

Recognizing the Rights and Legal Standing of the Natural World: Revisiting Christopher D. Stone's Essay from an Indigenous Perspective

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Revisiting an Environmental Classic

In 1972, a young legal philosophy professor from the University of Southern California named Christopher D. Stone published in the *Southern California Law Review* one of the most important essays in the history of environmental law – “Should Trees Have Standing? Toward Legal Rights for Natural Objects.”

In his landmark paper Stone argued that society should “give legal rights to forests, oceans, rivers, and other so-called ‘natural objects’ in the environment – indeed, to the natural environment as a whole.” (Stone, 1972: 450-501). Stone’s essay was written in response to a recent decision rendered by the U.S. Court of Appeals in California in which The Sierra Club – attempting to stop a massive ski resort planned by Walt Disney Enterprises in a high valley called Mineral King located in the Sierra Mountains – lost because the Club itself had not been injured and consequently possessed no “standing” to bring suit against the development. It was Stone’s hope that his essay would influence the U.S. Supreme Court in its review of the case – *Sierra Club v. Morton* (1972). Although the Sierra Club would also lose the case at the U.S. Supreme Court, Stone’s essay did indeed greatly influence a famous dissenting opinion written by Justice William O. Douglas. Stone would later re-publish his essay in a number of other venues - most notably as a book entitled *Should Trees Have Standing? Toward Legal Rights for Natural Objects* (1974 with numerous later editions) including various accompanying essays, and most recently in *Should Trees Have Standing? And Other Essays on Law, Morals and the Environment* (1996). *Trees* became the intellectual centerpiece for the environmental movement at its height of popularity, and especially for those environmentalists who believed that the non-human elements of the natural world – in the same manner as corporations in the United States – should be granted legal standing under the law. *Trees* – which took on something of a “cult status” - also became one of the foundation readings and inspirations for so-called “Deep Ecology” proponents. The merits of Stone’s essay was widely debated at environmental and legal forums everywhere and it remains today – more than 35 years later – the most developed and respected statement on the rights of the natural world. Among the intellectuals who was deeply impressed by *Trees* was Sioux scholar Vine Deloria, Jr. who wrote and spoke about it often, most notably in his own groundbreaking book *The Metaphysics of Modern Existence* (1979).

The purpose of this paper is to revisit Stone's seminal essay in light of current environmental issues in Indian Country today. Emphasis will be placed on examining this essay as it relates to Native American philosophical thoughts and ideas and especially the unfinished work and challenges left behind by the late professor Deloria.

The Basic Premise and Impact of *Trees*

As Stone observes in *Trees*, "Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable" (Stone, 1996: 3). "The fact is," states Stone, "that each time there is a movement to confer rights onto some new 'entity,' the proposal is bound to sound odd or frightening, or laughable." (Stone: 5). As Stone notes, at one time in American history, many entities that hold rights today, were denied those rights. Women and children, Blacks, Chinese, and other racial minorities, are among those cited by Stone – and most Americans did not question the withholding of legal standing from these entities. Although Stone does not mention Native Americans in his essay, he could have added that they did not receive any degree of legal standing until the Standing Bear decision of 1879, were not given the universal right to vote in national elections until the Indian Citizenship Act of 1924, and were still denied the right in a number of western states until the later half of the twentieth century with Utah refusing to grant them full legal standing until 1968.

More to the point in Stone's essay is the fact that the American legal system grants legal standing to a number of *non-living entities*. Among the inanimate rights-holders Stone lists are trusts, corporations, joint ventures, municipalities, Subchapter R partnerships, nation-states, even ships. Stone goes on to note that going back to the Chief Justice John Marshall decisions – that same John Marshall who handed down the "Marshall Trilogy" which forms the foundation of all Indian law – in *Bank of the United States v. Deveaux* (1809) and *Dartmouth College v. Woodward* (1819) – "We have become so accustomed to the idea of a corporation having 'its' own rights, and being a 'person' and 'citizen' for so many statutory and constitutional purposes, that we forget how jarring the notion was to early jurists." (Stone: 3).

Stone's position is a simple one: if we can grant legal standing to an inanimate entity like a corporation, why not to the living entities of the natural world, or the natural world itself?

Stone begins his case by noting that an entity – be it a person, corporation, or an inanimate object – can only be a holder of legal rights if *some public authoritative body* is prepared to give *some amount of review* to actions that are demonstrably inconsistent with that "right." But why would a court do so? Stone states that for any entity to be made *court jurally* – that is to have a legally recognized worth and dignity in its own right, and not merely to serve as a means to benefit another party – which would be the actual rights holder – three criteria must be met, namely that (1) the entity can constitute legal actions *at its own behest* (2) that in determining the granting of legal relief, the court

must take *injury to it* into account, and (3) that relief must run to the *benefit of it*. (Stone: 8).

