THE TOWER OF BABEL SYNDROME:

Locality and Governance in Response to the Ecological Crisis

by

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ABSTRACT

This dissertation furnishes a weltanschauung dominated by a Copernican shift where localism is brought to the centre of any effective response to the ecological crisis—and by doing so surrendering all other scales of social organization (from the national to the global) to subsidiarity. The dissertation has two main branches; both investigate the role of localism in relation to the ecological crisis. The first suggests that the causes of the crisis share a common denominator, namely detachment of people from their locale, leading to insatiable growth. The prime culprit here is social organising at the 'national' scale, especially after the French Revolution of 1789, although a second, more destructive, wave of delocalisation is now ushered by a specific form of globalisation—top-down globalisation. The second branch of this dissertation examines the role of localism in the historical (pre-Enlightenment) and modern (post-Enlightenment) responses to the ecological crisis. Historically, localism was the leitmotif of the historical discourse, form legislative instruments right down to policy implementation. The historical response was well within the ethics and spirit of local autonomy and self-determination. Today, however, the response is at best patronising to all that is local. Positivist dementia of instrumentality dominates the international law instruments formulating the response. Even the aspirational Earth Charter succumbs to this instrumentality. The current response marginalises localism through the fiction of 'indigenous peoples', through the 'universal human rights' paradigm, and above all through the illusion of the 'complexity imperative' which leave no option but to coordinate the response (to the ecological crisis) at the global scale. Notwithstanding, there is now a growing understanding of the importance of localism, shared by international organisations such as the UN and the World Bank, and the civil society. Unfortunately, the same cannot be said about the unitary central government in New Zealand. Resurrecting localism is the emancipatory project of our time.

ACKNOWLEDGEMENTS

שְׁמַע, יִשְׂרָאֵל ׃ יְהוָה אֱלֹהֵינוּ, יְהוָה אֶחָד.

וְאָהַבְתָּ, אֵת יְהוָה אֱלֹהֶיךָ, בְּכָל-לְבָבְךָ וּבְכָל-נַפְשְׁךָ, וּבְכָל-מְאֹדֶךָ

(Deuteronomy 6: 4-5)

قُلِ اللَّهُمَّ مَالِكَ الْمُلْكِ تُؤْتِي الْمُلْكَ مَنْ تَشَاءُ وَتَنْزِعُ الْمُلْكَ مِمَّنْ تَشَاءُ

وَتُعِزُّ مَنْ تَشَاءُ وَتُذِلُّ مَنْ تَشَاءُ ۖ بِيَدِكَ الْخَيْرُ ۖ إِنَّكَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

(The House of Imran 3: 26)

The author would like to take this opportunity to thank the following people, who played an important role in the development and/or successful completion of this dissertation.

My mother continues to be instrumental to my success through her sacrifice and dedication. I know how hard it has been for her to accompany me through my ambitious endeavours, and I only hope to be able to reward her fully for so investing in me. She was instrumental not only in providing emotional support, but also in being my sounding board during the development phase.

I would like to thank the Hon Dr Nick Smith, the Minister for the Environment, and Mr Alistair Morrison, the General Director of the Department of Conservation for providing the impetus for this dissertation. Their candid correspondences established the platform for my main themes.

I also would like to thank my dissertation supervisor, Professor Klaus Bosselmann for his support.

While lingering for the visitors,

Ben Gussen
Auckland, New Zealand
Summer, 2011

FOR THE LOVE OF YHWH

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*"Ironically, the measures that societies and states have
adopted to stabilise the relationship between
humans and the natural world have repeatedly contributed to
environmental crises over the course of history".*

Joachim Radkau[1]

I.   Introduction

No meme[2] has caused more suffering to the collective of mankind than that of 'nation', especially

as institutionalised (in both senses of the word) under the unitary modern state. Donald W. Livingston

provides a poignant account of the modern unitary nation state tragedy:[3]

> The first truly modern unitary state was that framed by the French Revolution. Prior to that, Europe
> was an order of federative polities.[4] At the time of William the Conqueror there were thousands of
> independent political units. By the beginning of the eighteenth century there were still hundreds

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[1] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008).

[2] A meme is a blend of "gene" and the Greek word μιμητισμός for "something imitated". Memes are the
cultural counterpart to genes. For the genesis of the term, see Richard Dawkins *The Selfish Gene* (2 ed, Oxford
University Press, 1989) at 192.

[3] Donald W Livingston "Secession and the Modern State" (1996) Stalking the Wild Taboo
<www.lrainc.com/swtaboo/taboos/dwliv01.html>.

[4] A federative polity is one in which a variety of smaller jurisdictions exist each of which is a potential source of
corporate resistance to the central government. Prior to the rise of the modern state, political leaders who
desired centralization therefore found themselves up against the historic liberties of these polities.

left: principalities, dukedoms, bishoprics, papal states, small republics, city states, margraves, free cities. Even so-called absolute monarchies were highly federated polities…

Wars tended to be short and casualties light because troops had to be paid for out of the King's purse or by powerful independent proprietors, who had an economic interest in limiting the scope of war. All of this abruptly changed with the appearance of the modern state. The French Revolution destroyed all independent social authorities…The people collapsed into an aggregate of individuals under an all-powerful government ruling in the name of the natural rights of individuals, and determined to spread this doctrine throughout Europe.

…

In response to the French Revolution other European states began to take on the form of the modem unitary state; more and more independent social authorities were destroyed, marginalized, or corrupted by becoming agents of the state which engrossed ever more power to the centre. By the twentieth century that state could not only conscript troops, it could impose an income tax on individuals. Endowed now with a formidable revenue, its wars would become spectacular barbarisms. World War I resulted in eight million battle deaths and six million wounded. (This was more than were killed in all wars in Europe during the previous two centuries of "civilized warfare," gradually instituted after the barbarism of the Thirty Years War of 1618-1648.)

…

Now what must be stressed here is that this enormous destruction was due primarily not to advanced technology nor to the wickedness and madness of certain leaders (as important as both of these were) but to the structure of the modern state itself: the destruction of independent social authorities and the massive concentration of power at the centre…It is the structure of the modern state itself, independent of whether it wears the mask of liberalism, fascism, or Marxism, that…must be called into account. (Emphasis added)

Livingston links the rise of the modern state, and the concentration of power at the centre, with the inferno of the twentieth century. It is within this logic that we can find a direct link between the modern unitary state and the ecological crisis. A recent example emphasises how nationalism, the main idea behind the unitary modern state, can distort the consciousness of local communities:[5]

Modern Israel offers a particularly striking example of the relationship between ecology and nationalism. Originally Israeli national pride was grounded in the belief that the country had restored, through irrigation and reforestation, the fertility of a land that had been nearly turned into a desert by many centuries of nomadic life. The American soil expert Walter Clay Lowdermilk had proclaimed this environmental interpretation as early as 1944 in his book *Palestine —Land of Promise*… and it was eagerly pick up by the Zionists. However, the extremely high water consumption of the orange groves and eucalyptus forests—two showpieces of Zionist colonization— pushed Israel's water economy into an increasingly precarious situation. That prompted a leading Israeli journalist to write in 1997 of the danger that Zionist colonisation could create an "ecological catastrophe" for the "small and fragile country". In contrast to the earlier ecological nationalism, environmental awareness today tends to promote an understanding between Israelis and Arabs.

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[5] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008) at 239.

Even as an eighteen-year-old I used to ridicule the political world map prominently displayed on the front wall of our classroom, usually to the rebuke of my teachers. The same response I still invoke at the 'Ice-Cream Factory'. Still to this very day, I do not understand that colourful mosaic. Why are there colossal countries such as the United States and China, and tiny little ones such as Singapore or Lichtenstein? Why are certain countries able to prosper with a small 'jurisdictional footprint',[6] while others cling on to a huge one, both geographically and demographically? It is this curiosity that furnishes the impetus for this research.

Through this dissertation I hope to better understand the role of localism in the history of mankind. My ultimate project is to develop what I perceive as the second fundamental theory of public law: legality is locality.[7] Pragmatically, however, such an intellectual endeavour will have to wait for hopefully a PhD on the same subject. For the purposes of this dissertation I need to focus the investigation. I hence limit the inquiry into ascertaining the role of locality (or the lack thereof) in the ecological crisis we face today.[8]

It is apposite here to explain what I mean by the term 'locality'. As a legal concept, the term is extremely vague. According to Yishai Blank:[9]

> "Locality" denotes both mega-cities with populations exceeding twenty million as well as small towns of a few families, technologically advanced Western cities as well as rural villages in developing countries, sprawling metropolitan areas as well as tiny, condensed settlements. Under the old national legal order, localities were geographical subdivisions of the national territory as defined by national laws and institutions. Classic recognition of a locality required a license from the state to perform various activities, to provide services, and to obtain some degree of autonomy from state intervention. The plurality of localities was a matter for the state to decide, and it could decide to modify this plurality by prohibiting incorporations of excessively small localities, forcing annexations of adjacent localities, encouraging suburbanization, or promoting sprawl.

