# ARTICLES

## UNNATURAL FOUNDATIONS: LEGAL EDUCATION'S ECOLOGICALLY-DISMISSIVE SUBTEXTS

BY

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*The specter of accelerating environmental decline, increasingly accompanied by a full-throated, corporate-financed chorus of climate change deniers and free market fundamentalists, has prompted environmentalists to apply greater scrutiny to those forces and institutions reinforcing and abetting this revanchist phenomenon. An emerging analysis contends that legal education serves as an indispensable resource for anti-environmentalism, given that it perpetuates the production of zealous practitioners who serve as apparent values-free apparatchiks—as opposed to responsible planetary citizens—furthering an increasingly destructive corporate-development agenda. Legal education notably frustrates the fostering of environmental empathy through its continuing adherence to an anachronistic, anthropocentric curriculum conceived in a pre-ecological worldview. This curriculum thwarts earth-consciousness through reifying property, discussed within a constricted parts-and-parcels, case-analysis perspective which excludes the critical considerations of holism and interconnection. Property analysis remains rooted in a pre-modern paradigm, blowing the dust off Victorian logics wholly inapt for our oil-and-carcinogen-soaked world. Constitutional law courses also imbue the flawed message that "neutral" analytical tools exist, in which language serves only its "own" interests, all the while as "nature" is evaluated only within contemporary capitalism's use-development parameters. Students*

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*frequently fail to comprehend how aggressively-ideological agendas masquerade behind such linguistic legerdemain, as ardent anti-environmental arguments disappear down Borgesian mazes of semantic manipulation. Finally, ethical concerns remain restricted within practitioner-enabling versus socially-cognizant confines; ask not what you can do for your planet, but what your planet can do for you. The implicit endorsement of environmentally-oblivious career paths begins with awarding accolades and plaudits to those students who assume positions at the commanding heights of the growth-fixated, ecologically-dismissive corporate apparatus. Little or no consideration is given to just what "output measures" (the entity once better known as "values") legal education provides. This article seeks to examine why the enduring lesson of legal education is that almost everything is "natural"—except nature.*



## I. INTRODUCTION

> If we are dwelling within a system that is degrading life on Earth, then every node of the system requires attention.[1]

Four decades after the inaugural Earth Day, a substantial number of law schools offer environmental law specializations, with most providing elective courses for those students eager to develop insights and skills in this thriving area of advocacy.[2] However, this development has been shadowed by the rise of a resurgent anti-environmentalism, as aggressive corporate-promoted co-option ("greenwashing") and confrontation (global warming "denialism") have obscured or belittled otherwise unavoidable

[1] Renee Lertzman, *Down to Business: Paul Hawken on Reshaping the Economy*, *in* MINDFULNESS IN THE MARKETPLACE: COMPASSIONATE RESPONSES TO CONSUMERISM 185, 191 (Allan Hunt Badiner ed., 2002).

[2] *See* James L. Huffman, *The Past and Future of Environmental Law*, 30 ENVTL. L. 23, 28 (2000) (noting that environmental law has moved from a boutique practice area to "a core course in every respectable law school").

indications of accelerating environmental decline.[3] Prospects for impactful reform have dimmed, despite the abundance of studies portending potentially calamitous climate change. As environmentalists' concerns over these increasingly-inescapable harbingers of ecological damage grow, so too have the efforts of some in their ranks to identify and target those deemed most responsible for marginalizing and minimizing the potency of their message.

Deep ecologists, eco-socialists, and other systemic-focused critics consider the legal profession the linchpin of this emboldened anti-ecological perspective, noting that "[t]he number of lawyers hired by single corporations to defend themselves against any limitation of their perceived rights to exploit the natural world is evidence of the strange principles of jurisprudence that allow the devastation of the planet to proceed."[4] They also contend that "[o]ur legal and political establishments perpetuate, protect and legitimi[z]e the . . . degradation of [the] Earth by design, not by accident."[5] The "perpetuate and protect" accusation refers to the number of prestigious law firms and legally-advised industry pressure groups that facilitate this process, while the "legitimize" label is affixed to legal education, which is considered thoroughly complicit in environmental degradation, given that "law schools teach the principles that allow these violations of the planet."[6]

Legal education evades or otherwise implicitly discourages necessary whole earth thinking, and exclusion of extra-occupational perspectives has intensified in a recessionary job market. Lawyer training exemplifies how we have "fractured our educational system into its scientific and its humanistic aspects, as though these were somehow independent of each other."[7] Such specialization obscures total views, so that "we have trouble understanding the world as an integrated community in which the well-being of the parts depends on the well-being of the whole."[8] Adhering to such a narrow,

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[3] *See* Jacob Vos, Note, *Actions Speak Louder Than Words: Greenwashing in Corporate America*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 673, 673–75 (2009) (highlighting the recent emergence and pervasiveness of "greenwashing" among American corporations, as well as the relatively minimal changes often made as a result of these campaigns); John Stanley & David Loy, *A Buddhist Perspective on Ecological Responsibility*, HUFFINGTON POST, June 15, 2011, http://www.huffingtonpost.com/john-stanley/a-buddhist-perspective-on_b_874829.html (last visited July 16, 2011) (contending that the "corporatocracy" is propelling the planet toward imminent ecological disaster); CLIVE HAMILTON, REQUIEM FOR A SPECIES: WHY WE RESIST THE TRUTH ABOUT CLIMATE CHANGE 1 (2010) ("[W]ith each advance in climate science, the news keeps getting worse."); Brendan DeMelle, *Greenpeace Unmasks Koch Industries' Funding of Climate Denial Industry*, HUFFINGTON POST, Mar. 30, 2010, http://www.huffingtonpost.com/brendan-demelle/greenpeace-unmasks-koch-i_b_518036.html (last visited July 16, 2011) (emphasizing the large amounts of corporate money spent on climate denial campaigns).

[4] THOMAS BERRY, THE GREAT WORK: OUR WAY INTO THE FUTURE 113 (2000).

[5] CORMAC CULLINAN, WILD LAW: A MANIFESTO FOR EARTH JUSTICE 67 (2003).

[6] THOMAS BERRY, THE SACRED UNIVERSE: EARTH, SPIRITUALITY, AND RELIGION IN THE TWENTY-FIRST CENTURY 144 (Mary Evelyn Tucker ed., 2009).

[7] BRIAN SWIMME & THOMAS BERRY, THE UNIVERSE STORY: FROM THE PRIMORDIAL FLARING FORTH TO THE ECOZOIC ERA—A CELEBRATION OF THE UNFOLDING OF THE COSMOS 1 (HarperCollins paperback ed. 1994).

[8] ERIC T. FREYFOGLE, THE LAND WE SHARE: PRIVATE PROPERTY AND THE COMMON GOOD 252 (2003).

parochial mindset is especially troubling when considering the deepening ecological crisis, in which lawyers, as the acknowledged "architects and defenders of property rights," are indispensable actors.[9]

Contemporary legal education prioritizes the development of skilled technicians, prepared to apply allegedly agenda- and bias-free solutions to complex problems. It also fosters a crisis-impervious mindset; zealous pursuit of client representation, not greater social concerns, characterizes the educational ethic. Law schools provide a Turner Classic Movies perspective for a Discovery Channel world, adhering to timeworn scientifically and ethically-discredited precepts despite their self-evident ecological inapplicability. Legal education "repeats an ancient curriculum developed for nineteenth century lawyers to meet nineteenth century concerns and contexts," and fails to "challenge the categories or to question the underlying worldviews reflected in that century-old system."[10] As ecological concerns rested outside the purview of nineteenth century lawyers, so today environmental law remains largely on the curricular periphery, even as climate peril appears less and less an "elective" subject. Law graduates, unaware of critical ecological understandings, nonetheless develop an enhanced esteem for property. Environmentalists assert that "[w]e have built an entire legal system—the entire legal system of the United States, with a few footnotes and exceptions, with the exceptions in the footnotes—on property rights."[11]

This Article will examine how the core and shadow legal curricula each impart ecologically-harmful memes, which in turn mire lawyers deeper in complicity with the ongoing global assault on the environment. These memes include a resistance to incorporating modern eco-scientific understandings; a faux-historical analysis of the roots of American jurisprudence, particularly in regard to property rights; implicit encouragement of an amoral, materialistic careerism; and the concomitant transmission of a truncated, self-serving sense of ethical responsibility.

