity's presence. Yet Grim & Tucker perceive a shared sensibility regarding our planetary future spreading around the globe.<sup>40</sup> The current challenge is to transform the ideological foundation prescribed here into gradual new laws. Have we arrived at a point "where we realize that more scientific statistics on environmental problems, more legislation, policy or regulation, and more economic analysis, while necessary, are no longer sufficient for the large-scale social transformations needed?"<sup>41</sup> Can religions provide leadership and embrace integral ecology at the level needed? Can we transform this knowledge into practical policies that bring real change? In answering these questions, this article provides examples of how religion significantly shaped attitudes toward nature worldwide while explaining how this wisdom can give a foundation to advance progressive international environmental law.

### 1. RELIGIONS AS ENVIRONMENTAL DISRUPTORS

As a human paradigm, religion can function to construct or destruct the environment. These two countervailing points remain at the core of the study of religious ecology. With anthropocentric roots, religion is partly responsible for the environmental catastrophe, often ignoring facts or blindly supporting 'progress.'<sup>42</sup> Virtually all religious and cultural traditions have contributed to the gravity of the ecological crisis, ultimately leading us into the Anthropocene. Consumption and unquestioned faith in economic progress has led to the improper utilitarian assumption that decision-making choices are equally bright and measurable. Tucker & Grim note that the "human capacity to imagine and implement a

---

<sup>40</sup> *Id.*

<sup>41</sup> Mary Evelyn Tucker & John Grim, *The Movement of Religion and Ecology: Emerging field and dynamic force*, in ROUTLEDGE HANDBOOK ON RELIGION AND ECOLOGY (Willis J. Jenkins, et al. eds., 2017).

<sup>42</sup> Roger S. Gottlieb, *Introduction: Religion and Ecology – What Is the Connection and Why Does It Matter?*, in THE OXFORD HANDBOOK OF RELIGION AND ECOLOGY (Roger S. Gottlieb ed. 2006).

utilitarian-based worldview on nature has undermined many ancient insights of the world's religious and spiritual traditions," including seizing on a material accumulation as containing divine sanction.<sup>43</sup> This view has developed widely before the 1960s.

Those who live in secular states can be skeptical of religion's dominance in society. Yet religion has a historic role as a source of conflict and war and can advance violent radical acts. Looking at how religion influences development, Weber notably proposed that Protestantism was responsible for the rise of market-driven capitalism in the Western world and the rational-legal nation-state.<sup>44</sup> Similarly, religion can be used to obstruct solutions to the environmental crisis. There is strong historical evidence that scientific, technological, and religious ideas precipitated anthropocentric attitudes that separated people from feelings of belonging to nature, suppressed animistic perceptions and beliefs, and fostered an indifference to the well-being of nonhuman organisms. These ideas contributed significantly, if not decisively, to the contemporary environmental crisis.<sup>45</sup>

White, Jr's 'The Historical Roots of Our Ecologic Crisis'<sup>46</sup> has played a critically important role in environmental studies by advancing a multifaceted and provocative argument that the 'Judeo-Christian' tradition, especially Christianity, has promoted anthropocentric attitudes and environmentally destructive behaviors.<sup>47</sup> White maintained that the technological innovations in medieval times played an important role in a cultural transformation that changed the Western view of humanity as a part of nature to viewing people as exploiters of it. He hypothesized the role of religion in environmental decline through a historical analysis. He argued this decline related to Christianity's and Judaism's deep anthropocentrism and its disenchantment of nature. He posited that "human ecology is deeply conditioned by beliefs about our nature and destiny—that is, by religion" and

---

<sup>43</sup> Tucker and Grim, *supra* note 41.

<sup>44</sup> MAX WEBER, *THE PROTESTANT ETHIC AND THE "SPIRIT" OF CAPITALISM AND OTHER WRITINGS* (Penguin 2002).

<sup>45</sup> Bron Taylor, *The Greening of Religion Hypothesis (Part One): From Lynn White, Jr and Claims that Religions can Promote Environmentally Destructive Attitudes and Behaviors to Assertions they are Becoming Environmentally Friendly*, 10 *J. FOR THE STUDY OF RELIGION, NATURE AND CULTURE* 268; 274 (2016).

<sup>46</sup> Lynn White Jr., *The Historical Roots of Our Ecological Crisis*, 155 *SCIENCE* 1203 (1967).

<sup>47</sup> Taylor, *supra* note 45.

especially by 'Christian teleology' with its "implicit faith in perpetual progress."<sup>48</sup>

For the most part, the worldviews associated with the Western Abrahamic traditions of Judaism, Christianity, and Islam have created a dominantly human-focused morality, in which nature often has a secondary role.<sup>49</sup> Western monotheistic religions see humans as an exclusively gifted creatures with a transcendent soul that manifests God's divine image and likeness.<sup>50</sup> The biblical command "to fill the earth and subdue it" (Genesis 1:28) indicates that the Judeo-Christian tradition puts humans above the rest of creation and regards all other forms of life as subordinate.<sup>51</sup> Until recently, there was a consensus that nature was God's creation and ultimately God's ownership.<sup>52</sup>

Given this divine ownership and humanity's 'special place' in creation, humans had the right to use property to their advantage.<sup>53</sup> As a consequence, nature gradually disappeared from Christian consciousness.<sup>54</sup> The perceived scriptural license to 'dominate the Earth' has arguably led to a great deal of environmental damage over time.<sup>55</sup> However, dominion implies stewardship, not domination. In Judaism, while God gave man dominion over every living thing, he did not give man the right to destroy it.<sup>56</sup> At the same time, the idealism inherent in the traditional Jewish approach to life, including their economic reality, gave rise to a religious lifestyle that is primarily indifferent to nature.<sup>57</sup>

The negative contribution is not solely the responsibility of Western Abrahamic traditions. Indeed, many civilizations have overused their environments. Each community uniquely contributed to the environmental catastrophe. Brunn & Kalland have similarly argued that Asian philosophies have done little to

---

<sup>48</sup> White, *supra* note 46, at 1205.

<sup>49</sup> GRIM & TUCKER, *supra* note 21, at 22.

<sup>50</sup> Tucker & Grim, *supra* note 41, at 4.

<sup>51</sup> Hava Tirosh-Samuelson, *Nature in the Sources of Judaism*, 130 DAEDALUS 99 (2001).

<sup>52</sup> Gottlieb, *supra* note 42, at 3-4.

<sup>53</sup> *Id.* at 3-4.

<sup>54</sup> Thomas Berry, *Earth: A New Context for Religious Unity*, in THOMAS BERRY AND THE NEW COSMOLOGY 16 (Anne Lonergan & Caroline Richard eds., 1987).

<sup>55</sup> White, *supra* note 46.

<sup>56</sup> McElroy, *supra* note 22, at 52.

<sup>57</sup> Tirosh-Samuelson, *supra* note 51, at 116.

prevent environmental disasters.<sup>58</sup> Eastern traditions also lacked implementation of nature stewardship, even when they proclaimed respect for nature. Eastern religions did not share a deep tradition to galvanize adherents to socially critical responses to injustice to people or wildlife.<sup>59</sup> For example, through samsara, the endless round of birth and death and rebirth, and the goal to liberate oneself from this circling, India turned its gaze inward. Its environmental ethic remained implicit only.<sup>60</sup> Despite benevolent attitudes towards nature, India has shown a deplorable environmental record, exemplified paradoxically through its relationship with the Ganges, a river with religious significance that is nevertheless mistreated through sewage and waste dump. Therefore, it is indefensible to congratulate any tradition as consistently and effectively promoting a practical ecological orientation.<sup>61</sup> As seen in the next section, ecologically sensitive ideas in religions are not always evident. It took a greening religious movement to bring that reinterpretation towards a better sense of nature. Religions have been subject to interpretation, and there is still a disconnect between principles and practice.<sup>62</sup> Yet, as the next section shows, a redirection towards an environmental moral compass is slowly taking place in religions across the globe.

## 2. RELIGIONS AS AN ENVIRONMENTAL MORAL COMPASS

Suppose religion has indeed had a role in environmental destruction. In that case, reversing the ecological crisis requires a dramatic change in the collective consciousness that produces feelings of belonging to nature and kinship with nonhuman organisms and ethics and behaviors that cohere with such sentiments.<sup>63</sup> The scope of the ecological crises is unprecedented, demanding new responses. While no religious tradition is fully prepared to address it, as original scriptures do not grasp our

---

<sup>58</sup> David L. Haberman, *Hinduism*, in *ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY* 35 (Willis J. Jenkins, et al. eds., 2017). (citing Ole Bruun & Arne Kalland, *Images of nature: an introduction to the study of man-environment relations in Asia*, in *ASIAN PERCEPTIONS OF NATURE* 2-3 (Ole Bruun & Arne Kalland eds., 1995)).

<sup>59</sup> Gottlieb, *supra* note 42, at 4.

<sup>60</sup> Philip Novak, *Tao How? Asian Religions and the Problem of Environmental Degradation*, 9 *REVISION* 33 (1987).

<sup>61</sup> George Rupp, *Religion, Modern Secular Culture, and Ecology*, 130 *DAEDALUS* 23; 26 (2001).

<sup>62</sup> Tucker & Grim, *supra* note 41, at 5.

<sup>63</sup> Taylor, *supra* note 45, at 274; White, *supra* note 46, at 1207.

current reality,<sup>64</sup> religions provide a stable foundation for new or revised answers. Religious traditions can marshal substantial resources for addressing environmental threats more effectively.<sup>65</sup>

Religious ethics can ensure environmental protection, drawing from previous experiences in provoking social change. For example, religions have traditionally developed ethics for homicide, suicide, and genocide and can provide the moral compass for a fundamental societal change – including, possibly, for ecocide. In a parallel development that occurred through the ‘greening’ of human rights law, in which existing human rights were reinterpreted to establish its role in environmental protection, scholars have developed the role of religions in the well-being of people and the planet to a flourishing future.<sup>66</sup> In an address on World Peace Day, Pope John Paul II stated:

*“In our day, there is a growing awareness that world peace is threatened not only by the arms race, regional conflicts and continued injustices among people and nations, but also by a lack of due respect for nature, by the plundering of natural resources and by a progressive decline in the quality-of-life.”<sup>67</sup>*

Based on a series of conferences on religion and ecology held at Harvard, Grim & Tucker identified seven common values that the world religions hold concerning the natural world: reverence, respect, reciprocity, restraint, redistribution, responsibility, and restoration.<sup>68</sup> These values are being resurfaced to guide a more nature-centered attitude towards the environment:

*“As religions move toward a broader understanding of their cosmological orientations and ethical obligations, these values are being retrieved and expanded in response to environmental concerns. As this shift occurs—and there are signs it is already happening—religions are calling for reverence for the Earth and its*

---

<sup>64</sup> Haberman, *supra* note 58, at 36 (citing Poul Pedersen, *Nature, religion, and cultural identity: the religious environmental paradigm in Asia*, in *ASIAN PERCEPTIONS OF NATURE* 226 (Ole Bruun & Arne Kalland eds., 1995).

<sup>65</sup> Rupp, *supra* note 61.

<sup>66</sup> Tucker & Grim, *supra* note 41, at 5.

<sup>67</sup> Pope John Paul II, World Peace Day, January 1, 1990, quoted in *Environment and the World of Work*, Report of the Director-General of the I.L.O. 4 (1990).

<sup>68</sup> GRIM & TUCKER, *supra* note 21, at 8.

*profound ecological processes, respect for Earth's myriad species and an extension of ethics to include all life forms, reciprocity in relation to both humans and nature, restraint in the use of natural resources combined with support for effective alternative technologies, a more equitable redistribution of economic opportunities, the acknowledgment of human responsibility for the continuity of life, and restoration of both humans and ecosystems for the flourishing of life.”<sup>69</sup>*

Throughout the years, the original religious interpretation based on human domination has changed. Religion entered an ecological phase in which “environmental concern takes its place alongside more traditional religious focus.”<sup>70</sup> This is partly due to the extent of the current environmental devastation, which grew from local to global. It also emphasizes how religions are flexible, changing from within and sparking change from without, inducing movements for social change.<sup>71</sup> As religions enter their ecological phase, they promise to enlighten the environmental crisis’s moral dimensions. As a result, major religious traditions have developed moral and ethical statements on the environment.<sup>72</sup>

Religions are repositories of sacred-human relations, guiding human affairs and orienting human-Earth interactions. In the former, religious ecologies situate humans in the dynamic world of nature.<sup>73</sup> Based on the notion of the “Earth is our home,” reflected in many religions,<sup>74</sup> there is a vision of human life as a universal gift, revealing the complexity and interconnectedness of life systems in one single planetary space for all.<sup>75</sup> The new planetary

---

<sup>69</sup> *Id.* at 8-9.

<sup>70</sup> Gottlieb, *supra* note 42, at 6.

<sup>71</sup> GRIM & TUCKER, *supra* note 21, at 24.

<sup>72</sup> *Id.* at 25.

<sup>73</sup> *Id.* at 26.

<sup>74</sup> EARTH CHARTER COMMISSION, THE EARTH CHARTER (2000). See “The Earth is the Lord’s” (Exodus 9:29; Psalm 24:1 in the Hebrew Bible); the earth and humans as God’s icons are interconnected in a communion of suffering and “hope for liberation (Paul’s letter to the Romans, Rom. 8.21). In Islam, Allah created humans as guardians of nature, within the concept of trusteeship (Khalifa) and the unity of Allah (Tawheed) and of humanity and nature emphasized as a central force. Buddhism rejects the illusion of separateness and emphasizes the interconnectedness of all beings. See Sigmud Bergmann, *Developments in religion and ecology*, in ROUTLEDGE HANDBOOK ON RELIGION AND ECOLOGY (Willis J. Jenkins, et al. eds., 2017).

<sup>75</sup> *Id.* at 17.

awakening of religions seeks ways beyond our current unsustainable predicament to a healthier human presence on Earth. Religious traditions worldwide are increasingly contributing to this movement.<sup>76</sup>

The word ‘environment’ in religious traditions includes the “biological, physiological, economic and cultural aspects, all linked in the same constantly changing ecological fabric.”<sup>77</sup> Elements of earth, air, fire, and water are essential symbols in religious ecologies, representing the Earth’s processes and the cosmos and corresponding to orienting, grounding, nurturing, and transforming humans.<sup>78</sup> Environmental problems are universal issues that need special attention from all humanity, regardless of race, religion, ideology, and country. Human beings and the environment each affect one another and are, in turn, affected by one another.<sup>79</sup>

Humanity’s cultural values affect how the natural environment and resources are perceived, used, and managed. Principles that heed the local religious context are likely to be more effective than imported, foreign ones.<sup>80</sup> Along with this significant change came the perception that the environmental crisis is, among other things, a spiritual problem.<sup>81</sup> Religions thus perceived an obligation to contribute to reversing the state of environmental degradation. It became apparent that the traditional interpretation of religions was “if not irrelevant, then clearly insufficient by the environmental crisis.”<sup>82</sup> McElroy further called:

*“We must appreciate that human society, like nature itself, is dynamic. We need a global vision to recognize that there is a unity to life on Earth, that we are part of nature, not independent, that we have the potential to change our environment, but that we must exercise this power with discretion. We need a deeper appreciation for ourselves and nature, drawing on insights not only from science but also from the intellectual heritage*

---

<sup>76</sup> Haberman, *supra* note 58, at 35.

<sup>77</sup> D. Vidart, Environmental education - Theory and practice, 8 PROSPECTS 466 (1978).

<sup>78</sup> GRIM & TUCKER, *supra* note 21, at 37.

<sup>79</sup> Gottlieb, *supra* note 42, at 5-6.

<sup>80</sup> Hussein A. Amery, *Islam and the environment*, in WATER MANAGEMENT IN ISLAM (Naser I. Faruqi, et al. eds., 2001).

<sup>81</sup> Gottlieb, *supra* note 42, at 11.

<sup>82</sup> *Id.* at 4.

*codified in the world's great philosophical and religious traditions.”<sup>83</sup>*

With this awareness, religious scholars advanced a profound ‘interpretive reevaluation’ of traditional teachings and classic texts. With the broad participation of religions in environmental discussions, multiple responses promoted their distinctive ecological vocation.<sup>84</sup> Theologians, ethicists, and other scholars became aware of scientific studies that indicated a global ecological crisis and, in response, began to encourage respect for the Earth’s biosphere.<sup>85</sup> Several international religious leaders emerged as influential spokespersons for the importance of care for the environment, including Tibetan Buddhist leader, the Dalai Lama, and the Vietnamese Buddhist monk Thich Nhat Hanh. The Ecumenical Patriarch Bartholomew emerged as a prominent religious figure responding to the environmental crisis.<sup>86</sup> Reinforcing the link between scientific and religious dialogue and the unique spiritual and ethical role of humans in the natural world, he called for an expanded view of the human-Earth relationship:

*“The Patriarch’s enduring legacy will be his long-standing articulation of the environmental crisis as primarily a spiritual and moral crisis. He sees the limits of purely utilitarian responses to the Earth, as well as rational choice policies and arid intellectualism. Rather, he notes the need for an expanded understanding of the relationship of humans to the Earth and to the divine. His insistence on the spiritual and moral nature of the environmental crisis leads to fresh theological insights.”<sup>87</sup>*

Contemporary scholars who wished to shape an ecologically sensitive attitude and sustainable practices relied on traditional ideas. According to their relevance to current circumstances, Swearer suggests reevaluating scriptures, doctrines, practices, hermeneutical and tactical strategies. Broadening the scope ensures that global environmental issues’ religious dimensions

---

<sup>83</sup> McElroy, *supra* note 22, at 56.

<sup>84</sup> See Tucker, *supra* note 28, at 403-404 for a more in-depth analysis.

<sup>85</sup> John Hart, *Catholicism*, in THE OXFORD HANDBOOK OF RELIGION AND ECOLOGY (Roger S. Gottlieb ed. 2006).

<sup>86</sup> GRIM & TUCKER, *supra* note 21, at 101.

<sup>87</sup> *Id.* at 103.

positively impact decision-making and implications for public policy.<sup>88</sup> In doing so, scholars questioned ideas that could lead to inappropriate environmental practices and suggested ways to adapt teachings to modern circumstances creatively. The ‘mining’ of religious traditions was essential to search for new ethical resources for promoting a holistic, non-anthropocentric, egalitarian, and eco-friendly worldview.<sup>89</sup>

Most religious traditions address environmental problems as they teach about the human-nature relationship, ethics, and morality. Every religion provides guidelines on obligations, rules, and values that set the criterion of correct actions for its adherents at a fundamental level, forming the normative foundation for religious ethics.<sup>90</sup> Similarly, universal law principles exist within civil law, common law, socialist law, Islamic law, and customary law regimes.<sup>91</sup> However, even where a set of shared religious values appears to exist, one should not assume that connectivity across groups and networks implies a stable epistemic community with a coherent focus on political ecology at a national level.<sup>92</sup>

This reevaluation of ethical and environmental values has invited a broader debate on religious institutions’ role and personal beliefs, informing spiritual and ecological values.<sup>93</sup> As an emerging worldwide phenomenon, religious environmentalism is becoming increasingly visible and consolidated as a political and social movement. Pope Francis called for an ‘ecological conversion’ from within all the world religions. The World Council of Churches (WCC), a gathering of primarily Protestant and Orthodox Christian churches, has hosted sustained and significant high-level work on religion and ecology since the 1960s.<sup>94</sup> The UK-based Alliance of Religion and Conservation (ARC), led by Martin Palmer, has been doing significant work with religious communities under Prince Philip’s patronage.

---

<sup>88</sup> Donald K. Swearer, *Principles and Poetry, Places and Stories: The Resources of Buddhist Ecology*, 130 *DAEDALUS* 225 (2001).

<sup>89</sup> *Id.*

<sup>90</sup> Norah bin Hamad, *Foundations for Sustainable Development: Harmonizing Islam, Nature and Law* 7 (2017; S.J.D. Thesis, Elisabeth Haub School of Law).

<sup>91</sup> Nicholas A. Robinson, *Evolved norms: A canon for the Anthropocene*, in *RULE OF LAW FOR NATURE* (Christina Voigt ed. 2013).

<sup>92</sup> Jeremy Kidwell, *Mapping the Field of Religious Environmental Politics*, 96 *INT’L AFFAIRS* 343 (2020).

<sup>93</sup> *Id.*

<sup>94</sup> Robert Booth Fowler, *The Greening of Protestant Thought* (University of North Carolina Press. 1995); Guillermo Kerber, *International advocacy for climate justice, How the World’s Religions are Responding to Climate Change: Social Scientific Investigations* (Robin Globus Veldman, et al. eds., 2014).

As a result, “[i]nnovative liturgies and rituals are being practiced, and a unique sense of moral responsibility that stresses the interdependence of our treatment of nature and our treatment of other people has emerged as the strikingly new concept of ‘ecojustice.’”<sup>95</sup> World religions provide a wide-ranging orientation to the cosmos and the human roles. Tucker further summarizes:

*“It is now the case that most of the world’s religions have issued statements on the need to care for the earth and to take responsibility for future generations. These statements range from various positions within the Western monotheistic traditions to the different sectors within Asian traditions of Buddhism and Daoism. By no means monolithic, they draw on different theological perspectives and ethical concerns across a wide spectrum. They reflect originality of thought in bringing religious traditions into conversation with modern environmental problems, such as climate change, pollution and loss of biodiversity.”*<sup>96</sup>

These efforts “are recovering a sense of place, which is clear in the environmental resilience and regeneration practices of indigenous peoples.”<sup>97</sup> As I expand later in this article, Indigenous peoples have long promoted deep care for nature central to their traditional beliefs. Similarly, the reevaluation of religious texts has made clear that promoting harmony and respect for nature is at the core of religious thinking.<sup>98</sup> For example, Buddhism sees the change in nature and the cosmos as a potential source of human suffering. On the other hand, Confucianism and Daoism affirm nature’s changes as the source of the Dao (Heaven’s Way). In Confucianism, humans are grounded in an expansive sense of community, which includes humans and nature.<sup>99</sup> Further, the death-rebirth cycle of nature serves as an inspiring mirror for human life, especially in the Western monotheistic traditions of Judaism, Christianity, and Islam. In fostering a relationship grounding the human, communities of several religious ecologies include humans in the

---

<sup>95</sup> Gottlieb, *supra* note 42, at 7.

<sup>96</sup> Tucker, *supra* note 28, at 404-405.

<sup>97</sup> Tucker & Grim, *supra* note 41, at 10-11 (providing several examples that illustrate an emerging alliance of religion and ecology around the world).

<sup>98</sup> See Grim & Tucker, *supra* note 21, at Chapter 3.