My conception of locality is different. It is closer to Livingston's 'federative polity' conception. My interest here is in locality as an autonomous governance option. I am therefore interested in the political governance mechanism known in literature as the 'new localism'. Stoker defines 'new localism' as "a strategy aimed at devolving power and resources away from central control and

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[6] The concept of "jurisdictional footprint" is analogous to the "carbon footprint" concept and suggests that the effectiveness of the response to the ecological crisis is diluted by the size of jurisdiction; the larger the jurisdiction the less effective the response. The concept is linked to the main hypothesis in this dissertation, namely that a return to locality is imperative for the effectiveness of any response to the ecological crisis.

[7] I have somewhat fleshed out the first fundamental theory of public law in a research paper I wrote for LAWHONS 728 in 2009 (under the guidance of Professor Bruce Harris). That theory asserts that *the state is the fiduciary of the people*, from which it can be argued that any jurisdictional footprint should be limited to localities in order to properly dispense the high standard of the fiduciary obligation.

[8] I use the terms "ecological crisis" and "environmental crisis" interchangeably although the former term is preferable given its emphasis on a stronger version of sustainability.

[9] Yishai Blank "Localism in the New Global Legal Order" (2006) 47(1) Harv. Int'l L.J. 263.

towards front line managers, local democratic structures and local consumers and communities, within an agreed framework of national minimum standards and policy priorities".[10] For my purposes in this dissertation, localities are *autonomous* legal entities with a relatively small jurisdictional footprint. The key differentiators are the small size of the entity[11] and the free ingress and egress of all forms of capital. I hence, see a locality as limited in its geographical and demographical dimensions, but also affording its 'citizens' mobility at a de minimus cost. Here then the reader can see that my definition of a locality has a global dimension. The locality I search for in the causes to the ecological crisis and in the responses to it is one that has a global dimension, not in that it is an administrative apparatus of the later or of the national modern state, but in its ability to freely interact with the collective of other localities around the globe, and by doing so leads to a bottom-up, organic, process of globalisation.

Therefore, in defining my localities I place emphasis on *local autonomy*, and therefore I do not consider local governments, such as the ones we have in New Zealand, to be localities. These are simply instruments of the central government to implement its own policies. These are simply part of the positivist paradigm of top-down policy implementation.

The issue, namely the role of locality in the ecological crisis, took special form of importance after an opinion I wrote for the Law 433 paper, International Environmental Law—one of the papers I took for this degree. As part of the new governance structure under the Auckland supercity, a new five-seat Waiheke Local Board was to be elected on 9 October 2010. There were around seventeen candidates vying for the seats. The issue of whether Waiheke should become a UNESCO biosphere reserve was central to these elections. The idea was championed by Colin Beardon who was standing as one of the candidates. Eight other candidates supported the idea,[12] while others were not sure about its merits: some saw it as an aspirational goal (Don Mckenzie), others worried about the bureaucratic/legislative (Andy Spence) or financial (Jo Holmes and Faye Storer) implications of such a framework, while others (Jim Hannan) argued such a framework would be redundant given protections under the Resource Management Act 1991 and the Gulf Marine Park Act 2000. There were also those who said there is too much mystery around the UNESCO idea for it to be an election issue

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[10] G. Stoker "New Localism, Participation and Networked Community Governance" (2007) Institute for Political and Economic Governance. University of Manchester, UK <www.ipeg.org.uk/papers/ngcnewloc.pdf>.

[11] The small size (geographic and demographic) results in default integration of the ecological, economic and social spheres—and hence accomplishing one of the fundamental substantive elements underlying sustainable development, namely the principle of integration. See Sumudu A. Atapattu *Emerging Principles of International Environmental Law* (Transnational Publishers, Ardsley, NY, 2006) at 129.

[12] These are Eme Kilkenny, Graham Hooper, Paul Walden, Marijke Ransom, Denise Roche, Ewen Sutherland, Millie Watkins, and Dorte Wray.

(Herb Romaniuk), and opined that the proposal should be developed away from the elections (Allen Davies).[13]

I hence embarked on writing a legal opinion to clarify said concerns in relation to the issue of UNESCO biosphere reserves, and to provide practical recommendations on the same. The first port of call was to understand the history of the concept of biosphere reserves. I found out that the framework of biosphere reserves came under the rubric of the UNESCO's Man and the Biosphere Program (MAB) which originated from recommendations by the International Biological Programme (IBP) in the 1960s. The official definition of a biosphere reserve can be found in Article 1 of the Statutory Framework of the World Network.[14]

My investigation of the biosphere reserve concept led me to two common underlying principles for their management. The first principle states that the management of a biosphere reserve needs to be community-based. This gives effect to what is known as participatory governance. Participatory governance is site-specific and dependent on both political culture and socio-economic development.[15] It is associated with risks and opportunities when taking into account the various stages of socio-economic development.[16] The second principle for the management of biospheres requires that each reserve has its own governance system to ensure that it meets its functions and objectives. This can be in the form of a local board to coordinate all biosphere reserve activities. Usually a coordinator is named as the contact person for all matters dealing with the biosphere reserve.

Under these principles, biosphere reserves can be seen as giving effect to a weak version of *local autonomy*. According to Pierre and Peters, [17] participation (considered a prerequisite for a collaborative multi-stakeholder approach to biosphere reserve management) is based on policies characterised by decentralisation of control over sub-national governing bodies, which creates a pattern of multi-governance. Political objectives to be addressed by the state are then to be seen as a complex trade-off between different policy objectives of the societal groups involved.

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[13]"Batting for a biosphere" (2010) Waiheke Marketplace <www.stuff.co.nz/auckland/local-news/waiheke-marketplace/4059464/Batting-for-a-biosphere>.
[14] The Statutory Framework is available at http://unesdoc.unesco.org/images/0010/001038/103849Eb.pdf Accessed on 2010-09-01.
[15] P Getimis and G Kafkalas "Empirical Evidence and Comparative Analysis of Policy-Making in the Pursuit of Innovation and Sustainability" in H Heinelt, P Getimis, G Kafkals, R Smith, E Swyngedouw (Eds.) *Participatory Governance in Multi-Level Context: Concepts and Experiences* (Leske + Budrich. Opladen, Germany, 2002).
[16] T O'Riordan and S Stoll-Kleemann "Deliberative Democracy and Participatory Biodiversity" in T O'Riordan and S Stoll-Kleemann (Eds.) *Biodiversity, Sustainability and Human Communities: Protecting Beyond the Protected* (Cambridge University Press, Cambridge, 2002) pp. 87–112.
[17] J Pierre and B G Peters *Governance, Politics and the State* (MacMillan Press Ltd., Houndmills, Basingstoke, Hampshire and London, UK, 2000).

It became clear to me that the central question to the issue of whether Waiheke should pursue a UNESCO designation is this: why are there no such reserves in New Zealand, given that the MAB programme has been designating such reserves since the early 1970s? In the opinion I suggest that the answer comes from the fact that the biosphere reserves concept affords a level of autonomy to the local community that our central government is not comfortable with, yet. The above two principles (requiring *autonomous* community-based governance systems) could well explain why New Zealand has been shying away from establishing biosphere reserves for the last fifty years: biosphere reserves inspire a decentralized approach to governance, which is not in line with the current political thinking in New Zealand.

However, to be fully informed on this matter, I put the question to Nikki Kaye, the National Party MP for central Auckland, who in turn raised the question with the Minister for the Environment, the Hon Dr Nick Smith. Dr Smith replied with these words (see the full response letter in the Appendix):

> The sustainability and public engagement focus of the Resource Management Act 1991 largely covers what a biosphere reserve status aims to achieve. The government is focussing its energies on a range of programmes relating to indigenous biodiversity protection and enhancement. This includes supporting local government through the development of non-statutory best practice guidance and a proposed national policy statement for freshwater management.
>
> The current programmes provide the appropriate level of protection to New Zealand's flora and fauna…

In summary there was no mention of the local autonomy principle underlying the concept of biosphere reserves. Instead, emphasis was placed on national legislation in the form of the Resource Management Act 1991 (RMA 1991). The key idea in the paragraph is "supporting local government", rather than the biosphere approach of giving local government autonomy to support itself.

Soon after I received Dr Smith's response, Alastair Morrison, the Director General of the Department of Conservation, gave a speech at Lincoln University about building biodiversity in New Zealand, where he criticised New Zealand's current response to the ecological crisis for being driven mainly by economic considerations. I felt inspired by his critique and send him my biosphere reserve opinion together with Dr Smith's response, hoping for a different view on the issue. Here is an excerpt of the response (the letter is provided in the appendix):

> As you are aware, the key regulator of resource use in New Zealand is the Resource Management Act with its underpinning principle of sustainability. In the case of Waiheke this is reinforced by the Hauraki Gulf Marine Park Act. Laying the principles of biosphere reserves on top of these requirements would not seem to add greatly to the approach already in place.
>
> In terms of governance, New Zealand is a small country and we already have significant local participation in local resource management. This results in elected representatives working through

existing legislative provisions to represent local interests in decision making. Additionally there are bodies such as the Auckland Conservation Board and the Hauraki Gulf Forum to which people are appointed to offer advice to officials and elected bodies.

Designation as a biosphere reserve would not seem to add significant value to the management of resources but would incur costs, not only to local people but also to the Government through participation in the programme. It is hard to see how these costs can be justified.

As I argued in my Lincoln address, there is a need for good integration of resource management by all sectors of society to ensure we maintain the highest possible quality of life. I am not sure that bringing the Biosphere Reserve paradigm into New Zealand significantly advances our achievement of this.