## II. INCLUSIONARY ECOLOGICAL SCIENCE MEETS EXCLUSIONARY PROPERTY EDUCATION

> By defining land as a commodity, the dominant legal philosophies legitimi[z]e and facilitate our exploitative relations with Earth.[12]

Legal education analyzes property wholly within the context of a discredited physical science paradigm, which employs antedated anthropocentric models in increasingly fruitless attempts to explicate a moving target, the dynamic ecosphere. Ecological science reveals that "the

9 PETER BARNES, CAPITALISM 3.0: A GUIDE TO RECLAIMING THE COMMONS 160 (2006).

10 Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 CLEV. ST. L. REV. 387, 393 (1992).

11 Interview of Carolyn Raffensperger by Derrick Jensen (Apr. 20, 2002), *in* HOW SHALL I LIVE MY LIFE?: ON LIBERATING THE EARTH FROM CIVILIZATION 141, 171 (Theresa Noll ed., 2008).

12 CULLINAN, *supra* note 5, at 165.

Earth is so integral in the unity of its functioning that every aspect . . . is affected by what happens to any component member of the community."[13] The late eco-theologian Thomas Berry noted how these emerging ecological insights illustrate that "[n]othing bestows existence on itself. Nothing survives by itself. Nothing is fulfilled in itself. Nothing has existence or meaning or fulfillment except [within] . . . the larger community of existence."[14] James Lovelock's "Gaia theory" posits that "[t]he Earth System behaves as a single, self-regulating system comprised of physical, chemical, biological and human components."[15] Contemporary science "has radically altered its view of the arrangement both of life and of nonliving components of the [E]arth," constructing a new paradigm "that place[s] relationship at the center."[16] Disdaining acknowledgment of this seminal concept of interconnection, property education adheres to an eclipsed worldview, which frustrates assimilation and understanding of ecological holism; it excludes rather than includes. This intransigence stymies environmental reform, highlighting how "laws and legal systems are primarily individualistic in tone, hence their resistance to a holistic ecosystem approach."[17]

Ecologists claim that this resistance to holistic thinking stems from an "arrogant and obsessively anthropocentric worldview" which is nowhere "more apparent than in law."[18] Legal education's reluctance to assimilate the emergent eco-scientific paradigm reflects how "few of the people who make most of the decisions that affect the relationship between humans and other aspects of the Earth Community have made the shift from a mechanistic worldview to a holistic or ecological worldview."[19] Uncomprehending or unappreciative of this transformative reorientation, lawyers instead proffer zealous representation to those corporate entities[20]—the very engines of ecological destruction—who fiercely resist this understanding. Legal property education's intense focus on individual parts and parcels greatly disserves the development of systemic awareness, of how all these combative land use issues exemplify developers' determination to impose short-term, market-driven deadlines on natural systems which operate on millennial rather than quarterly-profit timetables.

Although property education examines land disbursement schemes from medieval to present times, there is no corresponding analysis of natural

13 SWIMME & BERRY, *supra* note 7, at 243.

14 BERRY, *supra* note 6, at 138.

15 JAMES LOVELOCK, THE REVENGE OF GAIA: EARTH'S CLIMATE IN CRISIS AND THE FATE OF HUMANITY 25 (2007) (quoting Earth System Science Partnership, The Amsterdam Declaration, http://www.essp.org/index.php?id=41 (last visited July 16, 2011)).

16 PETER G. BROWN ET AL., RIGHT RELATIONSHIP: BUILDING A WHOLE EARTH ECONOMY 1–2 (2009).

17 LAURA WESTRA, AN ENVIRONMENTAL PROPOSAL FOR ETHICS: THE PRINCIPLE OF INTEGRITY 33 (1994).

18 CULLINAN, *supra* note 5, at 66–67.

19 *Id.* at 63–64.

20 *See* BERRY, *supra* note 4, at 113 (advocating that an essential reorientation to ecological understanding is required in all professions, and noting how the legal field has largely avoided this transition, thus increasingly reflecting a pro-corporate bias).

systems' progression.[21] Each case concludes with its legal resolution, foregoing discussion of any potentially significant ecological impacts. This is a troubling omission, given that "[i]n the domain of atmosphere and climate the delay between cause and effect can be thirty years."[22] Law students immersed in a history and tradition-hallowing curriculum are not appreciative of how "[t]he slow, inexorable pace of ecological and climatic cycles and lag times bear no relation to the hasty cycles and lag times of human attention, decision, and action."[23] Legal education remains obeisant to the capitalist use-development paradigm, in which "[o]ur economic models are projections and arrows when they should be circles."[24] The trajectory of legal education culminates in the bar exam and job hunting; the stressful academic regimen parallels the ever more frenetic pace of the larger society, where even the alarmingly *present* melting of the polar ice caps is deemed too distant and speculative for contemporary comprehension.[25] As futurist Lester Brown observes, "We are crossing natural thresholds that we cannot see and violating deadlines that we do not recognize. Nature is the time keeper, but we cannot see the clock."[26] Property education facilitates *linear* analysis of a *cyclical* subject—nature—in which "changes happen rapidly and reflect past, not present, actions."[27]

### *A. Balking Antiques: How Originalism Thwarts Ecological Holism*

I'm not a policy person. I'm a language person.[28]

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[21] *See generally* Bender, *supra* note 10, at 392–93 (explaining the emphasis law school curriculum, including property law courses, places on understanding doctrines established centuries ago, rather than on establishing creative solutions to present-day problems).

[22] STEWART BRAND, THE CLOCK OF THE LONG NOW: TIME AND RESPONSIBILITY 9 (1999).

[23] *Id.* at 133.

[24] WADE DAVIS, THE WAYFINDERS: WHY ANCIENT WISDOM MATTERS IN THE MODERN WORLD 217 (2009).

[25] *See* Kurt Campbell, *Avoiding Climate Change: Why Americans Prevaricate and Delay on Taking Action*, N.Y. TIMES (Nov. 13, 2007, 10:18 AM), http://kristof.blogs.nytimes.com/2007/11/13/ (highlighting the American public's lack of urgency in taking climate change action because of the perception that action can be deferred until the future); Matthieu Ricard, *The Future Doesn't Hurt . . . Yet*, *in* A BUDDHIST RESPONSE TO THE CLIMATE EMERGENCY 202, 204 (John Stanley et al. eds., 2009) ("People usually only consider changing their way of living when they are forced to do so by circumstances, not by rational and altruistic thinking."); DERRICK JENSEN & ARIC MCBAY, WHAT WE LEAVE BEHIND 273 (2009) (commenting on how America "has enshrined short attention spans in its economic system" while offering the public a choice between "a living planet forever, or cheap consumables now"); HAMILTON, *supra* note 3, at 95–133 (discussing cognitive dissonance in regard to our persisting psychological evasion of environmental realities).

[26] JOHN BELLAMY FOSTER, THE ECOLOGICAL REVOLUTION: MAKING PEACE WITH THE PLANET 56 (2009) (quoting LESTER R. BROWN, PLAN B 3.0: MOBILIZING TO SAVE CIVILIZATION 4 (2008)).

[27] ANDREW MCLAUGHLIN, REGARDING NATURE: INDUSTRIALISM AND DEEP ECOLOGY 37 (1993).

[28] Deborah Solomon, *The Wordsmith: Questions for Frank Luntz*, N.Y. TIMES MAGAZINE, May 24, 2009, at 17, *available at* http://www.nytimes.com/2009/05/24/magazine/24wwln-q4-t.html (quoting Frank Luntz).

