

EARTHONOMICS: BALANCING BETWEEN EARTH AND BUSINESS

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I. INTRODUCTION

The American Dream is one of this country's strongest selling points.¹ It is the symbol of American democracy.² This concept is recognized and understood worldwide to mean freedom, justice, prosperity, and opportunity.³ The American dream has brought people to America from every crevice in the world; people of all races, religions, colors, and ethnicities, regardless of age, gender, or socio-economic background flock to this country in search of "life, liberty, and the pursuit of happiness."⁴ Likewise, this country's economic values are based on a free-market system, which is also indirectly embedded in the Declaration of Independence.⁵ A free market can be understood as an economic theory or system intended to promote efficiency and competition through minimum government control.⁶ Simply put, the more "free" a market is, the less the government regulates. In the United States, the free market coupled with the ability to accumulate wealth through private ownership is simply referred to as capitalism.⁷

Individuals in favor of free-market generally conflate capitalism with a happy and healthy society.⁸ They believe that capitalism allows

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¹ See Geoffrey D. Korff, *Reviving the Forgotten American Dream*, 113 PENN ST. L. REV. 417 (2008).

² *Id.*

³ *Id.*

⁴ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); Korff, *supra* note 1.

⁵ *Id.*

⁶ See generally Arthur Acevedo, *Responsible Profitability? Not on my Balance Sheet!*, 61 CATH. U. L. REV. 651 (2012) (explaining free markets and capitalism).

⁷ JAMES GUSTAVE SPETH, *THE BRIDGE AT THE EDGE OF THE WORLD*, 7 (2008).

⁸ See Jonathan Scott Miles, *Doing the Right Thing for Profit: Markets, Trade, and Advancing Environmental Protection*, 44 DRAKE L. REV. 611 (1996).

anyone to achieve almost anything in life.⁹ They also believe that capitalism encourages competition, which keeps businesses honest and makes them work hard in order to stay comparatively affordable with other enterprises that provide the same products or services.¹⁰ Lastly, proponents of free-markets claim that capitalism fosters equality; that is, individuals who are willing to work hard can achieve their goals and desires regardless of how unattainable they may seem.¹¹ Free-market defenders have created a false dichotomy. To a degree, there is truth to these claims, as there have been many stories of people who came from nothing and now are successful.¹² There is no denying that the free market has allowed for great economic development.¹³ However, the question hardly asked is, “at what cost has this economic development come?” Along with extravagant benefits, corporations have imposed significant burdens on society.¹⁴

On its face, a completely free-market economy sounds ideal. However, society is hesitant to evaluate the downside of this dominant economic model. Some of the problems to consider include: who would stop businesses and corporations from being negligently wasteful if there is no government regulation? Who would prevent these enterprises from recklessly polluting the air? Who would stop companies from infinitely dumping waste wherever and whenever they desire? Who would restrict industries from consuming all the finite resources the Earth produces (i.e. fossil fuels)? Who would hold manufacturers to quality standards in regards to the products they produce? Who would stop companies from lying to, or misleading, innocent consumers? These are questions this article addresses and discusses for the reader to consider.

Statistics demonstrate that complete unrestricted market is detrimental, especially for the middle and lower classes of society and

⁹ See generally *id.* (discussing free markets).

¹⁰ See generally *id.* (discussing economic competition).

¹¹ Burton Folsom, *Equality, Markets, and Morality*, FEE (Sept. 1, 2008), http://www.fee.org/the_freeman/detail/equality-markets-and-morality.

¹² *Economic Mobility: Is “Rags to Riches” Still Possible?*, THE BIG PICTURE, <http://www.ritholtz.com/blog/2011/11/economic-mobility-is-%e2%80%9crags-to-riches-%e2%80%9d-still-possible/> (last visited Apr. 2, 2014) [hereinafter *Economic Mobility*].

¹³ Acevedo, *supra* note 6, at 652.

¹⁴ *Id.*

more importantly, to Earth as a whole.¹⁵ As scholars have noted, “[o]ur current economy and morals threaten our democracy.”¹⁶ While an elite few deplete the Earth for their personal acquisition of wealth, many others struggle to live while leaving a minimal footprint; the small group of people who do the majority of the damage gain power and wealth along the way but the permanent damage is paid for by every living being.¹⁷

What economists constantly fail to account for is that Earth has a finite amount of resources.¹⁸ “What the dominant industrialized civilizations today characterize as ‘progress’ amounts to accelerating towards their collapse.”¹⁹ However, societies do not contemplate this because humans have come to think of themselves as independent beings, separate from their nature, especially in modern times.²⁰ Although technological advances empower humans to believe they are independent beings, they are not as independent as they think. Humans are dependent upon the Earth and the resources within; everything from the air we breathe to the food we eat and the water we drink comes from the very ecosystems humans are destroying.²¹ People live under the false notion that technology can fix everything.²² This false rationale of independence may be part of the reason humans continue to use resources as if there is no limit.²³ If humans do not take the necessary precautions, this misconception of independence may eventually lead to human destruction, especially if technology does not catch up to the lifestyle people have ambitiously anticipated.²⁴

In the meantime, society needs a more ethical and moral approach to business and economics; one that takes Earth into account.²⁵ This

¹⁵ *Economic Mobility*, *supra* note 12.

¹⁶ DVD: 2006 The Great Turning (Yuba Gals Independent Media 2006).

¹⁷ SPETH, *supra* note 7.

¹⁸ Susan L. Smith, *Ecologically Sustainable Development: Integrating Economics, Ecology, and Law*, 31 WILLAMETTE L. REV. 261, 279 (1995).

¹⁹ CORMAC CULLINAN, *WILD LAW: A MANIFESTO OF EARTH JUSTICE* 37 (2d ed. 2011).

²⁰ *Id.* at 51.

²¹ *See generally id.* (discussing human reliance on Earth).

²² *See id.*

²³ *See id.*

²⁴ *See id.*

²⁵ 2006 The Great Turning, *supra* note 16.

cannot happen without a change in the systems of law and governance.²⁶ The current economic growth is simply impractical, and if humans do not put an end to it, the ecosystems will eventually fail.²⁷ Competition is necessary, but if people are competing to use up everything they have as quickly as they can, then they will all end up with nothing.²⁸ Neighbors want to outdo their neighbors by boasting and flaunting their possessions. Competition has turned into greed. Society has forgotten the difference between *want* and *need*. Some people excessively consume, while others suffer from poverty.²⁹ As resources become scarcer, people will end up fighting for access and control of it. Greed will turn into a survival of the fittest.³⁰ The consequences include war, famine and an increase in natural disasters.³¹

In reality, the American Dream has long faded. The idea of owning a home is no longer the driving force of a thriving economy, but rather it is rapid consumption.³² This is visible by the fact that many Americans do not own a home and yet many still live well above their means, possessing things they often do not own; this may be why one in three Americans are in debt,³³ while the national debt is currently estimated at

²⁶ Judith E. Koons, *At the Tipping Point: Defining an Earth Jurisprudence for Social and Ecological Justice*, 58 LOY. L. REV. 349, 352 (2012). [hereinafter Koons Tipping Point].

²⁷ *Id.*

²⁸ SPETH, *supra* note 7.

²⁹ Koons, Tipping Point, *supra* note 26.

³⁰ 2006 The Great Turning, *supra* note 16.

³¹ *Id.*

³² Diana Olick, *Will the American Dream Still Include Owning a Home?*, CNBC (Mar. 20, 2014), <http://www.cnbc.com/id/101479780>. See also Anthony DePalma, *Why Owning a Home is The American Dream*, N.Y. TIMES (Sept. 11, 1988), <http://www.nytimes.com/1988/09/11/realestate/in-the-nation-why-owning-a-home-is-the-american-dream.html>.

³³ Hadley Malcolm, *A Third of Americans Delinquent on Debt*, USA TODAY (July 29, 2014), <http://www.usatoday.com/story/money/personalfinance/2014/07/29/america-debt-loads/13152651/>. See PETER J. WALLISON, *A GOVERNMENT-MANDATED BUBBLE*, FORBES.COM (Feb. 16, 2009); Letters from Hal Delaplane, La Plata, to the Editor, *The Financial Sector's Predatory Lending Led to the Housing Bubble*, THE WASHINGTON POST (Feb. 4, 2015), http://www.washingtonpost.com/opinions/the-financial-sectors-predatory-lending-led-to-the-housing-bubble/2015/02/04/4c1f613c-abc4-11e4-8876-460b1144cbc1_story.html (The housing bubble recently burst due to the fact that many Americans were buying homes they could not afford while banks and lenders were giving out mortgages to unqualified purchasers).

eighteen trillion dollars.³⁴ The dream that once offered promise and hope is now an ominous nightmare for many. As author and lawyer of Laurence Tribe imparted:

“We can be truly free to pursue our ends only if we act out of obligation, the seeming antithesis of freedom. To be free is not simply to follow our ever-changing wants wherever they might lead. To be free is to choose what we shall want, what we shall value, and therefore what we shall be.”³⁵

The purpose of this article is to analyze the behavior of corporate America and the effect it has on the world from an Earth jurisprudence standpoint. Furthermore, it will explore two specific industries, oil and food, and what role they have played in the environment’s health. Lastly, it will explore potential solutions to see what needs to be done to prevent future harm.