Stone acknowledges that natural objects – at least at this stage in the development and implementation of American jurisprudence - do not meet the above criteria. Consequently, natural objects themselves possess no legal standing under the law. A mountain can not bring suit to stop it from being clear-cut by a timber company, it must depend on, say an environmental organization, to do so. An environmental organization can do so only if its own personal interests – its own rights – are being threatened.

Stone's argument is that it is neither inevitable nor wise that natural objects should have no rights to seek redress in their own behalf. He writes "It is no answer to say that streams and forests cannot have standing because streams and forests cannot speak. Corporations cannot speak, either; nor can states, estates, infants, incompetents, municipalities, or universities. Lawyers speak for them, as they commonly do for the ordinary citizen with legal problems." (Stone: 12).

He goes on to add:

One ought, I think, to handle the legal problems of natural objects as one does the problems of legal incompetents - human beings who have become vegetable. If a human being shows signs of becoming senile and has affairs that he is de jure incompetent to manage, those concerned with his well-being make such a showing to the court, and someone is designated by the court with the authority to manage the incompetent's affairs. The guardian (or conservator or committee – the terminology varies) then represents the incompetent in his legal affairs. Courts make similar appointments when a corporation has become "incompetent": they appoint a trustee in bankruptcy or reorganization to oversee its affairs and speak for it in court when in bankruptcy or reorganization to oversee its affairs and speak for it in court when that becomes necessary (Stone: 12-13).

Stone's proposal then is for a *guardian* to represent natural objects in a court of law, but that the legal standing from which the court case originated would rest with the natural object solely for its own benefit.

In a later essay Stone elaborates on his notion of a guardianship based on the so-called "Malta proposal" – a 1992 proposal offered by a delegation from Malta prepared for the upcoming Rio "Earth Summit." In brief, the Malta proposal called for the world community through the United Nations to appoint a standing guardian to represent future generations of humans yet unborn. Stone expanded on this idea to call for the creation of additional guardianships to represent various categories of natural objects. Stone's essay, "Should We Establish a Guardian for Future Generations?" provides a solid blueprint and many insightful and well thought out ideas as to how such a guardianship might work and could be implemented (see Stone: 65-77).

As noted at the start of this paper, Stone first advanced his essay for the purpose of influencing the U.S. Supreme Court in their review of *Sierra Club v. Morton*, and although the Sierra Club lost their appeal, Justice William O. Douglas not only accepted Stone's argument, but mentioned it in his dissent. Specifically Douglas wrote:

The critical question of “standing” would be simplified and also put neatly in focus if we ... allowed environmental issues to be litigated ... in the name of the inanimate object about to be despoiled, defaced, or invaded ... Contemporary public concerns for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. See *Should Trees Have Standing?* ... This suit would therefore be more properly labeled as *Mineral King v. Morton* (In Stone: x).

Thus in 1973 *Trees* had the effect of having influenced at least one U.S. Supreme Court justice. But what if anything has been the lasting impact of Stone’s essay? Has the American legal system moved at all toward granting inanimate or natural objects legal standing?

Writing twenty-five years (In 1996) after *Trees* was first published Stone noted that cases continue to be brought, sporadically, in the interest, and often the name of non-humans. Often these cases are filed to protect habitat under the Endangered Species Act (ESA) – mostly with favorable opinions. But as Stone also notes that, “ ... in no case was the species the sole plaintiff. Plaintiff’s council typically covers their bets with one or more conventional plaintiffs whose standing is less vulnerable to challenge.” The only case in which a species itself actually contested under the ESA – *Hawaiian Crow (‘Alala) v. Lujan* (1991) – the species was dismissed. Generally, as Stone observed ... “the species standing in its own right has usually gone unchallenged by the defendant and not dwelt upon by the court.” (Stone: 160).

Stone also notes, that cases which “originate with what might be called the animal rights bar, as distinct from the environmental law bar” most often sees litigation (Stone: 161). Considering the long history of animal rights legislation and the number, fervor, and finances of various animal rights organizations, this is to be expected. Generally these cases involve so-called “higher” forms of mammals – commonly primates and marine animals like dolphins. Perhaps the most notable of these cases involved a New England Aquarium dolphin named Kama. This dolphin had been born in captivity at Sea World, transferred to Boston, and when it did not fit in at its new aquarium, was scheduled to be transferred to a U.S. naval station to be studied for sonar capabilities. A group called Citizens to End Animal Suffering and Exploitation (CEASE) brought suit on behalf of Kama under the Marine Mammal Protection Act to nullify the transfer. The case – *CEASE, Kama, et. al v. New England Aquarium* (1993) - went to the U.S. District Court where judge Mark L. Wolf ruled that although past efforts to designate species as “persons” under the ESA had been largely successful, none other than *Hawaiian Crow (‘Alala)* had been challenged and in that case the plaintiffs had lost. Wolf went on decide against Kama – but based on the ground that in writing the Marine Mammal Protection Act, Congress had not expressly granted status to the mammals themselves. Consequently, Stone saw this decision the judge leaving an “open question” as to if dolphins and other non-human entities might be granted standing in the future (Stone: 163).