Law students are introduced to judicial philosophies that essentially enshrine or venerate historical epochs while steadfastly resisting introduction of scientific advances or extra-legal ethical movements. Constitutional law classes provide cursory overviews of originalism and textualism, and do not alert students to the outsize influence of these interpretive tools in conservative judicial analysis, particularly in the realm of property rights issues. Originalism effectively mires legal analysis in a pre-industrial paradigm, precluding the application of contemporary "principles of ecological connectedness and carrying capacity in the definition of property norms, rights, and obligations."[29] Environmental ethicist James Garvey notes that "[o]ur values grew up in a low-tech, disconnected world of plenty. Now, cumulative and apparently innocent acts can have consequences undreamt of by our forebears."[30] Originalist property analyses omit the requisite ecological context—"When capitalism started, nature was abundant and capital was scarce; it thus made sense to reward capital above all else. Today we're awash in capital and literally running out of nature."[31] The Founders' assumptions about land reflected an unchallenged anthropocentric perspective, so that nature, particularly nature-as-wilderness, remained confined within use-value parameters, without regard for its (then unrecognized) vital contributions to planetary health. Originalism redirects philosophical analysis of environmental concerns to a period prior to its scientific explication and comprehension.[32] This stratagem somewhat cynically facilitates subsequent assertions that ecological values were never contemplated—if not dismissed—by the Founders.

The prevailing property paradigm "was invented when the American continent seemed empty," and "envisions not only that the economy can grow forever, but also that the total scale of legally-justified damage to the Earth can grow forever as well."[33] Originalism's pursuit of the Founders' intentions sidesteps essential contextualization; their world was one of seemingly unlimited "virgin" land and "inexhaustible" natural resources,[34] which is why the Constitution does not offer express language on property rights and usage. As the Founders anticipated the dynamic of settlement in and improvement of what they deemed (value-free) wilderness, their outlook was necessarily open-ended, relying on (what they believed would be far-distant) future generations to address changes in circumstances.

Property rights proponents, however, claim their tenets both pre-date the Constitution and also implicitly resonate within it. However, these

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29 Lynda L. Butler, *The Pathology of Property Norms: Living Within Nature's Boundaries*, 73 S. CAL. L. REV. 927, 985 (2000).

30 JAMES GARVEY, THE ETHICS OF CLIMATE CHANGE: RIGHT AND WRONG IN A WARMING WORLD 59 (2008).

31 BARNES, *supra* note 9, at xiii.

32 *See* Bret Boyce, *Originalism and the Fourteenth Amendment*, 33 WAKE FOREST L. REV. 909, 910 (1998); Environmental History Timeline, http://www.radford.edu/~wkovarik/envhist/ (last visited July 16, 2011).

33 Joseph H. Guth, *Law for the Ecological Age*, 9 VT. J. ENVTL. L. 431, 435 (2008).

34 *See* Saul Cornell, *Originalism on Trial: The Use and Abuse of History in* District of Columbia v. Heller, 69 OHIO ST. L.J. 625, 626 (2008).

contentions frequently betray a greater debt to contemporary use-and-development rationalizations than to the Founders' intentions, more likely "originating" in the Federalist *Society* than in the *Federalist Papers*. The Constitution's drafters understood that government necessarily pre-dated any lawfully enforceable, commonly recognized concept of property, and accordingly drew upon their knowledge of developed, malleable English land ownership practices.[35] Strict textualist analyses thus more often contravene, rather than honor, the Founders' foresight. Obdurate faux-originalism comprises an indispensable element of pro-development campaigns to resist much-needed environmental remedies given a vastly transformed landscape. This is truly disturbing given how "[w]e interfere a million times more deeply in nature than we did one hundred years ago, and our ignorance is increasing in proportion to the information that is required."[36] Textualist defenses of property similarly contravene the new ecological paradigm, as:

> [T]he language of physical theory [has] changed and our conception of reality changed with it. Unfortunately, the languages of our social, political, and economic theories have endured despite achieving mature formulation before widespread industrialization, . . . the explosion of scientific knowledge, and globalization of economies . . . [which] altered our social life without altering theories *about* our social life.[37]

Trying to shepherd analysis of implosive ecological changes into the confines of pre-industrial worldviews emphasizes how "the vocabulary and expressions that are available to us influence and even steer our thought."[38] Property discussions take place within the "language of liberalism," which "excludes an alternative vocabulary that enables us to consider the central concerns of environmentalists."[39] An ecologist contends that "[o]ur entire language is permeated by historically charged euphemisms that acquire a reified life of their own," which serve to "assimilate the past to the present and in the very pretence of illuminating the past, they cunningly conceal it from our eyes."[40] This shows how "[o]ur civilization is masterful at twisting even our richest words to make them into slogans for a commodity-based reality. Our language and our habits of speech have coevolved with a violent relation to the world for so many generations . . . [and] one does not step out

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35 *See* John G. Sprankling, *The Antiwilderness Bias in American Property Law*, 63 U. CHI. L. REV. 519, 521 (1996).

36 Stephan Bodian, *Simple in Means, Rich in Ends: An Interview with Arne Naess*, *in* DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY 26, 32 (George Sessions ed., 1995).

37 JACK TURNER, THE ABSTRACT WILD 54 (1996).

38 CHRISTOPHER D. STONE, SHOULD TREES HAVE STANDING?: LAW, MORALITY, AND THE ENVIRONMENT 22 (3d ed. 2010).

39 C.A. Bowers, *Revitalizing the Commons or an Individualized Approach to Planetary Citizenship: The Choice Before Us*, 36 EDUC. STUD. 45, 54 (2004).

40 MURRAY BOOKCHIN, THE ECOLOGY OF FREEDOM: THE EMERGENCE AND DISSOLUTION OF HIERARCHY 122 (2005).

of them very easily."[41] The George W. Bush Administration's double-speaking, anti-environmental policies bore such Luntzian appellations as "Clear Skies" and "Healthy Forests," or what has been characterized as "Orwellian language for unconscionable violence."[42] Ecologists conclude that "[l]anguage becomes so perfectly attuned to the agendas of the powerful that the concepts and connotations with which resistance could be formulated are eliminated, making protest appear irrational and naïve."[43]

Textualism frustrates the pursuit of environmental reforms under the guise of impartial refereeing, with the language—rather than the interpreter's ideology—providing answers. But professionally-specialized vocabularies "are never neutral. Things that are included in a vocabulary gain a familiar reality; things that are left out are ignored or even have their existence denied."[44] Additionally, "[t]his betrayal by language is crassly ideological," exclusionary-minded, and demonstrates how intra-disciplinary terminologies "serve only to separate the sectarians of the parish from those who are excluded from the conversation."[45] Textualist semantics repel efforts to incorporate ecological understandings into property law, for "[i]f a 'right' cannot be conceived of and described in the language of law, our governance systems will not recogni[z]e it or give adequate weight to it when making decisions."[46] Further, ecologists argue that courts "define our concerns in economic terms and predetermine the range of possible responses. Often we cannot even raise the issues important to us because the economic language of others excludes our issues from the discussion."[47] They believe that "[w]e need an Earth-centered language. . . . [W]ords need to be extended to include the various beings of the natural world, their freedoms, their rights, their share in the functioning of the Earth."[48] Textualist bona fides of impartiality fail to conceal how "[e]very vocabulary shapes the world to fit a paradigm,"[49] and that language-parsing defenses of expansive land-use rights underpin a scientifically and ethically-discredited property paradigm.[50]

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41 Interview of David Abram by Derrick Jensen (July 7, 2000), *in* HOW SHALL I LIVE MY LIFE?: ON LIBERATING THE EARTH FROM CIVILIZATION, *supra* note 11, at 224.

42 *See* CURTIS WHITE, THE BARBARIC HEART: FAITH, MONEY, AND THE CRISIS OF NATURE 34 (2009).

43 SULAK SIVARAKSA, THE WISDOM OF SUSTAINABILITY: BUDDHIST ECONOMICS FOR THE 21ST CENTURY 48 (Arnold Kotler & Nicholas Bennett eds., 2009).

44 ERNEST CALLENBACH, ECOLOGY: A POCKET GUIDE 143 (1998).

45 BOOKCHIN, *supra* note 40, at 55; MICHEL SERRES, THE NATURAL CONTRACT 8 (Elizabeth MacArthur & William Paulson trans., 1995).

46 CULLINAN, *supra* note 5, at 110.

47 TURNER, *supra* note 37, at 62.

48 SWIMME & BERRY, *supra* note 7, at 258.

49 TURNER, *supra* note 37, at 62.

50 *Cf. id.* at 54–65 (discussing the limitations of economic language in depicting the natural world and arguing that a new language paradigm is necessary to create real alternatives to economies based on the destruction of the natural world).