Similar to the response from Dr Smith, Morrison's invokes 'local participation' under the national legislative framework, adding that principles of the biosphere reserve, namely local autonomy, "would not seem to add greatly to the approach"; the approach being "the management of resources" in New Zealand by local government. This far is rather accurate, as local autonomy would go against the grain of the unitary central government in New Zealand. But more importantly, Morrison asserted that "New Zealand is a small country and we already have significant local participation in local resource management". The argument is that 'local autonomy' would not work for a small country such as New Zealand. Instead, 'local participation' within a 'national' framework would be a more appropriate approach.

I disagree with the assessment made by Dr Smith and Mr Morrison. International organisations such as the UN and the World Bank also disagree with their assessment (as I discuss in Chapter III). The importance of localism—of localising the decision making process to ensure an effective response to the environmental crisis—is not, and cannot be guaranteed by a piece of national legislation. Even if it did, the RMA specifically is nowhere near granting local autonomy to combat the crisis. This is clearly evident in the area of climate change. Currently, the RMA is not used for reducing Greenhouse Gases (GHGs).[18] These gases were deliberately exempted in 2004. Under the RMA, local authorities are not able to consider the effects of GHGs on climate change when writing local plans and when granting air discharge consents. The RMA 1991, as amended in 2004, suggests that the effects on climate change can be considered only with respect to the development of renewable energy (Sections 7 and 104E). Hence, while in practice the RMA is administered by local authorities, the 2004 amendment means local government is not allowed to consider climate change. Section 104E explicitly prohibits considering the effects of climate change.[19]

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[18] Klaus Bosselmann "Carbon Neutrality and the Law" in N Harré and Qu Atkinson (eds.) *Carbon Neutral by 2020: How New Zealanders can tackle climate change* (Craig Potton Publishing, Nelson, 2007) 258-275.
[19] See *Greenpeace NZ v Northland Regional Council and Mighty River Power Limited* [2007] NZRMA 87.
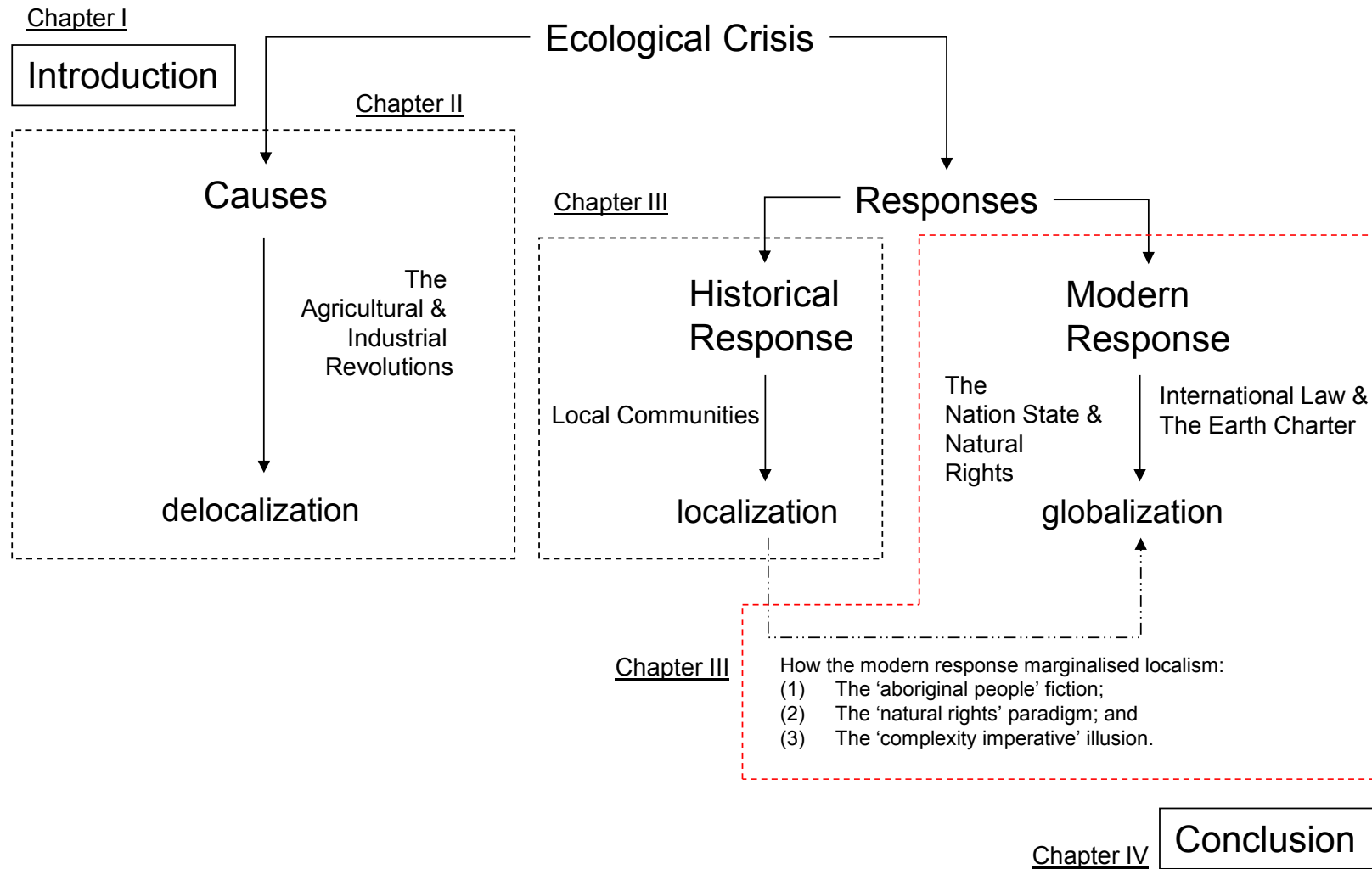
The fact that the RMA is not geared towards local autonomy (as a response to the ecological crisis) can also be seen in its content and structure. In particular, the rationale behind the Act is the use of sustainable management (s5(2)) rather than sustainable development. This not only excludes the wider considerations of social inequities and global redistribution of wealth as envisioned under the 1983 Brundtland Commission, but also exhibits a positivist approach to the ecological crisis. The RMA looks at local government instrumentally. The local government simply implements what has already been decided for it by the central government. This is further confirmed by Part IV of the RMA which divides responsibility between three sectors: central government (Minister for the Environment), regional councils, and territorial authorities. Central government furnishes the national policy statement and environmental standards. The local government implements the same. The RMA never envisioned local government taking the lead in tailoring responses to the ecological crisis to meet the need of each different locality.

In this dissertation I attempt a Copernican shift, where I place delocalisation at the heart of the causes of the ecological crisis.[20] My main hypothesis can be summarised as follows: the ecological crisis emerged from a form of socio-politico-economic organisation, namely the unitary nation state, which denigrated local forms of social organisation. Until large-scale forms of organisation, namely the national and global scales, become subsidiary to the local scale, there will be no *effective* response to the crisis. International legal instruments, such as the Earth Charter, need to furnish this diagnosis explicitly. Here there are important lessons for New Zealand's constitutional future.

The dissertation is structured as follows. After this introduction, Chapter II canvases the causes of the ecological crisis and synthesises these into one proposition: the root cause of the crisis is the move away from locally organised communities to the nation state, and the ensuing agricultural and industrial revolutions which accelerated the negative effects of the crisis. Chapter III considers the historical (Middle Ages) response to the crisis in the European context where evidence suggests that the response was led by local communities. Chapter III also contrasts the modern response (to the crisis) with the historical one, and criticises its emphasis on coordinating the response on a global scale. The dissertation ends with Chapter IV which provides suggestions on how to move forward. The figure on the next page depicts the structure of the dissertation.

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[20] It can in fact be argued that delocalisation is at the heart of the human condition generally.

A Pictorial Depiction of the Dissertation

Chapter I

Introduction

Ecological Crisis

Chapter II

Causes

The Agricultural & Industrial Revolutions

delocalization

Chapter III

Responses

Historical Response

Local Communities

localization

Modern Response

The Nation State & Natural Rights

International Law & The Earth Charter

globalization

Chapter III

How the modern response marginalised localism:
(1)   The 'aboriginal people' fiction;
(2)   The 'natural rights' paradigm; and
(3)   The 'complexity imperative' illusion.

Chapter IV   Conclusion

"Agrarian societies always had a tendency to push their ecological limits.
Peasant families tended to maximize births as a survival strategy.
States and entrepreneurs tended to seek a technological edge
over local competitors by modifying existing technologies.
Mining, in particular, tended to stimulate technological innovations,
as its high energy demands continually provoked crises and bottlenecks requiring solutions.
Trade and migration provided access to goods, ideas, and people not locally available,
but introducing these could have unforeseen destabilizing consequences".

Edmund Burke III [21]

II.   Delocalisation and the emergence of the ecological crisis[22]

In this part of the dissertation I make the assertion that the current environmental crisis is the product of a form of social organisation that favours a global approach at the expense of the historical localised organisation manifested in local communities around the world.