II. CORPORATIONS DOMINATING IN THE WORLD

Under the law, modern business corporations are considered artificial beings.³⁶ That means they have “legal rights, limited liability, no accountability to local communities, and [corporations are] driven almost solely by economic profit.”³⁷ If business organizations continue to deplete and waste without any regulation (unrestricted freedom and no liability), the future does not look prosperous for healthy ecosystems and everything that rely on them.³⁸ Society has become dependent on the products businesses produce and the jobs they provide.³⁹ The “top 200 corporations account for more than 25 percent of the world’s economic activities.”⁴⁰ However, corporations only employ “less than one percent of the world’s workforce.”⁴¹

³⁴ Mike Patton, *The U.S. Debt: Why it Will Continue to Rise*, FORBES.COM (Sept. 18, 2014), <http://www.forbes.com/sites/mikepatton/2014/09/18/the-u-s-debt-why-it-will-continue-to-rise/>.

³⁵ Laurence H. Tribe, *Ways Not to Think about Plastic Trees: New foundations for environmental Law*, 83 YALE L. J. 1315, 1326 (1974).

³⁶ Judith E. Koons, *Earth Jurisprudence and the Story of Oil: Intergenerational Justice for the Post-Petroleum Period*, 46 U.S.F L. REV. 93, 136 (2011).

³⁷ *Id.*

³⁸ CULLINAN, *supra* note 19 (discussing the future of Earth and its inhabitants).

³⁹ THOMAS BERRY, *EVENING THOUGHTS* 109 (Mary Tucker ed. 2006).

⁴⁰ CULLINAN, *supra* note 19, at 64.

⁴¹ *Id.*

The fact of the matter is it does not matter if the republican or democratic party holds the power of office because in the United States, corporations run the show; they have the money, they own the media, and ultimately they have the power.⁴² Corporations are glad to constantly supply peoples' wants because at the end of the day they only have one goal: more money.⁴³ The government has further supported this goal by supplying corporations with assistance and subsidies.⁴⁴

Over the last century, the economy has expanded by thirty six times,⁴⁵ and companies have produced more to keep up with the demand.⁴⁶ Surveys show that seventy two percent of "Americans believe that corporations have too much power."⁴⁷ A staggering seventy three percent of Americans believe that U.S. companies pay top executives way too much;⁴⁸ Further, eighty three percent of Americans agree that the United States is focused on the wrong priorities.⁴⁹ Ninety five percent of Americans believe that corporations should use some profit to help workers and communities.⁵⁰ Seventy four percent of Americans said large companies have too much government influence, while eighty two-percent believe small business does not have enough influence.⁵¹ In addition, it is important to note "respondents made a clear distinction between corporations and small business."⁵² The small group of people at the top keeps procuring more power at the expense of human survival...all for the sake of money.⁵³ The top five percent own sixty

⁴² C.M.A. McCauliff, *Didn't Your Mother Teach You to Share?: Wealth, Lobbying and Distributive Justice in the Wake of the Economic Crisis*, 62 RUTGERS L. REV. 383, 436 (2010); SPETH, *supra* note 7; BERRY, *supra* note 39; TOM ENGELHARDT, 5 SIGNS AMERICA IS DEVOLVING INTO A PLUTOCRACY, SALON (Mar. 22, 2015), http://www.salon.com/2015/03/22/5_signs_america_is_devolving_into_a_plutocracy_partner/?utm_source

⁴³ CULLINAN, *supra* note 19 (generally discussing business goals).

⁴⁴ BERRY, *supra* note 39.

⁴⁵ *Harmony with Nature*, UNITED NATIONS WEBCAST (Apr. 18, 2012), <http://www.unmultimedia.org/tv/webcast/2012/04/general-assembly-interactive-dialogue-on-commemoration-of-international-mother-earth-day.html>.

⁴⁶ SPETH, *supra* note 7.

⁴⁷ DAVID C. KORTEN, WHEN CORPORATIONS RULE THE WORLD, 6 (2d ed. 2001).

⁴⁸ *Id.*

⁴⁹ 2006 The Great Turning, *supra* note 16.

⁵⁰ KORTEN, *supra* note 47.

⁵¹ *Id.*

⁵² *Id.*

⁵³ 2006 The Great Turning *supra* at note 16.

percent of the American wealth, while the bottom forty percent own just 0.2 percent.⁵⁴

In this endless pursuit of economic growth, corporations have been a leading cause of globalization “which [is] changing [people’s] consumption patterns so that per capita consumption in many countries is increasing.”⁵⁵ Furthermore, economically prosperous corporations such as Monsanto (agricultural company) and Koch Industries (oil and gas) are exploiting Earth faster than it can recover;⁵⁶ however, it does not make sense to deplete essential non-renewables faster than alternatives are developed.⁵⁷ Currently, eighty six percent of energy comes from fossil fuels, and every year humans burn 400 years’ worth of fossil fuels.⁵⁸ The math does not add up. Even worse is human’s arrogance and false reliance that technology will fix *all* problems.⁵⁹ For example, although technological advancement has increased food production, much of that produced are processed, filled with hormones and preservatives causing harm to humans including obesity.⁶⁰ Replacing nature with technology has come with a high price. Unfortunately, this is a price no one can afford to pay.⁶¹ Aldo Leopold articulated, “if the biota, in the course of aeons, has built something we like but do not understand, then who but a fool would discard seemingly useless parts? To keep every cog and wheel is the first precaution of intelligent tinkering.”⁶² “We do not understand enough about this life support mechanism to carelessly discard parts” and use up limited resources *before* there are alternatives.⁶³

⁵⁴ McCauliff, *supra* note 42.

⁵⁵ CULLINAN, *supra* note 19, at 38.

⁵⁶ See generally KORTEN, *supra* note 47 (discussing how corporations are using too much).

⁵⁷ CULLINAN, *supra* note 19.

⁵⁸ *Harmony with Nature*, *supra* note 45.

⁵⁹ CULLINAN, *supra* note 19, at 19.

⁶⁰ Dr. Steven Ponder, *Obesity is disease, not lack of willpower*, CORPUS CHRISTI CALLER TIMES (May 18, 2011), <http://www.caller.com/news/2011/may/18/obesity-is-disease-not-lack-of-willpower/>.

⁶¹ 2006 The Great Turning, *supra* note 16.

⁶² See Heather Leibowitz, *Harmony with Nature and Genetically Modified Seeds: A Contradictory Concept in the United States and Brazil?*, 30 PACE ENVTL. L. REV. 558 (2013) (quoting Aldo Leopold).

⁶³ 2006 The Great Turning *supra* note 16.

A. HISTORY

In order to truly understand where we are and how we got here, we should first consider events that helped move us forward to this point. Western law developed over the last 500 years, beginning with the mid-sixteenth century Enlightenment Period.⁶⁴ At this time, “enlightenment philosophy reflected a massive shift of thinking that privileged reason and rejected the dogma of religious world views.”⁶⁵ Theorists, like Rene Descartes and Francis Bacon, greatly influenced this time period with their way of thinking which structured a philosophy that subordinated nature and objectified groups of people.⁶⁶ It was in this period when nature became viewed “as an object to be used (and destroyed) for human benefit.”⁶⁷ “Ironically, the leading physicists and mathematicians of today who are in many ways successors of Galileo, Bacon, Descartes, and Newton, had already rejected this worldview.”⁶⁸

The next period that brought humans to their present situation expanded the same method of thinking as the Enlightenment Era in the nineteenth century in America.⁶⁹ It was at this time when the “legal framework shifted to support industrial development.”⁷⁰ After the American Revolution, “a new structure of property and tort law” developed in the name of growth because this was in the best interest of society as a whole.⁷¹ During this time, communities experienced rapid growth and development without any concerns regarding future effects.⁷² “The Industrial Revolution’s dams, mills, factories, and canals use land with increasing intensity, causing damage that more and more frequently extended to neighboring, increasingly populated lands.”⁷³

Before the industrial age, strict liability was enforced as a deterrent of reckless behavior.⁷⁴ However, the courts moved away from strict liability and adopted a new tort law negligence standard, which

⁶⁴ Koons, Tipping Point, *supra* note 26, at 357.

⁶⁵ *Id.*

⁶⁶ *Id.* at 357, 358.

⁶⁷ *Id.* at 359.

⁶⁸ CULLINAN, *supra* note 19.