Obviously the United States and most other countries have made great progress toward at least the humane treatment of animals. The recent and highly publicized Michael Vick case is an excellent example of how society – and the legal system – no longer tolerates

the mistreatment of animals, at least domesticated and especially “companion” animals. The so-called “Animal Rights Movement” deserves a great deal of credit for their efforts on this front, especially for their work in lobbying for legislation to curb the abuse of laboratory animals. But the term “animal rights” is something of a misnomer, at least in the legal sense that Stone uses the term. In reality, animals still have no legal standing under the law themselves and whatever rights they possess are still largely derived as being part of the property rights of humans - *if* those property rights can be demonstrated in a court of law. In *Sierra Club v. Morton* concerned environmentalists lost their case because they could not show a clear vested interest in the Mineral King Valley. This remains unchanged. Along these lines I think of my good friend Billy Frank, Jr. who is in the audience today. In Indian Country we know Billy as being an environmental champion. No one has fought harder for the protection of our ecosystems and especially salmon. We often say “Billy speaks for the salmon.” In his heart, he does. In our hearts and understanding, he does. But in a legal sense this is inaccurate. Billy can only speak for a particular ecosystem or a specific stock or run of salmon, if he can legally demonstrate that he has a property right – as an individual fisherman, or in his position as the head of the Northwest Indian Fisheries Commission. In theory if you have a run of salmon living in an isolated river which is not being harvested or exploited by people who have a vested property right in them, these salmon have absolutely no legal protection whatsoever. Theoretically a corporation could come in, purposely poison these salmon, blow up the river, do whatever they wish, and the salmon and that ecosystem which sustains them, would have no legal right for self-protection. And indeed, many salmon streams have been destroyed in such a manner by timber companies.

At this time there appears to be no movement on the legal front in the United States to grant animals – domestic or wild – or ecosystems and the natural world – any actual self legal standing.

On a broader more international scope, Stone’s essay and ideas appear to have had an impact and found a new audience in the “Earth jurisprudence” movement. This movement is best articulated by the writings of “eco-theologian” Thomas Berry (see Bell, 2003). In 2003, South African environmental lawyer Cormac Cullinan wrote *Wild Law: A Manifesto for Earth Justice* in which he expanded and articulated the basic concepts of Earth jurisprudence into what he called “Wild law” – “laws that regulate humans in a manner that creates the freedom for all members of the Earth Community to play a role in the continuing co-evolution of the planet.” (Cullinan, 2003: 32). In sum, Cullinan advocates the creation of laws that seek to balance the rights and responsibilities of humans against those of other members of the community of beings that comprise the Earth. Implicit in this is the notion that non-human beings have rights, and that humans need to change their relationship with the natural world from that of exploitation to a more “democratic” participation with nature and the rest of the larger living community. In *Wild Law* Cullinan refers back to Stone’s work on numerous occasions. In the past several years a number of conferences and workshops have been held on the concept of wild law.

The question of *constitutional protection* – and even *constitutional recognition* for the natural world has moved to the forefront in several European countries and at least one Latin American country.

On June 25, 2008 the Spanish Parliament’s Environmental Committee passed a resolution that if approved later in the year by the full parliament as expected – would grant basic human rights to all primates, specifically the “right to life, freedom, and the absence of torture.” The resolution would end all harmful experiments on apes and ban their use in circuses, television commercials, and films (Roberts, 2008).

In Switzerland – a country that has included animal protection in its constitution for over 100 years – Article 80 of the federal constitution grants the government power to enforce animal protection. In 2002, an amendment was added to Article 120, Paragraph 2 – covering “Gene Technology in the Non-Human Field” specifically “plants, animals, and other organisms” to recognize “the dignity of the creature in the security of man, animal, and the environment.” Although this amendment seems somewhat narrow in context and scope, subsequent interpretation strongly indicates that animals and plants have been granted actual legal standing under Swiss law. In 2008 the Federal Ethics Committee on Non-Human Biotechnology (ECNA) – a federally established group of scientists brought together specifically to interpret the *wurde der kreatur* – the dignity of living beings – in Swiss constitutional law and to advise the federal government as to its implementation, released a remarkable 22 page report entitled *The Dignity of Living Beings with Regard to Plants: Moral Consideration of Plants for Their Own Sake*. In this report the committee, after consulting with numerous outside experts from a broad diversity of disciplines – from law to science to theology – determined that “an arbitrary harm caused to plants to be morally impermissible.” It went on to say that simply collecting plants “requires moral justification,” that plants were excluded from “absolute ownership” by humans, and that any action with or towards plants that serves the self-preservation of humans was morally justified only “as long as it is appropriate and follows the principle of precaution.” The report concluded by stating that “plants may not be arbitrarily destroyed ...the majority (of the committee) considers this to be morally impermissible because something bad is being done *to the plant itself* without rational reason and thus without justification.” (ECNH, 2008: 20-21). In sum, plants – and presumably animals – are now considered as “beings” under Swiss constitutional law.