Today a number of well publicised issues came to be known collectively as the environmental crisis. These include the destruction of tropical rainforests, acid rain, reduction of CO_2 emissions and the polar thawing process, to name just a few. These ecological problems are now seeping into the sociological sphere. There is now increase in respiratory diseases worldwide, violent clashes with

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[21] Edmund Burke III "The Big Story: Human History, Energy Regimes, and the Environment" in Edmund Burke III and Kenneth Pomeranz (eds) *The Environment and World History* (University of California Press, California, 2009) at 38.
[22] I refer to the ecological 'crisis' rather than 'challenge' while cognizant some readers might not agree with that designation. It is my personal belief that a crisis is not just emerging but escalating fast.

demonstrators, and even predictions of the imminent collapse of the climate by 2015.[23] If we do not put a stop to the environmental crisis, humankind will be decimated.

But in order to put a stop to the crisis, we need to understand how it emerged in the first place. While many different hypotheses have been put forward to explain the root causes of the crisis,[24] there seems to be a common thread weaving through all of them, namely the move away from local organising.

Some scholars see Christian teachings, which shaped Western attitudes toward nature, as fostering the creation of exploitive systems of science and technology that are largely responsible for the destruction of the environment.[25] Some argue that although Christian teachings may have influenced thought, humans have a long history of environmental destruction going back long before the advent of Christianity.[26] Notwithstanding, there is merit to the assertion that Christianity is at least behind the moral licence to 'subjugate' the planet to humans own use. I do not need to go through the scriptures to prove this. But even this licence is not, at least on its own, what is absolutely damaging about Christianity. It is rather Christianity's 'evangelical' tendencies. Christianity taught uniformity to universal dogmas that transcend the local. It was one of the front runners of top-down globalisation. As such, Christianity removed people from their attachment to the local and demanded uniformity to principles beyond their control. The local autonomy was now diluted with expectations of centralised power in the hands of the Church.

Other scholars identify biological and evolutionary roots to the crisis. For these theorists, expansion of organism populations is facilitated by special characteristics. For humans, technology took on this role, and by doing so greatly increased our environmental impact. On the other hand, some see population growth as a result of the way we organize our societies. In 1967 R. MacArthur and E. O. Wilson described two models of reproductive behaviour:[27] (1) the 'r' strategy which is used in unstable environments, and entails producing a large number of off-spring, even if they are mostly short-lived; and (2) the 'K' strategy which adapts to a relatively stable environment of inflexible food supply, and entails producing a limited number of offspring. According to Radkau "[t]he 'K' strategy is likely to occur where a clearly circumscribed living space is evident. By this reasoning, *the progressive*

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[23] Klaus Bosselmann *When Two Worlds Collide: Society and Ecology* (RSVP, Auckland, 1995).
[24] For a summary of these arguments see Daniel D Chiras *Environmental Science* (8th ed, Jones and Bartlett Publishers, Mississauga, Ontario, 2010) 34-49.
[25] See Lynn White "The Historical Roots of Our Ecologic Crisis" (1967) 155 Science 1203-1207.
[26] See, for example, Russell Christman "Environmental theology" (1980) 14 (11) Environ. Sci. Technol. 1271.
[27] See E R Pianka "On r and K selection" (1970) 104 American Naturalist 592–597. For the original work refer to R MacArthur and E O Wilson *The Theory of Island Biogeography* (Princeton University Press, Princeton, 2001 reprint).

elimination of boundaries in the world is threatened by population pressure, struggle, misery, and mass death".[28] (Emphasis added).

There are also the psychological, economic, and political camps where human attitudes and beliefs are seen as responsible for many unsustainable practices. Denial, apathy, inability to respond to subtle threats, greed, acquisitiveness, and other factors influence our economic systems, laws, and way of life in profound ways. In short, they worsen our biological imperialist tendencies. Some scholars believe that at the root of the ecological crisis are: (1) the spread of democracy as championed by the nation state, which put land ownership and wealth in the hands of many, and (2) the industrial revolution, which made mass production of goods possible and spread wealth throughout society. [29]

In his diagnosis of the long history of the environmental crisis, Bosselmann explains how the transformation of mankind from hunters to farmers through the agricultural revolution caused the environmental crisis 11,000 years ago.[30] In his *An Environmental History of the World* J. Donald Hughes articulates the transformation with special emphasis on the role of cities:[31]

> When cities appeared in the landscape, a new split between culture and nature entered human minds. City and countryside were still parts of an ecosystem that embraced both, but it was a reorganised ecosystem in which forms of energy such as food and fuel flowed towards the urban centre. Agriculture produced a surplus beyond the amount needed to feed the peasants who laboured on the land, and this surplus fed the rulers, priests, soldiers, and workers in specialised occupations. When food supply increased, population also tended to expand, and the demand for resources rose proportionately. This cycle of growth continued until it approached the limits of the local ecosystem. The early cities had ways of postponing the inevitable crash—conquering neighbouring lands and cities, engaging in trade over longer distances, importing metals and timber, and adopting more intensive agricultural technologies such as irrigation. But the basic problem remained. That is, an exponentially expanding population and economy within a finite ecosystem. Conquest could deplete as well as expand resources, lengthening trade routes reached the point where effort to bring in resources required more energy and expense than was brought in, deforestation made flooding more serious and unpredictable, and intensive agriculture introduced erosion, salinization, and other factors that reduced production. Limits were exceeded, the food supply declined, and the fall of civilization was typically more sudden than its rise had been. The same basic problem, in various guises, returned in later historical periods…
>
> By the end of the Middle Ages, humankind had spread to almost every land on Earth. The few exceptions included Antarctica and some isolated oceanic islands such as the Galápagos. Most of the main inhabited lands were relatively isolated from one another; in some cases almost completely so. A series of separate worlds, culturally and ecologically, occupied the planet. The human societies in each region existed in interaction with the ecosystems characteristic of that region; while there was some trade, transfer of technology, and a few introductions of species from one part of the globe to

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[28] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008) at 7.
[29] See Lewis W Moncrief "The Cultural Basis of Our Environmental Crisis" (1970) 170 Science 508-512.
[30] Klaus Bosselmann *When Two Worlds Collide: Society and Ecology* (RSVP, Auckland, 1995).
[31] J Donald Hughes *An Environmental History of the World* (Routledge, New York, 2001) at 48, 104.

another, wholesale translocations of biota including human populations from one region to another would reach epic proportions only in the period that followed. In the Middle Ages most ecological crises were limited to single regions. The Black Death, which spread from China to Europe, was perhaps an exception, although a very important one…In these isolated regions, historical ecological processes can be traced whose ramifications were to be increasingly global.

According to Bosselmann, the industrial revolution intensified the crisis since the 18th century C.E. Hughes comes to the same conclusion:[32]

Early modern times saw a greater transformation of the biosphere, and of the face of the Earth, than any other period…These were centuries of technological innovation…It was the Europeans who first embraced the Industrial Revolution, and it gave them a margin of military and economic lead for a time, indeed a long time, over other peoples. It also produced unprecedented amounts of pollution of the air, water, and soil. Transportation, especially by sea, colonization, and the industrialisation of increasingly urbanised countries created the first world trade economy worthy of the name. It operated for the benefit of the metropolitan states, and made possible the exploitation of resources located in far distant parts of the globe.

The industrial revolution signified the advent of energy intensive technologies. The industrial system developed to such an extent that the possibilities of ecological recycling was no longer an option. The greenhouse quantities produced were simply too large to be managed by the self-regulating potential of natural ecosystems.

In these two steps, the agricultural and industrial revolutions, humans have disrupted the flow of energy and the cycle of substances (such as CO_2, O_2, H_2O) in a drastic manner. The industrial revolution (and the agricultural revolution before it) caused a cultural acceleration of evolution, which in turn led to tension between cultural and natural evolutionary speeds. The revolutions resulted in the tendency towards "linearity of supply and use of resources", and the tendency towards "singularity of production objective and lack of focus on waste management and pollution".[33]

Joachim Radkau attempts to interweave these causes. He identifies a number of intertwined causes that set a vicious cycle in motion which eventually led to the ecological crisis. These are: overpopulation (biological), self-interest prevailing over collective interest (psychological), growing mobility, and global interconnectedness (technological). According to Radkau, the interweaving of these causes led to the conclusion that "[t]he balance between humans and their environment that was created over many generations is upset by external influences, by invasions and the *loss of autonomy*".[34] (Emphasis added).

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[32] Hughes at 136.
[33] Klaus Bosselmann *When Two Worlds Collide: Society and Ecology* (RSVP, Auckland, 1995) at 48.
[34] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008) at 7.

At first blush, the diagnostic discourse above does not explicitly identify localism, or more precisely the lack thereof, as 'the' or even 'a' cause of the environmental crisis. However, a closer reading exhumes a strong nexus with locality.

Many theorists identified the causes of the environmental crisis as the agricultural and industrial revolutions, which through their emphasis on linearity and singularity, led to the environmental crisis. However, the agricultural and industrial revolutions were precipitated by a new form of organisation that relied on moving away from small-scale operations through the use of networks—including networks of roads and irrigation channels. In the same logic, Radkau asserts that irrigation networks resulted in centralisation of power and eventually to ecological suicide (due to soil salinization) as documented by the fall of the Sumerians under the auspices of the (national) Code of Hammurabi (around 1800 B.C.E.) and its strict rules governing irrigation.[35]

The agricultural revolution reorganised humans from hunters and gatherers constantly on the move, to farmers settled in a particular locality. Instead of people moving to source, now sources had to be transported to people. This initiated the compression of space and time to justify operational scales exorbitantly beyond the needs of any locality. Over millennia settlements grew in size to form cities, which then connected in a network of settlements to form the precursor of what we came to know today as the nation state. Here the genesis of the 'growth explosion' was sawn both in geographic and demographic terms: populations grew in size, while social organization occupied a larger footprint.

