

SUSTAINABLE LIVING: SEEKING INSTRUCTIONS FOR THE FUTURE: INDIGENOUS PEOPLES' TRADITIONS AND ENVIRONMENTAL PROTECTION

Robert F. Housman*

White Man came to this country and forgot his original instructions. So you're here looking for the instructions you lost. I can't tell you what those were, but maybe there are some things I can explain¹

Depending on which theory you adhere to, roughly 500 years ago in 1492, Columbus sailed the ocean blue and discovered the new world. That, in fact, is a falsehood. Columbus did not discover America;² he came upon an America that was inhabited by scores of indigenous societies, such as the Onondaga, the Lakota, and the Hopi. Although their activities had a definite impact on their natural surroundings, these indigenous societies typically practiced a way of life that was integrated into the overall ecology so that it was sustainable over the long term. The Europeans called them savages.

During the ensuing five hundred years, the settler societies, of which we are members, have succeeded in virtually destroying the land and with it these indigenous societies.³ We have torn down adobe pueblos and long hut villages and put in their place

* Attorney, Center for International Environmental Law, U.S., Washington, D.C.; Adjunct Professor of Law, Washington College of Law, the American University; J.D. 1990, Washington College of Law, the American University; B.A. 1987, St. Lawrence University. The author wishes to thank Darwood Zaelke, David Downes, Lee McDonough, along with the staff of *The Touro Journal of Transnational Law*.

1. S. WALL & H. ARDEN, *MEETINGS WITH NATIVE AMERICAN SPIRITUAL ELDERS* 29 (Beyond Words Publishing Inc. 1990) (quoting Matthew King, traditionalist spokesman of the Lakota).

2. Current understanding provides that Columbus did not "discover" America, but instead "discovered" the Bahamas. See, e.g., B. Lopez, *The Rediscovery of North America*, 1991 *AMICUS J.* 12.

3. See generally *id.*

sprawling cities of glass and stone. We have replaced the horse with countless pollution-belching cars and trucks. Here in the United States and throughout most of the developed world, we have transformed trails and paths into miles of asphalt highways. We have turned pristine streams and lakes into poisonous dead waters and vast blue skies to gray smog. In 1992, the fruited plain now bears a harvest of shopping malls, fast-food joints and discount tire stores. All of this has been in the name of progress and development.

As we have depleted the natural resource base in our own country, we have had to turn increasingly to the resources of other nations to fulfill our desires. Having been taught to aspire to this process of churning up natural resources and spitting out material goods, progress, and development, many other nations have been willing partners by giving up tremendous natural resources and incurring substantial debts in the hope of raising their standards of living and entering the "developed" world.

Then somewhere along this path, we took a step back and began to look critically at the world we were building. We began to realize we were running out of the natural wealth upon which our societies are dependent.

There were fuel shortages, droughts and famines. Our communities were being poisoned by toxic wastes, and, if these threats were not enough, we began to recognize that there were growing world-wide environmental threats like global warming and ozone depletion. It was time to re-think our treatment of the world and its resources.

In 1972 in Stockholm, Sweden, the United Nations held the first Conference on the Human Environment that culminated in the issuing of the Stockholm Declaration.⁴ Principle 1 of the Stockholm Declaration recognizes that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and im-

4. Declaration of the United Nations Conference on the Human Environment, U.N. DOC. A/Conf. 48/14, *reprinted in* 11 I.L.M. 1416 (1972) [hereinafter Stockholm Declaration].

prove the environment for present and future generations."⁵ This recognition that mankind has a responsibility to preserve the resources of the world for future generations forms the cornerstone of "Sustainable Development": development at a rate that meets the needs of current generations without compromising resources for future generations.⁶

While recognizing the responsibility of nations to work to achieve sustainable development, the Stockholm Declaration was also quick to recognize, in Principle 21, that all nations have a sovereign right to develop and exploit their resources.⁷ The only restriction that the Stockholm Declaration imposes on this right to development is that states "must ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."⁸

This balance between a right to a clean and healthy environment and the right to development, known as sustainable development, has charted our course for roughly the past twenty years. During these twenty years, we have made many important strides towards this goal of sustainable development. While sustainable development remains a great distance away, we are seeing efforts today that would have been unheard of even ten years ago. For example, we are witnessing a greening of the corporate conscience as businesses, in response to the demands of an increasingly environmentally aware consumer population worldwide, begin to self-regulate their actions that have impacts on the environment.