In the summer of 2002, Germany’s parliament voted 545 to 19 to amend its constitution to protect animal rights. The amendment – supported by 80% of the German population – added the words “and animals” to Article 20a of the German Basic Law to read, “The state takes responsibility for protecting the natural foundations of life and animals in the interest of future generations.” Previously the courts had interpreted “life” to mean only human life (see Natrass, 2004). Thus, under German constitutional law animals seem to be given the same level of protection – and perhaps the legal status – as humans.

In 2004, Austria passed similar legislation writing into its Federal Constitution animal welfare protection. More recently the European Union (EU) has discussed – but not yet acted upon – including rights for nature in their constitution.

In September 2008 The Constitutional Assembly of Ecuador became the first Latin American political body to recognize – by a vote of 92-12 - constitutional rights to the natural world. Article 1 of a chapter in the Constitution entitled “Rights for Nature” reads “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.” The article goes on to conclude “Every person, people, community, or nationality, will be able to demand the recognition of rights for nature before the public organisms. The application and interpretation of these rights will follow the related principles established in the Constitution.” Ecuador was assisted in developing the language for their rights of nature article by an American-based legal activist organization, the Community Environmental Legal Defense Fund (CELDF). This organization has also been active in the United States at the community level.

While some countries seem to be moving toward a more constitutionally-mandated relationship with the Earth and other living organisms, little progress has been made in the United States – largely due to the power and influence of corporations and their political surrogates. As just noted, there is one notable community-based exception – a glimmer of enlightenment inspired by the CELDF. This legal advisory group – led by Thomas Alan Linzey – who has acknowledged that “Stone’s work was where it all started” - is heading a movement – mostly in Pennsylvania – to help municipalities pass ordinances that deny person status to corporations in an effort to make them legally accountable to the environment. So far dozens of communities have done so. The CELDF also helps communities design ordinances that grant legal standing to ecosystems. So far thirteen municipalities have done so (Linzey, Personal Communication, 2008). In 2006 the Tamaqua Borough of Schuylkill County, Pennsylvania passed a sewage sludge ordinance that recognizes natural communities and ecosystems within the borough as legal persons for the purposes of enforcing civil rights – the first such law passed in the United States. The ordinance also denies corporations status as “persons” under the law, and allows the borough or any of its citizens to file a lawsuit on behalf of the ecosystem for any harm done by the land application of sewage sludge. Punitive damages maybe recovered with fines paid to the borough which then uses the money to restore ecosystems and natural communities. As Cormac Cullinan writes about the groundbreaking Tamaqua ordinance, “(It)...is more than extraordinary – it is revolutionary. In a world where the corporation is king and all forms of life other than humans are objects in the eyes of the law, this is a small community’s Boston tea party.” (Cullinan, 2008:4).

It remains unclear if the CELDF movement will continue to gain momentum, or how wide-spread it will become. More importantly, it is unclear if it will survive the court challenges that the corporations will undoubtedly bring against it. The fact remains that the United States – more than any nation in the world – is a corporate-controlled country. In an economic sense, and in a very real way a political sense, corporations own and operate the federal and state governments, and consequently, the legal system. Laws tend to reflect the viewpoint of those who hold power and are generally slow to change. To recognize legal standing to nature would pose a far greater threat to corporate America

than did the similar recognition of legal status to women and minorities in an earlier era because it would threaten the very thing that keeps them all-powerful – the exploitation of natural resources. In the United States – a nation whose energy policies are written behind closed doors by corporate robber barons – and later sanctioned by the highest court in the land – it seems highly unlikely that non-human entities will receive legal standing in the near future.

In the end, the best hope for the natural world to achieve legal standing in American jurisprudence might be where such standing has always been historically recognized – on Native American tribal land – and hopefully one day through the sovereign legal systems of Indian Country.

An Indigenous Philosophy as to Law and the Rights of Nature

Native Americans were, are, and remain creationists. Every Native American tribe possesses its own origin story as to how the universe and all life came to be. Unlike western society and its Judeo-Christian creation story – and the western law that springs from this tradition – Native creation and law does not elevate humans above the other Animal or Plant People. There was no separate or special creation that gave man dominion over other life, and the other animals and plants with which man co-existed with on the Earth were not created merely for his use or pleasure. All entities were equal to each other. Every individual entity – even those deemed as “non-living” in terms of western thought – such as rivers, rocks, mountains and the sky, possessed its own individual life, spirit and soul, and purpose. Consequently every entity possessed its own inherent right to exist apart from the desires and needs of human beings.

The historical literature of Native American philosophy provides numerous examples of tribes recognizing the rights of the animal world. Often this is stated very explicitly. Luther Standing Bear, for example, provides the following philosophical viewpoint of his people, the Lakota:

The animals had rights – the right of man’s protection, the right to live, the right to multiply, the right to freedom, and right of man’s indebtedness – and in recognition of these rights the Lakota never enslaved the animal, and spared all life that was not needed for food and clothing (Standing Bear, 1933/1978: 193).