<sup>99</sup> *Id.* at 92.

past, present, and future generations. The expansion of the protection of humans in time has deep meaning for the development of intergenerational equity.<sup>100</sup>

This protection extends to other living beings in some traditions, such as meadows, rivers, forests, and oceans, mimicking a moral compass deeply rooted in Indigenous rituals.<sup>101</sup> Comparably, the protection of all aspects of nature has found fertile ground in religious thoughts, further developed in this thesis. Gottlieb clarifies how religions share with environmental organizations the laudable goal of safeguarding life in all forms, reinforcing the value of nature in itself:

*“Most contemporary environmental organizations repeatedly stress that your goal is not just to save wilderness, but to protect all of life. At its best the religious spirit has a similarly inclusive goal. We are all, says the Bible, made in the image of God. We all, says Buddhism, suffer and deserve released from our pain. Each community, says the Qur’an, has its own purpose and value. Any violence against one of us, teach the Jains, can only hurt us all. Looked at it in this light, then, the universal missions of truly compassionate religion in the first truly global environmental politics naturally converge, at least in the attempt to forge the widest possible social and ecological ethic. Both believe that life deserves a reverence that cannot be reduced to dollar value, that self-examination and spiritual practice makes the most important kind of sense, and that there is more to human well-being than money, power, and pleasure.”<sup>102</sup>*

Tucker explains that “[b]y linking human life and patterns of nature, religions have provided a meaningful orientation to life’s continuity as well as to human diminishment and death. In addition, religions have helped celebrate the gifts of nature such as air, water, and food that sustain life.”<sup>103</sup> For example, in Jewish

---

<sup>100</sup> Intergenerational equity provides a notion of partnership among all generations, as each generation has the right to inherit the same fundamental rights enjoyed by the previous generations and to equitable access to the use and benefits of these resources.

<sup>101</sup> *Id.* at 40.

<sup>102</sup> Gottlieb, *supra* note 42, at 16.

<sup>103</sup> *Id.* at 400.

tradition, nature is never an end in itself but rather points to the divine creator, who governs and sustains nature.<sup>104</sup> When analyzed carefully, it became evident that religious rituals and symbols arise out of cosmologies and are grounded in nature's dynamics. Nature provides resources for encouraging spiritual and ethical transformation in human life.<sup>105</sup> By observing and respecting nature in all of its forms and moments, religions provided it with a profound meaning, calling for its protection.

Eastern traditions similarly adopted an evolved interpretation of traditional texts to develop a care for nature. Daoism regards humans as an essential part of nature, avoiding any fixed distinction between the mind or soul and the body. Sikh scripture, Guru Granth Sahib, declares that “[c]reating the world, God has made it a place to practice spirituality” and that human beings’ purpose is to achieve a blissful state and be in harmony with the Earth and all creation.<sup>106</sup> In Hinduism, the entire universe is God. Noting the rich diversity of Hinduisms, Haberman has reinterpreted *bhakti* devotional texts and rituals.<sup>107</sup> Central to the Bhagavad Gita’s position is the vision of the universe as the body of Krishna.<sup>108</sup> The four terms *sarvatma-bhava* proclaims that everything is part of a unified and radically interconnected reality, referring to the primarily accepted viewpoint that all is sacred, a concept with deep roots in many Hindu scriptures.<sup>109</sup> Some natural entities, such as rivers (the Yamuna, Ganges, and Narmada), holy trees, and mountains, are favored through cultural selection.<sup>110</sup> This belief was recently grasped by an Indian court in a decision that granted rights of nature to rivers, showing how religious concepts are now being transferred to the legal frameworks.<sup>111</sup> As part of this

---

<sup>104</sup> Tirosch-Samuels, *supra* note 51, at 101.

<sup>105</sup> Tucker, *supra* note 28, at 400.

<sup>106</sup> Colin Millais, Common Belief: Australia’s Faith Communities on Climate Change, *The Climate Ins.* 4, 24 (2006).

<sup>107</sup> Haberman, *supra* note 58, at 35.

<sup>108</sup> *Id.* at 35.

<sup>109</sup> *Id.* at 37.

<sup>110</sup> *Id.* at 38.

<sup>111</sup> See *e.g.* Narayan Dutt Bhatt v. Union of India & others, Writ Petition (PIL) No. 43 of 2014, 1, (India.); T.N. Godavarman Thirumulpad v. Union of India (2012). I.A. Nos. 1433 and 1477 of 2995 in Writ Petition No. 202 of 1995, Supreme Court of India. Center for Environment Law and WWF-India v. Union of India (2013). I.A. No. 100 in Writ Petition No. 337 of 1995, Supreme Court of India.

exceptional protection conferred to nature, there is a growing conviction of the duty of care towards it.<sup>112</sup>

The Buddhist belief of reincarnation as an animal in a future life shows little distinction between beings. A Buddhist's goal was to ease the suffering of 'all sentient beings,' not just people. Jainism reflects an indigenous Asian perspective of nature, which inspires an ecologically sensitive response.<sup>113</sup> Jainism provides a comprehensive cosmology that integrates the human person's place within the continuum of the universe. Each living being houses a life force that occupies and enlivens the host environment. Like Buddhism, Jainism asserts the universe's eternality and rejects the notion of an initial creation moment. Things share a common root in their aliveness, which must be acknowledged and protected. As a living, dynamic process, nature requires protection and care in the context of contemporary environmental degradation.<sup>114</sup> The profound respect for the natural world distinguishes Jainism as potentially the most eco-friendly religion.<sup>115</sup>

Another essential aspect of the religious cosmologies relates to ecological diversity, which is evident in the varied environmental contexts and bioregions where religions have developed over time.<sup>116</sup> For example, Jerusalem and Israel are in a broader sacred bioregion where three religions' traditions, Judaism, Christianity, and Islam, have shaped and shaped by the environment. While these religions developed from the same grounds, their formulation and expression of symbols, rituals, laws, and communal life to the urban, piedmont, hill country, and desert settings of the bioregion are historically different.<sup>117</sup> The value each religion places on this ecological diversity represents a significant change in protecting the environment.

In comparison, interactions among Indigenous, Catholic, and African traditions in Latin America have generated a hybrid type of

---

<sup>112</sup> Yamuna as a Mother who cared for her human children, who now need to care for her in return. Haberman, *supra* note 58, at 38-39; *see also* DAVID L. HABERMAN, RIVER OF LOVE IN AN AGE OF POLLUTION: THE YAMUNA RIVER OF NORTHERN INDIA (University of California Press, 2006).

<sup>113</sup> Christopher Key Chapple, The Living Cosmos of Jainism: A Traditional Science Grounded in Environmental Ethics, 130 DAEDALUS 207 (2001).

<sup>114</sup> *Id.* 214.

<sup>115</sup> *Id.* 215 (based on the rules on nonviolent behavior towards all living beings and a meditative advice on forest preservation, which represents a textual foundation for the development of an activist Jaina environmentalism).

<sup>116</sup> Grim & Tucker, *supra* note 21, at 22.

<sup>117</sup> *Id.* at 22. *See* Daniel Hillel, THE NATURAL HISTORY OF THE BIBLE: AN ENVIRONMENTAL EXPLORATION OF THE HEBREW SCRIPTURES (Columbia University Press, 2006).

Catholic Christianity, incorporating mountains and rivers into myths and rituals.<sup>118</sup> Significantly, this hybrid type of Catholicism has developed throughout one of the world's most biodiverse regions, the Amazon rainforest. By adapting to the natural characteristics of that environment, religion has responded to the connection with the land. This worldview has led to a "modest and respectful attitude toward nature."<sup>119</sup> Some theologians, including the Brazilian Leonardo Boff, have incorporated ecological concerns into their work, connecting environmental and social justice.<sup>120</sup> Following this trend, Pope Francis also recognized the value of species within itself, beyond their importance to human beings:

*"It is not enough, however, to think of different species merely as potential "resources" to be exploited, while overlooking the fact that they have value in themselves. Each year sees the disappearance of thousands of plant and animal species which we will never know, which our children will never see, because they have been lost for ever. The great majority become extinct for reasons related to human activity. Because of us, thousands of species will no longer give glory to God by their very existence, nor convey their message to us. We have no such right."*<sup>121</sup>

This recognition of the value of biodiversity and the loss for future generations is deeply connected with a growing call to recognize the rights of nature and intergenerational equity. In 2015, Pope Francis published an encyclical focused on the environment called *Laudato si', On Care for Our Common Home*.<sup>122</sup> In it, as if responding directly to the criticism made by Lynn White decades before, Pope Francis acknowledged that Christianity is deeply anthropocentric, asserting that only human beings were created in the divine image. This confers on them a unique dignity and moral

---

<sup>118</sup> Anna Peterson, *Latin America*, ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY 192-193 (Willis J. Jenkins, et al. eds., 2017).

<sup>119</sup> *Id.* at 194.

<sup>120</sup> LEONARDO BOFF, CRY OF THE EARTH, CRY OF THE POOR (Orbis Books 1997).

<sup>121</sup> Francis, *supra* note 30, at 25, ¶33.

<sup>122</sup> *Id.* See Mary Evelyn Tucker, *Laudato Si*, 91 THE QUARTERLY REV. OF BIOLOGY 261(2016); Mary Evelyn Tucker & John Grim, *Integrating Ecology and Justice: The New Papal Encyclical*, 6 SOLUTIONS 38 (2015).

value.<sup>123</sup> Nevertheless, he averred, Christianity demands loving care for the entire created order by God. In line with what was recognized by the Catholic Church, Thomas Berry, years before, called on religions to respond to biocide, ecocide, and genocide.<sup>124</sup>

In choosing his papal name, Pope Francis honored Saint Francis of Assisi, explaining that he “reminds us that our common home is like a sister with whom we share our life and a beautiful mother who opens her arms to embrace us.”<sup>125</sup> His Holiness believes that “Saint Francis is the example par excellence of care for the vulnerable and of an integral ecology lived out joyfully and authentically. He is the patron saint of all who study and work in the area of ecology.”<sup>126</sup> As William French observed, Francis of Assisi was a “medieval friar; not an ecologist.”<sup>127</sup> Francis saw God’s presence in nature, but he was not advancing the idea that ecosystems and nonhuman organisms have intrinsic worth. His thinking first related the Earth’s value to humankind. Moreover, his spiritual priority was evangelical and intended to lead people toward a future life in heaven, and many of his ideas devalued the mortal world.<sup>128</sup> Yet, he became known for his appreciation of pristine nature and attitude toward nonhuman species, serving as an example to those later concerned with environmental issues. His teachings were reinterpreted to extend to Earth as a provider for a broader community until it was recognized for its intrinsic value.<sup>129</sup> Pope John Paul II declared him the ‘patron of ecology’ in 1980.

Similarly, Thomas Aquinas called for embracing the universe as a whole, saying that “the whole universe together participates in the divine goodness and represents it better than any

---

<sup>123</sup> Taylor, *supra* note 45, at 272.

<sup>124</sup> Thomas Berry, *The Sacred Universe: Earth Spirituality and Religion in the 21st Century* (Columbia University Press, 2009).

<sup>125</sup> Francis, *supra* note 30, at 3-4 (explaining that “[w]e have forgotten that we ourselves are dust of the earth (cf. Gen 2:7); our very bodies are made up of her elements, we breathe her air and we receive life and refreshment from her waters.”)

<sup>126</sup> *Id.* (explaining that “[t]he urgent challenge to protect our common home includes a concern to bring the whole human family together to seek a sustainable and integral development.”)

<sup>127</sup> William French, *Francis of Assisi*, *Encyclopedia of Religion & Nature* 672 (Bron Taylor ed. 2005); *See also* Robert F. Kennedy, Jr. & Dennis Nolan, *Saint Francis of Assisi, A Life of Joy* (2005).

<sup>128</sup> Hart, *supra* note 85, at 66.

<sup>129</sup> Émilien Vilas Boas Reis & Kiwonghi Bizawu, *A Encíclica Laudato Si à Luz Do Direito Internacional do Meio Ambiente*, 12 *VEREDAS DO DIREITO* 29, 66 (2015).

single being whatsoever”<sup>130</sup> According to John Paul II, “God gave the [E]arth to the whole human race for the sustenance of all its members, without excluding or favoring anyone.”<sup>131</sup> Through these developing considerations, the Christian tradition is recovering its ancient creation story through a new ethical lens. These restore a focus on the common good as the flourishing of all creation. Siemens believes that understanding the common good and ‘the good of the commons’ – air, water, soil – is another vital thread in weaving a new jurisprudence.<sup>132</sup> At the core of this progress lies the right to a healthy environment.

Pope Francis specifically addressed the link between human rights and the environment, urging greater attention to international human rights law as a way of ensuring that basic human dignity is respected in the face of environmental burdens.<sup>133</sup> The Catholic Church’s message to adopt a new, sustainable development model is timely. It explicitly calls for ensuring that future generations – expressed as ‘intergenerational solidarity’ – also enjoy the right to a healthy environment. This renewed message calls, both directly and indirectly, for increased environmental protection by reinforcing human rights. As articulated by several legal scholars, human rights and the environment are intrinsically connected. This relationship is reciprocal: “to protect certain basic human rights, protection of the natural world is essential,” since fundamental human rights rely on a healthy environment.<sup>134</sup>

In a similar vein, Pope Francis shared his ‘dreams for the Amazon region’ in 2020.<sup>135</sup> His four grand visions are thus articulated: an Amazon region that (i) fights for the rights of the poor, (ii) preserves its distinctive cultural riches, (iii) preserves its overwhelming natural beauty, and lastly, (iv) that the Christian communities might be capable of generous commitment, incarnate in the Amazon region. The document highlights an authentic ecological approach that values the good living of the Indigenous

---

<sup>130</sup> Thomas Aquinas, *Summa Theologica* (Part I, Question 47, article 1), quoted by Berry, *supra* note 54, at 30. THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 77 (Harmony/Bell Tower 1 ed. 1999).

<sup>131</sup> Encyclical Letter *Centesimus Annus* (1 May 1991), 31: AAS 83 (1991), 831.

<sup>132</sup> Patricia Siemen, *Earth Jurisprudence: Toward Law in Nature's Balance*, 11 BARRY L. REV. 1, 8 (2008).

<sup>133</sup> Lucia Ann Silecchia, “Social Love” as a Vision for Environmental Law: *Laudato Si’* and the Rule of Law, 371 LIBERTY U. L. REV. 371 (2016).

<sup>134</sup> *Id.* at 377.

<sup>135</sup> Pope Francis, Post-Synodal Apostolic Exhortation of the Holy Father Francis, “Querida Amazonia” ¶5-7 (Holy Press Office Feb. 12, 2020).

populations and warns against environmentalism concerned only with the environment.<sup>136</sup> The Pope explicitly calls for learning from Indigenous peoples, who have “developed a cultural treasure, interacting with nature,” using diversity as a bridge rather than a wall.<sup>137</sup> Proposing ‘an ecological dream,’ the Pope underlines a close relationship between the human being and nature in the Amazon.<sup>138</sup> As such, in any project in the Amazon region, there is a need to respect peoples’ rights. Pope Francis emphasizes that taking care of our brothers and sisters as the Lord takes care of us is “the first ecology that we need.” Caring for the environment and caring for the poor are “inseparable.” “It will be hard for them to remain unaffected,” he adds, if the environment in which they are born and in which they have grown up “is damaged.”<sup>139</sup> The Pope recalls that the health of the planet depends on its health, a statement that is ever more relevant in the COVID-19 pandemic.<sup>140</sup> Similarly, the climate crisis provides an overarching spirit of looking past differences, reaching out across faith communities to realize shared goals.

Using a different approach to advance the human-nature relationship, Bartholomew denounced the destruction of the environment as an ‘ecological sin.’ He called for an “ethical, legal recourse where possible, in matters of ecological crimes.”<sup>141</sup> Because nature is seen as God’s gift to humankind, humans are called upon to care for this gift – to preserve it and use it responsibly. To abuse nature is to sin against it.<sup>142</sup> In using the language of ‘sin,’ Bartholomew supported the highest importance of environmental protection.<sup>143</sup> He reinforced our ethical duty by looking at the attitude and existential orientation that leads to a particular ethical behavior.<sup>144</sup> As the most severe contemporary problem facing us, Orthodox Christianity called for action on the ecological crisis while

---

<sup>136</sup> *Id.* at ¶8.

<sup>137</sup> *Id.* at ¶36-38.

<sup>138</sup> *Id.* at ¶41-42.

<sup>139</sup> *Id.* at ¶39-40.

<sup>140</sup> See Vatican COVID-19 Commission, <https://www.humandevlopment.va/en/vatican-covid-19.html>.

<sup>141</sup> Address of His Holiness Ecumenical Patriarch Bartholomew at the Environmental Symposium, Santa Barbara, CA (Nov. 8, 1997); ROGER S. GOTTLIEB, THIS SACRED EARTH: RELIGION, NATURE, ENVIRONMENT 229-230 (Psychology Press, 1996). Bartholomew has held international symposia on “Religion, Science and the Environment” focused on water issues and made influential statements on this subject for 20 years.

<sup>142</sup> Grim & Tucker *supra* note 21, at 106.

<sup>143</sup> Gottlieb, *supra* note 102, at 13.

<sup>144</sup> Grim & Tucker, *supra* note 21, at 105.

also acknowledging the Christian tradition's responsibility for causing it.<sup>145</sup> This rationale might provide an avenue to recognizing ecocide as an international crime.

This approach relies not on the right to a healthy environment but on the duty to protect it. Because humans can transcend nature, God also commanded them to preserve nature as a duty of care for what belongs to God.<sup>146</sup> Creation in the image of God entails human responsibility for the whole of humanity. Humans must, therefore, protect nature through their efforts, thereby becoming partners of God.<sup>147</sup> The current interpretation of religion has translated this notion of human stewardship and responsibility into conservationist policies. The religious principle of 'do not destroy' can provide spiritual support for a range of environmental policies that highlight human responsibility toward the physical environment.<sup>148</sup> Given the primacy of Catholicism in Latin America, this might explain the region's prevalence of environmental duties provisions in countries within the region.

This notion of human stewardship can take place in various forms. Orthodox theology posits a universal union among beings, a 'cosmic liturgy' that potentially makes all existence sacred.<sup>149</sup> The Christian ritual of Eucharist is seen as a sacrament of thanksgiving for the fruits of the Earth and God's blessings. In pursuing environmental consciousness, spiritual awareness, and ascetic practice, humans shall restrain and reduce excessive consumption.<sup>150</sup> During the COVID-19 pandemic, this approach is ever more critical and an essential aspect of environmental justice, something highlighted by Townsend.<sup>151</sup>

Relatedly, writings from the *Qur'an* of Islam speak about human beings being appointed by God as a *khalifa*, 'viceroys' or guardians of the Earth and the heavens.<sup>152</sup> It is impermissible in Islam to abuse one's rights as *khalifa* because the notion of acting

---

<sup>145</sup> Orthodox Christianity: John Pergamon, *Orthodoxy and the Ecological Problems: A Theological Approach*, on the Ecumenical Patriarchate of Constantinople, available at <http://www.patriarchate.org/>.

<sup>146</sup> Tirosh-Samuels, *supra* note 51, at 101.

<sup>147</sup> *Id.* 102.

<sup>148</sup> *Id.* 116.

<sup>149</sup> Grim & Tucker, *supra* note 21, at 107.

<sup>150</sup> *Id.* at 107.

<sup>151</sup> Maria Antonia Tigre, Webinar on Law at the Intersection of Human Rights and the Environment (GNHRE Apr. 26, 2020) (reflecting the main messages from the speakers).

<sup>152</sup> Fazlun Khalid, *Guardians of the Natural Order*, 8 OUR PLANET 18-20 (1996).

in 'good faith' underpins Islamic law.<sup>153</sup> Humankind inherited the planet and "all its posterity from generation to generation... Each generation is only the trustee. No one generation has the right to pollute the planet or consume its natural resources in a manner that leaves for posterity only a polluted planet or one seriously denuded of its resources."<sup>154</sup> In other contexts, the concept of *khalifa* refers to the fact that waves of humanity will continuously succeed each other and inherit planet Earth. As such, each generation should care for the Earth for following generations to also enjoy it.

In addition to establishing a duty of care, Sharia law also relies on the principle that all issues begin with a right rather than discretion or prohibition. Islam holds inalienable rights, including rights associated with the environment, that pre-exist jurisprudential foundations, and therefore implies a natural order commencing with permission.<sup>155</sup> Islamism also shares the moral principle of environmental protection.<sup>156</sup> Ibn Jarir al-Tabari narrates the recommendations of the first Caliph, Abu Bakr as-Siddiq, to the commander of the Arab armies, Ussama Ibn Zeid, who led an expedition towards the 'Sham' (Syria): "Do not destroy palm trees, do not burn houses or fields of wheat, never cut down fruit trees and kill cattle only when you need to eat it." In Islam, the natural environment is holistic, and everything is essential and interdependent.<sup>157</sup> All environmental media have rights, including a right to water.<sup>158</sup>

In summary, new alliances are emerging, joining new ideas in social and environmental justice. In alignment with ecojustice concerns, religions can encourage values and ethics of reverence, respect, redistribution, and responsibility for formulating broader environmental ethics that includes humans, ecosystems, and other species.<sup>159</sup> Moral responsibility for the environment remains a significant part of human civilization, comparable to philosophy, law, and economics in the development of human thought. The support of religious beliefs strengthens an appeal to one's environmental responsibility. Even in secular states, religion plays

---

<sup>153</sup> Amery, *supra* note 80.

<sup>154</sup> Christopher G. Weeramantry, *Islamic Jurisprudence: An International Perspective* 61 (Palgrave Macmillan 1988).

<sup>155</sup> Hamad, *supra* note 90, at 17.

<sup>156</sup> Fatma Zohra Ksentini (Special Rapporteur), *Review of Further Developments in Fields With Which the Sub-Commission Has Been Concerned - Human Rights and the Environment*, ¶21; 26, U.N. Doc. E/CN.4/Sub.2/1994/9 (Jul. 6, 1994).

<sup>157</sup> *Qur'an*, 2:22.

<sup>158</sup> Amery, *Islam and the Environment*, *supra* note 80.

<sup>159</sup> Tucker, *supra* note 28, at 401.

a significant role in individual politics. Religion still has an important educational role and can help educate people about the seriousness of the problem.<sup>160</sup> Therefore, knowledge of moral responsibility can help appeal for international cooperation on environmental issues.<sup>161</sup>

A closer analysis shows similar ethical concerns for nature across all legal traditions. Religious teachings offer significant reference points because they provide knowledge in the development of environmental norms and laws.<sup>162</sup> Robinson has observed that “[s]ociety needs to embrace deeper principles that can breathe new strength into sustainable development.”<sup>163</sup> Bin Hamad further clarifies that religious followers, such as Islam’s followers, will only embrace sustainability when they see how their faith requires it.<sup>164</sup> The same is true for other religions. A missing vital component is identifying the cosmologies, symbols, rituals, and ethics that inspire changes in attitudes and actions for creating a sustainable future.<sup>165</sup> The next step in the ‘greening’ of religious beliefs is to transcend original traditions to practical efforts towards environmental protection and sustainability, including, most significantly, through the recognition of an international right to a healthy environment, as well as a duty to respect it.

In 2002, a Symposia on Water was held in Italy, bringing together Greek Orthodox and Roman Catholic Christian denominations and temporarily bridging Eastern and Western Christianity.<sup>166</sup> Signing a Common Declaration on the mutual concerns about the degradation of creation, the leaders of both churches recognized a growing ecological awareness and the need to use science, technology, and natural law to provide ethical responses to the ecological crisis.<sup>167</sup> This type of ecumenical cooperation is essential in further advancing this common moral ground.