The 'growth explosion' had been further accelerated by the advent of the industrial revolution. The pace and degree of development was being elevated though harnessing energy from fossil fuels to do the work hitherto the drudgery of man and beast. Now land, sea and air networks canvassed the Earth in search of fuel and raw materials. Space and time were being further compressed—to a zero dimension. The organization of human operations was now not only on a national scale, but on a global one.

The agricultural and industrial revolutions are manifestations of delocalisation—a precursor to globalization. These causes can be re-formulated as a manifestation of what I refer to as the problem of scale. As stated by Bosselmann, global environmental problems are traced to the pace and scale of

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[35] Radkau at 95.

development. The problem of scale itself can be seen as a move away from localisation. Edmund Burke III explains the local connection as follows:[36]

> Between 1400 and 1800, agriculture in early modern Europe became increasingly *delocalized* as agricultural products became commodified. Many states deployed increasingly well-tuned systems of exploitation and more effective technologies that strengthened their power in agrarian core areas and along internal frontiers. More particularly, Western European states were able to exploit their external frontier regions (the Americas, Africa, and the Indian Ocean zone), notably for silver, spices, sugar, silk, and cotton. One consequence...was a sharp increase in environmental degradation of all kinds. (Emphasis added).
>
> ...
>
> Mechanization and steam engines transformed British (and subsequently European, U.S., and Japanese) industrial production in the nineteenth century in three important ways. One was the revolution in transport brought about by railroads and steamships. Steam power enormously increased the ability of humans to transport bulky, heavy goods like coal and iron over long distances. Previously, mining operations had tended almost literally to burn out once they had exhausted the fuel potential of nearby forests. With steam engines and railroads, coal could be moved long distances for pennies a ton, stimulating industries far from the mineshaft. Beginning in the early nineteenth century, railroads soon linked local communities to distant cities and countries, with accelerating economic and social consequences. Steamships fueled by coal sounded the death knell for sailing ships following their introduction in the 1840s. Cheaper, more reliable, and faster than sail, steamships stimulated an unprecedented increase in trade and human migration. In sum, steam power made possible a revolution in global communication, shrinking the globe and facilitating both European imperialism and nationalism.

These transformations of how mankind organised their societies and operations eliminated the satiability which characterised localised communities. Before the agro-industrial re-organization, humans were able to satiate their needs from their locale at a much lower level of energy intensity. Today however, the ability to satiate the needs of any locality seems to be non-existent. There is always a need for new technology, new innovations, more food, and more energy.

The agricultural and industrial revolutions caused the environmental crisis by introducing a new form of organization. This form of organization relied on a web of networks to move resources to people rather than move people to resources. Overtime, human settlements grew in size both geographically and demographically. This divorced people further from their localities. Human needs now became insatiable. Growth became the obsession of human activity. From there, it was only a matter of time before the ecological crisis signalled the failure of this organizational approach. As eloquently formulated by Bosselmann:[37]

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[36] Edmund burke III "The Big Story: Human History, Energy Regimes, and the Environment" in Edmund Burke III and Kenneth Pomeranz (eds) *The Environment and World History* (University of California Press, California, 2009) at 41, 43.

[37] Klaus Bosselmann *When Two Worlds Collide: Society and Ecology* (RSVP, Auckland, 1995) at 44.

> For evolution generally, the accelerated cultural evolution does not signify a disruption; it takes place as an unstoppable dynamic process—whether humans are there or not. For humans the effect is precarious. They might, under certain circumstances, have to pay for all the rapidly gained advantages by no longer being able to integrate into the ecosystem of which they are a part. Thus a human strategy for survival which looked so successful in the beginning, would fail in the end.

The environmental crisis can be traced back to delocalisation made possible by the rise of the modern unitary nation state which was instrumental in centralising the power of decision making away from local communities.

If delocalisation is the cause of the crisis, it would only be reasonable to expect any response to it to roll back the delocalisation by putting more emphasis on the way communities organised themselves historical. In other words, one would expect a move back to localism. But is such a reversal possible today, under the unitary nation state? Livingston suggests the answer is no:[38]

> The idea of a modern unitary state goes back to…the seventeenth century, but its first appearance in the world was the work of the French Revolution. The unitary French republic has since been the model for would-be modern states throughout the world…The modern state was said to be one and indivisible, and so was conceived from the start as a state from which secession was impossible.
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> …
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> For Hobbes the state is composed of individuals who are thought of as having first existed in a non-moral and non-political state of nature where they were free to do anything they desired…restrained only by…self-interest...not sufficient to secure long term peace and security. This being an intolerable state, individuals contract with each other to form a sovereign political office…It makes no difference to Hobbes whether the state has the form of monarchy, aristocracy, or democracy. What is important is the office of sovereignty and that sovereignty be conceived as indivisible, irresistible, and infallible…otherwise there could be two sovereign voices with no umpire above them, and so a return to the wild anarchy of the state of nature.
>
> …
>
> As sovereignty is indivisible, so is territory. And from this it follows that the secession of a people from a modern state is logically impossible, for secession would require the territorial dismemberment of a state, and that would be to deny that sovereignty is indivisible. It is for this reason that the great modern philosophers and those who follow in their steps today never so much as raise the question of whether secession is morally justified. Their main task has been to theorize and legitimate the modern state.

In the following chapter I investigate this logic by examining the response to the environmental crisis in the Middle Ages and in the modern era.

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[38] Donald W Livingston "Secession and the Modern State" (1996) Stalking the Wild Taboo <www.lrainc.com/swtaboo/taboos/dwliv01.html>.

"Modern Communist China offers a prime example that a totalitarian,
centralised state may use [environmental] problems to legitimise itself,
but that it cannot solve these problems satisfactorily with its top-down methods.
Today the water resources in some regions of China are being
overused to such a degree that wet rice farming
around Beijing is declining as a result of dropping groundwater levels,
and the Yellow River, whose waters were China's terror for thousands of years,
barely reaches the sea in times of drought.
It would appear that the spirit of cooperation that is necessary
for successful water management can be effective, if at all, only on the local level,
but not within a framework of a gigantic state".

Joachime Radkau[39]

III.   Locality in the (historical and modern) responses to the ecological crisis

In the previous chapter I have explained how delocalisation caused the environmental crisis. Given that the genesis of the crisis is traced back to the beginning of the agricultural revolution, it would not be surprising that the ecological and sociological issues thrown up by the crisis were tackled much earlier than the twentieth century. At least in the European context, consciousness of the crisis and systematic measures for its mitigation can be seen in action as far back as the seventeenth century.

In this part of the dissertation I contrast that historical response to the environmental crisis with the current response under the international law paradigm, which is also a product of the European tradition. While it could be argued that there were repeated ebbs and flows in the ecological crisis,

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[39] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008) at 110.

for our purposes we will look at the crisis before and after the age of Enlightenment as this provides a clear contrast between the two approaches to tackling the crisis.

Unfortunately, responses to the ecological crisis do not follow a few simple basic patterns. The solutions to environmental problems are "often hidden within social and cultural history, and it is there that we must decipher them".[40] Inevitably, however, there are typical patterns of responses. These typical patterns arise from moves to higher levels of the state. This results in responses to the crisis becoming increasingly[41]

> subject to the laws of power and the preservation of authority…Environmental history is always also the history of political power—and the more it moves away from practical problems on the ground and into the sphere of high-level politics, the more that is the case…Environmental history is inevitably shaped also by the formation of ever larger political and even more expansive economic entities, and by the growing interconnectedness of the world.

The Enlightenment brought two important developments of thought. The first was the ability to explain human life without regard to metaphysical levels of human existence (the scientific revolution of rational thinking and empirical observations). The second was the 'reasoned' approach to law and governance where social norms are tested against rationality and scientific evidence. Similarly, positivism asserts that the only authentic knowledge is that which is based on positive verification. Under this approach, the 'scientific method' replaced metaphysics in the history of thought. This 'scientific approach' was the precursor to the industrial revolution which, as discussed in Chapter II, culminated with the current ecological crisis.

In this chapter I argue that locality was the cornerstone of the historical (pre-Enlightenment) response to the environmental crisis. In contrast, within the modern approach, under international law, locality was relegated to an instrumental role. This was a direct result of the rise of 'positivism', which in turn emerged from eighteenth century Enlightenment.

Next I will provide a brief description of the historical response to the ecological crisis, mainly in the European context. This then is contrasted with the modern response driven by international law, which also arises from the European context.

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[40] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008) at 9.
[41] Radkau at 10.

