

Dominium

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DOMINIUM

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The declining situation of planet Earth is, by all indications, becoming profound and far reaching in its many manifestations. One of the more obvious causes of this decline is climate change that is already affecting fundamental life-giving and life-sustaining components of the biosphere. The scientific evidence of the rapid degradation of the earth's ecosystems, as a direct consequence of human activity, is overwhelming. Science tells us that humanity is engaged in the process of rapidly and permanently damaging the earth's life-supporting systems.

Because of the dominant role that humanity is playing in the present epoch, which is being named the *Anthropocene*, it becomes imperative to reconsider the Human-Earth relationship. More particularly, we must consider the concepts of property, ownership, and *dominium*, where property is seen as “an institution for allocating resources and distributing wealth and power” according to Dukeminier and Krier—a view which is having a direct impact on already strained global ecological limits.

Book One of Genesis (King James Version) has historically provided a convenient principle:

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

27 So God created man in his own image, in the image of God created he him; male and female created he them.

28 And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.

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According to this story, humanity was placed in an intermediary position between God and Nature. God gave humanity ownership of the planet, which traditionally has included “the right to use, enjoy and dispose” thereof “fully and freely.” As this principle evolved over the centuries, humanity has considered itself at the center of the universe and entitled to an unlimited right of appropriation. Even though we have clearly moved away from this oversimplified view, recognizing the fact that there are significant restrictions to the exercise of an “absolute” right, large portions of the inhabitants of this planet are still quite convinced that, ultimately, the earth belongs to humanity, for its exclusive use and enjoyment. For example, the commitment to perpetual economic growth is still the prevailing force driving humanity’s use of planetary resources without adequate reference to the depletion and pollution of Earth’s life systems and their sustainability.

Humanity’s perceived dominion over the earth may well be one of the key factors in making this process possible. With the exception of notable examples provided by a number of Indigenous societies, we have neither developed nor evolved in a harmonious way with the biosphere of which humanity forms an integral part. This lack of harmony has now become a major source of destruction.

What seems to be needed in addition to more scientific facts is a profound change of worldview, a shift in the way as human beings we relate to each other, to the other living beings on this planet, and ultimately to the planet itself. The Genesis narrative is clearly no longer acceptable within the framework of evolutionary cosmology derived from contemporary science. The required shift will entail a redefinition of the characteristics of *dominium*, ownership, and property as fundamental concepts. The recent developments in the fields of ecological economics, property rights, and sustainability and planetary boundaries seek to relate law, governance, and economics to renewed definitions of *dominium* that would take into account the impacts of human activity on the biosphere by recognizing not only rights of appropriation but also duties to protect and preserve Earth’s life systems.

But the change of worldview and the shift of understanding that are required at this time have yet to be explicitly developed so that a meaningful consensus can emerge to support the kind of concerted action now called for. Such changes, to the extent that they seek to curtail traditional attributes of *dominium*, are neither shared nor underwritten by most of those in power, by the members of the political, financial, and economic elites who are the immediate beneficiaries of the present exploitation of the resources of the planet and who rely on strong notions of property and sovereignty to protect their interests. On the contrary, we witness many instances where their opposition to any significant change is quickly translated into fully and lavishly funded political, legal, and legislative

actions, designed to prevent any kind of curtailment of their self-centered destructive operations.

Two distinct questions could be considered:

- How can the required change or shift in worldview be defined and described, and what fundamental principles will be adopted as a foundation?
- Once more clearly enunciated, how will such a change of paradigm be implemented?

In my view, the most important single aspect that should serve as the underpinning of a change in the prevailing worldview is the recognition that human beings form an integral part of the biosphere; that all forms of life are interconnected and interdependent. This recognition would indeed shift our perception of ourselves as distinct and separate owners of this planet and inspire and inform the changes that would seem to be required at this time. As Burdon argues, ownership would no longer be seen as a right to exclude but one inspired by the need to share, to respect, to be responsible, to preserve the substance, and would recognize the inherent “rights” of the earth and of Nature in all their diversity.

In redefining the Human-Earth relationship, there is an element of responsibility that can naturally flow from humanity’s “uniqueness” or “anthropocentrism.” As Aldo Leopold has pointed out, the quality of “uniqueness” is not necessarily bad in itself, provided that recognition is given to the fact that uniqueness and unity in fact coexist. As has been very often said, humanity forms an integral part of the earth and the uniqueness referred to does not constitute a separation. From the principle of unity/uniqueness flows a responsibility to respect, protect, and preserve life—the life that all beings share.