---

<sup>160</sup> Posas, *supra* note 24, at 8-9. See chart on ways religion supports ethical actions on climate change.

<sup>161</sup> *Id.*, at 8.

<sup>162</sup> Hamad, *supra* note 90, at 2.

<sup>163</sup> Nicholas A. Robinson, *Keynote: Sustaining Society in the Anthropocene Epoch*, 41 DENV. J. INT’L L. & POL’Y 467 (2013).

<sup>164</sup> Hamad, *supra* note 90, at 7.

<sup>165</sup> Tucker, *supra* note 28, at 401.

<sup>166</sup> Common Declaration on Environmental Ethics, Common Declaration of John Paul II and the Ecumenical Patriarch His Holiness Bartholomew I (Jun. 10, 2002), [http://www.vatican.va/content/john-paul-ii/en/speeches/2002/june/documents/hf\\_jp-ii\\_spe\\_20020610\\_venice-declaration.html](http://www.vatican.va/content/john-paul-ii/en/speeches/2002/june/documents/hf_jp-ii_spe_20020610_venice-declaration.html).

<sup>167</sup> GRIM & TUCKER, *supra* note 21, at 97-98.

### 3. RELIGIONS AND SACRED WATERS

The ‘greening’ of religions has broadened the traditional teachings’ scope by adapting them to the current environmental crisis. For example, religions offer interesting new constructs on how climate change affects faith, ethics, and God’s image.<sup>168</sup> Most religious traditions have developed sacramental sensibilities in which material reality mediates the sacred.<sup>169</sup> In particular, virtually all religions have a significant relationship with water as it represents the creation of the cosmos and permeates many cultures and traditions.<sup>170</sup> Many different religious rituals and cultural ceremonies worldwide celebrate water’s symbolic potency as an agent of life, rebirth, and destruction.<sup>171</sup> For this reason, water is a cultural source of religious significance.<sup>172</sup> Such affirmation of material reality is a critical component of how religion values nature.<sup>173</sup> This section uses water to exemplify the reinterpretation of religious thought.

The history of water reveals a deeply rooted concept of water “as a common property resource rather than a traded commodity.”<sup>174</sup> For example, customary Jewish law identifies water as common property.<sup>175</sup> When water originates from a natural source, ‘provided by God,’ commodification is prohibited.<sup>176</sup> However, when it derives from human labor, such as wells, water is a common property resource.<sup>177</sup> Exceptionally, drinking water has the highest priority

---

<sup>168</sup> Bergmann, *supra* note 74. See also Sigmud Bergmann, *Climate Change Changes Religion: Space, Spiritual, Ritual, Technology - Through a Theological Lens*, 63 *STUDIA THEOLOGICA - NORD. J. OF THEOLOGY* (2009).

<sup>169</sup> GRIM & TUCKER, *supra* note 21, at 16.

<sup>170</sup> Christiana Z. Peppard, *Water*, in *ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY* (Willis J. Jenkins, et al. eds., 2017).

<sup>171</sup> *Id.* at 286.

<sup>172</sup> In addition to being a physical resource, a requirement for life, a social resource, showing status, a political resource, as the provision of water can help justify a regime, and an economic resource, as it becomes scarce. See James Salzman, *Thirst: A Short History of Drinking Water*, 18 *YALE J.L. & HUMAN* 97; 100 (2013); JAMES SALZMAN, *DRINKING WATER: A HISTORY* 32-33 (Overlook Duckworth and Peter Mayer Publishers, Inc. Revised ed. 2017) (noting that “water carries great symbolism throughout the Judeo-Christian tradition”).

<sup>173</sup> GRIM & TUCKER, *supra* note 21, at 16. Other sacramental practices include oil, food, flowers and lighting incense and candles.

<sup>174</sup> See Salzman, *supra* note 172, at 99.

<sup>175</sup> SALZMAN, *supra* note 172, at 50.

<sup>176</sup> Talmud Bavli Shabbat, 121b (“Rivers and Streams forming springs, these belong to every man”); Beitza, 391; Eiruvim, 46a and 48a; Tosephta Baba Qama, 6, 15. See Salzman, *supra* note 172, at 99; SALZMAN, *supra* note 172, at 50.

<sup>177</sup> Salzman, *supra* note 172, at 100.

access, regardless of whether it belongs to the well's community of owners.<sup>178</sup>

Likewise, traditional Islamic law imposes a holy duty to share water as a divine gift, based on the Right of Thirst.<sup>179</sup> The Arabic term for Islamic Law, Sharia, literally means 'way to water.'<sup>180</sup> Islam is a rich source of spiritually derived water-conservation ethics. It is considered a blessing from God that gives and sustains life and purifies humankind and the earth.<sup>181</sup> In the Quran, water is the most precious creation after humanity, holding life-giving quality.<sup>182</sup> For Muslims, water enjoys particular importance for its use in *wudu* (ablution, washing before prayer) and *ghusl* (bathing) in the daily prayers.<sup>183</sup> The Quran warns against unfair and inequitable water distribution,<sup>184</sup> and it is against Islamic law to hoard excess water.<sup>185</sup>

Islamic law provides for prioritization of water uses (1) human health; (2) domestic animals; and (3) irrigation. Islamism recognizes the rights of animals, in particular to water.<sup>186</sup> Nonhuman species have rights to sufficient water of 'good' quality because the water has to be suitable for 'nourishing vegetation' and drinking by animals. Flora also has the right to water, as rainwater sent by God nourishes these.<sup>187</sup> This effectively recognizes the rights of nature. Additionally, Islamic law protects water resources for ecological purposes. The recognition of water as a vital resource is emphasized by the following *hadith*, which effectively makes water

---

<sup>178</sup> See Melanne Andromedea Civic, *A Comparative Analysis of the Israeli and Arab Water Law Tradition and Insights for Modern Water Sharing Agreements*, 26 DENV. J. INT'L L. & POL'Y (1997).

<sup>179</sup> Salzman, *supra* note 172, at 100 (citing the *Qur'an*, "Anyone who gives water to a living creature will be rewarded . . . to the man who refuses his surplus water, Allah will say: "Today I refuse thee my favor, just as thou refused the surplus of something that thou hadst not made thyself"); See also SALZMAN, *supra* note 172, at 50-51 ("Islamic water law is quite similar to Jewish water law in both substance and significance.").

<sup>180</sup> Salzman, *supra* note 172, at 100.

<sup>181</sup> Naser I. Faruqi, *Islam and Water Management: Overview and Principles*, in WATER MANAGEMENT IN ISLAM (Naser I. Faruqi, et al. eds., 2001).

<sup>182</sup> See *Qur'an*, 16:65 and 21:30.

<sup>183</sup> Prophet (pbuh) "The similitude of five prayers is like an overflowing river passing by the gate of one of you in which he washes five times daily."

<sup>184</sup> Faruqi, *supra* note 181, at 2-3.

<sup>185</sup> *Id.* One category of sinners expressly identified in the *Qur'an* is a man who "possessed superfluous water on a way and . . . withheld it from the travelers." Al-Bukhari 3.838.

<sup>186</sup> *Id.* See note *Qur'an*, 6:38; Al-Bukhari 8.38; Al-Bukhari 5550 in The Hadith Encyclopedia; Al Bukhari 4.538.

<sup>187</sup> See *Qur'an*, 6:99; 35:77.

a community resource to which all, rich or poor, have a right: “Muslims have common share in three things: grass (pasture), water and fire (fuel).”<sup>188</sup> The *hadith* effectively recognizes the right of everyone to a fair share of water.<sup>189</sup>

The human desire to enter into the Earth’s nurturing processes promotes in-depth protection of food and water in many religious communities. These value water as sacred, using it for ceremonies of purification or initiation. Likewise, planting and harvest rituals and thanksgiving for food and drink are common in all religious ecologies.<sup>190</sup> Examples include the Seder in Jewish families, the Eucharist in Christian communities, and Ramadan dinners in the Muslim world. Offerings of food to the ancestors in Buddhist and Confucian communities bound humans to the long lineage of life. Grim & Tucker note that “nature’s fecundity is seen as a source of life, providing rich nourishment for individuals and communities.”<sup>191</sup>

Water in religious contexts is full of symbolism. In the Hebrew Bible’s book of Genesis, the separation of waters is described before dry land appeared. The rite of baptism in Christianity evokes the baptism of Jesus on the Jordan River banks, where present-day pilgrims seek the holy associations of those waters. At the Hindu celebration of the Kumbh Mela, millions of people gather over a month for bathing and purification rituals at sacred river sites.<sup>192</sup> Besides all of its symbolism, drinking water is a physical resource, “one of the few truly essential requirements for life.”<sup>193</sup> In his encyclical, *Laudato si’*, Pope Francis specifically addressed the human right to water, qualifying it as a “basic and universal human right”:

*“Even as the quality of available water is constantly diminishing, in some places there is a growing tendency, despite its scarcity, to privatize this resource, turning it into a commodity subject to the laws of the market. Yet access to safe drinkable water is a basic and universal human right, since it is essential to human survival and, as such, is a condition for the exercise of other human rights. Our world has a grave social debt*

---

<sup>188</sup> Faruqui, *supra* note 179, at 2.

<sup>189</sup> *Id.*, at 2-3.

<sup>190</sup> Grim & Tucker, *supra* note 21, at 40.

<sup>191</sup> *Id.* at 40.

<sup>192</sup> Peppard, *supra* note 170, at 286.

<sup>193</sup> Salzman, *supra* note 172, at 96.

*towards the poor who lack access to drinking water, because they are denied the right to a life consistent with their inalienable dignity. This debt can be paid partly by an increase in funding to provide clean water and sanitary services among the poor. But water continues to be wasted, not only in the developed world but also in developing countries which possess it in abundance. This shows that the problem of water is partly an educational and cultural issue, since there is little awareness of the seriousness of such behaviour within a context of great inequality.”<sup>194</sup>*

Although Judeo-Islamic perspectives focus on water as a property resource, the two reinforce a rights-based approach for quenching the global water crisis.<sup>195</sup> Another traditional view on the water crisis rests with the Catholic Church’s teachings, which calls on people to follow the principles of solidarity and subsidiarity.<sup>196</sup> Given the deep symbolism of water for religions, the moral duty to protect water perfectly exemplifies how the underlying principles reflect a related legal obligation. The use of water by religions not only promotes a duty of care for daily use but reflects the environmental crises humanity now grapples with, including COVID-19 and climate change.

---

<sup>194</sup> FRANCIS, *supra* note 30, at 24, para 30.

<sup>195</sup> Lori Beail-Farkas, *The Human Right to Water and Sanitation: Context, Contours, and Enforcement Prospects*, 30 WIS. INT’L L.J. 761; 769 (2013) (“Human rights are founded in the notion of human dignity and natural law. Natural law provides that all persons are inherently entitled to certain rights and freedoms, and it holds that there are immutable laws of nature that are and ought to be binding upon human society.”).

<sup>196</sup> *See generally*, Pontifical Council For Justice And Peace, Chapter Ten: Safeguarding the Environment in Compendium Of The Social Doctrine Of The Church 197, 210 (2005); Pontifical Council For Justice And Peace, Water, An Essential Element For Life: An Update 44 (2003), [http://www.vatican.va/roman\\_curia/pontifical\\_councils/justpeace/documents/rc\\_pc\\_justpeace\\_doc\\_20060322\\_mexico-water\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060322_mexico-water_en.html) (last visited Mar. 31, 2021) (calling for the concept of ‘family of nations,’ which acknowledges that “responsibility for the destiny of the less favored countries rests also with those more richly blessed. In a family, every member is responsible for each and every other member; the suffering of one becomes the suffering of all.” and declaring water to be a ‘resource security,’ which means that water is a strategic factor for establishing and maintaining world peace).

#### 4. AMERICAN CONSERVATIONISTS: TRANSCENDENTALISTS

Early spiritual conservationism has emerged of the Earth as God's creation, a 'temple' that we should not despoil. Grim & Tucker acknowledge these varied ecological perspectives, comparing them with traditional environmental knowledge in many religious and ethical systems.<sup>197</sup> Leading voices such as Ralph Waldo Emerson, Henry David Thoreau, John Muir, Robert Marshall, Sigurd Olson, and John Burroughs celebrated nature for its physical beauty, utility, and spiritual value.<sup>198</sup> These scholars called upon natural law theory to promote the preservation of nature, in a cross-over between the theological argument and finding in nature the presence of God. Sharing a similar appreciation of nature's complexity, beauty, and holism, scientists and religious communities call for the conservation and preservation of ecosystems and species.

As the fountainhead of public policy on nature conservation in the US, Emerson famously ignited the conservationism movement through his essay *Nature*.<sup>199</sup> Emerson projected the concept of transcendentalism, a belief system that espouses a non-traditional appreciation of nature. He followed a unitarian view of God, arguing that God is in nature and all of creation. Emerson further suggested that the divine, or God, pervades nature. The reality, then, can be understood by the study of nature. Using spirituality as a central theme of his essay, Emerson reimagined the divine as nature, the 'Universal Being,' and promoted environmental care as a way to find one's spirit. Through a powerful insight, Emerson connected a religious attitude to public policy to induce change, representing the fountainhead of nature conservation public policy in the U.S.

Emerson's essay profoundly influenced Thoreau. Through a series of writings on natural history and philosophy, Thoreau anticipated the methods and findings of ecology and environmental

---

<sup>197</sup> GRIM & TUCKER, *supra* note 21, at 83.

<sup>198</sup> Gottlieb, *supra* note 42, at 15. The conservation movement also benefited from other literary and artistic works of the 19<sup>th</sup> century, including by Albert Bierstadt, Frederic Edwin Church, George Perkins Marsch, William Henry Jackson, and, later, the work of foresters Carl A. Schenck and Gifford Pinchot.

<sup>199</sup> RALPH WALDO EMERSON, *NATURE* (James Munroe and Company. 1836). See also Russell B. Goodman, *East-West Philosophy in Nineteenth Century America: Emerson and Hinduism*, 51 *J. OF THE HISTORY OF IDEAS* (1990); Russell B. Goodman, *The Colors of the Spirit: Emerson and Thoreau on Nature and the Self*, in *NATURE IN AMERICAN PHILOSOPHY* (Jean De Groot ed. 2004).

history, prompting modern-day environmentalism.<sup>200</sup> Thoreau was an early advocate of conserving natural resources on private land and preserving wilderness as public land. His observations later persuaded the national park system.

Muir also drew on Emerson's teachings and became an early advocate for preserving wilderness in the U.S.<sup>201</sup> Muir valued nature for its spiritual and aesthetic qualities, which inspired the preservation of natural areas.<sup>202</sup> His experience with nature was religious; he saw natural landscapes as a primary source for understanding God.<sup>203</sup> His belief in the 'Book of Nature' led to his writings a sense of prophecy, seeking to change humanity's angle.<sup>204</sup> He later co-founded the Sierra Club as a prominent conservation organization.

These conservationists have significantly shaped the development of environmentalism in the U.S. through an intrinsic spiritual human-nature relationship. While not directly religious, they have inspired a transcendent view of nature that demanded respect and shelter, leading to significant developments in environmental protection. They called upon it on natural law theory as a cross-over between theological arguments and finding God's presence in nature.

##### 5. AMERICAN CONSERVATIONISTS: BERRY AND HIS LEGACY

Berry began where Muir ended and drew on Catholicism to find transcendent meaning in nature.<sup>205</sup> Berry drew on studies of world religions and cultures to formulate a framework for rethinking the relationships of cosmology and ecology.<sup>206</sup> Coining the term 'Earth Community,' he indicated our shared sense of belonging to something more splendid, humans and nature in continuity.<sup>207</sup> As a true Renaissance man, Berry drew on Hindu, Buddhist, Chinese, and Japanese civilizations, Jewish, Muslim, and

---

<sup>200</sup> See generally, HENRY DAVID THOREAU, *A WEEK ON THE CONCORD AND MERRIMACK RIVERS / WALDEN / THE MAINE WOODS / CAPE COD* (Library of America. 1989).

<sup>201</sup> See generally, John Muir, *John Muir: His Life and Letters and Other Writings* (Terry Gifford ed., Mountaineers Books 1996). See also Tim Flinders, *John Muir: Spiritual Writings* (Orbis Books 2013).

<sup>202</sup> See generally, John M. Meyer, *Gifford Pinchot, John Muir, and the Boundaries of Politics in American Thought*, 30 *POLITY* 267 (1997).

<sup>203</sup> DENIS C. WILLIAMS, *GOD'S WILDS: JOHN MUIR'S VISION OF NATURE* (Texas A&M Univ. Press. 2002).

<sup>204</sup> See generally, JOHN TALLMADGE, *MEETING THE TREE OF LIFE: A TEACHER'S PATH* (Univ. of Utah Press. 1997).

<sup>205</sup> See generally, Mary Evelyn Tucker, et al., *Thomas Berry: A Biography* (Columbia University Press. 2019).

<sup>206</sup> Grim & Tucker, *supra* note 21, at 89.

<sup>207</sup> Tucker, et al., *Thomas Berry: A Biography*.

Christian traditions, the traditions of indigenous peoples, and other scientific knowledge of the modern western world to develop a historical perspective of the universe.<sup>208</sup> He tried to understand these to situate humans in the more considerable diversity of culture and traditions embedded in human and Earth history. Berry's lessons have positively influenced emerging new legal theories that provide an Earth-centered perspective, as will be shown below.

In 1999, Berry proposed in *The Great Work* that humanity's challenge is to understand the underlying systemic reasons for the ecological crisis and transform our relationship with the natural world from one of destruction to one of mutually beneficial support.<sup>209</sup> Based on his observations, we are moving "from human history to planetary history," from "socio-political history to history of the biosystems of the planet." He added that "[a] new perspective has evolved which is still too difficult for most historians and most scientists to deal with."<sup>210</sup>

Berry used Catholicism to find transcendent meaning in nature and used nature to understand his religion. He employed apocalyptic language to describe the modern environmental dilemma, noting the supreme need of our time to heal the Earth.<sup>211</sup> Thus, environmental degradation represents a call for reorienting the human community in awakening to a 'New Story' in which humans can willingly diminish their impacts for the community of life to flourish.<sup>212</sup>

Berry argues that human society should broaden its present focus from human beings to recognize the supremacy of the existing Earth governance of the planet as a single, interconnected community.<sup>213</sup> In his final book, he called on human society to enter a new covenant with nature. He writes, "history is governed by those overarching movements that give shape and meaning to life by relating the human venture to the larger destinies of the universe. Creating such a movement might be called the Great Work of a people."<sup>214</sup>

---

<sup>208</sup> *Id.*

<sup>209</sup> Berry, *supra* note 130, at 7.

<sup>210</sup> Thomas Berry, *Goldenrod: Reflections on the Twentieth Century* (Harvard Archives) (Cited in TUCKER, ET AL., THOMAS BERRY: A BIOGRAPHY).

<sup>211</sup> Thomas Berry, *The Dream of the Earth* (Sierra Club Books 1988).

<sup>212</sup> TUCKER, ET AL., *supra* note 205, at Loc. 191.

<sup>213</sup> Thomas Berry, *Our Way into the Future: A Communion of Subjects*, EVENING THOUGHTS: REFLECTING ON EARTH AS A SACRED COMMUNITY 20 (Mary Evelyn Tucker ed. 2006).

<sup>214</sup> BERRY, *supra* note 130.

Based on the foundation of religious and indigenous traditions that honor the sacredness of creation and perceive the intrinsic value of nature, Berry advanced the idea of Earth jurisprudence.<sup>215</sup> As an emerging legal theory, Earth jurisprudence is closely aligned with environmental law and justice but goes a step further by bringing an innovative jurisprudential dimension. It attempts to live gently with the Earth, and all that life depends on by advancing an Earth-centered law and governance.<sup>216</sup>

Berry fundamentally observed that “[t]he Universe is a communion of subjects not a collection of objects.”<sup>217</sup> Earth jurisprudence can thus be characterized as a ‘systems approach,’ in which the functioning of its whole primarily determines the behavior of a part of a system.<sup>218</sup> Based on this universal communion, Berry set the foundation for the rights of nature. He argued that the Universe is the ultimate source of meaning. Suppose human beings claim that our mere existence means that we have inalienable human rights. In that case, it follows that the presence of rivers, trees, birds, and bees means that they also have a form of inalienable, fundamental rights. These would not be the same for each member but must include the right to exist, have a

---

<sup>215</sup> Siemen, *supra* note 132, at 2. The term “Earth Jurisprudence” arose out of a meeting hosted by the Gaia Foundation with environmental thinker Thomas Berry in 2001. See CORMAC CULLINAN, *WILD LAW: A MANIFEST FOR EARTH JUSTICE* (Green Books, 2011). The major works of BERRY, *THE DREAM OF THE EARTH*. BRIAN SWIMME & THOMAS BERRY, *THE UNIVERSE STORY: FROM THE PRIMORDIAL FLARING FORTH TO THE ECOZOIC ERA - A CELEBRATION OF THE UNFOLDING OF THE COSMOS* (Harper San Francisco, 1992). BERRY, *supra* note 130. Earth Jurisprudence follows the philosophical thread of the environmental movement and takes the inquiry to a systemic level. While environmental legal approaches have advanced a number of changes in law, they generally have not questioned the basic assumptions of humanity's relationship to the natural world or the structure of the legal system that supports continued destruction of the environment. Earth Jurisprudence makes this deeper, and necessary, inquiry into the premises of our system of law and governance in which the environmental movement operates. See also KLAUS BOSSELMANN, *WHEN TWO WORLDS COLLIDE: SOCIETY AND ECOLOGY* (RSVP Publishing, 1995). Bosselmann presents an analysis of the intersection between law and environmental philosophy.

<sup>216</sup> Siemen, *supra* note 132, at 1-2.

<sup>217</sup> Thomas Berry, *The Origin, Differentiation and Role of Rights* (2001), available at <http://www.earthjuris.org/viewpointdocuments/origin.htm>. See also Thomas Berry, *Appendix 2: Ten Principles for Jurisprudence Revision*, in *EVENING THOUGHTS: REFLECTING ON EARTH AS A SACRED COMMUNITY* (Mary Evelyn Tucker ed. 2006). Principle 3 states that “The universe is composed of subjects to be communed with, not primarily of objects to be used. As a subject, each component of the universe is capable of having rights.”

<sup>218</sup> Cormac Cullinan, *Do Humans Have Standing to Deny Trees Rights*, 11 BARRY L. REV. 11; 12 (2008).

place to inhabit, and continue to play a role in the ongoing co-evolutionary process.<sup>219</sup> Water is also part of Swimme and Berry's cosmology as water anthropomorphizes plants as "the first heroes to venture onto land" after eons of watery habitation.<sup>220</sup>

In conclusion, Berry drew on religious traditions to further develop a philosophy based on the protection of nature. His work, in turn, inspired the development of Earth jurisprudence, showing a true crescendo of jurisprudential thought on environmental protection that builds on top of one another.