⁶⁹ Koons Tipping Point, *supra* note 26, at 359, 360.

⁷⁰ *Id.* at 359.

⁷¹ *Id.*

⁷² *Id.* at 360.

⁷³ Joseph H. Guth, *Law for the Ecological Age*, 9 VT. J. ENVTL. L. 431, 450 (2008).

⁷⁴ *Id.*

permitted “landowners not only to degrade their own lands, but often also to externalize the consequences of their activities by damaging neighboring lands.”⁷⁵ This new cost-benefit analysis standard only took into account “harm to another” but failed to take into account the cost to Earth and the ecosystems.⁷⁶ In the modern world, “cost-benefit analysis can no longer be justified as a tool for evaluating the reasonableness of individual increments of environmental damage. Each incremental impact, if taken alone, might have caused little or even no harm at all in an empty world.”⁷⁷ Back when the rapid growth and development began, it may have been tolerable to use this analysis because the population was smaller, there were fewer businesses engaging in waste, drilling, and pollution, which resulted in less strain on the environment, therefore, the damage was bearable.⁷⁸ On the other hand, the population has grown so much, and there are so many businesses engaging in such practices that Earth simply cannot sustain all the harm.⁷⁹ By the year 2050 the world population is expected to surpass nine billion people.⁸⁰ It is no longer feasible to use the current analysis that was adopted years ago, especially when businesses disregard the Earth and only account for their bottom line: profits.⁸¹

Things began to shift in the 1970s when Ralph Nader generated awareness as to what was happening in American commerce and the business world.⁸² “Responding to the verdict of political pollsters, even Richard Nixon was talking environmentalism.”⁸³ Nixon went on to say, “The 1970s must be the years when America pays its debts to the past by reclaiming the purity of its air, its water, and our living environment. It is literally now or never!”⁸⁴ It was also in 1970 that the first Earth Day

⁷⁵ *Id.* at 452.

⁷⁶ *Id.* at 454.

⁷⁷ *Id.* at 466.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Elizabeth G. Hill, *Natures Harvest or Man's Profit: Environmental Shortcuts in the Deregulation of Genetically Modified Crops*, 44 TEX. TECH L. REV. 353, 354 (2012).

⁸¹ Guth, *supra* note 73, at 466.

⁸² Zygmunt J. B. Plater, *Dealing with Dumb and Dumber: The Continuing Mission of Citizen Environmentalism*, 20 J. ENVTL. L. & LITIG. 9, 29 (2005).

⁸³ *Id.* at 30.

⁸⁴ *Id.*

began.⁸⁵ It was a symbol of awareness and concern.⁸⁶ In 1971, attorney Lewis Powell, who is also a board member of Phillip Morris,⁸⁷ wrote a memorandum to the U.S. Chamber of Commerce titled, “Attack of American Free Enterprise System.”⁸⁸ In this proposal Powell stated, “We are not dealing with sporadic or isolated attacks from a relatively few extremists or even from the minority socialist cadre. Rather, the assault on the enterprise system is broadly based and consistently pursued. It is gaining momentum and converts.”⁸⁹ Powell further stated, “the time has come — indeed, it is long overdue — for the wisdom, ingenuity and resources of American business to be marshaled against those who would destroy it.”⁹⁰ Powell not only captured the Chamber but he also considered the role of the Courts with his memo:

“Under our constitutional system, especially with an activist-minded Supreme Court, the judiciary may be the most important instrument for social, economic and political change. . . . This is a vast area of opportunity for the Chamber, if it is willing to undertake the role of spokesman for American business and if, in turn, business is willing to provide the funds.”⁹¹

Powell’s memorandum continued to argue that individual corporations could not fight this battle individually, but rather they needed to join forces, plan carefully and implement large-scale finances over a period of years.⁹² “Arguing that the ‘survival’ of capitalism was at stake, Powell observed that ‘[t]he most disquieting voices joining the chorus of criticism come from perfectly respectable elements of society; from the college campus, the pulpit, the media, the intellectual and

⁸⁵ See generally Carole L. Gallagher, *The Movement to Create an environmental Bill of Rights: From Earth Day, 1970 to the Present*, 9 FORDHAM ENVTL. L. J. 107 (1997) (discussing the inception of Earth Day).

⁸⁶ *Id.*

⁸⁷ Woody R. Clermont, *Business Associations Reign Supreme: The Corporatist Underpinnings of Citizens United v. Federal Election Commission*, 27 T.M. COOLEY L. REV. 477, 500 (2010).

⁸⁸ David L. Franklin, *What Kind of Business Friendly Court? Explaining the Chamber of Commerce’s Success at the Roberts Court*, 49 SANTA CLARA L. REV. 1019, 1022 (2009).

⁸⁹ *The Powell Memo*, RECLAIM DEMOCRACY, http://reclaimdemocracy.org/powell_memo_lewis/ (last visited Apr. 2, 2014).

⁹⁰ *Id.*

⁹¹ Plater, *supra* note 82, at 45.

⁹² *Id.* at 32.

literary journals, the arts and sciences, and from politicians.”⁹³ The U.S. Chamber of Commerce took action; they “launched a complex and coordinated long term counterattack. They created a sophisticated network of Washington political strategists, media specialists, and lobbyists selectively distributing bundles of campaign contributions to legislators.”⁹⁴

Just months after the infamous memorandum, Powell was appointed to the Supreme Court by President Nixon and “environmentalists increasingly began to be portrayed by industry media efforts as remote, effete, Eastern elitists, or as scruffy, dope-smoking, unpatriotic, free-loving, iconoclastic extremists.”⁹⁵ Nixon also fell off the environmental movement.⁹⁶ In 1973, Nixon reportedly told his cabinet: “It’s time to get off the environmental kick” which is exactly what happened.⁹⁷

B. PRESENT DAY

Years ago when talk first began about global warming and other planetary damage, people were skeptical; however, now there is an abundance of studies and data to demonstrate that Earth is currently in a global decline.⁹⁸ Humans do not need science to tell them this, as many of the changes are apparent. For example, the animal extinction rate has risen and science supports this showing that “species are disappearing at rates about a thousand times faster than normal.”⁹⁹ Also, the human population has grown resulting in an increase in overall consumption (food, water, oil) and transportation needs (pollution);¹⁰⁰ statistically the “population has quadrupled in size over the last 100 years.”¹⁰¹ Many bodies of water are no longer as clean as they used to be.¹⁰² It is also rare

⁹³ Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109, 144 (2009).

⁹⁴ Plater, *supra* note 82, at 32.

⁹⁵ *Id.* at 34.

⁹⁶ *Id.* at 36.

⁹⁷ *Id.* at 35.

⁹⁸ *Climate Change: How Do We Know?*, NASA, <http://climate.nasa.gov/evidence/> (Last visited Apr. 10, 2015).

⁹⁹ Koons Tipping Point, *supra* note 26, at 355.

¹⁰⁰ CULLINAN, *supra* note 19, at 35-38.

¹⁰¹ *Harmony with Nature*, *supra* note 45.

¹⁰² SPETH, *supra* note 7, at 32.

to see large quantities of land inhabited by wild animals;¹⁰³ rather most property is now owned and developed.¹⁰⁴ When stuck in traffic on the interstate, one can see the factories releasing thick dark smoke into the air.¹⁰⁵ People do not need science to tell us that Earth is losing its natural aesthetics, cleanliness, and its overall condition is deteriorating. If regulation is imposed on the corporations that discharge toxins in the air and water in order to save themselves some money, then deterioration can drastically be slowed down, at least until technology can catch up to the rapid growth.¹⁰⁶

Today humans live in a world where they take from the Earth more than it can produce.¹⁰⁷ They over-consume the Earth's "natural capital" and mass extinction has accelerated.¹⁰⁸ Humans have become a people that believe they are independent.¹⁰⁹ This is evident through "loss of community and of a sense of belonging" replaced with extensive use of social media, television, and other forms of technology.¹¹⁰ In fact, humans are much more isolated, distant, and less social now than ever before; this could be an explanation for their detachment and lack of care for the natural environment.¹¹¹ Also, people desire "things" and they want them *now!*¹¹² This idea of "instant gratification" is due to short-term thinking and greed: the here and now, coupled with the constant want for more, as opposed to thinking of the long-term effects on future generations.¹¹³ Americans live under the false pretenses that "more" equates to "healthier, safer, happier, and more fulfilled" lives.¹¹⁴ Yet, people around the world seem to want less substance and more of the simple things; "a secure means of livelihood, a decent place to live,

¹⁰³ *Id.* at 1.

¹⁰⁴ Guth, *supra* note 73 (discussing land development).

¹⁰⁵ SPETH, *supra* note 7, at 27.

¹⁰⁶ SPETH, *supra* note 7, at 6, 7; DVD: 2006 The Great Turning (Yuba Gals Independent Media 2006).