### *B. Reified Property*

> We know more about property lines than we do about the life that moves under, over, and through them.[51]

Property rights ideology serves as a philosophical bulwark and rallying point for those resisting the holistic, communitarian message of environmentalism. Along with property's formidable cultural symbolism, land use maximalism also harnesses the energies of powerful corporate entities—and their legal counsel. The failure to enact broad-reaching environmental legislation since the 1970s has emboldened those who regard every element of the Earth Community as a "natural resource" indistinguishable from any other market commodity, and subject to the same (too often literal) slash-and-burn whims. Fervent property rights proponents, in extractive industry/developer-financed think tanks and faux-populist groups, demonize environmentalism as "eco-socialism" for resisting the commoditization of nature.[52] The gross disparity in legal resources between these forces and environmentalists dramatizes the difficulties the latter face in trying to halt the assault on natural systems, as land use debates are characterized by "[e]xploitation of the concept of private property that goes outward, destructively, like a ripple of water moving through rock."[53]

The ubiquity of aggressive property rights rhetoric suggests that it has resonated with anxious, hard-pressed homeowners, to the detriment of crisis-confronting ecological messages. "Ownership Society" ideology fails to consider that "[w]hen landowners physically alter their lands, they don't act only for themselves," but for present and future human and non-human life, "given the ways land parcels are interconnected ecologically and economically."[54] Interconnection, the *sine qua non* of the emerging ecological paradigm, is equally disserved by pro-development dissembling and legal education's emphasis on parts and parcels, rather than systems and wholes. Failure to acknowledge relational-minded ecology deprives students of the critical understanding that "most private property is connected with other private (and public) property globally through the atmosphere and regionally via water flows and the movements of animals,

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51 PETER BERG, ENVISIONING SUSTAINABILITY 83 (2009).

52 *See* PAUL HAWKEN, BLESSED UNREST: HOW THE LARGEST MOVEMENT IN THE WORLD CAME INTO BEING AND WHY NO ONE SAW IT COMING 65 (2007) (highlighting how corporate-funded climate deniers, particularly think tanks, have spread "skepticism, if not cynicism, about efforts to mitigate climate change"); Interview of David Edwards by Derrick Jensen (Jan. 11, 2000), *in* HOW SHALL I LIVE MY LIFE?: ON LIBERATING THE EARTH FROM CIVILIZATION, *supra* note 11, at 15 (emphasizing how a mere handful of corporate-financed climate change deniers have tilted the scales of public opinion, despite overwhelming scientific evidence refuting their contentions).

53 WHITE, *supra* note 42, at 175.

54 ERIC T. FREYFOGLE, ON PRIVATE PROPERTY: FINDING COMMON GROUND ON THE OWNERSHIP OF LAND, at x (2007).

plants, and microorganisms. To one degree or another, what happens on private property is everyone's business."[55]

This understanding has also been disserved by decisions such as *Lucas v. South Carolina Coastal Council*[56] in 1992, which dramatized Supreme Court conservatives' disdain for incorporating core ecological precepts into property law determinations.[57] Environmentalists found *Lucas* especially foreboding "because it seemed to accept too easily the precept that the economically profitable exploitation of a natural resource is somehow constitutionally guaranteed or at least preferable."[58] Subsequent High Court land use rulings "set[] up property owners to view environmental laws not as a legitimate democratic expression of the proper structure of property rights in our current circumstances, but as invasions of their rights."[59]

Takings controversies also typify how contemporary, ideologically-driven memes take root to the detriment of holistic, countervailing legal-ecological perspectives. Takings, "where the conflict between individual and holistic considerations is most evident," has become the philosophical blade's edge for aggressive anti-regulatory campaigns.[60] It has assumed totemic status for property rights ideologues, even as critical legal analyses dispel myths and misperceptions surrounding its ascendancy. The anti-regulatory animus of takings argumentation unmasks the abiding conservative fealty to "market fundamentalism," or "the belief that there is no reasonable alternative to a virtually unregulated market," one in which "governments should do nothing other than define property rights and enforce contracts."[61] The astonishing tenacity of this argument, as market forces further melt, erode, and poison the earth, highlights how "[c]apitalism as an ethical system has succeeded in convincing the people living under it that it is not a system at all but a state of nature."[62]

Legal property instruction epitomizes an educational system in which "we are brought up believing that capitalist market relations are more natural, more incontrovertible, than anything within nature."[63] The absence of any market-critical perspectives produces lawyers who zealously represent those pursuing *innately* ecologically-destructive practices, as markets' "purely human-centered value" discourages concern for natural areas which "have little or no market value, even when their true value to society is vast."[64] Case-analysis instruction's intense focus on the minutiae of

55 PAUL R. EHRLICH & ANNE H. EHRLICH, ONE WITH NINEVEH: POLITICS, CONSUMPTION, AND THE HUMAN FUTURE 269 (2004).

56 505 U.S. 1003 (1992).

57 *See id.* at 1024–27 (resisting ecological considerations and holding that a state may refuse compensation only where proscribed use interests were denied when the holder took title).

58 RICHARD J. LAZARUS, THE MAKING OF ENVIRONMENTAL LAW 133 (2004).

59 Guth, *supra* note 33, at 475.

60 WESTRA, *supra* note 17, at 33.

61 BROWN ET AL., *supra* note 16, at 29.

62 WHITE, *supra* note 42, at 27.

63 FOSTER, *supra* note 26, at 52.

64 FREYFOGLE, *supra* note 8, at 194, 198–99.

land disputes fosters narrowly compartmentalized, as opposed to panoramic, holistic understandings of land use.

Market fundamentalism also incorporates a flawed anti-ecological analysis drawn from Garrett Hardin's 1968 essay *The Tragedy of the Commons*.[65] Hardin postulated that inevitable overuse by one or more contributors rendered the commons concept unsustainable.[66] Property rights proponents seized upon his analysis (bereft of "any experimental or observed evidence") as confirming their assertion that only unburdened private ownership could forestall environmental peril.[67] Their pro-development, anti-regulatory message thereby acquired an Earth-friendly gloss, as they proclaimed that individual property owners, not naturalists, biologists, or scientists, were best equipped to recommend land use policy, and concluded that "there is no standard independent of the desires of the owners of property to judge what should be conserved."[68]

Ecologists respond by noting that "Hardin's premise depends on absolute egoism and denies several millennia of experience in the mutuality and negotiation of commoning."[69] Commons were not a "license to free-for-all," as Hardin ignored how "healthy self-governing commons systems are frequent in the world and in history."[70] Commons thrived in cultures that protected them from outside pressures, suggesting how Hardin's argumentation applies only to those societies "operating under capitalist social relations, where land and resources are privately held and exploited for individual gain."[71] Those seeking "to affix the word 'tragedy' to the commons" should acknowledge that "the nightmare did not begin with the creation of the commons, but with the process of its destruction, the process under which it was taken under private ownership" via enclosure.[72] Property rights ideologues disparage the pre-modern commons paradigm because it "involves other people putting limits on what resources you can exploit, how much you can accumulate, how things will be shared. The free market has none of those constraints."[73] Legal property instruction rarely addresses the equities involved in private versus public ownership,[74] instead channeling

65 Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968).

66 *Id.* at 1244.

67 RAJ PATEL, THE VALUE OF NOTHING: HOW TO RESHAPE MARKET SOCIETY AND REDEFINE DEMOCRACY 93 (2009).

68 PETER G. BROWN, THE COMMONWEALTH OF LIFE: ECONOMICS FOR A FLOURISHING EARTH 44 (2d ed., 2008).

69 PETER LINEBAUGH, A MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL 9–10 (2008); PATEL, *supra* note 67, at 99.

70 BRAND, *supra* note 22, at 135.

71 CHRIS WILLIAMS, ECOLOGY AND SOCIALISM 43 (2010) (emphasis omitted).

72 PATEL, *supra* note 67, at 100.

73 *Id.* at 111.