More recently a number of Native American intellectuals have sought to articulate this traditional indigenous view on the rights of non-human beings to the modern world. The late Iroquois scholar John Mohawk offered the following comments in a groundbreaking essay entitled “The Rights of the Animal People”:

The Indian cultures accept the legitimacy of the animals, celebrate their presence, propose that they are “peoples” in the sense that they have an equal share in this planet and, like peoples, have the right to a continued existence. Animals have the right to live as animals. If all of the above are true, humans have no

right to destroy animal habitat, or hunt or fish them to extinction, or even for commercial reasons (Mohawk, 1988:).

Still yet another contemporary Iroquoian philosopher, Oren Lyons, has stated:

We see it as our duty to speak as caretakers for the natural world ... the principle being that all life is equal, including the four-legged and the winged things. The principle has been lost; the two-legged walks about thinking he is supreme with his manmade laws. But there are universal laws of all living things. We come here and say that they too have rights (in Grinde and Johansen, 1995: 264).

Greg Cajete, Tewa, in his book *Native Science* notes that at least some segments of the modern day environmental movement are beginning to recognize a concept that Indigenous people have always known, “the idea that we are all related, that humans have a responsibility to animals.” Cajete goes on to state:

The whole concept of animal rights is not new; Among Native people animals have always had rights, and were equal to human beings in terms of their right to their lives and to the perpetuation of their species. One could describe these beliefs as a type of natural democracy (Cajete, 2000: 168).

In the framework of Cajete’s “natural democracy” all life shared a common creation, all life was considered to be kin – relatives. The Lakota phrase *Mitakuye oyasin* – “all my relations.” – illustrates this concept well. Some animals were referred to as “Grandfather” or “Father” (or Grandmother or Mother) indicating a family descent. In fact, many tribal clans traced their descent to some animal. Consequently, it is common for a traditional Indian to refer to his clan when he or she introduced themselves to someone by saying “I am bear,” or “I am wolf.” In continuing this train of thought such a person would refer to the bears or wolves living out in the mountains or prairies as “Brother” or “Sister.” Such a point of reference strongly suggests that Native Americans believed that a very fine line existed between humanity other animals.

Some tribes extended living attributes to what western society would refer to as non-living entities. The Navajo considered entities like mountains, rivers, and the rain also as “beings” and even talked of each as possessing a sexual identity. A hard driving rain, for example, was a “male rain.” A softer more gentle rain was designated as being female. Other tribes considered rocks and stones to be living entities. In his book *The World We Used to Live In: Remembering the Powers of the Medicine Men* (2006), Vine Deloria, Jr. devoted an entire chapter to the powers and miraculous behavior of sacred stones (Deloria, 2006: 149-166).

In the Native American world view each entity was bound together in a system of reciprocal relationships which western ecologists only recently have come to call the web of life. Most importantly for the purpose of this paper Natives Americans were themselves an inherent part of this web of life. In the past western writers have tended to misrepresent and trivialize this relationship by saying that Indians “loved” or were “close to” nature. But again, to re-state and emphasize this important point, Native people *were an integral part* of the natural world and as such not only took from, but gave to the other

entities as a means of fulfilling their obligation to help insure that the world continued to flourish in cooperative harmony. An example of this give and take relationship might be a Native Northwest Coast fisherman who would catch a salmon that had willingly given its life to provide him and his family with sustenance. In return the fisherman would in prayer and ceremony return the bones and the uneaten flesh of the fish to the river from which it was caught. In this way he not only honored the fish and insured its future return, but also contributed to the nutritional health of the river and its ecosystem. Another example might be a tribe that collected meat, wood, berries and medicine from a particular mountain. In return, tribal members might refrain from going into those mountains for part of the year – perhaps when the Animal people were giving birth to their young – or would go into the mountains at another designated time of the year to offer the necessary prayers and ceremonies needed to minister to the health and continued well being of that mountain and its inhabitants. The relationship of the Lakota to the Black Hills is a good example of such a reciprocal relationship. The relationship of the Gwich'in to the caribou calving grounds of the Arctic National Wildlife Refuge is another.

Perhaps the best intellectual discussion of the concept of an Indigenous reciprocal relationship with the natural world is provided by Vine Deloria, Jr. (with Daniel R. Wildcat, co-author) in *Power and Place: Indian Education in America* (2000). In a simple equation, $\text{Power} + \text{Place} = \text{Personality}$, Deloria provides an Indigenous metaphysical view of world in which *power* is defined as the “living energy that inhabits and/or composes the universe,” while *place* refers to the “relationship of things to each other.” For Native Americans power interfaces with place to necessitate a *personal relationship* between all living things. In other words, the universe is not only alive, but personal and must be approached in a personal manner (Deloria and Wildcat, 2000: 22-23). Deloria notes that:

The personal nature of the universe demands that each and every entity in it seek and sustain personal relationships ... The broader Indian idea of relationship, in a universe that is very personal and particular, suggests that all relationships have a moral content. For that reason, Indian knowledge of the universe was never separated from other sacred knowledge about ultimate spiritual realities (Ibid: 23).