¹⁰⁷ See CULLINAN, *supra* note 19 (discussing Earth's limitations).

¹⁰⁸ CULLINAN, *supra* note 19, at 36-40; See SPETH, *supra* note 7, at 3.

¹⁰⁹ CULLINAN, *supra* note 19, at 51.

¹¹⁰ *Id.* at 41.

¹¹¹ Paul Hudson, *Why Social Networking Makes Us Less Social*, ELITE DAILY (May 20, 2013), <http://elitedaily.com/life/why-social-networking-makes-us-less-social/>; <http://www.bestcomputerscienceschools.net/selfies/>.

¹¹² SPETH, *supra* note 7, at 9.

¹¹³ Adam Braverman, *The American Way: Why we are Paying for What we Borrowed, With Interest*, 14 GEO. PUB. POL'Y REV. 19, 20 (2008-2009).

¹¹⁴ CULLINAN, *supra* note 19, at 17, 52.

healthy and uncontaminated food to eat, good education, [...and] a clean and vital natural environment.”¹¹⁵ Studies show that although per capita consumption has tripled, human satisfaction with life as a whole has declined.¹¹⁶ Meanwhile, millions of Americans live in poverty.¹¹⁷ On the other hand, countries with less consumption and “with greater equality have fewer health and social problems.”¹¹⁸ Even with all the economic growth and the technological advances, America’s psychological problems (such as depression)¹¹⁹ and high divorce rates (estimated around fifty percent),¹²⁰ which have been rising. People are over-medicated, over-fed, and dependent on drugs and alcohol.¹²¹ Korten says, “our National disability is compounded by our cultural conditioning to believe that it is our human nature to be individualistic and often violent competitors for power, money, and material possessions.”¹²² It is true that propaganda has made us slaves to our desires and to corporations.¹²³ Yet most of the damage is done by only one-fifth of the world’s population as they account for “90 percent of total consumption while 1.2 billion people live on less than US \$1 per day.”¹²⁴ Even with all the economic growth, the gap between wealthy (top one percent) Americans and everyone else has increased substantially; corporations have exacerbated this disparity.¹²⁵

¹¹⁵ KORTEN, *supra* note 47, at 28.

¹¹⁶ *Harmony with Nature*, *supra* note 45.

¹¹⁷ Sara Tonnesen, *Stronger Together: Worker Cooperatives as a Community Economic Development Strategy*, 20 GEO. J. ON POVERTY L. & POL’Y 187, 187 (2012).

¹¹⁸ *Harmony with Nature*, *supra* note 45.

¹¹⁹ *Manic Nation: Why Americans Are Anxious, Stressed, Depressed and Fat (And What We Can Do About It)*, ALTERNET (June 25, 2012), [http://www.alternet.org/story/156008/manic_nation%3A_why_americans_are_anxious_stressed_depressed_and_fat_\(and_what_we_can_do_about_it\)](http://www.alternet.org/story/156008/manic_nation%3A_why_americans_are_anxious_stressed_depressed_and_fat_(and_what_we_can_do_about_it)) [hereinafter *Manic Nation*].

¹²⁰ *Divorce Rate*, DIVORCE RATE, <http://www.divorcerate.org/> (last visited Apr. 2, 2014).

¹²¹ *Manic Nation*, *supra* note 118.

¹²² 2006 *The Great Turning*, *supra* note 16.

¹²³ *Id.*

¹²⁴ CULLINAN, *supra* note 19, at 41.

¹²⁵ *Economic Mobility*, *supra* note 12.

I. Monsanto

Monsanto is a fortune 500 company that primarily licenses agricultural and chemicals products through their 404 facilities, dispersed throughout sixty-six countries.¹²⁶ “By utilizing biotechnology, Monsanto designs genetically modified (GM) crops in an effort to maximize the desirable traits within the plant.”¹²⁷ As Monsanto proffers, biotechnology such as this can increase (short-term) food supply through efficient land use and maximum harvests but does not account for soil depletion or loss of diversity.¹²⁸ As the population continues to expand, Monsanto claims to have the answers to the food crisis.¹²⁹ However:

“Biotech companies like Monsanto force growers to sign a technology use agreement when growing their patented GE [(genetically engineered)] crops which stipulates, among other things, they the farmer cannot save the seeds produced from their GE harvest. Half the world’s farmers rely on saved seed to produce food that 1.4 billion people rely on for daily nutrition.”¹³⁰

Unfortunately, the food problem has increased, leaving people hungry like no other time in history.¹³¹ The United States has been utilizing GM crops in farming since 1996; it is the world leader in producing GM crops.¹³² Some claims made by producers of GM crops and others in favor of this business is that GM makes foods last longer, taste better, and even adds nutrition.¹³³ However there is no actual benefit to the consumer; GM crops can simply withstand pesticides

¹²⁶ *Monsanto at a Glance*, MONSANTO, <http://www.monsanto.com/whoweare/pages/default.aspx> (last visited Apr. 2, 2014).

¹²⁷ Hill, *supra* note 80, at 355.

¹²⁸ Leibowitz, *supra* note 62, at 559.

¹²⁹ Hill, *supra* note 80, at 354.

¹³⁰ *Myths & Realities of GE Crops*, CENTER FOR FOOD SAFETY, <http://www.centerforfoodsafety.org/issues/311/ge-foods/myths-and-realities-of-ge-crops> (last visited Apr. 2, 2014).

¹³¹ Rebecca M. Bratspies, *Is Anyone Regulating? The Curious State of GMO Governance in the United States*, 37 VT. L. REV. 923, 924 (2013).

¹³² Joseph Kiefer, *Turning Over a New Sprout: Promoting Agricultural Health by Fostering the Coexistence of Organic and Genetically Modified Crops in the wake of Monsanto Co. v. Geertson Seed Farms and the Deregulation of Modified Alfalfa*, 61 EMORY L.J. 1241, 1241-48 (2012).

¹³³ *Myths & Realities of GE Crops*, *supra* note 129.

better meaning the products have a better shelf life.¹³⁴ “Engineered crops are typically infused either with herbicide-resistant genes, pest-resistant genes, or both.”¹³⁵ Also, the GM business is very profitable; the GM market is a multi-billion dollar field and biotech companies play a large part in that.¹³⁶

The government assures people that genetic engineering is safe for the environment and human health alike.¹³⁷ According to the Center for Food Safety, these claims are unfounded.¹³⁸ The Food and Drug Administration (FDA), the United States Department of Agriculture (USDA), and the Environmental Protection Agency (EPA) have not done any long-term studies on the effects to the environment or human health.¹³⁹ “Nor has any mandatory regulation specific to [genetically modified (GM)] food been established.”¹⁴⁰ Manufacturers are left to work on an honor system where they regulate themselves.¹⁴¹ “Doctors around the world have warned that [GM] foods may cause unexpected health consequences that may take years to develop.”¹⁴² Scientists too warn of the fatal consequences; these warnings should not be taken lightly as “previous unheeded warnings have been proven in the past.”¹⁴³ “Unlike more than 60 other nations around the world, the U.S. does not yet require labeling of [GM] foods.”¹⁴⁴ Europe for example has strong

¹³⁴ *Id.*

¹³⁵ Kiefer, *supra* note 131, at 1248.

¹³⁶ Henrique Freire de Oliveira Souza, *Genetically Modified Plants: A Need for International Regulation*, 6 ANN. SURV. INT’L & COMP. L. 129, 140 (2000). *See also Myths & Realities of GE Crops*, *supra* note 129.

¹³⁷ *See generally* Sarah L. Kirby, *Genetically Modified Foods: More Reasons to Label than not*, 6 DRAKE J. AGRIC. L. 351 (2001) (discussing the government’s position on genetically modified organisms).

¹³⁸ *Myths & Realities of GE Crops*, *supra* note 129.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *See* Kirby, *supra* note 136, at 354.

¹⁴² *Myths & Realities of GE Crops*, *supra* note 129.

¹⁴³ Kirby, *supra* note 136, at 359.