### **B. INDIGENOUS BELIEFS OF EARTH CONSERVATION**

*"From the top of the world at the Arctic Circle of Nunavut on Turtle Island (North America) to the tip of South America at Tierra del Fuego, Native Peoples assert their rights to land, culture, and a healthy future for generations to come and for all of the ecological life that creates sacred homelands."*<sup>221</sup>

Indigenous peoples have stewardship over the majority of the world's biodiversity. They have traditionally promoted an ideology that, contrary to Western civilizations, is not divorced from living with nature. Instead, they embrace nature fully. Their ways of living and value system hold the basic knowledge that many human beings have forgotten: the natural world is 'peopled' by beings with whom we must cultivate mutually respectful relationships. For example, Indigenous peoples carefully coordinate their ritual calendars with seasonal events such as the sounds of returning birds, the blooming of plants, the migrations of animals and fish, and cosmological events such as the shift of the constellations and the changes of the moon.<sup>222</sup> The relationship between Indigenous peoples and the land has always been unique:

*"This we know, the Earth does not belong to man; man belongs to the Earth. This we know, all things are connected, like the blood which unites one family. Whatever befalls the Earth, befalls the sons of the Earth. Man did not weave the thread of*

---

<sup>219</sup> Berry, *supra* note 217, at 149-150.

<sup>220</sup> SWIMME & BERRY, *supra* note 215, at 116.

<sup>221</sup> Melissa K. Nelson, *North America*, in ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY (Willis J. Jenkins, et al. eds., 2017).

<sup>222</sup> GRIM & TUCKER, *supra* note 21, at 25.

*life; he is merely a strand in it. Whatever he does to the web he does to himself.*"<sup>223</sup>

COVID-19 reminded us that environmental awareness is not a luxury but a staple of social progress.<sup>224</sup> And yet Indigenous populations, who embody the most profound care of nature, with an ancestral connection with places and natural features, remain marginalized and often excluded from policies.<sup>225</sup> Humanity finally needs to remember that we are supposed to live in balance, as caretakers.<sup>226</sup> Indigenous modes of being have preserved living knowledge that might prove invaluable in the current era confronted with problems that challenge the sustainability of sentient flourishing, ecological integrity, environmental health, and interspecies ethics.<sup>227</sup> This section looks at Indigenous environmental cosmologies as a foundation for the care for nature and this ideology's expansion at the international level. It does not provide a comprehensive view of Indigenous cosmologies but illustrates the Indigenous respect for nature through a few examples throughout different geographical regions.

Subsection 1 addresses the foundations of Indigenous environmental cosmologies, which rely on Mother Earth as a living entity that requires care. Drawing from ancient traditions, this Indigenous cosmovision is now renewed and gains force beyond their territories to reinforce the need to protect a degraded environment. Subsection 2 illustrates the foundation of Indigenous environmental cosmologies through water as a sacred symbol and a ceremonial source. The protection of water is reflected in water management policies and the reliance on Indigenous lessons to develop laws on the rights of nature, especially rivers, worldwide.

---

<sup>223</sup> Letter from Chief Seattle, Patriarch of the Duwamish and Squamish Indians of Puget Sound to United States President Franklin Pierce (1855), quoted in U.N. Comm'n on Human Rights, *supra* note 156, ¶74. The message from Chief Seattle has been disputed by some scholars who note that the words attributed to him were not his own. However, the disputes over what he said and when he said it don't detract from the essence of his message, which is relevant here.

<sup>224</sup> Etty et. al., *supra* note 7, at 385.

<sup>225</sup> *Id.*

<sup>226</sup> Bill McKibben, *The Coronavirus and the Climate Movement*, THE NEW YORKER Mar. 18, 2020. "Nature helps me figure out what truly matters in the short lifetime I have. Out here, the simple truths of life are tangible, and priorities are clear. Everything is hard work, every being has both purpose and fluidity. Everything has a spirit and must be treated with respect. It is life in the circular."

<sup>227</sup> Dan Smyer Yü, *Asia: An indigenous cosmovisionary turn in the study of religion and ecology*, in ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY (Mary Evelyn Tucker & John Grim eds., 2017).

Subsection 3 further elucidates the expansion of Indigenous and peasant rights at the international level as their recognition slowly progresses worldwide. Finally, Section 4 uses some specific examples of furthering Indigenous rights through international courts and tribunals to boost environmental protection and their particular environmental cosmologies.

## 6. FOUNDATIONS OF INDIGENOUS ENVIRONMENTAL COSMOLOGIES

Indigenous peoples' interactions with the environment represent a significant basis of their religious practices. For many Indigenous cultures, humanity is but one of many creatures, all of which are related. There is no reason to dominate nature. One can merely exist within nature, depending on it for survival and respecting it by maintaining wildlife and living sustainably. While this is a spiritual concept, it also led to preserving the ecosystem.<sup>228</sup>

For example, the Kurok, Hoopa, and Yurok peoples of northern California recognized particular spiritual presences in sacred mountains.<sup>229</sup> The Lakota people speak of 'all my relations' as an expression of nature as a source of kinship and nurturance. Indigenous groups in Latin America have actively emphasized their traditional knowledge of and connection to non-human nature and their practical ties to the land.<sup>230</sup> These complex interactions illustrate that religions are not static in their impacts on the environment. Instead, throughout history, they have interacted in myriad ways with natural settings. These can be called religious ecologies based on varied worldviews, ritual customs, and ethical practices.<sup>231</sup>

Land, in most Indigenous cultures, represents a living entity. The Inca civilization refers to the Earth as 'Pachamama,' which roughly translates to 'Earth Mother.'<sup>232</sup> While 'Mother Earth' as a concept in the West was once meant literally, it has often taken on a symbolic meaning. In Indigenous societies, the meaning is not metaphorical. Everything is alive, and Mother Earth should be cared for. Pachamama is an Earth goddess traditionally worshipped in the landscape herself. Earth as a literal mother has been found in many cultures throughout the world. The Lakota call her 'Unci

---

<sup>228</sup> Joseph Kowalski, *Environmentalism Isn't New: Lessons from Indigenous Law*, 26 BUFFALO ENVTL. L. J. 15; 27 (2019).

<sup>229</sup> GRIM & TUCKER, *supra* note 21, at 22.

<sup>230</sup> Peterson, *supra* note 118, at 196.

<sup>231</sup> GRIM & TUCKER, *supra* note 21, at 22.

<sup>232</sup> See Emilie Blake, *Are Water Body Personhood Rights the Future of Water Management in the United States*, 47 TEX. ENVTL. LJ 197 (2017).

Maka,' or 'Grandmother Earth.' The Lakota further view the concept of care for the Earth as a source of freedom.<sup>233</sup> These concepts are so old that they are often embedded in these cultures' spirituality and original beliefs.<sup>234</sup>

Indigenous peoples in the Americas have often made their relationships with the non-human world particularly explicit in their rituals and narratives.<sup>235</sup> Within Latin American cosmovision, objects in an interlinked universe are potentially powerful as they share vital ancestral essences spread throughout the world.<sup>236</sup> The behavioral environment requires personal interaction, not demanding gods but person-like beings representing ecological powers. In many myths, landscape features and non-human animals play an essential role in religious belief and practice.<sup>237</sup>

Using Tibetans as an example, Smyer Yü depicts a folktale in which the Earth is a supernatural living being upon whom humankind is dependent. The Tibetan tale describes the Earth and humankind as two sentient species, bonded with each other based on mutual respect and affective expressions.<sup>238</sup> Tibetans see the mountains as sacred sites distanced from humans, pillar-like high grounds reaching into the heavens where the gods reside. Smyer Yü compares the perspective with the Judeo-Christian image of the cosmos, God's upwardness, and the downwardness of the profane human realm.<sup>239</sup> Similarly, the sacredness of mountains for Tibetans is comparable to the sacredness of rivers for the Hindus.

Other Asian Indigenous communities share a similar spiritualized nature of traditional ecological knowledge. The Penan landscape in East Malaysia embodies gods and spirits' supernatural presence in rivers and forests' eco-geological features. The Eveny in Siberia deeply entwines human existence with reindeers, which offer human-earth relationships via shamanic visions through a deep partnership in their existential and spiritual connection. The Altaians in Siberia regard the Katun River and their forest as living beings. A similar cosmovision is found in India's Vedic tradition, which reveals the Earth's animated mode of being through

---

<sup>233</sup> Russell Means, Free to be Responsible, Address at Navajo Community College (1995) (transcript available at <http://www.russellmeansfreedom.com/2009/free-to-be-responsible-a-russell-means-speech/>).

<sup>234</sup> Kowalski, *supra* note 228, at 25.

<sup>235</sup> Peterson, *supra* note 118, at 191.

<sup>236</sup> Miguel Astor-Aguilera, *Latin America, in* ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY 158 (Willis J. Jenkins, et al. eds., 2017).

<sup>237</sup> Peterson, *supra* note 118, at 190-198.

<sup>238</sup> Smyer Yü, *supra* note 227, at 122.

<sup>239</sup> *Id.* at 122.

contemporary rituals. These examples of Indigenous eco-religious practices attest to the vitality of their cosmovision.<sup>240</sup>

Identities connecting trees, cultures, and ecologies have shaped the cultures of people in the Pacific.<sup>241</sup> In particular, the Maori are the people of the Pacific Ocean, the Great Ocean of Kiwa, who, in turn, is one of the children of Sky Father and Earth Mother and responsible for the domain of the oceans. The Maori's cosmic religious worldview is based on the understanding that humanity and all-natural world things are continually emerging and unfolding.<sup>242</sup> Maori do not see themselves as separate from Te Ao Marama, the natural world. As such, the world's resources do not belong to humankind. On the contrary, humans belong to the Earth, having user rights to harvest its resources.<sup>243</sup> Indigenous peoples in Australia have inhabited the continent for at least 30,000 years with a minimal negative impact on their environment.<sup>244</sup> Indigenous cultures tend not to have a separation of humanity and the environment as is found in Western culture: "As the late Western Shoshone spiritual leader Corbin Harney used to say, Native people are not separate from the environment. We are the environment!"<sup>245</sup>

Many Indigenous societies have totemic relationships, such as membership in a 'Bear Clan' or other animal groupings, where a member of that society must look after their totemic animal's well-being. The Yolngu of Australia, like many Indigenous cultures, have clan relationships with the animals that share their homelands.<sup>246</sup> The Lakota pray with the phrase 'Mitakuye Oyasin,' indicating a relationship with all that is, as it translates to 'all my relations' but means every living thing.<sup>247</sup>

The Maori of New Zealand see themselves as part of their environment, "They were born out of it, for the land was

---

<sup>240</sup> *Id.* at 125-126.

<sup>241</sup> Manuka Henare, Pacific Region: In Search of Harmony: Indigenous Traditions of the Pacific and Ecology, ROUTLEDGE HANDBOOK OF RELIGION AND ECOLOGY 129-137 (Willis J. Jenkins, et al. eds., 2017).

<sup>242</sup> See Catherine J Iorns Magallanes, *From Rights to Responsibilities Using Legal Personhood and Guardianship For Rivers*, RESPONSABILITY: LAW AND GOVERNANCE FOR LIVING WELL WITH THE EARTH, B MARTIN, L TE AHO, M HUMPHRIES-KIL (EDS) (ROUTLEDGE, LONDON & NEW YORK) (2018).

<sup>243</sup> Henare, *supra* note 241, at 131.

<sup>244</sup> Kowalski, *supra* note 228, at 23.

<sup>245</sup> Melissa K. Nelson, *Original Instructions: Indigenous Teachings For a Sustainable Future* 42 (Simon and Schuster 2008).

<sup>246</sup> Kowalski, *supra* note 228, at 25.

<sup>247</sup> JOSEPH M MARSHALL III, *THE LAKOTA WAY OF STRENGTH AND COURAGE: LESSONS IN RESILIENCE FROM THE BOW AND ARROW* (Sounds True. 2012).

Papatuanuku, the mother earth who conceived the ancestors of the Maori people.”<sup>248</sup> Indigenous peoples are intrinsically connected to their water taonga (‘treasures’ in the Maori language). They have wide-ranging practical, spiritual, environmental, cultural, and economic interests in, relationships with, obligations towards, and dependencies on water resources.<sup>249</sup> For example, the Fitzroy River Declaration recognizes that the Martuwarra River in north-western Australia ‘is a living ancestral being and has a right to life. It must be protected for current and future generations and managed jointly by the river’s Traditional Owners.’<sup>250</sup> The legal nature of Indigenous water rights recognized in western law is also complex,<sup>251</sup> with rights and entitlements typically fragmented across a complicated ‘patchwork’ of tenures.<sup>252</sup>

While these traditions are often ancient, there is currently a call for renewing Indigenous cosmivision to protect our degraded environment. The Native Peoples of North America are in a time of renewal and resurgence regarding their ‘treaties with creation,’ based on traditional and revered teachings. For example, the Anishinaabeg heritage of the Northern Great Lakes regions promotes ethical relations with the more-than-human world, including sophisticated values that bring together law, religion, art, science, and governance in a holistic vision and practice of

---

<sup>248</sup> LAURELYN WHITT, *SCIENCE, COLONIALISM, AND INDIGENOUS PEOPLES: THE CULTURAL POLITICS OF LAW AND KNOWLEDGE* 44 (Cambridge University Press, 2009).

<sup>249</sup> See, e.g., Amaya Alvez Martin, *Constitutional Challenges of the South: Indigenous Water Rights in Chile; Another Step in the Civilizing Mission*, 33 WINDSOR YB ACCESS JUST. 87 (2016); VIRIGINIA MARSHALL, *OVERTURNING AQUA NULLIUS* (Aboriginal Studies Press, 2017); Jacinta Ruru, *Listening to Papatūānuku: a call to reform water law*, 48 JOURNAL OF THE ROYAL SOCIETY OF NEW ZEALAND 215 (2018); Linda Te Aho, *Te Mana o te Wai: An Indigenous Perspective On Rivers and River Management*, 35 RIVER RESEARCH AND APPLICATIONS 1615 (2019); Anne Poelina, et al., *Martuwarra Fitzroy River Council: An Indigenous Cultural Approach to Collaborative Water Governance*, 26 AUSTRALASIAN JOURNAL OF ENVIRONMENTAL MANAGEMENT 236 (2019); Lara Bernadette Taylor, et al., *Ngā Puna Aroha: Towards an Indigenous-Centered Freshwater Allocation Framework for Aotearoa New Zealand*, AUSTRALASIAN JOURNAL OF WATER RESOURCES 1 (2020)..

<sup>250</sup> Fitzroy River Council, *Fitzroy River Declaration* (Nov. 3, 2016), available at <https://static1.squarespace.com/static/5e86add4e98f7421bace70f1/t/5e9fcc157dedb86cbb06a2e9/1587530798453/fitzroy-riverdeclaration.pdf>.

<sup>251</sup> This complexity is compounded by the general complexity of trans-jurisdictional water law and governance. See JANICE GRAY, ET AL., *TRANS-JURISDICTIONAL WATER LAW AND GOVERNANCE* (Routledge, 2016).

<sup>252</sup> For a discussion of the problem of a ‘patchwork’ of Indigenous water rights in the US context, see Philip Womble, et al., *Indigenous Communities, Groundwater Opportunities*, 361 SCIENCE 453 (2018).

regeneration. Similar examples are found in the great Haudenosaunee (Six Nations Iroquois) peoples of the Northeast. They have shared their ethical wisdom to address some of our time's most pressing ecological problems, including water scarcity and biodiversity loss.<sup>253</sup> Integral to these revitalization efforts is an understanding that people and place, nature and culture, biodiversity, and cultural diversity, are inextricably linked and must be addressed together and holistically.<sup>254</sup>

In Asia, Indigenous peoples' modes of being have preserved living knowledge that might prove invaluable in the current environmental crises. Yü proposes a rethinking and creative revisioning in the study of Indigenous religion and ecology in the region. He questions whether we can go beyond the sacred and profanes' dichotomy to address the linkages between Indigenous cosmovision and sustainable modes of living. He thus re-identifies 'the Indigenous' as an inclusive term encompassing people with knowledge of the Earth as a living being in ethical and spiritual terms, regardless of whether their understanding is space-specific or whether they no longer live on their native land due to migration.<sup>255</sup>

Pope Francis' *Dear Amazon*, on the fate of the Amazon biome and its Indigenous people,<sup>256</sup> brought for the first time hundreds of Catholic bishops, Indigenous leaders, and environmental activists from the nine Amazon countries. Recognizing the ecological importance of Amazonia, especially its potential in climate mitigation via carbon storage, Pope Francis argued that those best suited to protect the Amazon are the Indigenous people.<sup>257</sup> His plea in defense of the rainforest is scientific, humanistic, political, and spiritual: "If the care of people and the care of ecosystems are inseparable, this becomes especially important in places where the forest is not a resource to be exploited; it is a being, or various beings, with which we have to relate,"<sup>258</sup> Pope Francis writes in the ecological section. "When indigenous peoples remain on their land, they themselves care for it best, provided they do not let themselves be taken in by the siren song and self-serving proposals of power

---

<sup>253</sup> Nelson, *supra* note 221, at 138.

<sup>254</sup> *Id.*

<sup>255</sup> Smyer Yü, *supra* note 227, at 120-128.

<sup>256</sup> Francis, *supra* note 135.

<sup>257</sup> Justin Catanoso, The Pope Makes Plea to Save the Amazon — Will the World Listen? (Mongabay, EcoWatch, Feb. 18, 2020).

<sup>258</sup> Francis, *supra* note 135, at ¶42.

groups.” The particular care for nature by Indigenous groups is exemplified through water as a sacred and ceremonial source.

In parallel, the Colombian Constitutional Court’s decision in *Atrato River* – a landmark decision which recognized the rights of nature to the Atrato River – particularly noted the constitutional relevance of rivers, forests, food sources, the environment and biodiversity as part of the nation’s natural and cultural wealth and protected within the context of Colombia’s ‘ecological constitution.’<sup>259</sup>

### 7. WATER AS AN INDIGENOUS SACRED AND CEREMONIAL SOURCE

In most Indigenous spirituality, water represents a sacred symbol and a ceremonial source.<sup>260</sup> Water retains an honored and indispensable place, an actual force and symbolic image of life and death, creation and destruction, nourishment and deprivation: water exists as an autonomous and primeval element to be encountered with humility, respect, joy, and caution.<sup>261</sup> Given its profound religious meaning, water is used as an object of worship more than any other natural resource.<sup>262</sup> To the Hopi of North America, water is understood as the first existing substance. The Lakota say “Mní wíchóni,” or “Water is life.” The Blackfeet tribe in Montana believed in water as a separate realm of existence and a special and sacred place.<sup>263</sup> The Indigenous peoples’ unique relationship with water is often manifested in religious worship on particular geographic features, including rivers.<sup>264</sup> Their very cosmology is built on the intricate knowledge of and connection to

<sup>259</sup> Constitutional Court of Colombia, Judgment T-622/16, 10 November 2016, at 5.2 (Atrato River Case) <<https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishhdrpde1law.pdf>> accessed 16 December 2020. See also H Herrera-Santoyo, ‘The Rights of Nature (Rivers) and Constitutional Actions in Colombia’ (*GNHRE*, 8 July 2019) <[https://gnhre.org/2019/07/08/the-rights-of-nature-rivers-and-constitutional-actions-in-colombia/#\\_ftn3](https://gnhre.org/2019/07/08/the-rights-of-nature-rivers-and-constitutional-actions-in-colombia/#_ftn3)> accessed 16 December 2020.

<sup>260</sup> Rhett B. Larson, *Holy Water and Human Rights: Indigenous Peoples’ Religious-Rights Claims To Water Resources*, 2 *ARIZ. J. ENVTL. L. & POL’Y* (2011). Despite the overlap, some indigenous Muslim communities claim that any use of treated sewage effluent (“reclaimed water”) is ceremonially impure. See generally Shaukat Farooq & Zafar I Ansari, *Wastewater Reuse in Muslim Countries: An Islamic Perspective*, 7 *ENVIRONMENTAL MANAGEMENT* 119 (1983).

<sup>261</sup> June-Ann Greeley, *Water in Native American Spirituality: Liquid Life—Blood of the Earth and Life of the Community*, 2 *GREEN HUMANITIES* 156 (2017).

<sup>262</sup> See Larson, *supra* note 260, at 81.

<sup>263</sup> Rosalyn R. LaPier, *Why is water sacred to Native Americans?*, 8 *OPEN RIVERS* (2017).

<sup>264</sup> See GREGORY CAJETE, *LOOK TO THE MOUNTAIN: AN ECOLOGY OF INDIGENOUS EDUCATION* (ERIC. 1994).

their ancestral land and its relations to animals, plants, and water. This deep connection reflects Indigenous peoples' role in protecting water around the world.

Indigenous peoples have a strong spiritual connection with their traditional land and waters, which allows them to develop valuable conventional ecological knowledge.<sup>265</sup> Different forms of water, such as rain, lakes, streams, ponds, rivers, oceans, and seas, and the animal and plant life associated with those aquatic reservoirs have sustained prominence as sacred signifiers for Native American nations. As a result, Indigenous religious practices have become essential to effective water management, conservation, and preservation.<sup>266</sup> For example, the Amazon River is sacred to the Indigenous tribes within that watershed.<sup>267</sup> Besides, Australian aboriginal water law identifies most water sources as sacred; knowledge of their location is crucial for survival.<sup>268</sup> Ultimately, Indigenous peoples claim a right to water through a religious-rights-based perspective. Indigenous peoples continue to contest for water governance, ownership, and sovereignty across the globe.<sup>269</sup> In Australia, given the scarcity of water, there is no distinction between the different purposes. Most water sources are sacred, and knowledge of their location is vital to a group's survival.<sup>270</sup> Following the rule of 'always ask,' sharing plays a crucial role in water management. In India, the Bihar consider the

---

<sup>265</sup> See Larson, *supra* note 260, at 97 (explaining that traditional ecological knowledge is embodied in religious ceremonies and teachings that promote sustainable water management, and traditional ecological knowledge is defined as a "body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their environment."); See also FIKRET BERKES, SACRED ECOLOGY (Routledge 4th ed. 2018).

<sup>266</sup> See Larson, *supra* note 260, at 84; see also Cathleen Flanagan & Melinda Laituri, Local Cultural Knowledge and Water Resource Management: The Wind River Indian Reservation, 33 ENVTL. MGMT. 262, 269 (2004).

<sup>267</sup> See Larson, *supra* note 260, at 85; see also Brij Gopal, *Holy Ganga and the Mighty Amazon*, 16 AMAZONIANA 337, 338 (2001); Peter Gow, *River People: Shamanism and History in Western Amazonia*, SHAMANISM, HISTORY AND THE STATE (Nicholas Thomas & Carline Humphrey eds., 1994) (noting that indigenous groups depend on practicing ayahuasca shamanism in the Amazon river for ceremonial purposes).

<sup>268</sup> Salzman, *supra* note 172, at 101. Since Australia is the driest inhabited continent, Australian aboriginal water law does not distinguish between water uses. Instead, these rules function within a predominant access system labeled as "always ask."

<sup>269</sup> Elizabeth Macpherson, *Indigenous Water Rights in Comparative Law*, 9(3) TRANSNAT'L. ENV'T'L. 393 (2020).