5. *Id.* Principle 1.

6. *See, e.g.*, THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 8-9 (1987). Sustainable development now has taken on a wide variety of formulations, however, in its simplest sense, it refers to development that meets the needs of the current generation without compromising the resources for future generations. *See also* EDITH BROWN-WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY AND INTERGENERATIONAL EQUITY 22-24 (Transnational Publishers 1989) (discussing various formulations of sustainable development).

7. Stockholm Declaration, *supra* note 4, Principle 21.

8. *Id.*

These gains notwithstanding, with the United Nations Conference on the Environment and Development in Rio de Janeiro just completed and this being the 500-year anniversary of Columbus opening the way for colonization of the Americas, it is appropriate to re-evaluate our progress.

Even if we achieve this goal of sustainable development, what will our world look like? "Sustainable development" is still development in its most traditional sense: the churning wheels of society rolling over nature, spitting out material goods. Assuming we can successfully internalize all our environmental costs, if we view resources as only material ends, what will become of those resources that do not have readily apparent material values?⁹ What will become of a species, like the California condor, whose economic values are minimal, and will our world look and feel the same when they are gone?¹⁰

9. The very notion that the worth of a resource, such as a species, can be derived as a function of the economic value it delivers to people is, in and of itself, fundamentally flawed. The eminent conservationist Aldo Leopold wrote so eloquently:

My notes tell me I have seen a thousand geese this fall. Every one of these in the course of their epic journey from the arctic to the gulf has on one occasion or another probably served man in some equivalent of paid entertainment. One flock perhaps has thrilled a score of school boys, and sent them scurrying home with tales of high adventure. Another, passing overhead of a dark night, has serenaded a whole city with goose music, and awakened who knows what questioning and memories and hopes. A third perhaps has given pause to some farmer at his plow, and brought new thoughts of far lands and journeying and peoples, where before was only drudgery, barren of any thoughts at all. I am sure those thousand geese are paying human dividends on a dollar value. Worth in dollars is only an exchange value, like the sale value of a painting or the copyright of a poem. What about replacement value? Supposing there were no longer any painting, or poetry, or goose music? It is a black thought to dwell upon, but it must be answered. In dire necessity somebody might write another *Iliad*, or paint an 'Angelus,' but fashion a goose?

ALDO LEOPOLD, SAND COUNTY ALMANAC 229 (1949).

10. The second practical problem with assigning value to biological diversity . . . is that many species, perhaps most, do not seem to have any conventional value. True we can not be sure which particular species fall into this category, but it is hard to deny that there must be a

Somewhere along the way we have allowed ourselves to lose sight of the vision that nature exists as more than an indentured servant to human well-being. While we have been working for sustainable development, we should have been creating "sustainable living": living in harmony with nature, seeking to achieve more prosperity while using less resources in benign ways.

Today, the issue is not what level of development is sustainable; the issue is environmental and ethical quality control. Are you happier feeding yourself with a perfect fresh pineapple, free of pesticides and made without the destruction of rivers and lakes from agrottoxics grown in a truly sustainable fashion, or are you happier seeing your supermarket shelves stocked full of canned pineapples drowning in syrup? We must determine how we can raise global standards of living while at the same time minimizing current and future environmental impacts and remedying our past environmental faults. In other words, how do we achieve sustainable living?

As Audrey Shenandoah, the Clan Mother of the Ononodoga, has noted so eloquently:

great many of them. And unfortunately, the species whose members are the fewest in number, the rarest, the most narrowly distributed in short, the one most likely to become extinct are obviously the ones least likely to be missed by the biosphere. . . . If the California condor disappears forever from the California hills, it will be a tragedy: but don't expect the chaparral to die, the redwoods to wither, the San Andreas fault to open up, or even the California tourist industry to suffer — they won't

I am not trying to deny the very real ecological dangers the world is facing, rather, I am pointing out that the danger of declining diversity is in great measure a separate danger, a danger on its own right. Nor am I trying to undermine conservation; in fact, I would like to see it find a sound footing outside the slick terrain of economist and their philosophical allies.