74 Property law students would benefit from listening to Woody Guthrie's "This Land Is Your Land," in particular the verse: "As I went walking I saw a sign there / And on the sign it said 'No Trespassing.' / But on the other side it didn't say nothing, / That side was made for you and me." WOODY GUTHRIE, *This Land Is Your Land*, *on* THIS LAND IS YOUR LAND: THE ASCH RECORDINGS, VOL. 1 (Smithsonian Folkways 1997); BARBARA EHRENREICH, THIS LAND IS THEIR

discussion into those options available in a hyper-individualistic market economy, in which "[w]hat counts as a saleable commodity is not its ultimate usefulness to humanity but how much money can be made from selling it."[75] As a result, law students assimilate a perspective in which "[n]ature as a network of biotic communities disappears . . . and becomes visible only as bits and pieces of it are brought to the marketplace for sale."[76]

Property education evades critical discussion of public equities in favor of focusing on individualistic "dividend ecology" land use, reconfiguring natural entities into stock offerings.[77] Fragmentation serves as both the start and terminus of a truly unnatural property paradigm in which "[p]arts of ecosystems are plucked like fruits to be transformed into commodities, parts are used as sewers, and parts are invisible because they are not given value by the human participants in markets."[78] This destructive process flourishes in no small part because most lawyers "do not know enough about natural regulatory systems, and in any case do not believe that they are relevant to humans."[79]

As case-analysis-structured property education often does little more than examine isolated micro-controversies, it also implicitly suggests that individualistic, rights-justified behavior trumps ecological wellbeing. This contravenes the critical understanding that "[m]aintaining the integrity of ecological systems requires consideration of scales that are greater than individual landowners or individual tracts of land."[80] The ideological offensive to literally or figuratively "black-letter" property rights must inevitably surrender to nature's systemic requirements as "[a]ll private property depends on Nature's infrastructure. When that infrastructure collapses, it causes natural disasters that make property boundaries irrelevant."[81]

Absent a more inclusive, equities-examining, future-observant analysis of property, students instead assimilate the use-value perspective, rooting discussion entirely within market-deferential confines. Omission of ecological viewpoints produces lawyers who therefore "lack the language that would enable them to name the nonmonetized knowledge, activities, and relationships in their own communities," able to identify a Springing Executory Interest but none of the natural harbingers of spring.[82] This follows poet-naturalist Gary Snyder's comment that "attention to the observable order of nature is rarely practiced by those who think that wealth

LAND: REPORTS FROM A DIVIDED NATION, 11–13 (2008) (reflecting upon the decline of Guthrie's vision and noting the aggressive acquisition of spectacular natural vistas by the wealthy).

75 WILLIAMS, *supra* note 71, at 45.

76 MCLAUGHLIN, *supra* note 27, at 32.

77 WARWICK FOX, TOWARD A TRANSPERSONAL ECOLOGY: DEVELOPING NEW FOUNDATIONS FOR ENVIRONMENTALISM 33 (1990).

78 MCLAUGHLIN, *supra* note 27, at 31–32.

79 CULLINAN, *supra* note 5, at 30.

80 Butler, *supra* note 29, at 986.

81 Mary Christina Wood, *Nature's Trust: A Legal, Political and Moral Frame for Global Warming*, 34 B.C. ENVTL. AFF. L. REV. 577, 602 (2007).

82 Bowers, *supra* note 39, at 51.

is purely a creation of human organization, labor, or ingenuity."[83] Law schools too often focus on developing cog-fillers for the "Total Economy," where "everything—'life forms' . . . or the 'right to pollute'—is 'private property' and has a price and is for sale."[84]

If lawyers, as architects and defenders of property rights, want to dispel similar priced-and-available-for-sale insinuations, legal education must incorporate ecological understandings and, at the very least, deign to discuss the equities in the privatization-versus-commons debate. For law students to attain ecological literacy, they "must learn to think about the ecosphere in terms of interconnectedness, context and process—the basic principles of all living systems."[85] As Professor David Orr observes, "All education is environmental education. By what is included or excluded, students are taught that they are part of or apart from the natural world."[86] Berry concludes that "educational institutions need to understand that ecology is not a course nor a program. Rather, it is the foundation of all courses, all programs, and all professions . . . ."[87]

## III. LEGAL EDUCATION: ELUSIVE ETHICS IN THE CRASS NEED GAME

> One has every right in our time to develop suspicions about those who wear suits and ties.[88]

The manifold pressures involved in training students to "think like a lawyer" more likely erode rather than encourage extralegal ethical understandings, as the bar exam, not personal/cultural transformation, remains the paramount concern. Students as well as faculty propel the "relentless focus" classes place "on the procedural and formal qualities of legal thinking," a fixation that "is sometimes to the deliberate exclusion of the moral and social dimensions."[89] The result is that too many students learn the law "from too insular a perspective. Despite growing recognition of the importance of cross-cultural and cross-disciplinary perspectives, the core curriculum stubbornly resists intruders."[90] Legal instruction exhibits American universities' "failure to educate people to think broadly, to perceive systems and patterns, and to live as whole persons."[91] A legal

83 GARY SNYDER, THE GARY SNYDER READER: PROSE, POETRY, AND TRANSLATIONS 1952–1998, at 291 (1999).

84 Wendell Berry, *The Idea of a Local Economy*, *in* THE FUTURE OF NATURE: WRITING ON A HUMAN ECOLOGY FROM *ORION* MAGAZINE 319, 326 (Barry Lopez ed., 2007).

85 Ian Prattis, *Failsafe in Consciousness: Gaia, Science, and the Buddha*, THE TRUMPETER, Spring 2007, at 85, 86.

86 DAVID W. ORR, EARTH IN MIND: ON EDUCATION, ENVIRONMENT, AND THE HUMAN PROSPECT 12 (1994).

87 BERRY, THE SACRED UNIVERSE, *supra* note 6, at 137–38.

88 JIM HARRISON, THE FARMER'S DAUGHTER 292 (2010).

89 WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 145 (2007).

90 DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 198 (2000).

91 ORR, *supra* note 86, at 2.

curriculum critic suggests that "[e]ducational priorities are apparent in subtexts as well as texts. What the core curriculum leaves unsaid sends a powerful message that no single required course can counteract."[92]

Property education's evasion of ecological themes betrays an abiding professional mission to develop resolute tacticians unencumbered with equity-rooted sympathies or inclinations. Contemplation of overriding justice concerns suffers dismissal as fuzzy idealism, detrimental to client-focused training. If, as E. F. Schumacher claimed, "[e]ducation cannot help us as long as it accords no place to metaphysics,"[93] it is no wonder that lawyers are often regarded as lacking in what George H.W. Bush termed "The Vision Thing."[94] Ecologists note how technically-proficient, but values-deficient, education "fragments instead of unifies, overemphasizes success and careers, separates feeling from intellect and the practical from the theoretical, and unleashes on the world minds ignorant of their own ignorance."[95] Law schools turn out lawyers who lack rudimentary knowledge of environmental processes, relegating nature to the oversight of zealous partisans exemplifying what D.H. Lawrence characterized as the "know-it-all state of mind."[96] Legal education prioritizes tactical-adversarial skills as opposed to empathetic-cooperative knowledge, prompting criticism that "a distinction needs to be made between intelligence and cleverness," as the former aims for "wholeness," while the latter remains "personified by the functionally rational technician armed with know-how and methods but without a clue about the higher ends technique should serve."[97]

The law school milieu also frustrates the development of ecologically-cognizant consumer consciousness through implicit endorsement of the lifestyle rewards awaiting those who embrace conventional careerism. Aspirations for stakeholder/partnership status intertwine with pursuit of the appropriate material accoutrements of such attainment.[98] Students awaiting on-campus interviews, previously dissuaded from confronting larger equitable considerations, remain warily reluctant to too-closely scrutinize the underlying values and goals of their prospective employers.[99] Even then, idealization of corporatized large firm employment means that on-campus interviewers may represent those most able architects and determined defenders of an ecologically-destructive status quo.[100] Students who shun this process for public interest or other less-remunerative

92 RHODE, *supra* note 90, at 201.

93 E. F. SCHUMACHER, SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED 98 (Harper & Row reprt. 1989) (1973).

94 Arthur M. Schlesinger, Jr., *State of the 'Vision Thing'*, LOS ANGELES TIMES, Jan. 21, 2004, *available at* http://www.commondreams.org/views04/0121-06.htm.