<sup>270</sup> Salzman, *supra* note 172, at 101.

upper castes as sacred source waters. Water is believed to be a medium that transmits pollution when in contact with a person who himself is in a “state of pollution.”<sup>271</sup>

In comparative law, some encouraging examples of recognition of Indigenous rights in river co-management,<sup>272</sup> Indigenous customs, and cultures tend towards the ‘greening of water laws’ worldwide.<sup>273</sup> However, Western laws typically fail to recognize and provide for the full extent of Indigenous rights to water, denying Indigenous peoples procedural rights in water planning and management frameworks and substantive water use rights and allocations.<sup>274</sup> It is still often the case that Indigenous claims are excluded and obscured even by legal interventions designed to enhance their visibility.<sup>275</sup> As a consequence of the increasing recognition of this gap in the legal framework, there have been several examples of the recognition of the rights of rivers in comparative law in the past years.<sup>276</sup>

For example, while the rights of nature concept followed an attempt to codify Indigenous perspectives into modern legal frameworks, its success or failure as a legal strategy and embodiment of environmental justice largely relies on how litigants assert the newly created rights, how the legislatures develop them, and how the courts endorse and apply them.<sup>277</sup> Additionally, it is essential to acknowledge that Indigenous cultures differ from each other, and genuine intercultural engagement, especially within

---

<sup>271</sup> *Id.* at 102.

<sup>272</sup> See Karen Fisher & Meg Parsons, *River Co-governance and Co-management in Aotearoa New Zealand: Enabling Indigenous Ways of Knowing and Being*, 9(3) *TRANSNAT'L. ENV'T'L L.* 455 (2020).

<sup>273</sup> See Stefano Burchi, *The Future of Domestic Water Law: Trends and Developments Revisited, and Where Reform is Headed*, 44 *WATER INT'L.* 258 (2019).

<sup>274</sup> See, e.g., Lana D Hartwig, et al., *Trends in Aboriginal Water Ownership in New South Wales, Australia: The Continuities Between Colonial and Neoliberal Forms of Dispossession*, 99 *LAND USE POL.* (2020); Katherine Selena Taylor, et al., *Australian Indigenous Water Policy and the Impacts of the Ever-Changing Political Cycle*, 20 *AUSTRALASIAN J. OF WATER RESOURCES* 132 (2016).

<sup>275</sup> Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies*, 9(3) *TRANSNAT'L. ENV'T'L L.* 429 (2020). Elizabeth Macpherson, et al., *Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects*, 9(3) *TRANSNAT'L. ENV'T'L L.* 521 (2020).

<sup>276</sup> See Lidia Cano Pecharroman, *Rights of nature: Rivers that can stand in court*, 7 *RESOURCES* 13 (2018); ERIN O'DONNELL, *LEGAL RIGHTS FOR RIVERS: COMPETITION, COLLABORATION AND WATER GOVERNANCE* (Routledge. 2018).

<sup>277</sup> ETTY et. al., *supra* note 7, at 388-389. Laura Schimmöller, *Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador*, 9(3) *TRANSNAT'L. ENV'T'L L.* 569 (2020).

legal structures, “can never be a simple cut-and-paste task across disparate contexts.”<sup>278</sup>

Traditional ecological knowledge (TEK) embodied in religious ceremonies and teachings may promote sustainable water management. Religious claims to water rights reinforce the legitimacy of Indigenous religious-based TEK. For example, in the Katun River Basin of Siberia, the Altaians’ religious beliefs, which prohibit the subjugation of the natural world, formed the basis for their opposition to constructing a dam on the Katun River, which holds particular religious significance for the Altaians.<sup>279</sup> A religious-rights-based claim to water would provide legally cognizable claims to protect the type of TEK employed by the Altaians—TEK that successfully influenced water policy and informed scientific knowledge.<sup>280</sup>

The legal challenges associated with the relationship between water and worship are particularly complex for Indigenous communities. This is due to four reasons: (i) the spiritual connection of Indigenous communities is mainly linked to their traditional lands and rivers, providing challenges to property rights and natural resources; (ii) Indigenous communities make ceremonial or spiritual uses of water, triggering religious rights with other water-related rights and uses; (iii) Indigenous religious practices through traditional knowledge often promote ecological conservation of the watershed; (iv) Indigenous religions often center spirituality within the context of the natural world and on particular geographic features, including water bodies.<sup>281</sup> Therefore, religious water use is a delicate matter and provides a strong starting point to understanding the human right to water.<sup>282</sup> As a result, western laws are still inadequate in articulating and developing water rights for Indigenous peoples.<sup>283</sup> Issues of jurisdiction – recognizing Indigenous rights amidst ill-fitting, externally imposed legal regimes – and distribution – the substantive provision of rights to water – remain widespread.<sup>284</sup>

---

<sup>278</sup> Etty et. al., *supra* note 7, at 388.

<sup>279</sup> Kheryn Klubnikin, et al., *The sacred and the scientific: traditional ecological knowledge in Siberian river conservation*, 10 *ECOLOGICAL APPLICATIONS* 1296; 1299-1300 (2000).

<sup>280</sup> Larson, *supra* note 260, at 98.

<sup>281</sup> *Id.*, at 83-85.

<sup>282</sup> Leonard Hammer, Indigenous peoples as a catalyst for applying the human right to water, 10 *INT’L J. ON MINORITY & GRP. RIGHTS* 131 (2004).

<sup>283</sup> Etty et. al., *supra* note 7, at 387.

<sup>284</sup> See Macpherson, *supra* note 269, at 393–402.

One legal argument for Indigenous rights ties into the universal human right to water. Activists are now forming views and advocating to have the spiritual use of water be considered part of the human right to water, as Indigenous people often have formal ties to waterways.<sup>285</sup> The Wind River Reservation in the United States has incorporated spiritual use as a “beneficial use” under their Water Code.<sup>286</sup> Another avenue is recognizing the rights of nature. The rights of nature embody the Indigenous belief of living in harmony with nature, which is being progressively adopted at the U.N., as explained in the next section.

#### 8. INTERNATIONAL RECOGNITION OF THE RIGHTS OF INDIGENOUS PEOPLES AND PEASANTS

Recognizing Indigenous rights and protecting Indigenous lands provide successful ways of ensuring environmental protection in their territories.<sup>287</sup> The rights of Indigenous peoples have slowly advanced at the international level. The International Labour Organisation (ILO) broadly promoted the rights of Indigenous peoples. ILO Convention No. 169 (ILO C169), concerning Indigenous and Tribal Peoples in Independent Countries, binds member states who have ratified it (art. 38). ILO 169 contains a provision on environmental protection, Article 7:

*“[Indigenous peoples] shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control [...] over their own economic, social and cultural development [...]. Governments shall take measures [...] to protect and preserve the environment of the territories they inhabit.”*

The Committee on the Elimination of Racial Discrimination (CERD) lays the groundwork for recognizing the collective rights of Indigenous people, particularly for religious and cultural rights and

---

<sup>285</sup> Larson, *supra* note 260.

<sup>286</sup> Kowalski, *supra* note 228.

<sup>287</sup> Tauli-Corpuz et al., Rights and Resources Initiative, Cornered by Protected Areas: Replacing ‘Fortress’ Conservation with Rights-based Approaches Helps Bring Justice for Indigenous Peoples and Local Communities, Reduces Conflict, and Enables Cost-effective Conservation and Climate Action, pt. 14 (2018), [https://rightsandresources.org/wp-content/uploads/2018/06/Cornered-by-PAs-Brief\\_RRI\\_June-2018.pdf](https://rightsandresources.org/wp-content/uploads/2018/06/Cornered-by-PAs-Brief_RRI_June-2018.pdf).

rights to own property in association with others.<sup>288</sup> Activities that deprive Indigenous groups of access to resources force such groups to leave their territory, or negatively affect their religious practices or traditional way of life, implicate these economic, social, and property rights.<sup>289</sup> Special Rapporteur Mrs. Ksentini discerns that human rights violations detected in cases brought to the HRC and the IACHR by or on behalf of Indigenous peoples almost always arise due to land rights violations and environmental degradation.<sup>290</sup> The right to self-determination, the right to cultural expression, and the right to religion can be understood to include environmental aspects.<sup>291</sup>

The ICCPR affirms the right of self-determination. All peoples can freely determine their political status and pursue their economic, social, and cultural development and dispose of their natural wealth and resources.<sup>292</sup> This grant of a collective right to control over natural resources is particularly relevant for Indigenous groups who environmentally damaging development activities may deny access to natural resources.<sup>293</sup> The U.N. Human Rights Committee has stated that Article 27 of the ICCPR protects a “particular way of life associated with the use of land resources, especially in the case of Indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.”<sup>294</sup>

The Indigenous Rights movement has recently advanced a series of recognitions at the international level, reinsuring their right to traditional lands and worldviews. Native Peoples are regaining their rights and responsibilities to protect Mother

---

<sup>288</sup> See i.e. General Recommendation No. 23: Indigenous Peoples (Aug. 8, 1997).

<sup>289</sup> UNEP Compendium on Human Rights and the Environment: Selected international legal materials and cases. pt. 158 (2014), [https://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP\\_Compendium\\_HRE.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP_Compendium_HRE.pdf?sequence=1&isAllowed=y).

<sup>290</sup> U.N. Comm'n on Human Rights, *supra* note 156, at 88.

<sup>291</sup> UNEP Training Manual on International Environmental Law. pt. 392 (2006). See also Maria Antonia Tigre & Sarah Slinger, *A Voice in Development: The Right to Participation of Indigenous Groups in Amazon Countries*, in *INDIGENOUS AMAZONIA, REGIONAL DEVELOPMENT AND TERRITORIAL DYNAMICS: CONTENTIOUS ISSUES* (Walter Leal Filho, et al. eds., 2020).

<sup>292</sup> ICCPR, art. 1(1).

<sup>293</sup> UNEP & CIEL, *supra* note 289, at 12.

<sup>294</sup> General Comment No. 23, ¶7; 9.

Earth.<sup>295</sup> Since 2009, states and civil society alike have progressively acknowledged the interdependence between humans and nature under the umbrella of HwN.<sup>296</sup> Appreciation of both, the intrinsic value of nature, regardless of her usefulness to humans and her role in sustaining human wellbeing and complementing human rights, is expressed as the Rights of Nature. Since the UNGA adopted the first resolution on HwN (A/RES/64/196) in 2009 along with UNGA Resolution declaring 22 April International Mother Earth Day (A/RES/63/278), there have been annual intergovernmental negotiations rooted in the principle of Harmony with Nature: twelve UNGA Resolutions on Harmony with Nature have been adopted, eleven Secretary-General (UNSG) reports on Harmony with Nature have been published, including the 2016 Experts Report,<sup>297</sup> requested by UNGA Resolution (A/RES/70/208) and a Supplement<sup>298</sup> to the 2020 UNSG Report.

The U.N. has acknowledged the importance of Indigenous peoples and traditional communities and peasants in two significant declarations. The U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) has significantly advanced Indigenous rights internationally.<sup>299</sup> UNDRIP outlines Indigenous peoples' collective rights, including their right to practice religion, live on, and maintain their homelands, language, and collective human rights. It consists of a substantive provision on the environment, although it does not refer to a quality level.<sup>300</sup> Article 25 acknowledges the deep relationship and responsibility of Indigenous peoples to the land.

More recently, the Third Committee (Social, Humanitarian and Cultural) of the UNGA voted in favor of the U.N. Declaration on the rights of peasants and other people working in rural areas (UNDROP).<sup>301</sup> UNDROP aims to protect the rights of all rural populations, including peasants, fisherfolks, nomads, agricultural workers, and Indigenous peoples, improve living conditions, and

---

<sup>295</sup> Nelson, *supra* note 221, at 142.

<sup>296</sup> U.N. Harmony with Nature Programme, *available at* [www.harmonywithnatureun.org](http://www.harmonywithnatureun.org).

<sup>297</sup> U.N. Harmony with Nature – Note by the Secretary-General, 71st Sess., Provisional Agenda Item 19(h), UN Doc A/71/266 (1 August 2016), *available at* [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/71/266](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/71/266).

<sup>298</sup> U.N. Harmony with Nature, 75th Sess., Provisional Agenda Item 18(g), Supp. A/75/266 (2020), <http://files.harmonywithnatureun.org/uploads/upload1019.pdf>.

<sup>299</sup> United Nations Declaration on the Rights of Indigenous Peoples, Sept. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (2007) [hereinafter UNDRIP].

<sup>300</sup> Art. 29(1), UNDRIP.

<sup>301</sup> G.A. Res. 39/12, U.N. Doc. A/C.3/73/L.30 (Oct. 30, 2018).

strengthen food sovereignty, the fight against climate change, and the conservation of biodiversity. The endorsement of the U.N. Declaration also constitutes an essential contribution to the international community's effort to promote family farming and peasant agriculture. These declarations grew out of respect for the people they address and are distinct from human rights instruments. They generally recognize human rights broadly granted to humans and specific human rights characteristics of these people. Therefore, these are closer to Indigenous definitions of what they see as rights than universal rights of all people.

#### 9. INDIGENOUS CLAIMS IN HUMAN RIGHTS COURTS AND TRIBUNALS

Additionally, Indigenous people have ensured the protection of their rights through human rights instruments and international courts. The Inter-American Court of Human Rights (IACtHR) has been particularly active in ensuring Indigenous rights to lands, water, and nature.<sup>302</sup> In *Sawhoyamaxa Indigenous Community v. Paraguay*, the Court demanded Paraguay to return land stolen from the Sawhoyamaxa community, as it cut off the Sawhoyamaxas' source of water.<sup>303</sup>

In its 2020 decision in *Indigenous Communities Members of the Lhaka Honhat Association vs. Argentina*, the Inter-American Court of Human Rights (IACtHR) held that Argentina violated an autonomous right to a healthy environment, Indigenous community property, cultural identity, food, and water.<sup>304</sup> For the first time in a contentious case, the IACtHR analyzed the rights above autonomously based on Article 26 of the American Convention and ordered specific reparation measures to their restitution, including actions for access to adequate food and water, the recovery of forest resources, and Indigenous culture.<sup>305</sup> The ruling marks a significant milestone for protecting Indigenous peoples' rights and, more

---

<sup>302</sup> See Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights Over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, 35 AM. INDIAN L. REV. 263; 356 (2017).

<sup>303</sup> *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations, and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 146, 117 (Mar. 29, 2006).

<sup>304</sup> IACtHR, *Caso Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) vs. Argentina* (Feb 6, 2020).

<sup>305</sup> Press Release, Inter-American Court of Human Rights (Apr. 2, 2020) [http://www.corteidh.or.cr/docs/comunicados/cp\\_24\\_2020\\_eng.pdf](http://www.corteidh.or.cr/docs/comunicados/cp_24_2020_eng.pdf).

specifically, their right to water and a healthy environment.<sup>306</sup> The Court relied heavily on its interpretation of the right to a healthy environment in its Advisory Opinion 23/17 of 2018, mainly as it refers to the content and scope of the right to a healthy environment.<sup>307</sup> Indigenous claims based on environmental damage, lack of access to water, or the effects of climate change could soon be brought based on the Court's evolving jurisprudence.

Climate change has disproportionately affected Indigenous people, leading them to forced displacement. On January 15, 2020, five U.S. tribes in Alaska and Louisiana submitted a complaint to multiple U.N. special rapporteurs, claiming that the U.S. government is violating its international human rights obligations by failing to address climate change impacts that result in forced displacement.<sup>308</sup> The complaint is the first to address internal displacement as a result of climate-related effects specifically.<sup>309</sup> Framing climate displacement as a human rights issue, the complaint joins a growing number of legal challenges that use international human rights law to hold governments accountable for climate change. Tribal leaders claim that climate change compromises their human rights, including rights to life, health, housing, water, sanitation, and a healthy environment, and point to various impacts as evidence, such as their lost ability to trap, fish,

---

<sup>306</sup> See Maria Antonia Tigre, *Inter-American Court of Human Rights Recognizes the Right to a Healthy Environment*, 24 ASIL INSIGHTS (2020); Maria Antonia Tigre, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 115 AM. J. OF INT'L L. 706 (2021).

<sup>307</sup> *Lhaka Honhat vs. Argentina*, at 203. See Inter-American Court of Human Rights, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity)*, interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 (15 November 2017). Series A No. 23. Solicitada por la República de Colombia, Medio Ambiente y Derechos Humanos, ¶56-68. See Maria Antonia Tigre & Natalia Urzola, *The 2017 Inter-American Court's Advisory Opinion: Changing the Paradigm for International Environmental Law in the Anthropocene*, 12 J. HUM. RTS. & ENV'T. 24 (2021).

<sup>308</sup> The Alaska Institute for Justice, *Rights of Indigenous People in Addressing Climate-Forced Displacement*, available at [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200116\\_NA\\_complaint-1.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200116_NA_complaint-1.pdf).

<sup>309</sup> Ama Francis, *U.S. Tribes Claim U.S. Government Violates Human Rights Obligations by Failing to Address Climate-Forced Displacement* (Sabin Center for Climate Change Law, Feb. 28, 2020) available at <http://blogs.law.columbia.edu/climatechange/2020/02/28/us-tribes-claim-u-s-government-violates-human-rights-obligations-by-failing-to-address-climate-forced-displacement/>.

and farm; increased flooding and saltwater intrusion; and exceedingly high rates of coastal erosion in Louisiana.

The Alaska and Louisiana Tribes call on the U.N. special rapporteurs to pressure the U.S. to recognize climate-forced displacement as a human rights crisis and take actions to address displacement; including by acknowledging self-determination and inherent sovereignty of all of the tribes, funding the tribal-led relocation processes for the native village of Kivalina and Isle de Jean Charles, and granting federal recognition to the named tribal nations in Louisiana so they can access federal resources for adaptation and disaster response. The complaint also asks the special rapporteurs to recommend that the federal, Alaska, and Louisiana state governments set up an institutional relocation framework that can guarantee the protection of the right to culture, health, safe drinking water, and adequate housing. The case provides an additional avenue for the claim that grows out of Indigenous relationship to nature.

The recognition of the rights of nature, which will be further developed in Section E, has grown from Indigenous traditions and cosmologies. These religious ideas from Indigenous people have been taken up by modern legal systems, including under the U.N., as will be referenced later. The U.N. HwN Programme has studied the development of legislation and policies on the Rights of Nature throughout the world. The rights of nature theory shows how Indigenous cultures can be successfully incorporated into international and national law, upholding environmental values like communities have done for centuries. For this reason, ICEL has called for fully adopting the ideology of living in harmony with nature at the international level by granting it a place in the Political Declaration mandated by UNGA Resolution 73/333.<sup>310</sup>

### **C. CHINA AND ECOLOGICAL CIVILIZATION**

*“Language about how to tackle specific types of environmental problems can be equally dramatic. Language matters for many reasons. There is an inherent understanding of nature that crosses boundaries of nations and societies, religion and culture. It is embedded in our lives as forces that we appreciate, respect and fear. Much has been made about the need to live in harmony with nature and of the dangers of efforts to control, dominate, or otherwise interfere with nature. Often these*

---

<sup>310</sup> ICEL, Note: Recognition of Harmony with Nature (Mar. 15, 2021).

*points are made to contrast views of Eastern and Western civilizations or to contrast ecological Marxianism and capitalism viewpoints.<sup>311</sup>*”

China has traditionally relied on mitigating the negative environmental impacts of industrialization rather than ensuring prevention. Yet, decades of rapid industrialization have led to a profound ecological crisis. Facing noncompliance and lack of enforcement of environmental law, China acknowledged a deeper cultural obstacle, leading to a search for a revised environmental protection system that relies on an underlying ideology of living harmoniously with nature.<sup>312</sup> The country then redirected its modernization efforts into ‘ecological civilization,’ a new standard of human existence to ensure long-term sustainability.<sup>313</sup> The fundamental distinction between ecological civilization and China’s previous focus on high gross domestic product (GDP) growth is putting nature and people first.<sup>314</sup> This section introduces the Chinese concept of ecological civilization as a potential pathway for relying on an environmental foundation for the progressive development of international environmental law.

Subsection 1 defines the concept of ecological civilization by explaining its origins and practical implementation in environmental laws. Ecological civilization relies on respect for nature to realize ecological justice in a drastic reorientation of traditional beliefs. Subsection 2 explains the religious underpinnings of ecological civilization. Like the previous sessions, it does not offer a deep dive into the philosophical traditions and maturity of the concept. Briefly, it illuminates how a reorientation of traditional teachings allowed for translating the concept into progressive environmental laws. Subsection 3 further develops this practical side, showing how the concept was adopted by Chinese

---

<sup>311</sup> Arthur Hanson, *Ecological Civilization in the People’s Republic of China: Values, Action, and Future Needs* (Dec. 2019).

<sup>312</sup> Paul A. Barresi, *The Role of Law and the Rule of Law in China’s Quest to Build an Ecological Civilization*, 1 *CHINESE JOURNAL OF ENVIRONMENTAL LAW* 9; 9-12 (2017) (arguing that the traditional cultural clash between Confucianism of the Chinese legal tradition and modern rule-of-law concept plays a crucial role in undermining the effectiveness of environmental laws in China).

<sup>313</sup> Arran Gare, *China and the struggle for ecological civilization*, 23 *CAPITAL. NAT. SOCIAL.* 10 (2012). Jean-Yves Heurtebise, *Sustainability and ecological civilization in the age of Anthropocene: an epistemological analysis of the psychosocial and “culturalist” interpretations of global environmental risks*, 9 *SUSTAINABILITY* 1331 (2017).

<sup>314</sup> Hanson, *supra* note 311, at vi.

environmental law and policy. Subsection 4 notes the current attempt at broadening the geographical scope of the concept towards international recognition.

#### 10. DEFINING ECOLOGICAL CIVILIZATION

Ecological civilization (shēngtài wénmíng 生态文明) first emerged in scientific literature in the 1980s.<sup>315</sup> The concept did not see widespread practical use until the mid-2000s when translated and adopted by the Communist Party of China (CPC) as an explicit goal.<sup>316</sup> The CPC put forward the concept of ‘eco-civilization’ in 2012 as an expression of sustainable development with deeper roots on the ethical basis of the human relationship to nature and the use of Earth’s resources.<sup>317</sup> Since then, it has been embraced at the highest levels of the Chinese State and the CPC. It has been affirmed in the Chinese constitution<sup>318</sup> and enshrined as a goal in the newest version of China’s Environmental Protection Law.<sup>319</sup> Eco-civilization is now a key driver in the country’s transition to high-quality development for the ‘New Era.’<sup>320</sup>

Ecological civilization is an evolving conceptual framework that provides for adjustments to development that meet the challenges of the 21<sup>st</sup> century.<sup>321</sup> It is a way of approaching social and ecological reform through a fundamental shift in world view from the prevailing belief that humans must exhibit dominance over nature to a more eco-centric vision in which humans are one component of an extensive system in a dynamic equilibrium.<sup>322</sup> The underlying goals of eco-civilization indicate a radical difference when compared with the industrial civilization. It relies on respect for nature to realize ecological justice instead of utilitarian, profit-

---

<sup>315</sup> Ben Boer, et al., Introduction to the Special Issue on Ecological Civilization and Environmental Governance, 4(2) CHINESE J. OF ENVTL. L. 121 (2020).