Deloria goes on to stress that “The spiritual aspect about the world taught the people that *relationships must not be left incomplete*” (my emphasis). He then goes on to say: “There are many stories about how the world came to be, and the common themes running through them are the completion of relationships and the determination of how the world should function” (Ibid.).

Deloria also notes that it was important that relationships were *appropriate*:

The corresponding question faced by American Indians when contemplating action is whether or not the proposed action is appropriate. Appropriateness includes the moral dimension of respect for the part of nature that will be used or affected in our actions. Thus killing an animal or catching a fish involved paying respect to the species and the individual animal or fish that such actions have disturbed. Harvesting plants also involved paying respect to the plants. These actions were necessary because of the operative relationships that had to be maintained. Thus ceremonies such as the First Salmon and Buffalo dance and the Strawberry Festivals and the Corn Dances celebrated and completed relationships properly or ensured their continuance for future generations (Ibid.: 24).

In a time before written law, the need for people to honor their reciprocal duties to the natural world was passed down through the oral tradition. The late Cherokee scholar Robert K. Thomas developed in the 1970s and 1980s a model which well explains how tribes lived in what he called an “Ideal” tribal society – that is tribal life before any contact with outside peoples. In an article on Native American mental health Thomas noted that:

The second characteristic of Indian groups is that these societies are traditional societies. By tradition I mean a body of knowledge that has been accumulated over time by a social group and which regulates life. There’s very little authority among North American Indian tribes mainly because authority is vested in tradition, not persons (Thomas, 1982: 5-6).

Thomas goes on to state:

Now that body of tradition is usually thought of by tribal people in North America as ‘the Law,’ or ‘the Way,’ or ‘the Rule’ or what have you. The Law or the Way or that Rule is outside of the person ... Internal guides and controls are little developed in North American tribals. Guides and rules and controls are outside the individual (Thomas: 6).

Thomas also emphasizes the sacred nature of tribal law:

The third characteristic is that Indian societies are sacred societies. Tradition is sacredly sanctioned. In fact, to talk about tradition per se is really a distortion. Tradition is sacred like everything else. Life is sacred. Everything is meaningful. There is nothing dead in the tribal world ... The universe has order, it has reciprocity, it is alive, it is moral, it has meaning. And that’s everywhere. There is nothing dead in a tribal world and nothing without meaning to the person. It is the realm of the sacred that is casual. If you ask an old Papago why the country is drying up, he might tell you it is because the Papagos don’t put on rain ceremonies like they once did. In other words, that’s what causing the lack of rain. Immoral human agency in the sacred is what is conceived of as casual (Thomas: 7).

What Thomas is saying – or at least my understanding of it - is that every Native American tribal society lived under what might be called a “higher law” – a partly spiritual and partly experiential body of expected behavior from which there was little deviation. There was no need to formally record these laws as they were handed by the oral tradition and were known by every tribal member. They were followed unquestionably. Most importantly, they were not man-made laws, but rather what might be called natural law. Consequently, although elders and spiritual leaders might be looked upon to interpret these laws, they did not sanction or enforce them. And finally, there was always a price to be paid when these laws were not followed. But the most important point here is that within this body of higher or natural law all entities had rights – they possessed in the western vernacular, standing.

In recent years, as western-style tribal governments seem to have become less and less responsive to the natural world and as a consequence most tribes have experienced environmental degradation – which western-styled laws seem unable or unwilling to address - there has been a renewed interest in traditional tribal governance. It is to this issue that I now turn.

A Modest Proposal to Tribal Governments

From a tearful Iron Eyes Cody (actually a Sicilian fraud whose real name was Espera de Corti) paddling his canoe through a trash-laden body of water for the “Keep America Beautiful” campaign in the 1970s - to more recent Hollywood movies like *Dances With Wolves* and Walt Disney’s *Pocahontas* – the image of the Indian as an environmental spokesperson has been a strong one in American culture. Historically there is no doubt – despite the ranting of people like Shepperd Krech III – that Native Americans were indeed the first and most complete environmentalists. It is far more questionable if tribes today can morally lay claim to such a title.

Most modern tribal governments are products of the Indian Reorganization Act (IRA) of 1934. Under the IRA tribes were encouraged and often coerced into developing political structures of governance that looked like, and most importantly reflected the values of the United States government. Many tribes did so willingly. In the wake of the disastrous assimilation policies of the Dawes Act and the Allotment era, the IRA must have seemed, and in many ways actually was, a ray of hope for tribal sovereignty. But the new IRA tribal governments were modeled after a flawed American-style form of government that encourages political corruption, favors the rich and powerful, fosters dependency among the majority, and generally leaves behind its more impoverished members. It is also a government which, as already noted in this paper, promotes the interests of corporations over the interest of the natural world and in doing so has brought the entire Earth to the brink of ecological collapse.