¹⁴⁴ *How to Avoid Genetically Engineered Foods*, CENTER FOR FOOD SAFETY, available at http://www.centerforfoodsafety.org/files/shoppers-guide_final_24562.pdf (last visited Apr. 2, 2014). Some countries that require GM food labeling include Australia, Belgium, Brazil, Denmark, Germany, France, Italy, Jordan, Malaysia, Russia, Saudi Arabia, Spain, and many more. *See also Genetically Engineered Food Labeling Laws Map*, CENTER FOR FOOD SAFETY,

regulatory measures starting with food labeling and going as far as complete bans.¹⁴⁵ “Most Americans say they would not eat [GM] food if labeled,”¹⁴⁶ but yet sixty to seventy percent of the food sold in America “contains substances developed through genetic engineering.”¹⁴⁷ Not only is there a plethora of potential health risks to humans – toxicity, cancer, allergic reactions, antibiotic resistance, immune-suppression, and loss of nutrition – but GM products also pose great risk to the environment.¹⁴⁸ Some examples include biological pollution, superweeds, chemical dependence, genetic contamination, and more.¹⁴⁹

The current organic industry is “predicted to generate over \$50 billion in revenues in 2025” and projected to grow at around twenty percent annually.¹⁵⁰ However, this industry may not be around for long as the organic industry is at risk due to cross-contamination from GM crops.¹⁵¹ “Contamination occurs when genetic data is spread from one crop to another by various means, including wind, insect activity, or human intervention.”¹⁵² This makes it extremely difficult for organic crops to co-exist with GM crops and may eventually end the organic industry and people’s ability to choose what they put in their bodies.¹⁵³ Taken together, the organic business will be lost and GM crops will be imposed. Consumers will be left with no choice and eventually everyone may be forced to eat GM crops.

<http://www.centerforfoodsafety.org/issues/311/ge-foods/reports/1413/genetically-engineered-food-labeling-laws-map> (last visited Apr. 2, 2014).

¹⁴⁵ Alex Platt, *Center for Food Safety v. Vilsack: Roundup Ready Regulations*, 37 *ECOLOGY L.Q.* 773, 774 (2010).

¹⁴⁶ *How to Avoid Genetically Engineered Foods*, *supra* note 143; Mike Vainisi, *Are You Cool Having No Idea What’s in Your Food?*, *ATTN* (Dec. 21, 2014), <http://www.attn.com/stories/379/confused-about-gmo-and-monsanto-simple-explanation>.

¹⁴⁷ Freire de Oliveira Souza, *supra* note 135, at 131.

¹⁴⁸ *GE Food and your Health*, *CENTER FOR FOOD SAFETY*, <http://www.centerforfoodsafety.org/issues/311/ge-foods/ge-food-and-your-health> (last visited Apr. 5, 2014).

¹⁴⁹ *GE Food and the Environment*, *CENTER FOR FOOD SAFETY*, <http://www.centerforfoodsafety.org/issues/311/ge-foods/ge-food-and-the-environment> (last visited Apr. 5, 2014).

¹⁵⁰ Kiefer, *supra* note 131, at 1250.

¹⁵¹ Bratspies, *supra* note 130, at 933.

¹⁵² Kiefer, *supra* note 131, at 1246.

¹⁵³ *See id.* at 1241-52.

2. Koch Industries

“Koch Industries is one of the largest private companies in America,” and can be found in over sixty countries.¹⁵⁴ Koch works primarily in the refining, chemical, and biofuel industries and transports crude oil through aboveground and underground pipelines.¹⁵⁵ It also owns and operates many other companies, including ones in consumer products (Quilted Northern, Brawny, and Dixie), fertilizers, electronic components, minerals, energy, ranching, glass, and other investments.¹⁵⁶ Koch industries generate about \$115 billion in annual revenue.¹⁵⁷ Although Koch Industries’ website alleges they are compliant with the rules and that its products have positive environmental effects,¹⁵⁸ they are known to be “notorious environmental polluters.”¹⁵⁹ Over the last decade, Koch Industries has been sued several times in both civil and criminal court over environmental issues.¹⁶⁰

In one instance, Koch was sued by the EPA for more than 300 oil spills.¹⁶¹ The complaint alleged three million gallons of crude oil spilled into ponds, lakes, rivers, and streams.¹⁶² The case was settled for thirty million dollars.¹⁶³ In another instance of reckless disregard for the environment, Koch violated the Clean Air Act and tried to cover it up when the company exceeded their benzene emissions.¹⁶⁴ Koch pled

¹⁵⁴ *Koch Overview*, KOCH INDUSTRIES INC., <http://www.kochind.com/files/kochfacts.pdf> (last visited Apr. 5, 2014).

¹⁵⁵ Tim Atkinson, *EPA Settles Oil Contamination Suit for Record \$30 Million Penalty*, 11 NO. 1 FLA. ENVTL. COMPLIANCE UPDATE 3, (2000).

¹⁵⁶ *Koch Overview*, *supra* note 153.

¹⁵⁷ *Id.*

¹⁵⁸ *Operations Excellence: Environment*, KOCH INDUSTRIES, http://www.kochind.com/Operations_Excellence/Environment.aspx (last visited Apr. 5, 2014).

¹⁵⁹ Douglas T. Kendall & Jason C. Rylander, *Tainted Justice: How Private Trips Undermine Public Confidence in the Judiciary*, 18 GEO. J. LEGAL ETHICS 65, 86 (2004).

¹⁶⁰ *Id.* at 87.

¹⁶¹ Atkinson, *supra* note 154.

¹⁶² *Id.*

¹⁶³ *Koch Industries Fined Record \$30 Million by EPA and DOJ*, 12 NO. 6 UNDERGROUND STORAGE TANK GUIDE NEWSL. 5 (2000).

¹⁶⁴ *Koch Pleads Guilty to Covering up Benzene Emissions at Refinery*, 21 NO. 12 ANDREWS HAZARDOUS WASTE LITIG. REP. 15 (2001).

guilty and paid “\$10 million in criminal fines and \$10 million for special projects to improve the environment.”¹⁶⁵

However, Koch spends millions of dollars to fund “climate change deniers.”¹⁶⁶ The company is also infamous for their efforts to rig the game in their favor.¹⁶⁷ “These efforts start with generous campaign contributions.”¹⁶⁸ Then it proceeds to spend millions on lobbying efforts along with building institutions designed to promote Koch’s anti-regulatory objectives.¹⁶⁹ Furthermore, Koch’s foundations have been known for funding trips for judges; even judges with Koch on their docket.¹⁷⁰ This is what capitalism has become today; it is no longer just citizens trying to build a stable future, rather it is large corporations using their money to influence the government in order to maximize their profits – even at the cost of ecosystems and human wellbeing. In order to take back democracy from large corporations and give it back to people so they can once more enjoy their inherent rights, the government needs to increase regulation and implement changes to the current economic system. If this can be accomplished, then the democratic system can begin to be restored, ecosystems revived, dying species saved, and depleted resources replenished.

¹⁶⁵ *Id.*

¹⁶⁶ *10 Companies Vying for 2013 Corporate Hall of Shame: What’s Your Pick for the Worst Offender?*, CORPORATE ACCOUNTABILITY INTERNATIONAL, <http://www.stopcorporateabuse.org/blog/10-companies-vying-2013-corporate-hall-shame-whats-your-pick-worst-offender> (last visited Apr. 2, 2014); Koch Industries: Secretly Funding the Climate Denial Machine, GREENPEACE (Last visited Apr. 8, 2015), <http://www.greenpeace.org/usa/en/campaigns/global-warming-and-energy/polluterwatch/koch-industries/>; *Climate Deniers Exposed: Top Scientist Got Funding from ExxonMobil, Koch Brothers, Big Coal*, DEMOCRACY NOW (Last visited Apr. 8, 2015), http://www.democracynow.org/2015/2/25/climate_deniers_exposed_top_scientist_got; Nadia Prupis, *Prominent Climate Change Denier Funded by Koch Brothers*, *Energy Companies: Reports*, COMMON DREAMS (Feb. 22, 2015), <http://www.commondreams.org/news/2015/02/22/prominent-climate-change-denier-funded-koch-brothers-energy-companies-reports>.

¹⁶⁷ Kendall & Rylander, *supra* note 158, at 86.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

3. Façade

Businesses constantly need to adjust their strategies as they are deeply affected by consumer trends.¹⁷¹ Many businesses and corporations have accepted that people want to protect the planet and that many consumers are looking to purchase “green” products. Some companies have actually taken an interest in the environment and are “capitalizing” along the way.¹⁷² Others however, instead of changing their business structure and investing in “green technology” (which would still allow them to compete in the “green” industry) have attempted to “capitalize” on this Green Movement without actually changing anything in their business scheme. So instead of going green, they just release a couple of green products in order to gain innocent consumers, but their business approach and products generally do not change at all.¹⁷³ These companies are taking advantage of zealous consumers by using fraud, deceit, and manipulation. Some call it faking green; others use the phrase smoke screens, and even the term “greenwashing.”¹⁷⁴ Businesses generally greenwash in one of three ways: confusion, fronting, and posturing.¹⁷⁵

Some companies such as Ford, Toyota, and General Motors have all partaken in “greenwashing” at one point or another.¹⁷⁶ For example, Ford brags about its hybrid and flex fuel cars but “the company joined other automakers in suing to block a California law that would limit emissions of gases linked to global warming.”¹⁷⁷ Toyota also focuses on its hybrid cars, such as the Prius, but what the company does not advertise is the fact that its other vehicles have dropped in fuel efficiency.¹⁷⁸ General Motors’ vehicles are “the number one source of air pollution and consume one-third of the world’s oil.”¹⁷⁹ Although

¹⁷¹ Robert C. Illig, *Al Gore, Oprah, and Silicon Valley: Bringing Main Street and Corporate America into the Environmental Movement*, 23 J. ENVTL. L. & LITIG. 223, 229 (2008).