<sup>316</sup> Gare, *supra* note 313.

<sup>317</sup> Boer, et al., *supra* note 315, at 122.

<sup>318</sup> See Constitution of the Communist Party of China (revised and adopted at the 18th Nat’l Cong of the Communist Party of China, Nov 14, 2012), at General Program ¶9, 18, translated at China.org.cn (The 18th National Congress of the Communist Party of China (CPC)) <[www.china.org.cn/china/18th\\_cpc\\_congress/2012-11/16/content\\_27138030.htm](http://www.china.org.cn/china/18th_cpc_congress/2012-11/16/content_27138030.htm)>.

<sup>319</sup> See Amended PRC Environmental Protection Law (n 4) pmb1, art 1.

<sup>320</sup> Hanson, *supra* note 346, at vi.

<sup>321</sup> *Id.*, at vi.

<sup>322</sup> Amy E. Frazier, et al., Ecological civilization: perspectives from landscape ecology and landscape sustainability science, 34 LANDSCAPE ECOLOGY 1; 3 (2019).

driven, and technology-innovation-oriented functionalism.<sup>323</sup> By reconsidering its relationship with nature and recognizing that drastic changes to protect the ecological systems are necessary to ensure humans' long-term health and well-being, China has found a new way of approaching social and environmental reform. The ideology relies on a change in individual behavior for national development and a commitment from the CPC to take ecological responsibility and reevaluate the traditional ecological wisdom.<sup>324</sup>

Ecological civilization is simultaneously a philosophy, a vision, and a compass for a green and prosperous future.<sup>325</sup> It is based on the notion that humanity can both benefit from nature and act in its interest.<sup>326</sup> One of its most important features is that it acts as a catalyst for bringing together related components for green development, including economic, political, demographic, and educational transformations.<sup>327</sup> As a result, there is now a growing emphasis on re-balancing the economy, promoting sustainable growth, and accepting the 'New Normal (xin changtai):' a vision of a qualitatively different developmental pattern within the context of a softer and more sustainable growth pace.<sup>328</sup>

#### 11. RELIGIOUS UNDERPINNINGS OF ECOLOGICAL CIVILIZATION

Based on a proposal from an agricultural economist,<sup>329</sup> the concept of ecological civilization embraces ancient and enduring philosophical traditions to share insights with China's legal tradition.<sup>330</sup> Its emergence is not a novel creation but rather a reaffirmation of long-held, traditional values.<sup>331</sup> The term 'unity of human and nature' dates back thousands of years and forms the core of several traditional Chinese religions, including Taoism,

---

<sup>323</sup> Maurizio Marinelli, How to Build a 'Beautiful China' in the Anthropocene. The Political Discourse and the Intellectual Debate on Ecological Civilization, 23 J. OF CHIN. POLIT. SCI. 365 (2018).

<sup>324</sup> Geall Sam Geall & Adrian Ely, Narratives and pathways towards an ecological civilization in contemporary China, 236 CHINA Q. 1175 (2018).

<sup>325</sup> Hanson, *supra* note 346, at vi.

<sup>326</sup> Marinelli, *supra* note 323, at 373.

<sup>327</sup> Hanson, *supra* note 346, at 10. See Fred Magdoff, *Ecological civilization*, 62 MONTHLY REV. 1 (2011).

<sup>328</sup> Marinelli, *supra* note 323, at 370.

<sup>329</sup> Prof. Ye Qianji was the first to use the concept and emphasize its importance for sustainable agriculture in China.

<sup>330</sup> Barresi, *supra* note 312, at 13-15. See e.g. Yue Pan, *Evolution of an ecological civilization*, 9 BEIJING REVIEW 18-19 (2006); Yue Pan, *Looking Forward to an Ecological Civilization*, 57 CHINA TODAY 29 (2008).

<sup>331</sup> Frazier, et al., *supra* note 322, at 3.

Confucianism, and Buddhism.<sup>332</sup> The Chinese Academy of Social Sciences conducted a study in rescuing the three religious traditions of China as a response to pressing realities of environmental damage.<sup>333</sup>

Pan Yue, the Deputy Vice Minister for the Environment in China, had for long studied the history of religions and valued the importance of traditional beliefs responding to modern environmental problems.<sup>334</sup> In one of his speeches, he reinforced a core principle of traditional Chinese culture: harmony between humans and nature and the political wisdom of a balanced environment. These include the Confucian idea of humans and nature becoming one, the Daoist view of the Dao reflecting nature, or the Buddhist belief that all living things are equal. Chinese philosophy can be a powerful weapon in preventing an environmental crisis and building a harmonious society.<sup>335</sup> He soon then realized that an environmental culture was necessary to enforce environmental laws.<sup>336</sup>

Unlike other Western religions, Confucians do not view hierarchy as leading to domination. Instead, they trust that everything in nature and society has its appropriate role and place and should thus be treated accordingly. As a result, the use of nature for human ends must recognize each element of nature's intrinsic and broader value in the context of the environment as interrelated beings. For Confucians, human flourishing is thus dependent on fostering nature in its variety and abundance; going against nature's processes is self-destructive. Grim & Tucker further explain:

*“In Confucianism, nature is not only inherently valuable, it is morally good. Nature thus embodies the normative standard for all things; it is not judged simply from an anthropocentric perspective. There is not a fact–value or is–ought division in the Confucian worldview, for nature is seen as an intrinsic source of value. In particular,*

---

<sup>332</sup> *Id.*, at 3.

<sup>333</sup> GRIM & TUCKER, *supra* note 21, at 110.

<sup>334</sup> *Id.* at 111.

<sup>335</sup> Pan Yue, “Green China and Young China,” in China Dialogue (July 2007), <http://www.chinadialogue.net/article/show/single/en/1168-Green-China-and-young-China-part-two->. China Dialogue is one of the best Internet sites for information on China ([www.chinadialogue.net](http://www.chinadialogue.net)). See also [http://english.mep.gov.cn/Ministers/Speeches/201107/t20110704\\_214385.htm](http://english.mep.gov.cn/Ministers/Speeches/201107/t20110704_214385.htm).

<sup>336</sup> GRIM & TUCKER, *supra* note 21, at 111.

*value lies in the ongoing transformation and productivity of nature. A term repeated frequently in Neo-Confucian sources is sheng-sheng, reflecting the ever-renewing fecundity of life itself. In this sense, the dynamic transformation of life is seen as emerging in recurring cycles of growth, fruition, harvesting, and abundance. This reflects the natural processes of flourishing and decay in nature, human life, and human society. Change is thus seen as a dynamic force that humans should harmonize and interact with rather than withdraw from.”<sup>337</sup>*

There is renewed interest in China for developing a broader environmental ethic drawing on Confucian values.<sup>338</sup> Confucianism manifests a religious ecology in its cosmological orientation, which is “realized in the connection of the microcosm of the self to the macrocosm of the universe through grounding oneself in natural and human communities, nurturing oneself in ritual relatedness, and transforming oneself through cultivation.”<sup>339</sup> The care for family motivates the respect for the Earth community.<sup>340</sup> These ethical principles are now being retrieved in ecological civilization. Traditional Chinese religions have emphasized deep value systems and human dependence on nature, contrasting to other historical transitions in which people ‘conquered nature,’ especially during the evolution of agricultural to industrial civilizations.<sup>341</sup>

What makes ecological civilization different from existing dialogues and actions for sustainable development? Ecological civilization can easily be compared to the ‘ecological law’ that developed from the concept of ‘ecological culture’ (экологической культуры) in the Soviet Union in the 1980s.<sup>342</sup> The Russian system of strictly protected areas exemplifies what ecological law supports.<sup>343</sup> Socialist legal frameworks later reversed the

---

<sup>337</sup> *Id.* at 123.

<sup>338</sup> *Id.* at 92.

<sup>339</sup> *Id.* at 113.

<sup>340</sup> *Id.* at 114.

<sup>341</sup> Hanson, *supra* note 346, at 4.

<sup>342</sup> Nicholas A. Robinson, Ecological Civilization and Legal Norms for Resilient Environmental Governance, 4 CHINESE J. OF ENVTL. L. 131; 144 (2020).

<sup>343</sup> Nicholas A. Robinson, Perestroika and Priroda: Environmental Protection in the USSR, 5 PACE ENVTL. L. REV. 351 (1987); Tatiana Zaharchenko, The Environmental Movement and Ecological Law in the Soviet Union: The Process of Transformation, 17 ECOLOGY L.Q. 455 (1990).

progressive development of ecological law in the 1980s. While Russia continued to support sustainable development concepts, sustainability did not become a management priority in the absence of ecological law as a foundation.<sup>344</sup> The Russian example shows the impact of having an ecological foundation in developing (inter)national environmental law.

## 12. ECOLOGICAL CIVILIZATION TO ECOLOGICAL LAW

Ecological civilization introduces two significant elements to the existing environmental, economic, and social components of sustainable development: politics and culture. This is described as the ‘five-in-one approach.’<sup>345</sup> Redefining the relationship between people and nature enables living well within the environmental boundaries of the Earth.<sup>346</sup> Additionally, the call for eco-civilization is much more than a version of the Anthropocene ‘with Chinese characteristics:’ the concept could situate understandings of the political and socio-economic system with alternative ways of exploring eco-social prosperity in China.<sup>347</sup>

The concept of ecological civilization has become part of Chinese environmental law and policy over the past eight years.<sup>348</sup> Developing from the goal of ecological civilization, ecological law offers a “juridical foundation for the laws and policies that aim to maintain a healthy environment for people and nature that embodies the duty to respect and restore the integrity of Earth’s natural systems that sustain life.”<sup>349</sup> It implies a pervasive duty shared by a wide range of stakeholders that relies on the core duty to give precedence to environmental stewardship.<sup>350</sup>

In the 2016 13<sup>th</sup> Five-Year Plan (2016-2020), China has set out a “green is gold” top-level policy path with the declared aim of supporting the country’s transition to an ecological civilization.<sup>351</sup>

---

<sup>344</sup> Robinson, *supra* note 342, at 145-146.

<sup>345</sup> Hanson, *supra* note 346, at 4.

<sup>346</sup> *Id.* at vi.

<sup>347</sup> Marinelli, *supra* note 323, at 383.

<sup>348</sup> Boer, et al., *supra* note 315, at 122. See ‘The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016–2020)’ (Central Compilation & Translation Press 2016), <[https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/China\\_13th-Five-Year-Plan-for-Economic-and-Social-Development-Chapter-66.pdf](https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/China_13th-Five-Year-Plan-for-Economic-and-Social-Development-Chapter-66.pdf)>. Constitution of the People’s Republic of China as amended in 2018, Preamble and art 89(6) <[http://www.gov.cn/guoqing/2018-03/22/content\\_5276318.htm](http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm)>.

<sup>349</sup> Robinson, *supra* note 342, at 148.

<sup>350</sup> *Id.*

<sup>351</sup> Marinelli, *supra* note 323, at 370. See UNEP, *Green Is Gold: The Strategy and Actions of China’s Ecological Civilization*, UNEP: NAIROBI, KENYA (2016).

Still, creating a robust legal framework for ecological civilization remains a challenge. The expansion of eco-civilization remains as the risk that the concept might only be incorporated as a piece of teleology and political rhetoric. While there is strong interest in the Supreme People's Court for strengthening environmental law, including enforcement efforts, there is no defined approach for ecological civilization law.<sup>352</sup> Essential in the development of ecological civilization is the translation of the underlying principle into ecological law implementation.

*An ecological civilization cannot be seen as a simple technological or modernizing response to the immense ecological challenges of Great Climacteric associated with the Anthropocene. Rather it requires changes in the forces and relations of production and in the state and society: a massive shift, but necessarily occurring in stages, toward realized socialism/communism, i.e., a social formation aimed at substantive equality and ecological sustainability, emphasizing sustainable human development—one that involves collective action and planning. It requires that cultural resources, the long heritage of humanity in its many social formations, be brought to bear on the need to create a bridge to a sustainable future.*<sup>353</sup>

### 13. INTERNATIONAL RECOGNITION OF THE ECOLOGICAL CIVILIZATION

Relying on a traditional ideology in a communist state is essential to guide states with strong ideological foundations towards a new pathway that supports the right to a healthy environment. By refining a communist doctrine to have an environmental dimension, the path toward an ecological civilization could easily be envisioned. The next step is to forge a route to eco-civilization by scaling down humanity's impact while pulling back our excessive presence and interference with the natural world.<sup>354</sup> Based on China's experience, other communist states such as Cuba and Vietnam could similarly craft an ideological foundation based on nature. Rather than relying on religion, as other countries

---

<sup>352</sup> Hanson, *supra* note 346, at 10-11.

<sup>353</sup> John Bellamy Foster, *The Earth-system crisis and ecological civilization: a Marxian view*, 7(4) INT'L CRITICAL THOUGHT 439; 450 (2017).

<sup>354</sup> Eileen Crist, *Abundant earth: toward an ecological civilization* 186 (University of Chicago Press. 2019).

exemplified earlier in this article, China has found its evolving perspective on an ideological premise that relies on an ethical, moral, and economic foundation to protect the environment within China. Yet, the underlying foundation of ecological civilization is similar to other religious philosophies' objectives.

Ecological civilization represents a novel way of approaching environmental protection and sustainability when transformative change is urgently needed. A rationale is emerging for the roles that ecological civilization can play at the regional and global levels. China is pushing for the concept to be adopted at the international level, especially in a post-COVID-19 recovery scenario that relies on green recovery.<sup>355</sup> For example, the 2021 UN Biodiversity Conference's theme, which will frame the 15<sup>th</sup> meeting of the Conference of the Parties to the CBD, is "Ecological Civilization: Building a Shared Future for All Life on Earth."<sup>356</sup>

Can ecological civilization bring about new ways of thinking and additional opportunities to address the projected gaps and development needs? And if so, will there be a receptive audience in other countries and those involved in South-South cooperation?<sup>357</sup> Boer notes that comprehensive law reform is needed concerning the implementation of international environmental conventions.<sup>358</sup> This would mainly entail revising laws at the international and national levels and recommending reform of their objectives, scope, definitions, and implementation mechanisms to assess whether they can achieve ecological civilization's ideas.<sup>359</sup> He further clarifies:

*If the concept of ecological civilization were to be more widely adopted around the world, it would demand a critical examination of all aspects of international environmental law to ensure that more holistic integrated and consistent legal*

---

<sup>355</sup> Chloé Farand, China is expanding its UN presence, in belt and road push (2019). Xi Jinping's speech at the General Debate of the 75th session of the United Nations General Assembly, (Sep. 23, 2020), <<https://news.cgtn.com/news/2020-09-23/Full-text-Xi-Jinping-s-speech-at-General-Debate-of-UNGA-U07X2dn8Ag/index.html>>.

<sup>356</sup> <https://www.unep-wcmc.org/news/building-an-ecological-civilization--theme-for-2020-un-biodiversity-conference-announced>

<sup>357</sup> Hanson, *supra* note 346, at 15-16.

<sup>358</sup> Boer et. al., *supra* note 315, at 124.

<sup>359</sup> *Id.* at 125.

*frameworks are generated with a view to drafting much more robust 'green legislation.'*<sup>360</sup>

Recalling the development of international principles of environmental law, Robinson asks whether States can agree on a new set of legal principles to build resilience and effectiveness into implementing the SDGs and whether such a declaration can guide nations to cooperate through a transition into global ecological civilization.<sup>361</sup> Korten argues that an expanded vision of international environmental law would involve, among other things, granting legal rights to nature, shifting ownership of productive assets from transnational corporations to nation-states and self-governing communities, and prioritizing life-affirming, rather than wealth-affirming, values.<sup>362</sup>

The duty to cooperate to safeguard Earth's environment can be enhanced through a shared understanding of the norms contained in the concept of 'ecological civilization.'<sup>363</sup> Ecological civilization can improve environmental governance by clarifying the imperative to observe the laws entirely for environmental stewardship so that States fully acknowledge their responsibility to operate within the ecological limits of Earth's Biosphere.<sup>364</sup> Norms such as those arising from ecological civilization can contribute principles of law that build reciprocity between the human species and all other species and ecosystems and help shape consensus about restating environmental legal principles generally.<sup>365</sup>

#### ***D. FUNDAMENTAL PRINCIPLES OF NATURAL LAW AND EARTH JURISPRUDENCE***

Despite the apparent consensus on the relevance of nature for human lives, we keep polluting it. We are exploiting it to tipping points, which will soon irreversibly alter our natural environment. Yet, how can we turn this philosophical foundation of our shared love for nature towards legal norms that prioritize it? Nations require coherent and consistent systems to sustain Earth's ecosystems.<sup>366</sup> Sustainability has often proven to be declarative and

---

<sup>360</sup> *Id.* at 124.

<sup>361</sup> Robinson, *supra* note 342.

<sup>362</sup> David Korten, *China and the Ecological Civilization* (2016), <https://davidkorten.org/living-earth-econ-for-eco-civ/>.

<sup>363</sup> Robinson, *supra* note 342, at 144.

<sup>364</sup> *Id.* at 144, 154.

<sup>365</sup> *Id.* at 149, 154.

<sup>366</sup> *Id.* at 141.

aspirational, and governments have struggled to elaborate and give substantive content to its concept.<sup>367</sup>

Yet just filling in the gaps in international environmental law is a flawed premise. Human laws must first be grounded in the laws of nature, of ecology. Norms of ecological civilization can contribute principles of law that build reciprocity between the human species and all other species and ecosystems.<sup>368</sup> The rise of ecosystem regimes, understood as regimes where “the science of ecology is applied through environmental laws,”<sup>369</sup> can represent a crucial step in transforming environmental law from anthropocentrism to ecocentrism.<sup>370</sup> This recalibration of environmental law in an ecocentric sense has led to emerging legal theories that build on natural law and ethical principles to indicate a moral position where nature is recognized as having intrinsic value and an epistemological position reflecting ecology’s relational and holistic understanding of nature and its ecosystems, of which humans are but apart.<sup>371</sup> Bosselmann indicates the convergence of ecological principles and legal ethics reform through an ecocentric approach in law.<sup>372</sup> These emerging theories are further rooted in crucial ecological concepts, which despite having gained prominence and legal instruments and shaping environmental law, still often lack a defining legal concept. This section delves into some of these emerging theories, showing the importance of this reshaping of environmental law from a nature-based ethical perspective.

Subsection 1 grounds these emerging legal theories in natural law as the moral foundation for developing rights and duties. Natural law relies on an inherent law for which formal recognition is dispensable. Subsection 2 relies on Earth jurisprudence, which emphasizes the interconnectedness of the environment and promotes a legal paradigm shift. Earth Jurisprudence draws from natural law and the teachings of Berry,

---

<sup>367</sup> *Id.* at 146.

<sup>368</sup> *Id.* at 153.

<sup>369</sup> Richard O. Brooks et al., , *Law and Ecology: The rise of the ecosystem regime* (2002).

<sup>370</sup> Vito De Lucia, *Beyond anthropocentrism and ecocentrism: a biopolitical reading of environmental law*, 8(2) *J. OF HUM. RTS. AND THE ENVTL.* 181 (2017).

<sup>371</sup> *Id.* at 186. See Rakhyun E Kim & Klaus Bosselmann, *Operationalizing sustainable development: ecological integrity as a grundnorm of international law*, 24 *REV. OF EUR., COMP. & INT’L ENVTL. L.* 194(2015). Klaus Bosselmann, *The rule of law grounded in the Earth: ecological integrity as a grundnorm*, in *THE EARTH CHARTER, ECOLOGICAL INTEGRITY AND SOCIAL MOVEMENTS* (Laura Westra & Mirian Vilela eds., 2014).

<sup>372</sup> Klaus Bosselmann, *The principle of sustainability: transforming law and governance* 93 (2017).

illustrating the moral, philosophical and religious background of emerging legal theories. Subsection 3 addresses another line of development of redefining environmental law: ecological law. Ecological law questions the inherent anthropocentric limitations of environmental law and proposes an Earth-centered approach to law and governance. Subsection 4 focuses on the international progression of the concept of harmony with nature within the U.N. system.

### 1. NATURAL LAW

Natural law provides a moral foundation that allowed reason and morality to serve as the touchstones for civil authority, rather than relying on force, pedigree, or religion.<sup>373</sup> The law of nature school addresses law from a moral standpoint. These perceive a moral duty to do what the moral ideal indicated and the precept of the political lawgivers as an attempt to realize that ideal.<sup>374</sup> Conceptually, rights are fundamentally moral claims related to human beings' intrinsic worth and the importance of the prerogatives they protect to a dignified life.<sup>375</sup> Human rights are seen as an approach to ethics, asserting the intrinsic ethical role of certain basic human entitlements.<sup>376</sup> MacCormick believes that "it is morally important that we should recognise the moral importance and the significance of moral rights."<sup>377</sup>

As Rodríguez-Garavito points out, law-centered conceptions of rights fail to hold up to empirical scrutiny, as exemplified by rights-based demands pushed forward before acknowledging any entitlement in a formal legal document.<sup>378</sup> Movements from the abolitionists, women's rights, socio-economic rights, and the Indigenous peoples preceded international recognition. Yet, these movements have used the language of natural law and natural rights as the basis for progressive campaigns throughout history.<sup>379</sup>

<sup>373</sup> Sam Kalen, *An Essay: An Aspirational Right to a Healthy Environment*, 34 UCLA J. ENVTL. L. & POL'Y 156; 164 (2016).

<sup>374</sup> Roscoe Pound, *The formative era of American law*, by Roscoe Pound 17 (Boston: Little, Brown and Company, 1938). Roscoe Pound & Marshall L DeRosa, *An introduction to the philosophy of law* § 10; 15-19 (Yale University Press. 1954).

<sup>375</sup> Cesar Rodriguez-Garavito, *A Human Right to a Healthy Environment? Moral, Legal and Empirical Considerations*, in *THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT* (John H. Knox & Ramin Pejan eds., 2018).

<sup>376</sup> Amartya Sen, *Elements of a theory of human rights*, 32(4) PHILOSOPHY & PUBLIC AFFAIRS 315 (2004).

<sup>377</sup> Neil MacCormick, *Children's Rights: a Test-Case for Theories of Right*, in *LEGAL RIGHT AND SOCIAL DEMOCRACY: ESSAYS IN LEGAL AND POLITICAL PHILOSOPHY* 158-59 (Neil MacCormick ed. 1984).

<sup>378</sup> Rodriguez-Garavito, *supra* note 375.

<sup>379</sup> Kalen, *supra* note 384, at 168.

US Supreme Court Justice Kennedy clarified that “individuals need not await legislative action before asserting a fundamental right.”<sup>380</sup> Following this rationale, civil society and state actors have invoked a right to the environment regardless of formally incorporated in an international legal instrument.<sup>381</sup>

Some scholars look to natural law as the basis for the development of Earth Jurisprudence, expanding its broad framework for ecocentric goals.<sup>382</sup> Natural law can bolster the argument that environmental protection goes beyond serving the interests of humans. It relies on the premise that there is a coherent right irrespective of written law or a binding legal obligation. Conceptually, rights are fundamentally moral claims that relate to the intrinsic worth of human beings and the importance of the prerogatives they protect to a dignified life.<sup>383</sup> Invoking a right to the environment entails a strong ethical assertion about the central role of a livable natural environment to a dignified human existence.