If conservation is to succeed, the public must come to understand the inherent wrongness of the destruction of biodiversity.

D.Ehrenfeld, *Why Put a Value on Biodiversity*, in *BIODIVERSITY*, 1988, at 212, 214-15.

necessary to provide food, clothing, and shelter for everyone . . . Western society needs to prioritize life-supporting systems and to question its commitment to materialism.¹¹

If our societies have the ability to allow all the world's people to live in an environmentally friendly way at a higher standard of living, why have we not achieved an environmental balance between the world's resources and human needs? When we question modern society's inability to live in harmony with nature, the heart of the question is really more aptly put as "where did we lose these principles of sustainable living?" If you adhere to the theory that Columbus discovered the new world, we lost them roughly 500 years ago. Discovery quickly gave way to conquest, and our settler ancestors, in their efforts to tame these new-found lands and obtain their wealth, foolishly squandered animal and plant species, languages, epistemologies, cultures and even races of humankind. Among the victims of this physical and cultural carnage were many of the existing principles of sustainable living.

The laws of these indigenous peoples, including the principles, traditions, and lore that guides their day-to-day affairs, embody highly advanced tenets that allowed, and in certain instances continue to allow, these peoples to live in closer harmony to nature.¹² For example, while our American courts continue to struggle with the question of who has standing to raise a challenge on behalf of a natural resource, the Oneidan people have for hundreds of years had a principle of "speaking for the wolves," or appointing a person, a trustee if you will, to speak

11. WALL, *supra* note 1, at 27.

12. This is not to imply that all indigenous groups are noble savages living in perfect harmony with nature. Like most of us, as the developed world has dangled the trinkets of industrialization before them, many indigenous groups have sold their beliefs for the trappings of consumerism. This, however, does not in any way diminish the value of their abandoned beliefs and traditions. Moreover, these groups abandonment should make more valuable those groups — and the principles and beliefs they continue to hold — that have refused to sell out. *See Lopez, supra* note 2.

on behalf of nature to the tribe's decision making bodies evaluating tribal actions.¹³

Despite growing recognition of the beauty and worth of these indigenous societies, to this day the carnage continues. As shrinking resource reserves require industrialization to push deeper into areas that have in the past been insulated from development, all around the world the last remaining indigenous societies are falling prey.¹⁴

Confronted with this human tragedy, environmentalists are finally taking action, joining the ranks of the human rights advocates who have been struggling to protect these peoples and their lands. From the Arctic to the Amazon, we are now struggling together to preserve these peoples, their lands and their cultures. This partnership between environmental advocates and human rights advocates is beginning to pay off in ways we never would have imagined. Brazil and Canada have committed to increasing the territories of their indigenous populations.¹⁵ The World Bank has issued an indigenous peoples directive intended to ensure that

13. See Wolf, *Only Man's Presence Can Save Nature*, HARPERS MAGAZINE, Apr. 1990, at 48.

14. Alan Thein Durning accurately notes: Most of the Americas' 40 million Indians live in what Mexican anthropologist Aguirre Beltran called "regions of refuge," places so rugged, desolate or remote that industrial economy has eschewed them.

Intact Indian communities and little disturbed ecosystems overlap with uncanny regularity: from the coastal wetlands of Central America to the densest tracts of Amazonian rain forest, from the Badlands of South Dakota to the wind-bitten expanses of the Andean high country. Indians live in these areas for tragic reasons. The tribes that were better endowed with resources were either eradicated outright to make way for colonial settlers or plantations, or they retreated—or were forcibly relocated—into these natural redoubts.

But . . . no refuge is safe for long. Everywhere, the world economy is intruding on the remnants of native lands, destroying habitat and undermining cultures built on enduring design.