The historical response[42]

As illustrated by Bosselmann,[43] some 600 years ago Europe suffered its first ecological crisis (peak timber):[44]

> Between 1300 and 1350 agricultural development and timber use had reached a peak that led to an almost complete deforestation. The loss of ecological carrying-capacity had a number of severe consequences. Without forests there was no timber for heating, cooking, house building and tool making. At the same time, an important nutritional basis for deer, pigs and cattle vanished and with it the prospect for animal fertilizers necessary for growing crops. Erosion, flooding and lowering of water table levels were further effects. The resulting great starvations between 1309 and 1321, followed by the plague (the 'Black Death') between 1348 and 1351, decimated the population of Middle Europe by one third. In some regions half of the townships disappeared, altogether 40,000 settlements. Compared to the collapse of other cultures, such as the Maya, the European collapse was less dramatic, but marked a significant 'cultural standstill'.

What I am interested in is how Europe responded to this crisis? Here we can see the central role of local communities. Bosselmann explains:[45]

> In response to the crisis, local principalities and townships took measures of large-scale reforestation and enacted laws based on sustainability. The idea was to not clear more wood than would grow again and to plant new trees so that future generations would benefit. From the end of the fourteenth century, local laws in Middle Europe were guided by sustainability concerns.

These laws centred on the 'Allmende' (Germany) or 'Commons' (England) land use systems. These systems restricted the use of land in three main ways: (1) land use rights were regarded as heritage from the past and obligation for the future (relational context of land use); (2) lands were organised as undivided common areas of the local community; and (3) land use rights could not be sold or passed on without the approval of the collective.

The above excerpt from Bosselmann asserts that "local principalities…enacted laws" which is in line with a high level of local autonomy and self-determination. What is clear then is that the response was informed by ethics different from the ethics of Enlightenment (and modern property rights). In essence, "the human-nature relationship was seen as one of stewardship" and "[s]ustainability of this kind was typically administered by the local principal and usually 12 judges forming the local court, but always within small communities". [46] Under this setup land use was decentralised and fully controlled by local communities. The local communities' intimate knowledge of their eco-systems

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[42] Since I am interested in contrasting the historical and modern responses, I limit my analysis to the European context, as it is this context that 'manufactured' what came to be known today as the modern response.

[43] Klaus Bosselmann *The Principle of Sustainability* (Ashgate, Aldershot (UK), 2008) 9-25, 40-41.

[44] Bosselmann at 14.

[45] Bosselmann at 14.

[46] Bosselmann at 15.

allowed for informed decision-making, while the form and extent of land use could be easily adjusted to changing ecological conditions.

Radkau paints a similar picture. He reminds us that "[h]istorians, who are fascinated by long-distance trade, have often overlooked that, until very recently, humanity's food supply was largely dependent on local and regional subsistence, and that an effective response to environmental problems was most likely to occur at those levels—if at all".[47]

In summary, the response to the ecological crisis was localised, both through the *legislative* and *administrative* functions of governance. During this period, the influences of positivism and its emphasis on the individual were still nascent. Thus this response ensured common interests had preference over individual interests, while the aim of (often rotational) land use was optimization rather than maximization. But by the eighteenth century, due to Enlightenment, and the ensuing positivist tradition, local communities became part of an overarching instrumentalist lens through which all systems (ecological, social, legal, etc.) were evaluated. Now the emphasis shifted towards economic growth. Local communities became a tool to achieve economic growth.

The modern response

What I am interested in here is to analyse the responses to the post-Enlightenment environmental crisis precipitated by the industrial revolution, and contrast the role of localisation in this and the historical response. I argue that the environmental response discourse, whether from secondary sources such as academic commentary, or primary sources such as UN declarations, is oblivious to any active role of local communities, save for an instrumental role in implementing the policies of the international society, with its national states and non-state actors such as Non-Governmental Organisations (NGOs).

The Enlightenment (and later modernity especially with its emphasis on the nation state) brought economic success but also ecological failure. The new crisis started also as one of deforestation, this time caused by rapidly increasing economic demand (from 1650 onwards). The genesis of this new crisis emerged under the feet of the industrial revolution. The revolution had three transformational aspects:[48] (1) the environmental aspect with fast growing populations causing the agricultural system to expand its boundaries; (2) the philosophical aspect with the Newtonian mechanistic-atomistic

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[47] Joachim Radkau *Nature and Power* (Cambridge University Press, Cambridge, 2008) at 10.
[48] Klaus Bosselmann *The Principle of Sustainability* (Ashgate, Aldershot (UK), 2008) at 15.

image of nature favoured its exploitation over ecological sustainability; and (3) the energy aspect where renewable energy resources were replaced by fossil fuels. These aspects became the catalyst for the modern economy with its resource-intensive and short-term orientation. Now the new property model subjected nature to exclusive private control (e.g. the 1811 Prussian Land Law).

The Enlightenment consummated an unholy alliance between the state and the economy.[49] The state externalised the environmental costs which should have been borne by those causing it, namely the costs for 'freely available goods' like air and clean water. Economic calculations listed only that which increased material prosperity. The economy was basically living off the destruction of the environment. The state shared the ecological blindness which also characterises the traditional economy. "The state structure is therefore in no way 'neutral'. It favours a way of thinking which sees economic prosperity as the basic requirement for human existence".[50]

It took governments until the second half of the twentieth century to realise that some environmental safeguards may be needed. Not surprisingly, after the rise of positivism, international agreements approached the subject primarily from a utilitarian perspective that sought to maximize economic exploitation of the designated species. This approach was moderated in the 1960s when governments began to demonstrate concern over the general state of the environment. But even the new public environmental laws of the 1960s and 1970s added only certain environmental duties to otherwise unrestricted private property rights.

Basically, the nation state 'hijacked' the decision making powers from local communities and replaced their bottom-up process with a top-down one that is becoming more and more dictated by international players, including non-government and other non-democratically elected organisations. I am interested in probing the justifications for this shift from the local to the global.

The modern response to the ecological crisis increasingly recognised environmental problems as international in scope. The logic is that any significant impact on the environment can produce effects outside national territory, as evidenced by the number of countries affected as a result of the Chernobyl nuclear power accident. The exportation of pollution also requires international cooperation and the adoption of common standards. Moreover, the dimensions of some existing phenomena can be understood and consequently combated only on a regional or global level. For example, desertification, reduction of world's genetic heritage, ozone-depletion, and global-warming. International regulation thus becomes the basic guarantee of environmental protection.

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[49] Klaus Bosselmann *When Two Worlds Collide: Society and Ecology* (RSVP, Auckland, 1995) at 64.
[50] Bosselmann at 71.

The current response can be summarised as a legal approach to environmental questions where the nation state is the central actor, cooperation between states the dominant process, international law the desirable outcome, and the creation of new international institutions the method of implementation.[51] The most common method for conducting the 'response' process is the big, set-piece international conference, usually organised under the auspices of the UN—think the Copenhagen Summit in 2009 and Cancun in 2010. The response is driven by legal protection through the international society (both nation states and NGOs) and its international law instruments.[52] Here the main actor was the nation state rather than local communities.

But while the principle of sovereignty has long served as the backbone of public international law,[53] the power of the nation state was also somewhat diluted by the rise of the international law paradigm. State interdependence required new rules of international law. Initially, in Europe, state sovereignty was often associated with the 'absoluteness' of state political power. Although at the normative and practical levels states have accepted many restrictions to their sovereignty in the period since the formation of the UN—hence the idea of 'relative sovereignty'. Today sovereignty does not only give rise to state rights but to state obligations and responsibilities. For example, Principle 21 of the Stockholm Declaration mandates that the sovereign right of states to exploit their own natural resources pursuant to their own environmental policies is *qualified* by the obligation not to cause any extraterritorial environmental harm (*sic utere tuo ut alienum non leadas*).

The challenge for the decades to come is how to balance state sovereignty with localism. If we are able to accept 'relative sovereignty', are we also able to accept divided sovereignty in the form of local autonomy? How will the balance be affected by other basic principles and emerging norms of international law, including respect for human rights, good governance and the duty to pursue sustainable development at national and international levels?

Livingston provides the idea of 'federal polity' as an alternative to the nation state:[54]

> …if the idea of a modern state rules out the possibility of secession, the idea of a federative polity
> does not. It was in this sort of polity, in the Middle Ages, that the western practice of liberty began;
> and although it has been challenged by the idea of the modern state, it has never, in some form or

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[51] Tony Evans "International Environmental Law and the Challenge of Globalisation" in Tim Jewell and Jenny Steele (eds) *Law in Environmental Decision-Making: National, European, and International Perspectives* (Oxford University Press, Oxford, 1998) 207-227.

[52] Alexander Kiss and Dinah Shelton *International Environmental Law* (2nd ed, Transactional Publishers, Ardseley (NY), 2000) 1-5, 11-27, 31-52.

[53] Niko Schrijver "The Dynamics of Sovereignty in a Changing World" in Konrad Ginther Erik Denters and Paul Jim de Waart (eds) *Sustainable Development and Good Governance* (Kluwer, Boston, 1995) 80-89.

[54] Donald W Livingston "Secession and the Modern State" (1996) Stalking the Wild Taboo <www.lrainc.com/swtaboo/taboos/dwliv01.html>.

another, ceased to exist. The idea of a federative polity was theorized by St. Thomas Aquinas and other medieval philosophers; modern versions are to be found in Johannes Althusius, David Hume, John C. Calhoun, and Lord Acton. The modern state begins with individuals in a state of nature who give up the unlimited exercise of natural rights in favour of a limited excise of them in a polity endowed with an office of indivisible sovereignty. In contrast, the idea of a federative polity rejects entirely the notion of natural rights. It begins, not with individuals devoid of social and political identity, but with individuals shaped by such identities. We may use as an example of a federative polity the theory of political order framed by Johannes Althusius in his work Politica published in 1603 and revised in editions of 1610 and 1614.