Since natural law provides a moral foundation that allows reason and morality to serve as the touchstones for civil authority, it supports the expansion of nature rights.<sup>384</sup> The right to the environment would not only be relevant for the enjoyment of other human rights but have an intrinsic ethical significance.<sup>385</sup> Berry recognized Earth itself as the referent for human affairs.<sup>386</sup> The natural law tradition represents the most significant jurisprudential legacy left by Aquinas and has inspired neo-Thomist theorists.<sup>387</sup> It is based on a duty to follow the moral ideal and the precept of the political lawgivers to realize said ideal.<sup>388</sup> From a naturalist perspective, environmental ethics – and the right to a healthy environment – would be binding because of its intrinsic reasonableness.

---

<sup>380</sup> *Obergefell v. Hodges*, 576 U.S. 644(2015).

<sup>381</sup> Rodriguez-Garavito, *supra* note 375.

<sup>382</sup> Peter D. Burdon, *A Theory of Earth Jurisprudence*, 37 *AUSTL. J. LEG. PHIL.* 28 (2012). CULLINAN, *supra* note 215, at 74-79.

<sup>383</sup> Rodriguez-Garavito, *supra* note 375.

<sup>384</sup> Kalen, *supra* note 384, at 164.

<sup>385</sup> Rodriguez-Garavito, *supra* note 375.

<sup>386</sup> Thomas Berry, *The Nation-State in the Twenty-first Century*, in *EVENING THOUGHTS: REFLECTING ON EARTH AS A SACRED COMMUNITY* 81, 84 (Mary Evelyn Tucker ed. 2006).

<sup>387</sup> Burdon, *supra* note 403, at 36.

<sup>388</sup> Roscoe Pound, *The Formative Era of American Law* 17 (1938); Roscoe Pound, *An Introduction to the Philosophy of Law* 15-19 (1954).

A known example of natural law to develop the right to the environment is found in the Philippines. In *Oposa vs. Factoran*,<sup>389</sup> the Supreme Court of the Philippines relied on natural law as the basis of the right to a balanced and healthful ecology. The Court said that the right “concerns nothing less than self-preservation and self-perpetuation, [the] advancement of which may even be said to predate all governments and constitutions.”<sup>390</sup> The Court further stated that such fundamental rights “need not even be written in the Constitution for they are assumed to exist from the inception of humankind.”<sup>391</sup> The Court uses natural law as the premise of the concept of “generational genocide.” Killing an entire succeeding generation is inherently wrong as it would counter the nature of humanity to preserve and perpetuate itself.<sup>392</sup> No statute is necessary for society to grasp the inherent wrongfulness of generational genocide through environmental degradation. Thus, the Court declared that the right to the environment is founded in natural law, imposing a ‘solemn obligation’ to preserve a healthy ecology and protect public health for present and future generations.<sup>393</sup>

## 2. EARTH JURISPRUDENCE

For the vast majority of Western history, law has reflected an anthropocentric human-earth relationship. Scholars are now asking: How can law, as an evolving social institution, shift to reflect the modern understanding that human beings are interconnected and dependent upon a comprehensive Earth Community? For Berry, two points are critical in this evolution towards the recognition of a community of living.<sup>394</sup> First, that human law reflects and is bound by the laws of nature.<sup>395</sup> Second, to provide legal recognition to the rights of all beings.<sup>396</sup> Therefore, ecological principles shall reflect the design parameters within

---

<sup>389</sup> *Minors Oposa v. Factoran*, a case from the Republic of the Philippines. See 224 S.C.R.A. 792 (S.C. July 30, 1993) (Phil.), reprinted in 33 I.L.M. 173 (1994).

<sup>390</sup> *Oposa*, 224 SCRA at 805.

<sup>391</sup> *Id.*

<sup>392</sup> Herbert A. Loja, *From Pronouncement to Enforcement: Bridging the Gap in Law to Promote and Protect the Right to a Decent Environment*, 58 ATENEO L.J. 740 (2013).

<sup>393</sup> Michael C Blumm & Mary C Wood, *The public trust doctrine in environmental and natural resources law*, 45 U.C. DAVIS L. REV. 741 (2021).

<sup>394</sup> BERRY, *supra* note 130, at 58.

<sup>395</sup> PETER BURDON, *EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE* (2011).

<sup>396</sup> Peter Burdon, *The Jurisprudence of Thomas Berry*, 15(2) WORLDVIEWS: GLOBAL RELIGIONS, CULTURE, AND ECOLOGY 151; 158 (2011).

which Earth Jurisprudence must operate,<sup>397</sup> recognizing nature as the ultimate referent.<sup>398</sup>

Developing from natural law, Earth Jurisprudence is an emerging theory of law that emphasizes human interconnectedness with the environment as a prerequisite for ecological sustainability.<sup>399</sup> It thus promotes a legal paradigm shift toward the ecocentric concept of ‘Earth community,’ an idea traced to Berry. As an ecocentric concept of law, Earth Jurisprudence promotes a vision for radically reconfiguring our legal system and governance structures to support rather than undermine the health and integrity of the Earth community.<sup>400</sup> Still in its infancy,<sup>401</sup> it promotes an interdisciplinary dynamic that evolves, becoming more complex and changing shape as many minds put their energies into identifying its development.<sup>402</sup>

The starting point of Earth Jurisprudence is denouncing the ecological crisis caused by anthropocentrism. In contrast to anthropocentric legal philosophies, Earth Jurisprudence represents an ecological theory of law.<sup>403</sup> At the heart of this dimension lies the premise of a necessary shift in thinking from a purely human-centered to an Earth-centered system of law and governance.<sup>404</sup> Burdon questions the efficacy of our existing environmental laws and regulations, arguing that their impact has always been limited to the extent they challenge the facilitation of economic growth.<sup>405</sup> Despite the careless way humans have interacted with the Earth, nature is a subject and not a collection of objects.<sup>406</sup> This necessitates a shift from the anthropocentric notion that nature

---

<sup>397</sup> CULLINAN, *supra* note 213, at 84-85.

<sup>398</sup> Burdon, *supra* note 396, at 159.

<sup>399</sup> Peter D Burdon, *Earth Jurisprudence and the project of Earth democracy*, in WILD LAW-IN PRACTICE 24 (Michelle Maloney & Peter Burdon eds., 2014).

<sup>400</sup> *Id.* at 20.

<sup>401</sup> See EARTH CHARTER, *supra* note 74, at 1. See THE GAIA FOUNDATION & UK ENVIRONMENTAL LAW ASSOCIATION, WILD LAW: IDEAS INTO ACTION-WHERE CAN WE FIND EXAMPLES OF EARTH JURISPRUDENCE IN PRACTICE 6 (2008) (noting infancy of Earth Jurisprudence in Draft Initial Findings); see also Ame Naess & George Sessions, *Platform Principles of the Deep Ecology Movement*, in THE DEEP ECOLOGY MOVEMENT: AN INTRODUCTORY ANTHOLOGY (Alan Drengson & Yuichi Inoue eds., 1995).

<sup>402</sup> Siemen, *supra* note 132, at 1.

<sup>403</sup> Burdon, *supra* note 382, at 29.

<sup>404</sup> BERRY, *supra* note 130, at 56-57, 80-81 (reasoning that Earth is the context and normative basis for human existence).

<sup>405</sup> Burdon, *supra* note 399, at 23-24.

<sup>406</sup> Judith E. Koons, *What Is Earth Jurisprudence: Key Principles to Transform Law for the Health of the Planet*, 18 PENN ST. ENVTL. L. REV. 47(2009), *supra* note 408, at 55. See CULLINAN, *supra* note 215, at 115 (quoting Berry, *supra* note 217).

exists for human use and toward the facilitation of ‘mutually enhancing’ human-Earth interactions.<sup>407</sup> Without such a jurisprudential shift, Earth and humanity remain at peril.<sup>408</sup>

Two significant legal consequences emerge out of the Earth Jurisprudence and the concept of Earth community. Natural law and legal positivism are ultimately concerned with relations between individuals, communities, and states. The environment is thus rarely considered. Legal positivism considers only human beings and corporations as subjects. Legal positivism, describing law from an objective perspective, posits a conceptual or purely descriptive theory of law, free from moral evaluation. Nature does not possess any inherent value and receives instrumental value and protection from property rights.<sup>409</sup> Berry critiques western law in this regard, which, he argues, is framed for the advancement of human beings, with “no significant referent to any other power in heaven or on Earth.”<sup>410</sup> In this sense, law has little understanding of the greater context and governing principles of the universe or the planet.<sup>411</sup> Rather than maintain this system of exploitation, Berry contends that we must evolve our system of law to recognize “the supremacy of the already existing Earth Governance of the Planet.”<sup>412</sup>

Berry is not alone in making the connection between a shift in paradigm and its consequence for ethics and our broader social institutions.<sup>413</sup> Teilhard de Chardin writes of this relationship, noting that “all the elements of the universe touch each other by that which is most inward and ultimate in them.”<sup>414</sup> Importantly, because Berry characterizes our environmental crisis as a ‘cultural crisis,’ he is under no delusion that it can be corrected simply by legislative amendment, introducing a new law, or a restructure of current governance systems.<sup>415</sup> Indeed, while the changes are vital, Berry argues that they must be underpinned and driven by a more profound shift in culture and worldview. He terms this shift a

---

<sup>407</sup> BERRY, *supra* note 130, at 3. Thomas Berry, *Legal Conditions for Earth's Survival*, in *EVENING THOUGHTS: REFLECTING ON EARTH AS A SACRED COMMUNITY* 107 (Mary Evelyn Tucker ed. 2006). Berry, *supra* note 217.

<sup>408</sup> Koons, *supra* note 408.

<sup>409</sup> Burdon, *supra* note 399, at 25.

<sup>410</sup> CULLINAN, *supra* note 215, at 13.

<sup>411</sup> Burdon, *supra* note 396.

<sup>412</sup> Berry, *supra* note 213, at 19.

<sup>413</sup> Burdon, *supra* note 396, at 158.

<sup>414</sup> PIERRE TEILHARD DE CHARDIN, *THE DIVINE MILIEU: AN ESSAY ON THE INTERIOR LIFE* 92 (Harper & Row. 1965).

<sup>415</sup> Burdon, *supra* note 396.

“reinvention of the human at the species level”<sup>416</sup> and notes that the “great work” before the present generation is to “carry out the transition from a period of human devastation of the Earth to a period when humans would be present to the planet in a mutually beneficial manner.”<sup>417</sup> To achieve this transition, Berry uses the medium of story. He asks, what is the best story we can tell, and how can we re-orientate the human community toward the Earth? That is a great starting point, and because of its importance to our broader discussion on law, I would like to spend a few moments outlining some of its pertinent themes.

Picking up on Berry’s thesis, Cullinan called for people to remake our legal system to support the planet by enforcing laws that promote the environment.<sup>418</sup> Since then, a small body of theoretical work on environmental justice has emerged within academic legal literature.<sup>419</sup> To shift the focus of jurisprudence from a narrow, anthropocentric perspective to a eco-centered viewpoint recognizing humankind as part of the broader Earth community, Koons explores a vision of Earth Jurisprudence through three principles: (i) the intrinsic value of Earth; (ii) the relational responsibility of humanity toward Earth; and (iii) the democratic governance of the Earth community. This shift requires a clarity of vision to embrace our relationship with Earth as a trust and a breadth of vision to support Earth Democracy in all forms of governance.<sup>420</sup>

These jurisprudential principles are illustrated through a legal framework of rights, responsibilities, duties, representative legal doctrines of standing, public trust doctrine, and intergenerational equity.<sup>421</sup> Despite the many challenges of adjudicating and legislating Earth’s legal status, it remains unaltered that nature, having intrinsic value, is worthy of legal consideration.<sup>422</sup> Our legal system must be able to consider the rights and obligations of other-than-human animals and ecological

---

<sup>416</sup> BERRY, *supra* note 130, at 159.

<sup>417</sup> *Id.* at *supra* note 130, at 3.

<sup>418</sup> CULLINAN, *supra* note 215. See generally MICHELLE MALONEY & PETER BURDON, *WILD LAW-IN PRACTICE* (Routledge, 2014).

<sup>419</sup> Jamie Murray, *Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law—Part 1*, 35 LIVERPOOL L. REV. 205 (2014); Jamie Murray, *Earth jurisprudence, wild law, emergent law: The emerging field of ecology and law-part 2*, 36 LIVERPOOL L. REV. 105 (2015).

<sup>420</sup> Koons, *supra* note 408, at 69.

<sup>421</sup> *Id.* at 51.

<sup>422</sup> *Id.* at 59.

entities.<sup>423</sup> Subjectivity may be translated into Earth Jurisprudence as the principle of the intrinsic worth of nature. This claim stands on the premise that beings, systems, and entities in nature warrant moral consideration.<sup>424</sup> The declaration of the inherent value of nature also assumes that beings, systems, and entities in nature deserve legal consideration and should be given legal recognition.

Further, it considers the principle of Earth community as both relevant and necessary to our idea of law.<sup>425</sup> Earth jurisprudence will necessarily reflect the interconnectedness of nature's laws and incorporate standards of respect and care for the other community members.<sup>426</sup> By incorporation, the Earth's entire community is defined beyond what has been thought of as a human-centered planet. It embraces Berry's definition, referring to all human and non-human life forms and components of the planet as Earth's community.<sup>427</sup> The concept of the interdependence of all things in the magnificently tangled web of life is a *sine qua non* of Earth jurisprudence.<sup>428</sup> As subjects, the members of the Earth community hold certain intrinsic rights to exist and to flourish. How we humans perceive our relationship with the other members of the larger community of beings, and our duties to protect their viability for future generations, is what shapes the formulation of law.<sup>429</sup> Since Earth jurisprudence is essentially an ecocentric philosophy of law, awe and wonder are indispensable qualities needed for creating new laws and governance that respect nature's right to exist.

Based on the idea that humans are part of a whole (Earth community), Koon argues for the principle of relational responsibility, in which humanity's relationship to Earth is expressed as a trust and our responsibility as a trustee. The public trust doctrine gives legal effect to the notions of communion and relational responsibility.<sup>430</sup> The principle of Earth community refers to the idea that human beings are interconnected to a broader community that includes both living and non-living entities. The

---

<sup>423</sup> See i.e. *Lujan v. Defenders of Wildlife*, 504 U.S. at 563 (the case is a prototypical allegation to support standing as it focuses on the injury to humans rather than the endangered species in question).

<sup>424</sup> Koons, *supra* note 408, at 57.

<sup>425</sup> Burdon, *supra* note 403, at 32.

<sup>426</sup> Siemen, *supra* note 132, at 5.

<sup>427</sup> MALONEY & BURDON, *supra* note 418, at 105.

<sup>428</sup> Siemen, *supra* note 132, at 7.

<sup>429</sup> *Id.* at 1.

<sup>430</sup> Koons, *supra* note 408, at 63.

Earth is a subject and not a collection of objects for human use and exploitation.<sup>431</sup>

Finally, the principle of differentiation is based on the knowledge that nature never makes two things alike. Through Earth Democracy and approach to governance, humanity's role is recontextualized within the Earth family and girded with a purpose that safeguards the wider Earth community.<sup>432</sup> Earth Democracy encourages governance at the local level and is based on ecosystems. This type of collaborative governance brings together actors at different levels for a common purpose, demonstrating how an ecosystem focus has the potential for renewing democracy.<sup>433</sup> At the global and nation-state level, Earth Democracy can recognize our duty to future generations.<sup>434</sup>

Burdon contends that the focus of Earth Jurisprudence should be on the ecological integrity of the Earth community, retaining a strong connection between law and science.<sup>435</sup> Ecological integrity originated as an ethical concept as part of Aldo Leopold's "land ethic"<sup>436</sup> and has been recognized in legislative instruments such as the Clean Water Act U.S. (1972).<sup>437</sup> Leopold was influential in developing modern environmental ethics and wilderness conservation, having a profound impact on the environmental movement with his ecocentric and holistic ethics on land. Because of the extent of human exploitation of the environment, wild nature provides the paradigmatic example of ecological integrity.<sup>438</sup>

Leopold notes the extension of the ethical criteria to more fields of conduct, including ethics in ecological and philosophical terms, moving away from the view of land as mere property. The

---

<sup>431</sup> Burdon, *supra* note 403, at 29. This concept is informed by BERRY, *supra* note 130; ALDO LEOPOLD, SAND COUNTY ALMANAC 11 (Oxford University Press. 1949). NICHOLAS AGAR, LIFE'S INTRINSIC VALUE: SCIENCE, ETHICS, AND NATURE (Columbia University Press. 2001). LAWRENCE E JOHNSON, A MORALLY DEEP WORLD: AN ESSAY ON MORAL SIGNIFICANCE AND ENVIRONMENTAL ETHICS (Cambridge University Press. 1993).

<sup>432</sup> See Vandana Shiva, Earth democracy: Justice, sustainability and peace 1, 9-11, 88-89 (2006).

<sup>433</sup> Koons, *supra* note 408, at 68.

<sup>434</sup> *Id.* at 68.

<sup>435</sup> Burdon, *supra* note 403, at 43-44.

<sup>436</sup> LEOPOLD, *supra* note 431 ("a thing is right when it tends to preserve the integrity, stability and beauty of the biotic community" and "wrong when it tends to do otherwise.").

<sup>437</sup> Clean Water Act of 1977, 33 U.S.C. § 1251(a) stating that the primary objective of the law is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

<sup>438</sup> Burdon, *supra* note 403, at 44.

Ecological Conscience advocates for a qualitative change in the content of conservation education and its philosophy of values, including obligations to the land above those dictated by self-interest.<sup>439</sup> “A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”<sup>440</sup> Leopold explains that all religions respect life as a basis for his land ethic. If given appropriate legal status, ‘ecological integrity’ recognizes the intrinsic value of ecosystems and can help curve the excess of human development and exploitation of nature.<sup>441</sup>

Aldo Leopold provided a holistic perspective on land as an interdependent organism that required higher ethics than simply pragmatic use.<sup>442</sup> Leopold further explained: “We abuse land because we see it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.”<sup>443</sup> His “land ethic” expands the boundaries of the human community to include soils, waters, plants, and animals, or, collectively, the land.

On the other hand, wild law is a groundbreaking approach to laws that stress human interconnectedness and dependence on nature. Wild law expresses Earth jurisprudence. It recognizes and embodies the qualities of the Earth system within which it exists. As an approach, it seeks both to foster intimate connections between people and nature and deepen our relationship with the wild aspect of our own natures. It protects wilderness and the freedom of the communities of life to self-regulate. Wild law opens spaces within which different and unconventional approaches can emerge, perhaps to flourish. Wild laws regulate what humans can do in and to the wild in ways that creates freedom for all the members of Earth’s community to play a role in the continuing evolution of the Planet.<sup>444</sup>

Where issues or concerns related to the environment are pursued,<sup>445</sup> Earth Jurisprudence provides one set of answers to these questions. Earth jurisprudence helps identify problems with the current legal system and society as a whole and seeks ways to revolutionize to see the situation through a different and powerful

---

<sup>439</sup> LEOPOLD, *supra* note 431, at 11.

<sup>440</sup> *Id.* at 11.

<sup>441</sup> Burdon, *supra* note 403, at 45.

<sup>442</sup> GRIM & TUCKER, *supra* note 21, at 75.

<sup>443</sup> LEOPOLD, *supra* note 431.

<sup>444</sup> CULLINAN, *supra* note 215.

<sup>445</sup> *Id.* at 231.

lens. This approach relies significantly on the axiom that many of society's problems stem from the almost universally held anthropocentric view, which assumes human beings reside at the center and are the entire purpose of existence, without recognizing the rights of nature.<sup>446</sup> Earth jurisprudence turns this notion on its head and relies heavily on the idea that humans are only one part of a broader community on Earth rather than its center.<sup>447</sup> Through this view, the concept of wild laws can be captured, incorporated, and promoted. Since wild law seeks to capture the importance of preserving the natural environment for the benefit of all Earth's ecosystems and natural entities, these two theories meld nicely.<sup>448</sup> Wild laws recognize the right of all beings to exist and to fulfill their respective roles.<sup>449</sup>

The framework of natural law provides a useful way to understand the nature and function of the Great Jurisprudence.<sup>450</sup> However, natural law philosophy has an inherently anthropocentric footing.<sup>451</sup> Burdon notes that language is a significant barrier to those engaged with articulating Earth Jurisprudence, given the two thousand years baggage of concepts such as 'nature' and 'natural law.'<sup>452</sup> Cullinan maintains that one of the reasons for the waning of natural law is the tendency of various groups "to claim that their beliefs are 'natural' and therefore inherently superior to competing beliefs, which they pillory as 'unnatural.'"<sup>453</sup> In light of modern scientific insights, Cullinan contends that "common good" must be extended to include humans and the broader community of life.<sup>454</sup> Earth Jurisprudence, in contrast, questions laws that contradict the

---

<sup>446</sup> Judith E Koons, At the tipping point: Defining an earth jurisprudence for social and ecological justice, 58 *LOY. L. REV.* 349 (2012).

<sup>447</sup> *Id.*

<sup>448</sup> CULLINAN, *supra* note 444, at 10.

<sup>449</sup> *Id.* at 291.

<sup>450</sup> Burdon, *supra* note 396, at 160.

<sup>451</sup> BOSSELMANN, *supra* note 215, at 236.

<sup>452</sup> Burdon, *supra* note 403, at 33. Legal positivism presents another significant challenge to the construction of Earth Jurisprudence. See Brian Bix, *On the dividing line between natural law theory and legal positivism*, in *LAW AND MORALITY* (2017). Following this analysis, if (1) Earth Jurisprudence is reduced to the claim that objective scientific evidence regarding our interconnectedness with nature should be used to evaluate our political and legal institutions and (2) legal positivism reduces to the claim that there is a possibility of, and value to, a descriptive or conceptual theory of law separated from any such scientific date, then there would seem no reason why one could not support or advocate both positions.

<sup>453</sup> CULLINAN, *supra* note 418, at 76.

<sup>454</sup> Burdon, *supra* note 396, at 161.

standard of ecological integrity. Burdon clarifies that “purported laws that undermine the health and future flourishing of the Earth community are not binding and citizens are justified in engaging in non-violent acts of civil disobedience to amend or repeal the law.”<sup>455</sup> If given legal status, ‘ecological integrity’ recognizes the intrinsic value of ecosystems and can help curb the excess of human development and exploitation of nature.<sup>456</sup> Earth jurisprudence can offer a cohesive framework within which law, politics, science, economics, ethics, traditional wisdom, and human spirituality can be woven together to create a more effective governance approach to nurturing the Earth.<sup>457</sup>

Further, Earth Democracy corresponds to a significant aspect of Earth Jurisprudence as an attempt to fuse ecocentric ethics with more profound forms of democracy and public participation.<sup>458</sup> The Earth Charter provides a solid example of these entangling ideas by promoting democracy as a means for achieving social and environmental goals.