Alan T. Durning, *Native Americans Stand Their Ground*, WORLDWATCH, Nov. - Dec. 1991, at 11.

15. See *Brazil Grants Land Rights to Indians*, WASH. POST, Nov. 16, 1991, at A24 (discussing creation of Yanomami reservation); see also *Accord to Give Eskimos Control of a Fifth of Canada*, N.Y. TIMES, Dec. 17, 1991, at A1.

World Bank projects do not adversely affect indigenous peoples.¹⁶

Substantively, we must develop legal frameworks that will enable us to expand on and protect these gains. For example, there is growing recognition that the right to a safe and clean environment, embodied in Stockholm Principle 1, is more than compelling rhetoric; it has meaning in the sense that there are legal rights that relate to the environment. For example, there is now a call for the creation of new schemes of property rights in intellectual property and biological information to take into account the value of foods and medicines that can be derived from plants and animals within indigenous territories and of indigenous knowledge of these resources.¹⁷

Procedurally, we must develop the necessary legal mechanisms and form a way to protect these emerging rights and principles. A first step in this direction is the decision of the Texas Supreme Court that the doctrine of *forum non conveniens* does not preclude a suit by a foreign national against a Texas company for alleged tortious conduct occurring outside of the United States.¹⁸ This decision allows, at least for the time being, foreign individuals (including indigenous peoples) injured by the actions of corporations with minimum contacts to Texas to sue for harms incurred, even though the domestic law of the nation in which the harm occurred may not recognize a reasonable person minimum standard of conduct.

Although the Texas decision provides an important mechanism for regulating the overseas conduct of domestic and foreign industries with ties to Texas that satisfy constitutional protections, it is, however, limited to Texas. Broader and more important legislative initiatives are, however, developing in the United States House of Representatives and Senate that would provide even greater degrees of protection for indigenous peoples. Of

16. *World Bank Operational Directive 4.20: Indigenous Peoples* (WORLD BANK) (photocopy on file with author).

17. See David Downes, *Legal Mechanisms for Preserving Biological and Cultural Diversity* (U.S. working paper, 1992) (on file with the Center for International Environmental Law).

18. See, e.g., *Dow Chemical Co. v. Alfaro*, 786 S.W.2d 674 (Tex. 1990).

note is a recent proposal by Senator Gephardt to introduce legislation that would allow United States courts to hear actions for the violation of foreign laws.¹⁹ The importance of this legislation lies in the fact that, while many of these indigenous peoples enjoy protections in their national laws and constitutions, the law enforcement agencies and courts of the countries in which they live cannot or do not protect these rights. If, as Senator Gephardt's proposal envisions, a violation of these laws by an American company or a foreign company with sufficient ties to the U.S. can be redressed by an American court, the efficacy of the protections provided to these indigenous peoples by these laws of their own countries will increase exponentially.

Despite all our efforts to assist these peoples, in the long run, mere preservation is not enough. If all we succeed in accomplishing is the establishment of a few human biosphere reserves—indigenous peoples' drive-through parks for the tourist gawker—we will have accomplished little and learned nothing. If our societies are to achieve sustainable living, we need to not only preserve these indigenous societies; we must learn from their examples.

Learning from these indigenous societies does not necessarily mean returning to the days of adobe pueblos. That would be impossible. Rather, it means recognizing the worth of the sustainable values, traditions, and laws of these societies, so that they may regain and retain value within their own societies and aid in reshaping our laws and decision making processes as well. This is the goal of the Center for International Environmental Law-U.S.'s Traditions for the Future Project. The Traditions for the Future Project focuses on listening and learning from the indigenous peoples we work in partnership with so as to make it possible to build their laws and practices into the systems of the "developed" world.