¹⁷² Jacob Vos, *Actions Speak Louder than Words: Greenwashing in Corporate America*, 23 NOTRE DAME J.L. ETHICS & PUB. POL’Y 673, 673 (2009).

¹⁷³ *Id.* at 691

¹⁷⁴ *Id.* at 673.

¹⁷⁵ *Id.* at 679.

¹⁷⁶ *Id.* at 675 – 77.

¹⁷⁷ *Id.* at 675.

¹⁷⁸ Vos, *supra* note 172.

¹⁷⁹ *Id.* at 676.

General Motors plants a tree for every car sold in their Geo division, it lobbies against fuel efficiency.¹⁸⁰ As seen from just a few examples in one industry, it is not unusual for corporations to engage in such misleading tactics all in the name of profit.

The food industry takes part in “greenwashing” quite often. Some familiar brands including General Mills, Kellogg, Kraft, Nestle, PepsiCo, and Coca-Cola have been scrutinized for their use of GM ingredients.¹⁸¹ Kashi brand for example asserts they are a small business selling organic cereal labeled as “natural.”¹⁸² However, many people do not know that Kashi is owned by Kellogg Company (“Kellogg does not include its name on Kashi packaging”) and its cereal is loaded with GM and pesticides.¹⁸³ In addition, many companies are loading their food products with monosodium glutamate (MSG), a harmful substance that increases shelf life in order to lower costs.¹⁸⁴ Yet many companies still advertise their products as “natural” or “healthy” or they neglect labeling completely.¹⁸⁵ Companies often use athletes and entertainers to promote their product that often misleads young consumers. Food politics expert Michele Simon scrutinized the propaganda used by the food industry in order to expose “how corporations and lobbyists hide behind friendly and benign-sounding names.”¹⁸⁶ She profiles prominent front groups such as U.S. Farmers and Ranchers Alliance, the Center for Consumer Freedom, and the Alliance to Feed the Future and discusses their typical strategies.¹⁸⁷ Through these fronts, industry works to project an image of trust and neutrality, while at the same time circulating media and consumer-friendly material that aids their corporate agenda.¹⁸⁸ The use of agrarian imagery such as cows peacefully grazing

¹⁸⁰ *Id.*

¹⁸¹ *How to Avoid Genetically Engineered Foods*, *supra* note 144.

¹⁸² *Exposing Kashi Cereal for the Poison that it is*, HEALTH FREEDOM ALLIANCE (Mar. 24, 2014), <http://healthfreedom.org/2014/03/24/exposing-kashi-cereal-for-the-poison-that-it-is/>.

¹⁸³ *Id.*

¹⁸⁴ Amy Lavine, *Monosodium Glutamate (MSG) and Food Labeling Regulations*, 62 *FOOD & DRUG L.J.* 349, 350 (2007).

¹⁸⁵ *How to Avoid Genetically Engineered Foods*, *supra* note 143.

¹⁸⁶ *Best Public Relations That Money Can Buy: A Guide to Food Industry Front Groups*, CENTER FOR FOOD SAFETY, <http://www.centerforfoodsafety.org/issues/311/ge-foods/reports/2210/best-public-relations-that-money-can-buy-a-guide-to-food-industry-front-groups> (last visited Apr. 5, 2014).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

pastures subliminally conveys messages of purity and healthy. The ordinary person does not have the time to investigate every innocent sounding publication, which makes it very easy for corporations to mislead consumers.¹⁸⁹

The media and advertising culture have contributed significantly to the American consumer mentality.¹⁹⁰ Corporations have in-house teams or outsourced consultants that focus primarily on effective advertising and company image.¹⁹¹ These highly paid and highly skilled individuals concentrate on strategic and creative marketing, branding, and promotions. Some may argue that these advertisements do not truly impact consumer's decisions or habits; however companies continue to invest substantial sums of money for customer acquisition. General Motors for example spent 4.2 billion dollars on advertising in a single calendar year.¹⁹² Wal-Mart spent 2.5 billion dollars in 2010.¹⁹³ Similarly, General Mills, McDonalds, and Toyota all spent over one billion dollars in 2011 in advertising.¹⁹⁴

III. WHAT IS EARTH JURISPRUDENCE AND CAN IT MAKE A DIFFERENCE?

In order to truly appreciate the law in regards to Earth and the environment, it is important to briefly discuss the concept of Earth Jurisprudence and how it can be applied to the issues at hand (how corporations' capitalism effect the environment). Jurisprudence means

¹⁸⁹ *Id.*

¹⁹⁰ DANIELLE SARVER COOMBS, WE ARE WHAT WE SELL: HOW ADVERTISING SHAPES AMERICAN LIFE...AND ALWAYS HAS (2014); See Avi Dan, *What Are 10 Great Ad Agencies of 2013, According To CMOs?*, FORBES.COM (Dec. 04, 2013), <http://www.forbes.com/sites/avidan/2013/12/04/ten-great-agencies-of-2013/>

¹⁹¹ Avi Dan, *What are 10 Great Ad Agencies of 2013, According to CMOs?*, FORBES.COM (Dec. 04, 2013), <http://www.forbes.com/sites/avidan/2013/12/04/ten-great-agencies-of-2013/>.

¹⁹² Patricia Laya, *Do You Pay Enough For Advertising? One Big Corporation Spent A Jaw-Dropping \$4.2 Billion Last Year*, BUSINESS INSIDER (June 06, 2011), <http://www.businessinsider.com/corporations-ad-spending-2011-6?op=1>.

¹⁹³ *Id.*

¹⁹⁴ Christina Austin, *The Billionaires' Club: Only 36 Companies Have \$1,000 Million-Plus Ad Budgets*, BUSINESS INSIDER (Nov. 11, 2012), <http://www.businessinsider.com/the-35-companies-that-spent-1-billion-on-ads-in-2011-2012-11?op=1>.

the study of the general or fundamental elements of a particular legal system, as opposed to its legal and concrete details.¹⁹⁵ In the literal sense, “jurisprudence” comes from the Latin term *juris prudentia*, which means “the study of law.”¹⁹⁶ Therefore, Earth jurisprudence can mean the study of law in regards to Earth’s health. Currently, the structure of law and governance is human-centered; however it needs to become more Earth-centered.¹⁹⁷ After all, humans are just one small part of Earth. Humans do not sustain Earth; rather, Earth gives humans sustenance. Therefore, society needs laws to protect that which supports life.

Earth jurisprudence is a new field of law, closely related with environmental law.¹⁹⁸ Earth jurisprudence is intended to bring about a way for humans to live on Earth and in harmony with the Earth. It promotes fundamentals such as the Earth is not to be used and abused rather people should try to leave minimal impact. Thomas Berry asserts that Earth jurisprudence perceives the Earth as a “communion of subjects and not a collection of objects.”¹⁹⁹ He further elaborates that everything, as members of the Earth community, have “intrinsic rights” to live and develop.²⁰⁰ Earth jurisprudence is a new way of thinking that encourages humans to respect all living things, and promotes the rights of things that cannot speak for themselves.

“Earth jurisprudence is essentially an eco-centric philosophy of law ... creating new laws and governance that respect Nature’s right to exist.”²⁰¹ Although an emerging concept, Earth jurisprudence is gaining awareness and momentum. It is not short-term law that looks at financial gain but law that attempts to leave a flourishing planet for generations to come.²⁰² Earth Jurisprudence Law prevents harms and seeks to promote health and well-being.²⁰³ “Society cannot be better than its idea of itself. Law cannot be better than society’s idea of itself. Given the central role

¹⁹⁵ Jurisprudence, *Black’s Law Dictionary* (10th ed. 2014).

¹⁹⁶ *The Free Dictionary*, JURISPRUDENCE, <http://legal-dictionary.thefreedictionary.com/jurisprudence> (last visited Apr. 2, 2014).

¹⁹⁷ Koons Tipping Point, *supra* note 26, at 364.

¹⁹⁸ Sister Patricia Siemen, OP, Esquire, *Earth jurisprudence: Toward Law in Nature’s Balance*, 11 BARRY L. REV. 1 (2008).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.* at 4.

²⁰² Koons Tipping Point, *supra* note 26, at 389.

²⁰³ *Id.*

of law in the self-ordering of society, society cannot be better than its idea of law.”²⁰⁴

IV. SOLUTIONS AND LEGAL REMEDIES

There are many ways to go about changing the current economic and environmental status. Three proposals for beginning a healthier way of life, in conjunction with the environment, rather than opposed to it, is to start with: (1) changing economic values and calculation methods; (2) changing the system of lobbying, and; (3) amending the Constitution to include the Rights of Nature.