There are many implications that flow from this redefinition as we attempt to implement such a change. One such implication that appears to be particularly significant is the need to address the constantly increasing inequality of wealth between the extremely rich and the others who live on this planet. This increasing concentration of wealth is not only undermining the very existence of large segments of the world’s population by excluding them from access to the bare necessities of life through indiscriminate use and excessive hoarding, including “land grabbing,” but is also making it possible for those with such wealth to subvert the whole democratic process. The possible accumulation of unlimited wealth by individuals or corporations is not subject to effective limitations and is presently protected and secured by the traditional characteristics of the right of ownership. The distortions that such inequalities bring about limit the possibility of adopting principles of “strong sustainability” and intergenerational responsibility and of enacting laws providing for different forms of participatory ownership. Some economists, such as Tim Jackson,

consider that in the short term, wealth inequality is a greater problem than the impact attributed to increasing global population (demographics).

As the concept of ownership is redefined to become an inclusive force—not one that institutionalizes and protects separateness but that promotes a more equal distribution of wealth—life-sustaining elements that are essential for the survival of beings on this planet would be given the status of *res communis*, expanding the scope of the public trust doctrine and the content of the World Heritage or *Patrimoine commun de l'humanité*. On another scale, the significance of the traditional principles that have supported state sovereignty would need to be redesigned to make it possible to implement the kind of world harmony that is called for without the interference of states invoking their right of sovereignty to prevent enforcement of laws and international conventions designed to protect Earth's life systems for the benefit of all beings.

From an individual perspective, the present situation of the planet provides a strong impetus to question and redefine the foundations of our convictions, our beliefs, and more pointedly, our understanding of our relationship with the world in which we were born, where we live and where we will die, leaving after us a complex inheritance of liabilities. Our children will have no choice in the matter since in this context the rule “*le mort saisit le vif*” will operate in an absolute way, preventing our children from conditioning their acceptance of this heavily burdened patrimony by availing themselves of any form of conditional acceptance or one “with benefit of inventory.” They will be bound by all the liabilities that we leave behind.

As profound shifts in worldview are required, the scientific and academic worlds are engaging a considerable amount of research and creativity in this process, generating at once hope and cynicism. The sense of impending doom is always present but it may serve more to stimulate than to discourage. The challenges are huge in their complexity and magnitude. It is no longer pertinent to be either optimistic or pessimistic since both attitudes are irrelevant. The results of all these endeavors are not yet known even though they appear to be promising. But in the meantime, there is much to do and more to attempt.

The link, which relates us all one to the other, to nature, to the planet, to other beings, is life itself—this mysterious quality that remains forever a source of wonder and awe, irrespective of our religious beliefs. We share the same life with each other, with animals, with insects, with vegetation, and with all beings living in our biosphere. It is this life force that is the impulse for all our actions.

Mais la nature est là qui t'invite et qui t'aime ;
 Plonge-toi dans son sein qu'elle t'ouvre toujours :
 Quand tout change pour toi, la nature est la même,
 Et le même soleil se lève sur tes jours.

Lamartine, *Le Vallon*

References

- Berry, Thomas, *The Great Work: Our Way Into the Future* (New York: Bell Tower, 1999).
- Brown, Peter G & Geoffrey Garver, *Right Relationship: Building a Whole Earth Economy* (San Francisco: Berrett-Koehler, 2009).
- Burdon, Peter, ed, *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Kent Town: Wakefield Press, 2011).
- Cullinan, Cormac, *Wild Law: A Manifesto for Earth Justice*, 2nd ed (White River Junction, VT: Chelsea Green, 2011).
- de Lamartine, Alphonse, *Méditations poétiques* (Bruxelles: Ligarane, 2015)
- Dukeminier, Jesse & James E Krier, *Property*, 5th ed (New York: Aspen Law & Business, 2002).
- “Economics for the Anthropocene” (last visited 17 August 2020), online: *Economics for the Anthropocene* <e4a-net.org> [perma.cc/62JF-ECAX].
- Grinlinton, David & Prue Taylor, eds, *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (Leiden: Martinus Nijhoff, 2011).
- Jackson, Tim, *Prosperity Without Growth: Economics for a Finite Planet* (London, UK: Earthscan, 2009).
- Kaag, Mayke & Annelis Zoomers, eds, *The Global Land Grab: Beyond the Hype* (Hilfax: Ferwood Publishing, 2014).
- Leopold, Aldo, *A Sand County Almanac: And Sketches Here and There* (New York: Oxford University Press, 1949).
- Nadeau, Robert L, *Rebirth of the Sacred: Science, Religion, and the New Environmental Ethos* (New York: Oxford University Press, 2013).
- Ost, François, *La nature hors la loi : l'écologie à l'épreuve du droit* (Paris: La Découverte, 2003).
- Patel, Nehal A, “Mindful Use: Gandhi’s Non-Possessive Property Theory” (2014) 13:2 Seattle J for Soc Justice 289.
- The Bible: Authorized King James Version*, with an introduction and notes by Robert Carroll & Stephen Prickett (Oxford: Oxford University Press, 1998).