For example, today there is a tremendous battle over the Amazon basin and what will become of this tremendous area of natural wealth. Forces in Brazil are arguing that Brazil has a sover-

19. See *Gephardt Proposes Enforcement of Foreign Environmental Law in U.S. Courts*, INSIDE U.S. TRADE, Sept. 13, 1991, at 3.

eign right to develop this land for its own economic benefit.²⁰ The Amazon is, however, inhabited by scores of indigenous groups who have lived in harmony with the rain forests for centuries.²¹ These indigenous peoples have a right to their ancestral lands and their cultures just like Brazil has a right to develop its territories.²²

Perhaps, however, there is a way of harmonizing all these interests. By using indigenous resource expertise, there are ways that Brazil can use the Amazon's resources to increase the standard of living in Brazil without destroying the Amazon's natural

20. See *Environmentalists in Amazon Field Threats From Local Military Officers, Politicians*, 14 Int'l Env't Rep. (BNA) 501, 502-03 (Sept. 25, 1991).

21. For example, the Brazilian Amazon is the homeland of the Yanomami and Kayapo. Not only have the Yanomami not degraded their environment but studies relate that the activities of the Yanomami actually contribute to the health and vitality of the rainforest areas that they live in. See K. Taylor, *Deforestation and Indians in Brazilian Amazonia*, in, BIODIVERSITY, 1988, at 138. The Kayapo live a healthy and well-fed life while their practices make the natural resources of the areas they inhabit more diverse, locally concentrated, with greater population, size and density and more vigorous than if Kayapo were not present in these areas. *Id.* at 140.

22. The rights of the indigenous people to their traditional Amazonian territories are recognized under the new Brazilian Constitution. C.F., Titulo VIII, Capitulo VIII, Art. 231 (Brazil)(1988). While the Brazilian government has been slow to enforce these rights, it has taken initial steps to demarcate some territories. See *Brazil Grants Land Rights to Indians*, *supra* note 15.

Additionally, the right to preservation of culture is recognized internationally and, increasingly, on the national level by nations other than Brazil. See The Convention Concerning the Protection of World Culture and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, T.I.A.S. No. 8226; WEISS, *supra* note 6, at 329-43, (setting out constitutional provisions of seventeen countries that pertain to preservation of cultural heritage). Also, these indigenous peoples have rights to life and security of person that are non-derogable and are regarded as *jus cogens*. See Case 9647, Inter-Am. C.H.R. 147, 166, OEA/Ser. L/V/11.71, doc. 9 rev. 1 (1987); see also Gromley, *The Right to Life and the Rule of Non-derogability: Preemptory Norms of Jus Cogens*, in THE RIGHT TO LIFE IN INTERNATIONAL LAW (Ramcharan ed., 1985); Comment, *International Human Rights Law and the Earth: Protection of Indigenous Peoples and the Environment*, 31 VA. J. INT'L L. 479, 489 (1991). These rights to life and security of person have been found to be violated where development efforts have destroyed or taken the territories of indigenous peoples. See Case 7615, Inter-Am. C.H.R. 24, OEA/Ser. L/V/11.66, doc. 10 rev. (1985).

wealth and beauty. The indigenous people of the Amazon sustainably use over 700 plant species for nutritional, medicinal, domestic, and religious purposes.²³ Each of these 700 species of plants, harvested in a sustainable fashion, can offer their indigenous discoverers and Brazil a long-term potential source of wealth, and they could give the world a cure for cancer or a new food to ameliorate world famine.²⁴

Not only do indigenous peoples offer us great technological expertise, but their traditions offer us a wealth of knowledge that can help us create the laws that will be necessary if we are to move towards sustainable living. Look at our environmental planning laws. The United States National Environmental Policy Act, our national environmental assessment law, does not address the environmental effects of a project on future generations.²⁵ The Great Law of the Six Nations of the Iroquois, however, requires that every deliberation must consider the impact of the decision on the next seven generations.²⁶ With the advent of long-range threats like global warming and ozone depletion, which

23. See J. Kimmerling, *Disregarding Environmental Law: Petroleum Development in Protected Natural Areas and Indigenous Homelands in the Ecuadorian Amazon*, 12 HASTINGS INT'L & COMP. L. REV. 849, 854 (1991) (discussing the use of plants by the indigenous amazonian people of Ecuador's Oriente region). The vast number of plant species that indigenous cultures have learned to use stands in sharp contrast to the "developed" world's ignorance as to the value of the world's vast number of resources. For example, nearly half the drugs in use today were developed from substances initially found in plants, fungi, and microorganisms. See *A Report to the National Science Board: Loss of Biological Diversity: A Global Crisis Requiring International Solutions*, NATIONAL SCIENCE BOARD, 1989, at 10. Yet all plant-derived drugs are the product of fewer than 90 of the 250,000 identified plant species. See K. MILLER & L. TANGLEY, *TREES OF LIFE SAVING TROPICAL FORESTS AND THEIR BIOLOGICAL WEALTH* 24 (1991).