95 ORR, *supra* note 86, at 17.

96 RICHARD LOUV, LAST CHILD IN THE WOODS: SAVING OUR CHILDREN FROM NATURE-DEFICIT DISORDER 58 (2006) (quoting D.H. Lawrence).

97 ORR, *supra* note 86, at 11.

98 *See id.* at 17, 22.

99 Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 123–24 (2002).

100 *Id.* at 117–18.

positions suffer a patronization akin to scratch lottery players in a room full of Powerball winners.

This enduring tendency to prioritize pecuniary over planetary concerns illustrates "the increased commercialism and competitiveness of legal practice and the absence of a widely shared vision of the public interest."[101] It reflects the profession's embrace of the reigning corporate style, and the values underlying it. Once graduates leave the rope-line and enter the club, they need to adjust their priorities—and personas—to better fit in an environment every bit as pressured as the one they left. Contemporary lawyers discover that "upscale business entertaining calls for upscale dining and clothing, upscale housing invites upscale furnishings, and all require upscale incomes."[102] Less pretentious, lower ecological-footprint choices present obstacles to career viability; for example "[a]n attorney who might prefer to keep driving her battered old Dodge knows she would be sending a subliminal signal to potential clients that [she is] not likely to win their cases."[103]

Retaining the clunker is nearly incomprehensible for those law graduates who are mesmerized by the "idealized vision of professional life," in which they "can expect both moral independence and worldly rewards, such as power, wealth, and prominence."[104] Yet when this dream dims, the consequences—reflected in the burgeoning ranks of practitioners entering intra-professional treatment programs for depression, substance abuse, and marital/relationship problems—are acute.[105] Whole Personhood has been discarded in pursuit of a chimerical professional ideal, and retrieval is a task beyond the capabilities of LEXIS or Westlaw. This abandonment reinforces philosopher Zygmunt Bauman's assertion that entry to prestigious professions requires applicants "*to recast themselves as commodities*: that is, as products capable of catching the attention and attracting *demand* and *customers*."[106] For the 3L aspirant to the corporate legal kingdom, this requires attainment of "zero drag,"[107] or no out-of-work commitments, for who knows how these pursuits (from biking to trail-hiking to vegetarianism) might clash with prevailing shareholder norms. As Bauman states:

> The ideal employee would be a person with no previous bonds, commitments or emotional attachments, and shunning new ones; a person ready to take on any task that comes by and prepared to instantly readjust and refocus their

101 RHODE, *supra* note 90, at 51.

102 *Id.* at 32.

103 EHRLICH & EHRLICH, *supra* note 55, at 217.

104 RHODE, *supra* note 90, at 14.

105 *See* Peter H. Huang & Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYRACUSE L. REV. 335, 335–36 (2008) (discussing studies showing that lawyers have higher rates of depression, substance abuse, and divorce than other professionals).

106 ZYGMUNT BAUMAN, CONSUMING LIFE 6 (2007) (emphasis in original).

107 Robert P. Gephart, Jr., *Introduction to the Brave New Workplace: Organizational Behavior in the Electronic Age*, 23 J. ORGANIZATIONAL BEHAV. 327, 337 (2002).

> own inclinations, embracing new priorities and abandoning those previously acquired in short order.[108]

Those seeking to assuage a nagging sense of seller's remorse can fall into a psychologically—and ecologically—destructive rut of compensating via consumption, as "[a]ttorneys working sweatshop hours feel entitled to goods and services that will make their lives easier and their leisure time more satisfying."[109] But no amount of spending can overcome the "Cultural Autism" of sacrificing hour after billable hour of one's youth at the expense of encountering a wider world, especially the world of nature.[110] Even though "the quality of exposure to nature affects our health at an almost cellular level," the pale ranks of nascent architects and defenders of land use include those whose last prolonged exposure to sunlight was a weekend catnap in the firm's atrium.[111] Funneling high achievers into a career path that effectively precludes contact with nature—while commending an unsustainable materialism—unsurprisingly produces young lawyers who remain oblivious of their day-to-day activities' potential impact on environmental health. The unquestioning pursuit of professional success has spawned too many Captain Louis Renaults, who are *shocked*, *shocked* when confronted with their work's complicity in ecological damage. In contrast to the idealized Atticus Finch, today's lawyers exemplify those contemporary professionals who do not "know enough of the whole terrain to be dangerous to the established order. Narrowness, 'methodolatry,' and careerism have rendered many unfit and unwilling to ask large and searching questions."[112]

Legal education reflects and reinforces hyper-individualism, the "cult of self [which] dominates our cultural landscape," and is predicated on "the misguided belief that personal style and personal advancement, mistaken for individualism, are the same as democratic equality."[113] Too many belatedly discover that chasing materially-defined *rewards* becomes "a psychologically frustrating and ecologically lethal mode of forming personal identity."[114] Recognizing the ecologically- and psychologically-harmful effects of pursuing a careerist lifestyle comprises a necessary first step before recognizing that indispensable insights from extra-professional sources and disciplines, especially ecology, merit a place in any truly "ethical" lawyer's understanding. It is high time for aspiring lawyers to remove their careerist blinders and open the window, for as environmental philosopher Holmes

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108 BAUMAN, *supra* note 106, at 10.

109 RHODE, *supra* note 90, at 32.

110 LOUV, *supra* note 96, at 64–65.

111 *Id.* at 43.

112 ORR, *supra* note 86, at 100.

113 CHRIS HEDGES, EMPIRE OF ILLUSION: THE END OF LITERACY AND THE TRIUMPH OF SPECTACLE 33 (2009).

114 MCLAUGHLIN, *supra* note 27, at 79.

Rolston III has remarked, "The unexamined life is not worth living; life in an unexamined world is not worth[] living either. We miss too much of value."[115]

## IV. EXPANDING ETHICS: REDEFINING HUMAN-EARTH RELATIONS

> If ethical considerations govern the relations between individuals and the community around them, why do we restrict our understanding of that community only to the human community?[116]

Amid mounting concerns that lawyers' ethical values are not recognized—if not derided—by the public, analysis of the sub-textual messages of legal education is even more necessary. The ABA-sponsored Sullivan Report noted how "a number of studies have shown that students' moral reasoning does not appear to develop to any significant degree during law school."[117] It observed that "law school typically blares a set of salient, if unintentional, messages that undercut the likely success of efforts to make students more attentive to ethical matters."[118] Despite professional proclamations of ethical rectitude, the sub-textual, shadow legal curriculum promotes skepticism toward any restriction placed upon the aggressive, unfettered pursuit of advantage in legal contests.[119] The steely-tactical, winner-take-all mindset law schools tacitly encourage plants the seeds for lawyers' later difficulties in comprehending that ethics represent more than irksome, easily-circumvented technicalities.

Legal education too infrequently contemplates those greater social policies and values that lie beyond the case-analysis structure; the core curriculum remains a forced march through an overwhelming thicket of minutiae, with larger social concerns consigned to selective courses. Questioning is largely confined to formal and procedural concepts, and any attempt to insert social or broader ethical concerns into discussion—whether by faculty or students—often results in resigned, fatigued silence.[120] Students intuitively decide to "separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine," concluding that "matters of justice are secondary to formal correctness."[121]

Understanding of and appreciation for equitable considerations also suffer from the abiding perception that the required core ethics course presents a one-size-fits-all solution toward addressing lawyers' social

115 Holmes Rolston III, *Value in Nature and the Nature of Value*, *in* ENVIRONMENTAL ETHICS: AN ANTHOLOGY 143, 143 (Andrew Light & Holmes Rolston III eds., 2003).

116 Andrew Light & Holmes Rolston III, *Introduction: Ethics and Environmental Ethics*, *in* ENVIRONMENTAL ETHICS: AN ANTHOLOGY, *supra* note 115, at 7.

117 SULLIVAN ET AL., *supra* note 89, at 133.

118 *Id.* at 31.

119 *Id.* at 21–22, 30–31.

120 *Id.* at 49–50, 68.

121 *Id.* at 57–58.

responsibility.[122] Yet ethical instruction's sub-text often fosters a fraternal "nudge-nudge, wink-wink" attitude when encountering ineffectual formalities—"[w]hen legal ethics courses focus exclusively on teaching students what a lawyer can and cannot get away with, they can inadvertently convey a sense that knowing this is all there is to ethics."[123] Students imbued with a shallow, somewhat cynical sense of professional ethics comprise an inauspicious audience for attempts to introduce an ecologically-responsible planetary ethic.