Changing America’s economic worldviews can help citizens regain their democracy and save the life-sustaining planet humans inhabit. It starts with changing the models of corporate production and human consumption habits. The first steps are basic ones that can be taken on a personal level. First, people must educate themselves about the cultural and economic drivers that are destroying the Earth. Once communities gain awareness, society can shift from passivity to proactivity.²⁰⁵ Humans can move from a society that competes for individual advantage to one that cooperates for mutual advantage, and the common good.²⁰⁶ Furthermore, people can move away from energy intensive industrial agriculture to local, low input family farm agriculture.²⁰⁷ Secondly, the system of lobbying desperately needs change and regulation. Those with money should not have undue influence of the government. Rather, a democracy should be based on the choices of the majority and the wellbeing of society as a whole. Finally, there is no better way to create change than through amending the Constitution to guarantee the rights society wants protected. The United States Constitution is a deeply rooted document that is respected and observed. It is the highest authority of the land.²⁰⁸ Therefore, amending the U.S. Constitution can have an authoritative impact on society and how people perceive Earth and nature.

²⁰⁴ CULLINAN, *supra* note 19, at 58.

²⁰⁵ 2006 The Great Turning, *supra* note 16.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ U.S. CONST. ART. VI, *available at* <https://www.law.cornell.edu/constitution/articlevi>.

A. ECONOMICS

America's current economic methods have been successful at producing profits and expanding business growth.²⁰⁹ However, our current economic calculations do not take into account society's wellbeing or the environment.²¹⁰ The cost-benefit analysis is not working to sustain the environment.²¹¹ "We cannot have well humans on a sick planet. We cannot have a viable human economy by devastating the Earth economy."²¹² In order to prevent complete depletion of Earth, and therefore all life systems, individuals need to do more than recycle, car-pool, and use less paper (although these are important). Citizens need to regulate the root of the problem so that we do not consume and pollute more than the Earth is capable of regenerating. People need to change their economic views at large, as entire nations, starting with reducing corporate power and influence. Over recent years, there have been minimum business regulations, and the existing regulations usually favored the wealthy.²¹³ This has been followed by scientific evidence regarding our societal and environmental decline. It is obvious that an unregulated free market works in only one-way: creating short-term profit. However, it disregards other important areas such as human health, safety, and Earth sustainability, which is why the economy needs regulation.²¹⁴ America needs regulation that protects the whole of society, not just the wealthy.²¹⁵

Some believe that there is no middle ground and that if one does not believe in unregulated capitalism then they must be unpatriotic or anti-American. That dichotomy is an extreme and ignorant view. Reasonable people compromise when necessary and there is no time more necessary than now.²¹⁶ There is no time to argue; humans need solutions. The current free-market is not focused on the long-term. The

²⁰⁹ Lan Cao, *The Ethnic Question in Law and Development*, 102 MICH. L. REV. 1044, 1085 (2004).

²¹⁰ *Harmony with Nature*, *supra* note 45.

²¹¹ *Id.*

²¹² BERRY, *supra* note 39. ,

²¹³ *See generally* C.M.A. McCauliff, *supra* note 42 (discussing business regulation).

²¹⁴ KORTEN, *supra* note 47, at 28.

²¹⁵ *See generally* C.M.A. McCauliff, *supra* note 42 (elaborating on regulation that permits wealthy to prosper while undermining the rest of society).

²¹⁶ *See generally* CULLINAN, *supra* note 19 (discussing the human situation with urgency).

current production output is very high and consumption is very high. People are too focused on what they *want* (bigger factories, more production, increased profits, etc.) as opposed to being content with what they have or *need*, and Earth is paying the ultimate price.

Capitalism is one of the greatest American values and society should hold on to this. On the other hand, society needs adapt its economic system since it is leading toward destruction of the ecosystems and the planet's viability. A minimally regulated market has led to human imprisonment, where people have become slaves to their wants, their desires, and the industry.²¹⁷ Yet most disciplined business people or investors admit that success requires rules and regulations. For example, a successful business has procedural standards for its employees to follow. Likewise, schools have rules for students to abide by. Governments have laws. Nature, too, follows laws such as the laws of physics (i.e. gravity) and the laws of motion (i.e. velocity). Even economics have laws, as Joshua Farley explains:

“As an economy grows, marginal benefits we get from its growth are less and less. The marginal costs on the environment become greater and greater. The more we produce of something, the less it is worth ... In economics the idea is you stop engaging in an activity when marginal costs exceed marginal benefit. It becomes uneconomic growth where we become worse off as a result of increasing economic production and consumption.”²¹⁸

It is evident that without laws and regulations there would be chaos. Why is it that businesses require their employees to follow rules but the corporations themselves see rules as adverse? This can be answered by implementing the law of double standards. This is when someone imposes something on someone else that they do not want to abide by.

Social and behavioral scientists agree that one effective way to change behavior is through implementing reinforcements (i.e. incentives) and punishments (i.e. sin tax, fines, injunctions, and prison time).²¹⁹ The current system where the free-market impedes sustainability is not achieving healthy or sustainable balance by any means. In order to reverse the damage, environmental laws must precede

²¹⁷ See CULLINAN, *supra* note 19 at 1-58.

²¹⁸ *Harmony with Nature*, *supra* note 45.

²¹⁹ Stephanie Stern, *Encouraging Conservation on Private Lands: A Behavioral Analysis of Financial Incentives*, 48 ARIZ. L. REV. 541, 543 (2006).

the free-market for two reasons. First, ultimately, sustaining life precedes making money. Second, in the past and currently, economic growth took precedent over environmental protection so now growth must take the backseat in order to undo the damage and develop processes that grow within Nature's limits. Businesses, however, can still compete because competition (to a certain degree) is healthy; but there must be structure, rules, and guidelines to have fair competition. If companies choose to use harmful products or methods to save money or avoid costs then they should be responsible for the environmental and social harm they cause (shifting the burden of proof). Additionally, this shift will give companies and businesses a fair playing field as it should apply to all, big and small. Raising the requirements on everyone keeps the competition aspect of capitalism while implementing vigilance and concern for the Earth environment. The rules are fairer when they apply to everyone across the board, regardless of wealth or size. This would be one way of balancing competing interests.

Some government regulation is a good thing, especially when the regulation is chosen or ratified by the people. Regulation keeps society functioning smoothly. Take for example state regulations on driving (e.g. speed limits, stop lights, lanes). Imagine driving on roads that did not have rules. Likewise, businesses also need some regulation. Business without regulation would allow corporations to reap the benefits of society without being held accountable to anyone. This is not justice. "To save the democracy we thought we had, we must take it to where it's never been."²²⁰

B. LOBBYING

Most lobbying is pervasive and corrupt, but it functions very well. Many big corporations with deep pockets are taking advantage of the system and are essentially writing the laws and regulations themselves.²²¹ Lobbyists persuade congressmen and judges to endorse and sign biased legislation that unjustly favors preferential interests.²²²

²²⁰ 2006 The Great Turning, *supra* note 16.

²²¹ Beverley Mitchell, *House Passes Bill that Prohibits Expert Scientific Advice to the EPA*, INHABITAT (Nov. 20, 2014), <http://inhabitat.com/house-passes-bill-that-prohibits-expert-scientific-advice-to-the-epa/>.

²²² See Sergio Munoz, *The Historian, Legal Experts, And Justices Who Think Judges Asking For Cash Is A Really Bad Idea*, MEDIA MATTERS (Jan 14, 2015),

How is this legal or ethical? Lobbyists claim it is an exercise of their First Amendment right (free speech); however, it stops being political speech when members of the government receive campaign incentives, gifts, or contributions from these groups. Since Powell's memorandum,²²³ lobbying has grown drastically. In Washington, from 1970 to 1978, full-time corporate lobbyists grew from 71 to 4,000.²²⁴ General Motors, Toyota, Mobil, and Amoco are just a few of the many corporations that fund lobbyists.²²⁵ "In 1996, [industry groups] formed the Air Quality Standards Coalition ("AQSC") specifically to fight EPA rules."²²⁶ This group included Monsanto and Koch Industries.²²⁷

One essential step to a better government and enhanced democracy (one that does not allow corporations to have excessive power and simultaneously protects the Earth) is through the restriction of lobbying and unobstructed transparency. Currently, lobbying is too influential and causes dishonesty in politics. America needs to go back to being a democracy of "one-person-one vote" as opposed to "one-dollar-one-vote."²²⁸ Lobbying allows those with power and money to gain more power and money. Individuals without large sums of money never get to share their side of the story with legislators and those individuals make up most members of society and small businesses.²²⁹ Furthermore, there should be some type of regulation (or at the very least close monitoring and scrutiny) of corporate members who later transfer to become influential members of the government.²³⁰

<http://mediamatters.org/research/2015/01/14/the-historian-legal-experts-and-justices-who-th/202133>.