Chief Oren Lyons, the Faithkeeper of the Onondaga tribe of the Haudenosaunee (Iroquois) Nation, best summarized this “corporate mentality” toward the natural world in an address before the Earth Summit at Rio de Janeiro in 1992:

... Western civilizations look at life as resources, and as long as they use that term for life as resources, you’re never going to gain anything. When you recognize life for what it is: a tree as a spirit, a tree as a living being, a tree as a grandfather that we call; when you recognize that there is a reason for all of these beings and that these beings are interlocked, that we depend on one another; if we can change the definitions, we if can have people speak about life for what it is – as life with equal value, as life necessary for survival and not as commerce and not as resources then we may have a chance. But as long as we look at forests as resources, as long as we look at these things as board-feet of lumber or we look at fish runs as resources for people, we’re going to continue to use them without restraint and without guidance (Lyons, 1992: 4).

Although Lyon’s remarks were directed at western societies, it is sadly clear that most tribal governments operate in the same manner and are motivated by the same profit-driven value system. No where is this more evident than in the manner which tribal governments view the natural world. Plants, animals, birds, fish, water and minerals are considered “resources.” Every tribe has a natural resource department that treat these

entities as property that need to be managed, as opposed to kin that need to be respected and dealt with in an appropriate manner. And despite the rhetoric of most tribal leaders who proclaim – usually before a non-Indian audience – that their people have always lived in harmony with and respected the Earth – there is little evidence to support the fact that they believe in or are willing to stand by their words. The fact is that the vast majority of tribes from both a philosophical as well as an operative position, continue to run their natural resource programs no differently than do those of any state government.

In recent years there has been a renewed interest by tribal people – as shown by the papers presented at this symposium - to move away from the corporate-business model of governance and towards more traditional forms of leadership. So far there has been little progress made on this front – entrenched tribal leaders find it more appealing to position themselves as CEOs rather than servants of the people – but a serious discussion seems to have been brought to the table.

Vine often said – and I am paraphrasing here - that if tribes were going to claim to be sovereign nations, they needed to act like they were sovereign nations. In one of the most important essays ever written on self-determination and tribal sovereignty, Deloria – in noting that the U.S. Supreme Court has always referred back to the “distinct people” aspect of Indian tribes - argues that sovereignty is as much cultural as it is political:

Sovereignty, in the final instance, can be said to consist more of continued cultural integrity, than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty (Deloria, 1979: 27).

In this essay Vine admittedly was not talking about the relationship of Native people to the environment, but rather the need to restore traditional internal institutions such as educational and welfare programs. Given the body of his later life work, however, it is quite clear that Vine considered things such as re-establishing appropriate, reciprocal relationships to the natural world to be a vital part of the “cultural integrity” he is referring to in the above passage in terms of tribes not simply declaring, but actually exercising their sovereignty.

Increasingly, as tribal governments have come under intense criticism for their ineffectiveness, there has come a realization that tribal constitutions need to be seriously revised (See, for example, Lemont, 2006). For those tribes that truly see themselves as sovereign nations and wish to move beyond the rhetoric to actuality, and who really believe in traditional values as a means to distinguish their uniqueness apart from the American mainstream, I offer the following modest proposal: That they should call together constitutional conventions or some other more traditional means of assembly, enlist the aid of tribal elders and spiritual leaders, and dramatically rewrite or amend their constitutions to reflect traditional values, including the recognition of the rights of the natural world and all of its living and non-living entities.

The fact is that if countries like Switzerland, Germany, and Ecuador can rewrite their constitutions to recognize the rights of nature, why not the indigenous tribes for who it is a far more inherent part of their culture?

The fact is that if a dozen or so municipalities in the United States can rewrite their ordinances to declare their independence from over-bearing federal agencies, state governments, and corporations, why not the indigenous tribes of the United States who possess a far stronger and more inherent claim to sovereignty?

It is quite obvious that tribes can do so if they possess the desire and political courage.

For those tribes that choose to follow such a course, I further suggest that various Native rights organizations such as the National Congress of American Indians (NCAI), offer their expertise in helping them draft new constitutions or to amend existing ones. If Native organizations are unable to assist in this effort, I strongly suspect that the before mentioned CELDF – which helped Ecuador write their constitution and also has experience working with indigenous groups in both the United States and Latin America – would be willing to provide guidance. Sadly the CELDF has already approached numerous tribes to offer their assistance only to be rebuffed. Thomas Alan Linzey of the CELDF has stated that “I can almost say that they (tribes) seem even more *colonized* (My emphasis) than our white communities in terms of the law and being unwilling to go frontally against some of the U.S. law (Linzey, personal communication: 2008).

Again, it is a matter of desire and political courage.