Another barrier to an expansive ethical sensibility is what has been characterized as "attorneys' amoral advocacy—their willingness to defend causes and clients without regard to the ethical merits."[124] The acknowledged pinnacle of professional success is to land a position with a top firm—regardless of their client list.[125] Instructed that their primary responsibility is "to defend, not judge, the client," these achievers find that "good ethics and good business are in happy coincidence."[126] Atticus Finch iconography assumes a (truly) rich irony in a field in which the commanding heights are occupied by those who zealously defend the corporate elite—or write the laws that fortify their preeminence. The reputed level playing field is readily refuted in examining the socio-economic-political clout of environmental transgressors against the resources of their opponents: globalized corporations versus tree-sitters, or oil and gas colossi versus the residents of bayou small towns. Persisting gross disparities in legal resources mock notions of an equal contest; instead, they accentuate how corporate "haves" are able to litigiously overwhelm attempts to redress glaring inequities. Ecologists consider this emblematic of "a deep cultural pathology . . . [which] is particularly pathetic when we bargain over these issues of life and survival for monetary gain or some commercial advantage for a few individuals or a corporative enterprise."[127] Legal education must confront this pathology by addressing its equitable oversights, and in finally recognizing and incorporating contemporary Earth ethics.

### *A. Paradigm Shift: Green-Letter Ethics*

> A question we might well ponder: when human beings unilaterally declare their superiority to all other species, who do they think is paying attention?[128]

Legal education's failure to acknowledge or incorporate fundamental eco-ethical considerations into the core curriculum exposes an antedated framework, in which vital new extra-curricular ideas are kept at arm's

122 *See id.* at 148–49.

123 *Id.* at 149.

124 RHODE, *supra* note 90, at 4.

125 *Id.* at 32–34 (discussing the overvaluing of income, at the expense of other priorities).

126 *Id.* at 15.

127 SWIMME & BERRY, *supra* note 7, at 251.

128 THEODORE ROSZAK, THE VOICE OF THE EARTH: AN EXPLORATION OF ECOPSYCHOLOGY 233 (2d ed. 2001).

length. In the case of property, this buttresses a pre-industrial, conquest-and-control concept of nature, which resists the introduction of modern, scientifically-supported concepts of land's role in ecosystem health. As Berry notes, "To assume that conquest and use are our primary relations with the natural world is ultimate disaster not only for ourselves but also for the multitude of other living forms on the planet."[129] As the acknowledged legislators of the world, lawyers must acknowledge the contemporary nature philosophies of ecologists, biologists, and climatologists in revamping a woefully archaic property paradigm that evades contemporary planetary realities. As ecologist John Rodman noted, "It is probably a safe maxim that there will be no revolution in ethics without a revolution in perception."[130] An indispensable first step in this transformation lies in recognizing that "it is not possible to specify any reasonably clearly discernible, morally relevant characteristic that includes all humans but excludes all non-humans."[131] Environmental ethicists conclude that "[t]here is no reasonable alternative to redrawing our moral boundaries to include all life."[132] The history of ethics chronicles an expansive incorporation of those formerly marginalized on account of race, gender, or ancestry.[133] Responding to the growing recognition of planetary interconnection requires further legal protections for natural entities, which to this point have been denied a "hearing"—and rights.

Property education's reluctance to provide a broader ecological framework for discussion underlines the prevailing pedagogical focus on developing efficient, fact-processing *crackpot realtors*. This tendency also evinces an abiding suspicion of introducing metaphysically-tinged considerations, even though "[r]egarding nature as a community of purposive systems does not involve the surrender of reason nor any leap into 'mysticism.'"[134] Reluctance to introduce ecological equities may lie in their potential to topple the obsolescent, constricted notion of ethics propounded in legal education. It is past time for legal education to acknowledge that a "new ecological paradigm implies a correspondingly ecologically oriented ethics."[135]

Expanding the role of ethics will first require uprooting the pervasive anthropocentrism characterizing the curriculum. In particular, incorporating discussion of interconnectedness necessitates broadening the field of actors implicated in legal analysis, for "[r]ecognizing the interdependence of only those humans who are able to resolve conflicts by bargaining with each other is not the same as recognizing the pre-contractual, natural

129 BERRY, *supra* note 6, at 132.

130 FOX, *supra* note 77, at 35 (quoting John Rodman).

131 *Id.* at 16.

132 BROWN, *supra* note 68, at 38.

133 *See, e.g.*, Peter Singer, *Not for Humans Only: The Place of Nonhumans in Environmental Issues*, *in* ENVIRONMENTAL ETHICS: AN ANTHOLOGY, *supra* note 115, at 55, 57 (discussing society's ultimate recognition that racism is based on a flawed understanding of moral significance).

134 MCLAUGHLIN, *supra* note 27, at 151.

135 Fritjof Capra, *Deep Ecology: A New Paradigm*, *in* DEEP ECOLOGY FOR THE TWENTY-FIRST CENTURY, *supra* note 36, at 20.

interdependence of all components of land communities."[136] Rolston argues that "[t]here is something Newtonian, not yet Einsteinian, besides something morally naïve, about living in a reference frame where one species takes itself as absolute and values everything else relative to its utility."[137] If an expanded ethical framework "requires a paradigm change about the sorts of things to which duty can attach," he adds, "so much the worse for those ethics no longer functioning in, nor suited to, their changing environment. The anthropocentrism associated with them was fiction anyway."[138] As another critic asks, "Why totalize an instrumental image of nature developed under historically contingent circumstances?"[139]

Ridding the curriculum of discredited anthropocentric biases presents a formidable undertaking. Yet the contemporary legal system cannot evade its complicity in the contention that the environmental crisis "is the consequence of putting human rights before human obligations to the Earth and all the other life forms we share it with."[140] Gaian theory places humankind within a parliament of species, not enshrined above all others, heedless of their concerns, as it "makes clear that we have no special human rights; we are merely one of the partner species in the great enterprise of Gaia."[141] As Berry commented, "The ecological community is not subordinate to the human community. Nor is the ecological imperative derivative from human ethics. Rather, our human ethics is derivative of the ecological imperative . . . [which is] the well-being of the comprehensive community . . . ."[142]

### *B. Expanded Standing: A Stone Left Unturned?*

> A few such elms would alone constitute a township. They might claim to send a representative to the General Court to look after their interests.[143]

Professor Christopher Stone's path-breaking book, *Should Trees Have Standing?*,[144] provides a starting point for discussions of expanding legal-environmental ethical parameters. Proposing that non-human members of the comprehensive community be recognized as legal rights-holders, Stone acknowledged the great naturalist Aldo Leopold's hope that expanded ethics would be an inevitable consequence of ecological evolution.[145] In this

136 Terry W. Frazier, *The Green Alternative to Classical Liberal Property Theory*, 20 VT. L. REV. 299, 310 (1995).

137 HOLMES ROLSTON III, PHILOSOPHY GONE WILD: ESSAYS IN ENVIRONMENTAL ETHICS 218 (1986).

138 *Id.*

139 MCLAUGHLIN, *supra* note 27, at 115.

140 LOVELOCK, *supra* note 15, at 243.

141 *Id.* at 9.

142 Thomas Berry, *Ethics and Ecology*, *in* EDUCATING FOR HUMANITY: RETHINKING THE PURPOSES OF EDUCATION 145, 153 (Mike Seymour ed., 2004).