### 3. ECOLOGICAL LAW

Based on these principles of interdependence and relational partnership between humans and nature, a group of scholars developed the foundation of ecological law. According to them, environmental law is an expression of the dominant cultural hegemony that has failed to mitigate or navigate the conditions of the Anthropocene. Environmental law presents inherent limitations that impede genuinely transformative change in achieving mutually enhancing relationships with the more-than-human and the governance of socioecological systems.<sup>459</sup> It perceives nature as an object of the human subject.<sup>460</sup> As the Covid-19 pandemic reminded us, humans and their existence are not the most important and central fact of the universe.<sup>461</sup>

---

<sup>455</sup> Burdon, *supra* note 399, at 25.

<sup>456</sup> *Id.* at 25.

<sup>457</sup> Michelle Maloney & Patricia Siemen, Responding to the Great Work: The Role of Earth Jurisprudence and Wild Law in the 21st Century, *EARTH JURISPRUDENCE & ENVTL. JUST.J.* 6 (2015).

<sup>458</sup> Burdon, *supra* note 399, at 25.

<sup>459</sup> Anna Grear, *Towards new legal futures? In search of renewing foundations, in* THOUGHT, LAW, RIGHTS AND ACTION IN THE AGE OF ENVIRONMENTAL CRISIS (Anna Grear & Evadne Grant eds., 2015).

<sup>460</sup> Anna Grear, ‘Anthropocene, Capitalocene, Chthulucene’: Re-encountering environmental law and its ‘subject’ with Haraway and new materialism, in ENVIRONMENTAL LAW AND GOVERNANCE FOR THE ANTHROPOCENE (L. Kotzé ed. 2017).

<sup>461</sup> Klaus Bosselmann, *Foreword, in* FROM ENVIRONMENTAL TO ECOLOGICAL LAW (K. Anker, et al. eds., 2020).

Ecological law, in turn, seeks to overcome the limitations of our anthropocentric legal system and reimagine an Earth-centered approach to law and governance.<sup>462</sup> It recognizes that the human sphere is a part of, is inherently connected and embedded in the Earth's ecological systems, and bound by the limits of these systems.<sup>463</sup> The transformation of the semantics of the environment naturally reflects in the institutions of law and governance.<sup>464</sup> Ecological law favors ecocentrism and emphasizes alternative concepts with other legal concepts that are on the rise, such as Earth jurisprudence, Wild Law, Earth law, ecoconstitutionalism, and rights of nature.<sup>465</sup> Its approaches to law are based on holism and intra-/intergenerational and interspecies justice so that the law no longer favors humans over nature and individual over collective rights.<sup>466</sup>

This transformation requires multiple perspectives, disciplines, and knowledges. Deepening the understanding of ecological law, Boulot proposes a culturally aware practice of ecological restoration to transform and define a law and governance system that envisions ongoing and mutual human and more-than-human flourishing.<sup>467</sup> Ecological restoration seeks to restore degraded ecosystems to a historical ecological reference point or ecological trajectory.<sup>468</sup> Given the state of our environment, the UNGA has declared 2021-2030 as the decade of ecosystem restoration. These initiatives aim to contribute to achieving a resilient ecosystem that articulates the different natural elements, including the interdependency between human and environmental health. Restoring nature and culture provides an opportunity to envision a legal system that is ecologically grounded.

The values and principles of ecological law are expressed in contemporary legal scholarship in ecocentric jurisprudence (e.g., rights of nature, Mother Earth rights, Earth law, eco-feminism, and ecological legal theory), eco-constitutionalism, and global law in the

---

<sup>462</sup> Emille Boulot, Restoring land, restoring law: Theorizing ecological law with ecological restoration, in FROM ENVIRONMENTAL TO ECOLOGICAL LAW (K. Anker, et al. eds., 2020).

<sup>463</sup> Ecological Law and Governance Association (ELGA), Oslo Manifesto (2016), <https://www.elgaworld.org/oslo-manifesto>.

<sup>464</sup> Boulot, *supra* note 462.

<sup>465</sup> K. Anker, et al., From Environmental to Ecological Law (Taylor & Francis, 2020).

<sup>466</sup> Bosselmann, *supra* note 461.

<sup>467</sup> Boulot, *supra* note 462.

<sup>468</sup> Anastasia Telesetsky et al., Ecological restoration in international environmental law (2016).

Anthropocene. It provides a comprehensive new approach that takes elements from different legal theories, including natural law, based on a historical grounding, to take the next step in environmental protection.

#### 4. UNGA'S HARMONY WITH NATURE (HWN) PROGRAMME

Nature as a subject has recently emerged as a discourse and become embedded in legal frameworks, most notably in the Americas. This legal framework is reflected in the dialogues of the UNGA's HwN Programme at the international level. In 1982, the UNGA affirmed the importance of the intrinsic value of Nature in The World Charter for Nature (Res. 37/7), which stated that "Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognitions, man must be guided by a moral code of action."<sup>469</sup>

In 2009, the UNGA adopted Resolution 64/196 titled "Harmony with Nature," designating HwN as a sustainable development sub-item in UNGA's sixty-fifth session agenda and reporting.<sup>470</sup> The 2030 Agenda, adopted in 2015, incorporated this language in seeking to "ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature."<sup>471</sup> The UNGA further adopted Resolution 63/278, which specified the necessity of promoting harmony with nature and declaring April 22nd the International Mother Earth Day.<sup>472</sup> In 2010, the Plurinational State of Bolivia presented to the UNSG the conclusions adopted at the first Peoples' World Conference on Climate Change and the Rights of Mother Earth, held in 2010 Cochabamba, Bolivia. The Conference adopted the Universal Declaration on the Rights of Mother Earth.<sup>473</sup>

A significant step in recognizing the Rights of Nature took place in June 2012 at the U.N. Conference on Sustainable Development (UN Rio+20), held in Rio de Janeiro, Brazil, where

---

<sup>469</sup> "Every form of life is unique, warranting respect regardless of its worth to men, and, to accord other organisms such recognitions, man must be guided by a moral code of action", UNGA Res 37/7, Annex, World Charter on Nature, ¶2(a), available at <https://undocs.org/en/A/RES/37/7>.

<sup>470</sup> UNGA Res/A/64/420, 12 February 2010, ¶3-4. I can't find this resolution.

<sup>471</sup> G.A. Res. 70/1, (Sept. 25, 2015). Target 12.8 of SDG Goal 12 seeks to "ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature," available at [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

<sup>472</sup> G.A. Res. 63/278, (May 1, 2009). "...in order to achieve a just balance among the economic, social, and environmental needs of present and future generations, it is necessary to promote harmony with nature and the Earth.", Preamble, ¶4.

<sup>473</sup> G.A. Res. 64/777 (May 7, 2010), available at <https://undocs.org/en/A/64/777>.

Heads of State and Governments adopted the outcome document, entitled *The future we want*. This document recognized that the Earth and its ecosystems are our home and that some countries recognize the rights of nature in the context of the promotion of sustainable development. To achieve a just balance among the needs of present and future generations, it is necessary to promote harmony with nature,<sup>474</sup> and called “for holistic and integrated approaches to sustainable development that will guide humanity to live in harmony with nature and lead to efforts to restore the health and integrity of the Earth’s ecosystem.”<sup>475</sup>

The UN HwN Programme provides a platform for promoting these goals.<sup>476</sup> Since its creation, there have been annual intergovernmental negotiations rooted in the principle and interactive dialogues of the UNGA<sup>477</sup> between international experts to inform its work. The programme has sought to bring the diversity of Earth laws and knowledge into global debates on sustainable development and recognize the connections between Earth jurisprudence and Indigenous cosmovision. The 2017 Dialogue specifically linked Earth Jurisprudence to the U.N. Sustainable Development Goals, recognizing harmony with nature as an essential contribution to attaining the U.N. Sustainable Development Goals.<sup>478</sup> As a result, twelve UNGA Resolutions on harmony with nature have been adopted, and eleven UNSG reports on harmony with nature have been published.

The 2016 Experts Report (a UNSG report in response to a UNGA’s request for an expert report on the topic) provided information and recommendations in Earth-centered governance, also known as Earth Jurisprudence, acknowledging the fundamental legal rights of ecosystems and species to exist, thrive and regenerate.<sup>479</sup> It specifically stated that the first step for Earth-centered law and policy is:

*“to include the rights of Nature in our governance systems, not by advancing its interests within the capital system as resources to be exploited, but by recognizing the fundamental legal*

---

<sup>474</sup> [G.A. Res. 66/288, ¶39](#), U.N. Doc. A/RES/66 (Sept. 11, 2012).

<sup>475</sup> *Id.* at ¶40.

<sup>476</sup> U.N. HwN Programme, *supra* note 296.

<sup>477</sup> U.N. HwN Programme, Dialogues, <http://harmonywithnatureun.org/dialogues/>.

<sup>478</sup> *Id.*

<sup>479</sup> U.N. Secretary-General, Report on Harmony with Nature, ¶19, U.N. Doc. A/71/266 (Aug. 1, 2016) (describing the experts’ reports on Harmony with Nature as requested by the UNGA in its resolution).

*rights of ecosystems and species to exist, thrive and regenerate. Nature is regarded as the source of basic “Earth rights” and these rights cannot be validly circumscribed or abrogated by human jurisprudence. These rights are not in opposition to human rights: as part of Nature, our rights are derived from those same rights. The human right to life is meaningless if the ecosystems that sustain us do not have the legal right to exist.*

The 2017 UNSG’s report (A/74/236) highlighted that the U.N. is committed to remaining conversant with recent and forthcoming transformations and actions in law, policy, education, and public engagement to a just transition to an Earth-centered paradigm. It is recommended that the Member States consider engaging in a formal dialogue among academics, non-governmental organizations, and civil society organizations regarding the drafting of a universal declaration of the rights of Mother Earth, reflecting the growing worldwide commitment and calls to protecting the Earth, future generations, and all species. Such a universal declaration will provide an international moral compass to understand life in harmony with nature better. Earth Jurisprudence legislation adopted worldwide may serve as a framework for such dialogue, further supported through the HwN website.<sup>480</sup>

The 2020 Supplement to the UNSG’s Report further noted the growing participation of academic institutions designing and delivering programmes and projects that focus on an Earth-centered paradigm, as well as an increasing jurisprudence worldwide.<sup>481</sup> Many of these advances are led by expert members of the UN HwN Knowledge Network. This year also saw the UNGA’s adoption of the twelfth resolution on HwN.<sup>482</sup>

The recognition of nature as a subject of law under different legal systems worldwide has shifted perceptions, attitudes, and behaviors from anthropocentric or human-centered, to non-anthropocentric or Earth-centered.<sup>483</sup> Through the Rights of Nature, human beings recognize that we are an inseparable part of

---

<sup>480</sup>U.N. Secretary-General, Report on Harmony with Nature, ¶134, U.N. Doc. A/74/236 (July 26, 2019).

<sup>481</sup> U.N. Supp. to Secretary General Report on Harmony with Nature A/75/266.

<sup>482</sup> G.A. Res. 75/220, ¶19, U.N. Doc. A/RES/75/220 (Dec. 30, 2020).

<sup>483</sup> The goal of this section is to briefly present the Harmony with Nature paradigm at the UN system, not analyze all the developments of the rights of nature.

nature and that we cannot damage her without severely damaging ourselves.<sup>484</sup> This change of paradigm in which the planet is not considered to be an inanimate object to be exploited, but as our typical home, alive and subject to a plethora of dangers to its health, has led to a serious reconsideration of our interaction with nature as well as support for Earth Jurisprudence in-laws, ethics, institutions, policies, and practices, including fundamental respect and reverence for the Earth and its natural cycles.<sup>485</sup> For the past decade, the UN HwN has documented and analyzed legislation, policies, constitutional, legislative, and judicial rulings on the Rights of Nature.<sup>486</sup> The UN HwN Programme has also reported and examined collaboration among non-governmental organizations (NGOs), civil society organizations, legislators, and legislative bodies working together to draft, adopt and implement laws or policies recognizing nature as a subject of rights and/or a legal “person,” protected by law.<sup>487</sup>

The Covid-19 pandemic reflects such human behaviour hence the urgency to embrace an Earth-centred paradigm to further the Decade of Action through the Rights of Nature. At the fifth session of the UNEA, the medium-term strategy for 2022–2025 adopted, called “For people and planet,” rests on the recognition of three planetary aspirations: (a) “Climate stability,” where net-zero greenhouse gas emissions and resilience towards climate change are achieved; (b) “Living in harmony with nature,” where humanity prospers in harmony with nature; (c) “Towards a pollution-free planet,” where pollution is prevented and controlled and good environmental quality and improved health and well-being are ensured for all.<sup>488</sup>

Given UNEA’s acceptance of the medium-term strategy and the developing recognition of HwN by the UNGA, ICEL recommended that the HwN is reflected in the political declaration mandated by UNGA Resolution No. 73/333.<sup>489</sup> The acknowledgment of HwN by States and civil society reflects the intrinsic value of nature in sustaining human well-being for present and future generations. The growing recognition by the UNGA on the HwN

---

<sup>484</sup> HARVARD MEDICAL SCHOOL CENTER FOR HEALTH AND THE GLOBAL ENVIRONMENT, *BIODIVERSITY: ITS IMPORTANCE TO HUMAN HEALTH* (Eric Chivian ed. 2002).

<sup>485</sup> U.N. Doc. A/71/266, *supra* note 479, ¶6.

<sup>486</sup> <http://harmonywithnatureun.org/rightsOfNature/>

<sup>487</sup> U.N. Doc. A/75/266, *supra* note 481.

<sup>488</sup> UNEP/EA.5/L.3, 17 February 2021, Medium-term strategy for the period 2022–2025 and programme of work and budget for the biennium 2022–2023 (Advance Copy), [K2100697 - UNEP-EA-5-L-3 - Reissue - ADVANCE.pdf](#).

<sup>489</sup> ICEL, *supra* note 310, at 1.

contributes to a change in paradigm in which the planet is not considered to be an inanimate object to be exploited, but as our common home. ICEL notes that a consequence of this paradigm shift is reconsideration of human interactions with Nature.<sup>490</sup>

### ***E. CONCLUDING THOUGHTS***

It is undeniable that nature is deteriorating, and humanity shares the responsibility for its state. Given the effects of our actions towards nature, we are now at risk. Every decision we make has ethical underpinnings, and “the way we choose to structure ourselves in governance, law, policy, and economics, and how we address the issues of justice, equality, equity, and integrity, have implications for the natural world.”<sup>491</sup> Despite our religion or philosophical belief, humanity can find moral ground in knowing that the Earth is our home. As our home, this interconnected space should be cherished and treasured, and our cultural values are at the core of this change of belief. Through the same principles that permeate different bedrock foundations, it is time to take care of our home.

The attempts to create links between the ethics debate and law reform have populated recent developments in international environmental law in the past decades. Scholars in religious ecology understood there to be a common ground in which the Earth is revered and respected despite our different ideologies. This article illustrated that the underlying foundation for environmental care already exists worldwide, and our cultural values provide the fundamental moral principles on which our legal principles should be grounded. The ethics to change our behavior are already out there to help us bridge the gap between how the world is and how we want it to be. Ignited by the moral worth of nature, these religious, philosophical, and legal discussions are fundamental in creating new legal obligations.

Common to the religious and ideological foundation illustrated here is that the care for the Earth reflects a right to a healthy environment and a duty to care for it. The right and the duty represent the first step into propelling us into a sustainable future that finally addresses the Earth Emergency Crisis. In light of universal environmental problems, we need universal environmental solutions. A global vision shall recognize the unity in

---

<sup>490</sup> *Id.*, at 3.

<sup>491</sup> Kathryn A Gwiazdon, *From stardust to sacred sands: protecting life on Earth through a human story of ethics, care and the cosmos*, in *THE CRISIS IN GLOBAL ETHICS AND THE FUTURE OF GLOBAL GOVERNANCE* 52 (Peter D. Burdon, et al. eds., 2019).

nature and draw from our cultural heritage grounded in philosophical and religious traditions. If we are to revert the current path, we need all nations on board. Yet despite the urgency of the Earth Emergency Crisis, several nations are still reluctant to agree to additional environmental commitments.<sup>492</sup> It is time for States to declare the state of our environment and act towards reverting it.

This notion is recently finding recognition in national courts. For example, the German Constitutional Court (the Bundesverfassungsgericht, or GCC) recently rendered a groundbreaking judgement requiring the German government to establish specific plans to achieve its mid-century GHG emissions goal.<sup>493</sup> The ruling renders Germany's current climate legislation unconstitutional as it fairly limits the rights of younger people. The court found that the protection of life and physical integrity encompasses protection against the adverse consequences of climate change, including future generations in case of irreversible developments. If the government only achieves reduction targets after 2030, fundamental rights could be jeopardized.<sup>494</sup> Following an intergenerational equity argument, the GCC ruled that one generation should not be allowed to consume large portions of the carbon budget while bearing a relatively minor share of the reduction effort, if this would leave subsequent generations with a drastic reduction burden and expose their lives to comprehensive losses of freedom.<sup>495</sup> The court thus recognized the challenge of striking a balance between the diverging interests of the present and future generations and showed the importance of constitutional amendments that support planetary integrity and global sustainability.<sup>496</sup>

---

<sup>492</sup> See Maria Antonia Tigre & Victoria Lichet, *Update on Negotiation of a New International Environmental Agreement*, 50 ENVTL. L. REP. 10818 (2020).

<sup>493</sup> Bundesverfassungsgericht, *Neubauer, et al. v. Germany*, 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (Order of Mar. 24, 2021), available at [http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210429\\_11817\\_judgment-2.pdf](http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210429_11817_judgment-2.pdf) (unofficial translation).

<sup>494</sup> *Id.*, ¶246

<sup>495</sup> Jaap Spier, Guest Commentary: A Ground-Breaking Judgement in Germany (Climate Law Blog, May 10, 2021), available at <http://blogs.law.columbia.edu/climatechange/2021/05/10/guest-commentary-a-ground-breaking-judgment-in-germany/>.

<sup>496</sup> Frank Bierman, Germany's climate law ruled unconstitutional: First reflections (Mar. 30, 2021), available at <https://www.frankbiermann.org/post/germany-s-climate-law-ruled-unconstitutional-first-reflections>.

Several scholars now argue that we need an alternate worldview to guide international environmental law.<sup>497</sup> Yet Taylor notes that one of the primary challenges that ecological concerns present for rights theory is whether entirely new approaches need to be developed or whether existing ideas can be reformed or re-interpreted to consider the limits of ecosystems and allow for a new ethical relationship between humanity and nature.<sup>498</sup> For example, the SDGs provide an accepted parameter to guide our laws and policies into the future and aim to sustain the environmental integrity needed for the health of the Earth. However, as Robinson notes, adopting the SDGs does not equate with implementing its content.<sup>499</sup> Similarly, past efforts to encourage bolder action brought by civil society have failed. The closest States have come to an agreement in the past decade is the Paris Agreement, and there is still weak political will from States to embrace it. Can we complement our existing legal system with progressive new rules that reflect a more ambitious approach to environmental problems and is grounded on a share ethics? It is time for States to commit to more. Foundational concepts such as ‘ecological civilization,’ if they became a unified field of jurisprudence, could serve to support the SDGs and other existing agreements while encouraging bolder action.<sup>500</sup>

Now that the right to a healthy environment and the complementing duty for the environment have been adopted at the international level, we can introduce additional progressive new rights and duties that take us even further in environmental protection. For example, the deep care for the Earth shared across religious and Indigenous beliefs promotes harmony with nature, which is already reflected in international environmental law. It reinforces that every person has a right to a healthy environment and relatedly shares a duty to care for the environment. These beliefs can similarly provide the pathway for evolving or emerging concepts such as intergenerational equity, ecojustice, rights of nature, and ecocide.

Several religions and Indigenous beliefs already recognize the foundation of the rights of nature by broadening environmental ethics to include the value of ecosystems and other non-human species. Yet, how do we translate these underlying ideologies into

---

<sup>497</sup> Naomi Klein, *This changes everything: Capitalism vs. the climate* 462 (2015).

<sup>498</sup> Prudence E. Taylor, *From Environmental to Ecological Human Rights: A New Dynamic in International Law?*, 10 *GEO. INT'L ENVTL. L. REV.* 309 (1998).

<sup>499</sup> Robinson, *supra* note 342, at 146.

<sup>500</sup> *Id.*, at 146.

practical efforts towards environmental protection and sustainability? Given that the foundation for shared legal principles already exists, how can we adopt a more progressive new international environmental declaration in 2022 that reflects a higher moral ground towards nature? The COVID-19 pandemic has reinforced the need to care for the health of our planet.<sup>501</sup> The climate crisis similarly highlights the fragility of the environment and the urgency to adopt swift measures that reflect an ethical understanding of the human-nature relationship.

Restating environmental legal principles is essential as human laws have proven to be manifestly at variance with the natural systems of Earth's biosphere. Further steps can integrate environmental protection with social and economic goals, fulfilling the three pillars of sustainable development. Given the global consensus on the SDGs and the moral underpinnings shared worldwide as portrayed in this article, what kind of principles and policy declarations can humanity agree on? The UNGA called for a new political declaration to be adopted by 2022. We now have an opportunity to analyze our past and look into the future with fresh eyes. Through this research, my goal is to contribute to the understanding that States already share the same moral understanding that we need to do more. Can we agree on a progressive new declaration that ensures environmental justice for people and nature? Can Earth justice be at the center of new commitments? With the lessons learned in the past decade through the biodiversity crisis, climate crisis, and COVID-19 health crisis, it is essential to come together and develop an Earth-centered approach that ensures our environmental future.

Dancer argues that we need deep legal pluralist approaches that decenter anthropocentric thinking on the environment and decenter the state in the development of Earth-law, which places responsibility for the environment and the equitable sharing of power at the heart of legal frameworks on human-Earth relations and recognizes the diversity of ontologies that shape these relationships in law and practice.<sup>502</sup> This article shows how Earth-centered discourses have existed in human societies and civilizations for millennia. Different religious and philosophical

---

<sup>501</sup> Maria Antonia *COVID-19 and Amazonia: Right-based approaches for the pandemic response*, 30(2) REV. OF EUR., COMP. AND INT'L ENV'T L. 162 (2021). Maria Antonia Tigre, et al., *COVID-19 and "New" Human Rights Symposium: Introductory Remarks* (Mar. 22, 2021).

<sup>502</sup> Helen Dancer, *Harmony with Nature: towards a new deep legal pluralism*, THE J. OF LEGAL PLURALISM AND UNOFFICIAL L. 1; 3 (2020).

underpinnings all share a view of humanity as an integral part of an organic whole, revering all living things. While the recent developments in jurisprudence may appear novel, they are somewhat latent and emergent.<sup>503</sup> Theories of land ethics, rights of nature, Earth-centered environmental ethics, wild law, and Earth jurisprudence all build on these philosophical crescendos and have proved influential at the international level through the HwN Programme. It is time to find new approaches to the law that rely on the value of nature. This article tells us the why and the how.

---

<sup>503</sup> *Id.*, at 5.