²²³ *The Powell Memo*, *supra* note 88.

²²⁴ Capulong, *supra* note 92.

²²⁵ Vos, *supra* 171, at 678.

²²⁶ Kendall & Rylander, *supra* note 158, at 110.

²²⁷ *Id.*

²²⁸ 2006 The Great Turning, *supra* note 16; Tom McKay, *Princeton Concludes What Kind of Government America Really Has, and It's Not a Democracy*, MIC (Apr. 16, 2014), <http://mic.com/articles/87719/princeton-concludes-what-kind-of-government-america-really-has-and-it-s-not-a-democracy>; Sophia Tesfaye, *The New York Times Downplays The Influence Of Money In Politics*, MEDIA MATTERS (Dec, 12, 2014), <http://mediamatters.org/blog/2014/12/12/the-new-york-times-downplays-the-influence-of-m/201861>.

²²⁹ C.M.A McCauliff, *supra* note 42, at 425.

²³⁰ Charlie Cray, *Corporate Accountability Overview: Halliburton*, CORPWATCH, <http://www.corpwatch.org/section.php?id=15> (last visited Apr. 6, 2015). *See also* Jarrett

C. CONSTITUTION

When Christopher Columbus first arrived in the Americas, the founders relentlessly persecuted the Native Americans (otherwise known as Indigenous people or Indians) killing millions of them and occupying their land by force.²³¹ Equally, African Americans were enslaved and barred from owning land and obtaining rights.²³² Similarly, women were oppressed, prevented from attaining an education, and precluded from voting.²³³ Robert Heinlein states, “A generation which ignores history has no past and no future.”²³⁴ Humans need to realize that they have acted unjustly, and today people are doing to Earth the same things they did before to other humans; we are enslaving Earth in order to satisfy human desires and greed. Fortunately, society was able to admit their old ways were wrong, and they were able to correct most of the past injustices by amending the Constitution and giving deprived people their natural rights. The problem with the present scenario is humans do not have unlimited time to realize that Earth *needs* protection. It *needs* its rights to exist and flourish, to be recognized and protected. Earth has been abused and taken advantage of at the expense of future generations.²³⁵

The Constitution currently gives rights and liberties to human beings. Among them are the right to choose and practice religion, freedom of speech, the right to bear arms, and much more. The Fourteenth Amendment declares, “nor shall any State deprive any person of life, liberty, or property, without due process of law.”²³⁶

Murphy, *Cheney's Halliburton Ties Remain*, CBSNEWS (Sept. 26, 2003), <http://www.cbsnews.com/news/cheneys-halliburton-ties-remain/> (A conspicuous moment of this is former Vice President Dick Cheney who joined President Bush's presidential ticket after working for Fortune 500 Company Halliburton).

²³¹ Larry Sager, *Rediscovering America: Recognizing the Sovereignty of Native American Indian Nations*, 76 U. DET. MERCY L. REV. 745, 759 (1999).

²³² See William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. DAVIS L. REV. 1311 (2007).

²³³ See Gretchen Ritter, *Jury Service and Women's Citizenship Before and After the Nineteenth Amendment*, 20 LAW & HIST. REV. 479 (2002).

²³⁴ Robert A. Heinlein, *Thoughts on the Business of Life*, FORBES.COM, <http://thoughts.forbes.com/thoughts/history-robert-a-heinlein-a-generation-which> (last visited Apr. 12, 2014).

²³⁵ See generally CULLINAN, *supra* note 19 (discussing the extensive waste which will leave future people with less or maybe nothing).

²³⁶ U.S. CONST. amend XIV.

Theoretically, humans are treated very well under the supreme law of the land and they have the right to live freely. However in the Constitution, there is no mention of rights for animals, plants, or the land. The founding fathers believed that humans possessed natural rights; rights that humans receive intrinsically simply by existing, given to them by their creator. However, the founding fathers unlikely saw the position humanity is in today: where the population is so large and certain individuals and corporations are so powerful that people are actually depleting Earth faster than it can replenish.²³⁷ When the founding fathers created the Constitution, they had just escaped from the tyranny of the British crown. They created laws that protected citizens from the government; they could not possibly have envisioned that Earth itself would need protection.

Now Americans live in a world that is much different from the one the Framers lived in. As the world keeps changing, laws too must adapt to those very changes. The current Constitution protects people and even corporations, but does not mention anything about animals, plants, and the land. Nature urgently needs its own set of rights. These rights should be specifically tailored or altered, as it does not make sense to give nature the same rights as humans considering the innate differences. Nature needs its own rights; the right to exist, persist, and to be respected.²³⁸ If people do not believe that nature and the creatures that dwell therein inherently deserve rights, then people should give nature rights at least for the sake of human survival, if nothing more. The U.S. Constitution should be ratified or amended to include the Rights of Nature. Ecuador is the first nation that has ratified its constitution to include nature's rights.²³⁹ The United States should follow in their footsteps. The Founding Fathers would have certainly included the rights of nature in these nations' Constitution had they foreseen the problems existing today.

²³⁷ See generally KORTEN, *supra* note 47 (discussing how corporations have grown very rapidly over the last 20-30 years and the population has also soared).

²³⁸ *Ecuador Adopts Rights of Nature in Constitution*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, <http://therightsofnature.org/ecuador-rights/> (last visited Apr. 2, 2014).

²³⁹ *Id.*

V. CONCLUSION

“If one does not look into the abyss, one is being wishful by simply not confronting the truth...”²⁴⁰ Throughout American history, American society as a whole has done many things not worthy of pride. Currently, there is an abundance of science to suggest that corporations are damaging the atmosphere, using up all the natural energy, and polluting the food and water supply. Just consider how many species have gone extinct over the last decade. Also consider how the population has grown rapidly over the years and continues to grow, and how our daily per capita consumption has increased.²⁴¹ More importantly, people do not necessarily need science to tell them most of these things; it can be seen plainly in communities and throughout the world. A great deal of this irreversible damage has been done for a very cheap price (i.e. proprietary gain).

When most people are asked if they would rather have their favorite tangible items (homes, cars, boats, jewelry) or their life, they would choose their life without any hesitation; just ask a person dying of a terminal disease. The apparent reason for this is that no dead person can enjoy tangible worldly things; therefore life precedes what people would call priceless material objects. Likewise, offer someone a large sum of money, in exchange for giving up their life; it is safe to assume that everyone would certainly reject the offer. The million-dollar question then becomes, why are people not concerned about the planet that sustains human life? After all, how can people enjoy all the wealth they acquire if they do not even have a healthy place to live? The answer is simple...most people either do not believe the problem is urgent (because people seem to be living “just fine” currently); or people do believe that there is a growing problem but they believe that technology will figure it all out.

Humans have made vast improvements over the decades and centuries; people should not lose hope now. In 1970 the first Earth Day took place²⁴² and more recently, Ecuador implemented Nature’s Rights

²⁴⁰ SPETH, *supra* note 7, at 17.

²⁴¹ See generally CULLINAN, *supra* note 19 (discussing rapid population growth coupled with increase in individual consumption).

²⁴² See generally Carole L. Gallagher, *The Movement to Create an Environmental Bill of Rights: From Earth Day, 1970 to the Present*, 9 FORDHAM ENVTL. L. J. 107 (1997) (discussing the inception of Earth Day).

into their Constitution.²⁴³ This is proof that the message is being heard and people do care. That same drive and willingness that carried humanity to where it is today needs to continue to push people forward. Economic views and systems need to be altered. The lobbying structure needs to be reformed. Lastly, the Constitution needs to be amended to include the rights of nature. The public has gained awareness, which is vital to bringing about the necessary changes, but time remains limited. Many people realize that economic growth comes with a hefty price tag that is no longer practical. Many companies have heard the voices and have changed their ways.²⁴⁴ Communities are changing their ways on both an individual and on a global community level. Change is certainly emerging for the greater common good.

However, to say there is no problem is ignorant, and to say that time will solve the problem is naïve. Humans are so consumed with all their fancy gadgets that they do not realize the valuable time they are wasting. Societies need to become ecologically and economically educated and proactive. Every person has an individual duty to do the best they can and a duty to stop others from causing harm. The more this worldview or understanding gets out among the people, the more participation. Then the change can take place. The less humans consume, the more clear our message will become to corporations and the media. They will be forced to change their ways and production will decrease, so the time for change begins now.

²⁴³ Ecuador Adopts Rights of Nature in Constitution, *supra* note 223.

²⁴⁴ Robert C. Illig, *Al Gore, Oprah, and Silicon Valley: Bringing Main Street and Corporate America into the Environmental Movement*, 23 J. ENVTL. L. & LITIG. 223, 229 (2008).