143 HENRY DAVID THOREAU, THE JOURNAL 1837–1861, at 361 (Damion Searls ed., 2009).

144 STONE, *supra* note 38.

145 *Id.* at 22–23 (stating that the comprehensive community includes environmental actors such as trees and rivers).

paradigm, nature would possess legally actionable rights unrelated to its value to or use by humans.[146] Stone's analysis points toward a new legal-ethical consensus in which "humankind is no longer the sole yardstick against which the utility of environmental protection must be measured," as nature assumes rights-bearing status and "is entitled to a certain amount of integrity independent of human interest."[147] For Berry, this consensus should embody the principle that "every being has three basic rights: the right to be, the right to habitat, and the right to fulfill its role in the great community of existence."[148]

Unfortunately, Stone's proposal has achieved only "meager precedent" comprising "less than meets the eye."[149] Its marginalization reflects the ideological ascendancy of property rights and conservative judicial intransigence against considering ecologically-derived land use philosophies. Each tendency thrives in the absence of legal curriculum's failure to provide any environmentally-cognizant perspectives for analyzing property and its necessary equitable and ecological considerations. This omission is emblematic of a legal structure in which "[w]ith few exceptions, the most dangerous and harmful acts of human beings, those that kill or threaten to exterminate other forms of life or even the life-support systems of Earth, are not even recognized as crimes."[150] This demonstrates the dire need for legal education to extend the parameters of ethics, discussed within a planetary context rather than solely an occupational context.

## V. GREEN-LETTERING LAW

> [F]alse reification of the self is basic to the planetary ecological crisis in which we find ourselves.[151]

Few labels are as dreaded in academia, particularly in professional education, as that of "popularizer," that is, someone with the effrontery to incorporate multi-disciplinary influences and seek to connect with a broad, non-specialist audience. Intra-disciplinary journals, often incomprehensible to even the most educated layperson, operate in a fusty, hermetic sphere which "thwarts universal understanding . . . [and] keeps the uninitiated from asking unpleasant questions."[152] The enormity of the environmental crisis requires abandoning the dubious high ground of insular professionalism, as "education that examines the cultural disconnect and what is happening to

146 Susan Emmenegger & Axel Tschentscher, *Taking Nature's Rights Seriously: The Long Way to Biocentrism in Environmental Law*, 6 GEO. INT'L ENVTL. L. REV. 545, 571 (1994).

147 *Id.*

148 BERRY, *supra* note 6, at 133.

149 STONE, *supra* note 38, at 62.

150 CULLINAN, *supra* note 5, at 72.

151 Joanna Macy, *The Greening of the Self*, *in* ECOTHERAPY: HEALING WITH NATURE IN MIND 238, 243 (Linda Buzzell & Craig Chalquist eds., 2009) (quoting Gregory Bateson).

152 HEDGES, *supra* note 113, at 90.

the natural world is precisely what is most needed today."[153] Legal education must confront transformative changes in ethical understanding and revamp an archaic 19th-century curriculum by incorporating 21st-century realities. Disciplinary retreats into "core curriculum" redoubts—designed in-and-for a vanished world and its anti-natural paradigm—greatly disserve both students and the society in which they will wield outsize influence. Curricular originalism "allows students and faculty to retreat into these self-imposed fiefdoms and neglect the most pressing moral, political, and cultural questions."[154]

Why should legal education undertake this transformation? Is not its role more properly to prepare technicians-tacticians, rather than (those frequently mocked) "Big Picture" thinkers? Starting with legally counseled developers, extractors, and agribusinesses, moving on to lawyer-dominated local, state, and national governmental bodies and agencies, and concluding with lawyers' socio-cultural ubiquity, the profession cannot evade responsibility for its indispensable environmental role. Confronting escalating ecological peril cannot be delegated to environmental law practitioners alone; the entire profession needs to reexamine its role in the part-and-parceling of the planet, for as Stone asserts, "[T]he law has not merely an educative, but a spiritualizing role in our society."[155] Garvey adds that "[t]here is viciousness in refusing to act unless others do too. It is nothing less than ignoring the moral demands on us while simultaneously trying to place moral demands on others."[156] Accordingly, a legal critic notes, "If lawyers see themselves as officers of justice, they must accept greater obligations to *pursue* justice."[157] Lawyers' duty of zealous representation does not absolve them from broader societal ethics and norms, but instead obligates them to be *more* rather than less aware of the possibly far-reaching effects of their counsel. Professor Deborah Rhode has proposed granting legal professionals a greater range of freedom of conscience, "where the ethical stakes are substantial, lawyers have an obligation to refuse assistance whatever the other consequences. We do not normally absolve individuals of moral responsibility on the ground that their successor could be worse."[158]

The core legal curriculum needs to incorporate ecological understandings, which does not necessitate requiring environmental law courses so much as expanding the parameters of ecologically-pertinent discussion and analysis in the existing framework; not to retrofit but rather to reinvigorate. Ethics, presented without reference to earth ethics, and property, offered within an 18th-century paradigm, evince disregard, if not disrespect, for the most critical issue facing humankind. Necessary contextualization can be provided without derailing the priority of practice

153 EHRLICH & EHRLICH, *supra* note 55, at 249.
154 HEDGES, *supra* note 113, at 90.
155 STONE, *supra* note 38, at 66.
156 GARVEY, *supra* note 30, at 111.
157 RHODE, *supra* note 90, at 17 (emphasis in original).
158 *Id.* at 69.

preparation; reexamination of the curriculum's sub-textual messages will simply result in more ecologically-conscious practitioners, and fewer amoral tacticians. Law schools must help construct "ethical frameworks that lead us to question and examine the results of our teaching and research on the natural and human communities of which we are a part . . . [and] must be not only *of* the world but *in* it."[159] This task cannot be delegated to specialists, for "[h]ad environmental law worked, we would not have an ecological crisis."[160]

In the end, the legal education process must reexamine what values are implicitly transmitted, and how they operate to the benefit or detriment of the greater society. As Schumacher observed, "Education which fails to clarify our central convictions is mere training or indulgence."[161] The intensifying bottom-line-oriented pressures confronting practitioners might account for the growing number of those who are now disillusioned with their craft. So also might be the profession's—and legal education's—greater failure to inspire a greater sense of identification with the "outside" world, particularly the world found in nature. The late eco-philosopher Arne Naess's concept of the *ecological self* offers a promising alternative path.[162] Defining the *self* as "that with which this person identifies," Naess suggested that it could be "as comprehensive as the totality of our identifications," supplanting conventionally-defined (career, status) identities in favor of more ecologically-expansive ones (other species, natural systems).[163] This process "enlarges our temporal context, freeing us from identifying our goals and rewards solely in terms of our present lifetime."[164] Naess's Deep Ecology, or "ecosophy," proposes that "there is an identity between the human self, properly understood, and the natural world. To destroy it is to destroy ourselves."[165] Legal education needs to reexamine and reevaluate what sort of identifications it implicitly encourages—and discourages. Ultra-competitiveness and the laurels awarded to those who attain the (market-defined) commanding heights of the profession subvert otherwise indispensable life-lessons. As Stone cautioned:

> If we only stop for a moment and look at the underlying human qualities that our present attitudes toward property and nature draw upon and reinforce, we have to be struck by how stultifying of our own personal growth and satisfaction they can become when they take rein of us.[166]

Naess's concept "refers to self-realization in the sense that one's own self-realization is intimately bound up with the self-realization of others rather than to self-realization in an egoic, narrowly self-centered, or 'ego-trip'

159 BROWN, *supra* note 68, at x (emphasis in original).
160 Wood, *supra* note 81, at 591.
161 SCHUMACHER, *supra* note 93, at 107.
162 FOX, *supra* note 77, at 230 (quoting Arne Naess).
163 *Id.*; *see also* ARNE NAESS, ECOLOGY OF WISDOM 81–82 (Alan Drengson & Bill Devall eds., 2008).
164 Macy, *supra* note 151, at 244.
165 BROWN, *supra* note 68, at 48.
166 STONE, *supra* note 38, at 27.

sense."[167] Legal education, unfortunately, has invested in developing the latter, rather than the former state of awareness. The ecological costs overshadow those experienced by practitioners who find themselves confronting mounting occupational frustration and materialist malaise. New ecological insights emerge with increasing frequency, but legal education has yet to acknowledge the paradigm-transforming foundation upon which these findings build. As the Dalai Lama observes, "It has become an urgent necessity to ethically reexamine what we have inherited, what we are responsible for, and what we will pass on to coming generations. We ourselves are the pivotal human generation."[168]

167 FOX, *supra* note 77, at 113.

168 The Fourteenth Dalai Lama, *Universal Responsibility and the Climate Emergency*, *in* A BUDDHIST RESPONSE TO THE CLIMATE EMERGENCY, *supra* note 25, at 22.