Althusius was the theorist of the Dutch federation which David Hume described in the mid-eighteenth century as the most illustrious government in the world. Althusius teaches that the family is the primordial political entity, and it is political because it contains the relations of authority and subordination. Families may form a village and generate another political authority in the form of the village council. Villages may form provinces and the authority of provincial councils. Provinces may form a commonwealth of provinces and the office of state authority. Individuals may form voluntary associations which Althusius calls collegia: guilds, trade associations, universities, the church, and corporations of all kinds, including cities.

The state is the symbiotic relation of these corporate bodies ranging from the family to the commonwealth. Each corporate body is conceived as a substantial moral community with something of its own to excel in, to enjoy, and to defend. Each is an independent social authority. Sovereignty resides in the people, but not the people conceived as an aggregate of individuals pursuing their natural rights, but as incorporated into independent social existences. From this it follows that sovereignty is not indivisible, but is jointly shared by those independent social authorities whose symbiotic relation constitutes the state. Consequently, Althusius argues that a province, an estate, or any other corporate entity having the means and dignity to do so may legally secede from the polity to join another political association or to remain independent. Similar arguments for secession are to be found in Hume, Calhoun, and Lord Acton.

To the modern response that divided sovereignty is absurd and must lead either to political impotence or to violent strife, David Hume replied in an essay entitled "Of some Remarkable Customs" that the most energetic and illustrious republic in history (the Roman republic) functioned quite well with a system of divided sovereignty. The comitia centuriata and the comitia tributa were distinct legislative bodies; both were sovereign; neither was subordinate to the other; and both were capable of giving laws that could contradict the laws of the other. Yet such contradictions never occurred. Hume goes on to show that what cannot be reconciled in an abstract theory can be united in the soul of an amiable character or in the soul of a loyal and skillful participant in an inherited political tradition. The Swiss republic is over six hundred years old, and it operates with a system of divided sovereignty; indeed, it perfectly exemplifies what Calhoun called the principle of concurrent majority.

The advantages of European polycentrism have often been cited to explain the military, political, and economic success of Europe in recent centuries. Radkau extends the notion to environmental management on the grounds that large-scale states cannot know enough about local conditions to devise and enforce suitable policy, and that multiple polities could easily learn from one another which

practices are best. The latter argument is one routinely used to justify federal systems of government. Radkau turns to German forest history to make his case, and does so persuasively.

However, some question whether Radkau's argument can be extended beyond forestry to other aspects of environmental management? The main counterargument is that Radkau's thesis holds in those arenas where management is undertaken locally and the components of the managed ecosystems stay put, like trees. But local, small-scale environmental management presumably runs into difficulty in cases where the things to be managed move around from one jurisdiction to another. When it comes to wildlife or air pollution, for example, the appropriate scale for regulation and management is probably a larger one, and the advantages of polycentrism become disadvantages. Historically, of course, few of these things were subject to much regulation or management, but that has changed lately. The Rhine, for example, has been the focus of considerable efforts at regulation since at least 1815, and European polycentrism has made this effort more, rather than less, difficult.

The counterargument can be interpreted as a 'complexity imperative' argument, namely that the interconnectedness of the world today necessitates a level of coordination that can only be made more difficult if attempted at the local level, rather than at the national and global levels. To see the fallacy of this counterargument one needs to remember that global environmental problems are traced to the pace and scale of development. The difficulty that arises with the Rhine is not due to European polycentrism, but due to the pace and scale of development alongside the Rhine. The perceived complexity is not inherent, and I address this illusion in more detail later in this chapter.

Given the current international law discourse, even in aspirational instruments such as the Earth Charter (see infra), it seems that states rather than local communities would still continue to be the principal actors in international relations—albeit by no means as the only powers. And this will have disastrous consequences. For example, Tony Evans argues that "the failure of legal practitioners, environmental activists, and political leaders to reflect on the changing context of global political and economic relations leads to international law solutions that are a poor foundation on which to build environmental society". [55] He adds:

> …even if states had the will to develop lasting solutions to global problems, they no longer have the capacity to take decisive action. Globalisation points to processes of modernity, particularly technological innovations that empower global finance and production, making state regulation less feasible. Seen from the perspective of globalisation, environmental degradation is therefore a crisis of modernity and cannot be tackled by clinging to the very practices and policies that are its cause.

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[55] Tony Evans "International Environmental Law and the Challenge of Globalisation" in Tim Jewell and Jenny Steele (eds) *Law in Environmental Decision-Making: National, European, and International Perspectives* (Oxford University Press, Oxford, 1998) at 208, 209.

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> International law is therefore little more than an attempt by a hegemon to gain universal legitimacy for a set of rules and norms that support its own interests.

International law cannot deliver the conditions for an effective response to the ecological crisis. As Evans points out the 'international society',[56] like positivism, does not offer a convincing view of history. Both fail to realise that the state is not a fact of nature, but an historic solution to the problem of increasing complexity in economic, social, and political life, first recognised in the seventeenth century. International society is therefore a conservative approach that views all new problems through the prism of familiarity.

Moreover, globalisation is changing the role of the state from being an active policy-maker to a passive unit of administration. Transnational Corporations (TNCs) and Multinational Corporations (MNCs) are the most obvious sign that the role of the state is changing. These organizations modulate the ability of the state to legislate environmental laws by shopping for jurisdictions with less stringent regulations. Now the Nébuleuse (e.g. WTO and G20), which are not democratically elected (at least directly), dictate governance on national governments. From this perspective, the role of international law is to legitimise the 'technical fix' that supports particular global interests.[57]

In summary, when viewed from the realist or international society perspective, international law seems to offer only limited solutions to global environmental problems. When the conditions of globalization are added, including the decline of the authority of the state, achieving environmental security through international law seems even less possible. For those who adopt the international society perspective, the international law approach has achieved the 'common sense' status closing the mind to any critical appraisal. International law is not only incapable of protecting the planet from further environmental degradation, but that it acts as a barrier to achieving such a goal. International law offers an illusion of orderliness that deflects attention from wide-ranging, fundamental disagreement when thinking about the environment. Furthermore, it deflects from the purpose of the environmental discourse.

Theorists such as Evans correctly identify that the environmental crisis indicates that the nation state and the system of states may be either in crisis or heading toward crisis. However, they do not take the extra step to suggest an alternative. If the nation state is moribund, how can we respond to

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[56] The 'international society' approach assumes that states do not subscribe to a limited set of rules that serve their common interests. However, the approach assumes that states are the active agents of change, with the capacity to reach and implement co-operative agreements.
[57] Evans at 222.

the ecological crisis? Evans seems not to question the process of globalisation and its emerging transformation of existing institutions, including that of the nation state. To me, this suggests Evans is indifferent to the marginalisation of the role of localism in the response to the ecological crisis.

Similarly, other commentators critique the fora of international law but still do not provide glimpses of the role of localism in the solution. Take for example Birnie and Boyle.[58] They argue that while international organizations, such as the UN, have been exercising powers of international governance for over a century,[59] the historical background and original goals of the UN and its agencies have not generated a system that is well suited to synthesising environmental and developmental goals—a fusion that United Nations Conference on Environment and Development (UNCED) identified as the key issue in the achievement of sustainable development.[60] The response offered by Birnie and Boyle is to view the international society as something more than a crucible for the resolution of competitive nation state interests. Here governance implies a more cosmopolitan notion of international society than one composed solely of states. However, two objections are commonly made to the involvement of intergovernmental bodies in international governance. The first is that they are seen as undemocratic in taking power away from elected governments and national legislatures. The second is that they lack the necessary power to take effective action for the common good and to impose their collective will on individual states. Nowhere in the critique do Birnie and Boyle discuss the implications of delocalisation. They too seem resigned to the inevitability of a globalised response (i.e. top-down response).

Some academics inch closer to localism by arguing for the 'new institutionalism' but only to move yards away. For example, Oran Young directs attention to governance instead of government and to institutions instead of organizations.[61] This reorientation, argues Young, offers the potential of reintegrating the principal streams of analysis that make up the fields of international law, international organisations and international politics. However, Young then points to the paradox view

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[58] P W Birnie and A E Boyle *International Law and the Environment* (2nd ed, Oxford University Press, Oxford, 2002) 34-37, 47-57, 66-71.

[59] The UN is only part of international governance. Other organisations include supervisory bodies, conferences, and commissions established by environmental treaties. Intergovernmental organizations such as the UN, the International Maritime Organisation, the Food and Agriculture Organisation, the UN Educational, Scientific and Cultural Organisation, and the International Atomic Energy Agency, among others, have provided the principal fora in which much of the interstate cooperation necessary for developing international environmental policy and regulatory regimes has been realized.

[60] Birnie and Boyle at 69.

[61] Oran R Young *International Governance: Protecting the Environment in a Stateless Society* (Cornell University Press, Ithaca (NY), 1994) 12-32.

that the international society decentralised nature is a disadvantage, arguing the need for the creation of organisations to govern at the international level.