24. In order to ethically facilitate capitalization on indigenous knowledge of biological resources, it will be necessary to change national and international intellectual property regimes to ensure that the indigenous discoverers of new medicines, foods, and other products are rewarded for their knowledge.

25. See National Environmental Policy Act, 42 U.S.C. §§ 4321-4347 (1988).

26. SEVENTH GENERATION (Seventh Generation), May 1990 (newsletter).

will be felt most severely not by our generation but by our progeny, it would behoove us to incorporate the seventh-generation principle into our laws.

Incorporating the traditional knowledge and principles of indigenous people is not merely environmentally or ethically sound but is also economically sound. In the short term, properly crafted environmental regulations create incentives for industries to become more efficient and innovative.²⁷ The incorporation of indigenous principles, like the seventh-generation principle, that encourage long range planning and maximum efficiency in resource use, will serve as a much needed impetus for American government and industries to eliminate waste and to accurately evaluate and plan for their futures. Moreover, incorporating and building upon indigenous knowledge of medicines and foods will create new markets and allow sustainable industries to emerge. In the long term, by forcing our societies to stop destroying the resources upon which our industries, markets, and lives are dependent, these indigenous principles will help ensure our economic and physical survival. These short and long term benefits are embodied in the concept I have chosen to call "environmental quality control."

In addition to producing tangible benefits for our developed societies as we learn from these indigenous societies, we will begin to assign these peoples, and their cultures, the respect they deserve. We will approach them not as novelties to be gawked at by tourists for a fee—incessantly pointing flashing cameras from behind the closed windows of air-conditioned automobiles—but as the learned statesmen, scientists, pharmacists, foresters, farmers, teachers, and healers they are. The more we come to realize the value and worth of these indigenous peoples as our equals, the more difficult it will be for us to ignore the trespasses our societies inflict upon these peoples, their lands, and their cultures.

The United Nations Conference on Environment and Development in Brazil and the 500-year anniversary of the "birth of the

27. Michael Porter, *America's Green Strategy*, SCI. AM., Apr. 1991, at 168.

new world” have afforded us a tremendous opportunity to evaluate our past and to carve our future. As we look to the future, let us find direction from our past. As we implement the agreements signed at Rio 92 and apply them to all our laws, to the ethical codes of our industries and to our daily lives, we should follow the principles of living in harmony with the land that our indigenous brethren have held so dear.

Man sometimes thinks he has been elevated to be the controller, the ruler. But he’s not. He’s only part of the whole. Man’s job is not to exploit but to oversee, to be a steward. Man has responsibility, not power.²⁸

28. WALL, *supra* note 1, at 67 (quoting Oren Lyons, Faithkeeper of the Turtle Clan of the Onondaga Nation and spokesman for the Six Nations Iroquois Confederacy).

the world. For a long time, the world was a
 very different place. It was a place where
 the people were very different from the
 people of today. They were very
 different in their ways of thinking,
 their customs, and their
 ways of life. They were very
 different in their
 ways of thinking,
 their customs, and
 their ways of life.

The world was a very different place.
 It was a place where the people were
 very different from the people of today.
 They were very different in their
 ways of thinking, their customs, and
 their ways of life. They were very
 different in their
 ways of thinking,
 their customs, and
 their ways of life.

The world was a very different place.
 It was a place where the people were
 very different from the people of today.
 They were very different in their
 ways of thinking, their customs, and
 their ways of life. They were very
 different in their
 ways of thinking,
 their customs, and
 their ways of life.