What would such a clause or amendment look like? It could be a single paragraph that states that the tribe acknowledges that the natural world and all of its entities – the Animal and Plant People, the mountains, rivers, sky – all beings - possess the inherent right to live free and to experience the natural cycle of birth, life, and death. It would recognize the fact that all of these beings – including humankind - participate in a reciprocal network of relationships that comprise the great web of life. It would acknowledge the natural cycle of creation, life and death and that understanding that one life is willingly given so that another can go on. In doing so, the clause or amendment would recognize the natural and traditional role of Native hunting and fishing – and the prayers, ceremonies, and other practices that accompany such activities – as being necessary elements in fulfilling humankind’s role in the scheme of reciprocal relationships. Such an Indigenous clause or amendment of the rights of nature would be a far more thoughtful and complete than anything western society has yet to offer.

I might add that such a clause or amendment can be written to recognize and guarantee the right of tribes to commercially harvest as well. A reciprocal relationship implies that all entities must survive in order to keep up their obligations in the relationship. The reality is that activities such as, say commercial fishing for tribes in the Northwest Coast, are necessary for the survival of the people.

Tribes also need to stand up for the rights of nature in a collective sense. On August 1, 2007, 11 Indigenous nations from the United States, Canada, Australia and New Zealand gathered at the Lummi Nation to sign the United League of Indigenous Nations Treaty. The treaty was based on the determination that Indigenous nations were not bound by the

laws of their colonizers and retained the inherent right to enter into their own nation-to-nation agreements with each other for their own mutual interest and benefits. In time, 33 additional nations ratified this treaty which creates a United League of Indigenous Nations of the Pacific Rim. This organization plans future meetings and will eventually seek member nations from Mexico, Central and South America (Parker, personal communication: 2008). Such organizations reflect the sovereign will of Indigenous people – and ideally – the traditional values of these people as well. I would hope that future discussions and documents produced by organizations like the United League of Indigenous Nations include strong statements of recognition of the rights of nature.

Again, if a collective body of European nations like the EU can at least consider the inclusion of the rights of nature in its constitution, then why not the collective bodies of Indigenous nations for whom it is a far more inherent aspect of their traditions?

Once tribes have constitutionally acknowledged the rights of natures – have recognized the legal standing to the natural world within the boundaries of their own nations and in their own tribal governments and courts of law – then and only then will they have reclaimed the moral authority to speak for nature in the larger legal arena – to step forth as the guardians envisioned by Christopher D. Stone in *Trees* – and truly be the environmental spokesmen that they once were, and so desperately need to be again.

Oren Lyons perhaps best summarized the need and the promise of Native Americans speaking for the natural world when he recounted his words to a meeting of the Non-Governmental Organizations of the United Nations in 1977:

We went to Geneva, the Six Nations, the Lakota Nation, as representatives of the indigenous people of the western hemisphere, and what was the message that we gave? ‘There is a hue and cry for human rights,’ they said, ‘for all people,’ and the indigenous people said “what of the rights of the natural world? Where is the seat for the Buffalo of the Eagle? Who is representing them at this forum? Who is speaking for the water of the earth? Who is speaking for the trees and the forests? Who is speaking for the Fish, for the Whales, for the Beavers, and for our children? We are indigenous people to this land. We are like a conscience; we are small, but we are not a minority; we are the landholders, we are the land keepers; we are not a minority, for our brothers are all the natural world, and we are by far the majority (Lyons, 1984: 91-93).

Each year I show to my Rights of Indian Tribes class an excellent video entitled *The Trial of Standing Bear*, a dramatization of the 1879 court trial by which Standing Bear, chief of the Poncas, sued the United States government essentially to prove that Indians were human beings who were entitled to rights under the law. At one point in this video the attorney representing the Ponca, Andrew Poppleton, explains to the Ponca that under current law Indians were viewed as being almost like children who had no rights of their own. Standing Bear responds angrily by proclaiming, “Children! Then the law is like a child!” Poppleton replies by agreeing, “Yes, you could put it like that that ... all of us are trying to help the law grow up a little.”

I am not sure if this exchange of words ever took place, but they do accurately reflect the reality of times in regard to how Native Americans were viewed by the courts that interpreted the Constitution, and to the need for the law to evolve to recognize their

inherent rights. The same can be said today as to the need for the law to further evolve to recognize the equally inherent rights of nature and all living entities, the plant and the animal people. In sum, the law needs to grow up – and Native people can as they did earlier in the *Standing Bear* decision – lead the way.

In closing, there was a time when the “Founding Fathers” of our country turned to the Native people of this continent for ideas and guidance as to what direction they should take in creation of their new nation. There is little doubt that many of the basic principles of American democracy trace their origin back to the foundations of earlier Indian democracies, most notably and directly the Haudenosaunee, the ancestors of contemporary intellectuals like John Mohawk and Oren Lyons. The United States never truly followed the spirit of the Haudenosaunee, and as noted elsewhere in this paper, the governments of Indian nations eventually came to model themselves after the American federal system. The time has come for Indian nations to again show the way, to set an example which the United States will hopefully one day become mature enough to follow.

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