In essence, developments in the 1980s and 1990s (realisation that governments fail just like markets do) resulted in an alternative picture of international governance. There is now the understanding that governance does not require the creation of formal organizations. Setting the structure of government aside, it becomes clear (according to Young) that governance is not lacking in the international society.

At the general level, governance involves social institutions capable of resolving conflict and facilitating cooperation. Young's general proposition is that groups of interdependent actors can succeed in providing governance with no more than rudimentary organization.[62] He then asks: But what cost does so doing exact on social welfare and the ability to adapt to changing social and material circumstances. How robust would such governance be? This explains why we have different types of governance on the international stage: functional scope, geographic domain, membership composition, formalisation, stage of development, and admin apparatus. It follows that there will be a multiplicity of governance systems.

Young then goes on to offer some critical caveats.[63] Governance systems are not easy to establish, international relations fail to solve collective-action problems, no guarantee that governance systems once established will perform as intended, or achieve the level of robustness required to sustain them. Also, there is the difficulty on agreeing on the provisions of such a system, and selling the same to national constituencies. Hence, there is a need to systematically identify the determinants of success or failure for these systems.

In summary, Young hints to decentralised political systems in which governance without government is the rule rather than the exception. However, he is quick to also point out to the existence of difficulties under such a decentralised system where there are links between efforts to protect the environment and to promote economic development. Young however never takes the additional step of looking at localisation of the decision making as a rudimentary organisational from that provides governance in the absence of government, at least as typified by the nation state.

I suggest that the distinction between governance and government is one of scale, where larger organisational blueprints require a hierarchical complexity that leads from social institutions (rules of

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[62] This is in fact a variation of the 'weak links' hypothesis first proposed by Mark Granovetter. I discuss this hypothesis in detail later in this chapter.
[63] Young at 18.

social practice) to organisations (the material actors in social practices). At the micro level, within a given locality, the (power) distance between governance and government is minimal. This of course would result only where the locality has local autonomy or self-determination that minimises its dependence on higher organisational scales (whether national or global).

The above analysis of the international law approach serves the purpose I intended for it, namely to highlight the move away from localism and to globalism, and some of the critical views of that approach. The difficulty with international law can also be seen in one of the most important documents in the response to the ecological crisis—the Earth Charter. Next I deconstruct the Earth Charter to illustrate its deficiencies vis-à-vis localism.

Localism and the Earth Charter

The Earth Charter represents the flagship in modern response discourse. The Charter is touted as a map for the interconnectedness of the challenges facing humanity. It is seen as an educational tool, and as the basis for cross cultural and inter-faith dialogue in society. It is intended as a bible for internal reflection and consideration of fundamental ethical values and attitudes. The Charter can then be used for the creation of an 'ethical code of conduct'. This code would help people think of ethical conduct as a 'universal responsibility' rather than as a choice. In essence, the Charter creates a moral responsibility on all humanity to take action. Moral action is not a choice any more, but a responsibility. The Charter moves humanity from 'self-interest' to the larger 'community interest'.

The Charter is not exclusively concerned with the environment but also considers the interdependence between environmental protection and wider issues such as human rights, human development, and democracy. Example: the Charter suggests that in order to stop the use of fossil fuels in some parts of the world, we also need to address human poverty. Another example is in stipulating that the production of bio-fuels must not create further hunger in the world. Charter principles acknowledge that the wealth of developed countries was achieved at the expense of the people and the environment of the poor nations.

The Earth Charter represents a much broader consensus than the 1992 Rio Earth Summit. The reputation and credibility of the Earth Charter rests largely on its transnational, cross-cultural, inter-denominational approach.[64] In terms of international law principles, the Earth Charter represents

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[64] Klaus Bosselmann and Prudence Taylor "The Significance of the Earth Charter in International Law" in Blaze Corcoran (ed) *The Earth Charter in Action: Towards a Sustainable World* (KIT Publishers, Amsterdam, 2005) 171-173.

prima facie a draft legal document. While the legal status of a number of the principles in the Earth Charter is disputed, most of these principles are frequently referred to in treaties, conventions, and other binding documents. Although the Earth Charter is not yet recognised as a soft law document, it has all the ingredients to become one. The 2002 World Summit on Sustainable Development (WSSD) in Johannesburg made reference to the Earth Charter and its Political Declaration adopted language similar to that in the Earth Charter preamble.

I now turn to analyse the text of the Charter (which is found in the Appendix). My interest in the Charter is to evaluate its 'sensitivity' to localism as a response to the ecological crisis. In particular, I am looking at contrasts that bring to the front 'the problem of scale'. Hence, I am looking for signifiers such as 'interdependent', 'local', 'nation', 'global', 'universal' and 'community'. In particular, two signifiers stand out. The first is the prominent place reserved for the nation state in the Charter. The second has to do with the way localism is narrated throughout the Charter, especially in relation to other organisational scales at the national, regional and global.

The text of the Charter provides valuable insights.[65] The Preamble declares that "[w]e stand at a critical moment in Earth's history", and suggests that "[t]he dominant pattern of production and consumption are causing environmental devastation and massive extinction of species". In The challenges ahead, the Charter suggests that "[w]e need a global partnership to care for the Earth". This ushers the concept of 'Universal responsibility': "This means living with a sense of universal responsibility, identifying ourselves with the Earth community as well as with the local communities". According to the Charter "[w]e need a shared vision of basic values to provide an ethical foundation for the emerging world community".

The word 'local' (and its derivatives) appears in the Charter five times, while the world 'global' appears thirteen times. The word 'local' never appears in any headings, while 'global' appears in the 'The Global Situation' heading in the Preamble. The word 'local' appears in clusters, while 'global' is sprinkled throughout the whole text. The word 'local' first and second occurrences are clustered under 'Universal Responsibility' in the Preamble, the third and fourth occurrences are under Principle 13, and the last occurrence is in the 'Way Forward'.

The world 'local' appears first in the Preamble under the 'Universal Responsibility' heading in the expression "identifying ourselves with the whole Earth community as well as our <u>local communities</u>". In the next sentence under the same heading one finds the second occurrence of the word 'local' where it is also contrasted with the global scale: "We are at once citizens of different nations and of

[65] "The Earth Charter" (2000) Earth Charter Initiative <www.earthcharterinaction.org>.

one world in which <u>the local and global are linked</u>". The third occurrence comes under Principle 13(b), where the word 'local' enters in the entourage of three higher scales: "Support <u>local, regional and global civil society</u>…" And under 13(f), the fourth occurrence refers again to 'local communities': "Strengthen <u>local communities</u>, enabling them to care for their environments, and assign environmental responsibilities to the levels of government where they can be carried out most effectively". The last time 'local' appears is in the 'Way Forward' where it is also linked with higher scales: "We must imaginatively develop and apply the vision of a sustainable way of life <u>locally, nationally, regionally, and globally</u>".

The word 'nation' and its derivatives ('national', 'international', 'transnational' and 'multinational') appear in the Charter twenty times—more than both 'local' and 'global', combined. This to me indicates still a central role in the Earth Charter for the nation state, not very different from the malaise I discussed in relation to international law approach. There is a logical explanation to this. The Charter was intended to finish the work that nation states could not finalise in the Rio Summit. Reasonably then, the Charter would be geared towards the nation state as the main actor. However, even if we agree with this logic, it is difficult to see how the Charter can be touted as a platform for an effective response to the ecological crisis.

In particular, a deconstruction of the Charter in relation to the 'nation' discourse and its satellites of 'local' and 'global' suggests the Charter, at best, furnishes a *positivist* vision for local communities where these communities are only instrumental—supporting national and global decision-making structures.

A more detailed analysis of the Charter text reveals three main concepts driving the discourse: First is what I refer to as the 'complexity imperative' advocating the inevitable interdependence and interconnectedness of our world. The second concept flows from the first one: given the complexity in the world today, any response to the challenges we face will have to be 'universal' and 'global' while still being connected to the lower scales of local, national and regional; essentially arguing for a hierarchy on a colossal scale. The third concept is that of 'human rights' that are 'universal' due to the second concept but also moderated by duties and responsibilities arising from the first concept. All three concepts are then driven by the nation state to effect a response to world challenges, in particular the ecological crisis. In the following part I trace these concepts throughout the Charter.

The Preamble:

The Preamble emphasises that we are at a critical juncture in our (and Earth's) history. The Preamble talks about a world that is becoming 'increasingly <u>interdependent</u>', hence invoking the

'complexity imperative'. The same imperative appears under the 'The Challenges Ahead' heading where it is declared that "[o]ur environmental, economic, political, social, and spiritual challenges are interconnected…" According to the Charter, this interconnectedness requires a sustainable global society founded on, inter alia, 'universal human rights' and 'a sense of universal responsibility'. Hence, this part of the Charter says that *given* the high level of interdependence of the world we live in, a universally coordinated approach to the ecological crisis is needed. It should be obvious that the 'interdependence' (or what I call the 'complexity imperative') is taken as a premise. The Charter never questions the genesis of this complexity or whether it is inherent in the world we live in. The concepts of 'interdependence' and 'interconnectedness' are taken as static concepts not amenable to re-engineering. The Charter does not identify reducing interdependence as a tool to produce a more efficient and more effective world. Per the Charter, complexity is here to stay, if not increase.

While it seems the Charter is still sensitive to a structural connection between the organisational scale (local versus higher order organisation such as the national and the global) and the ecological crisis, this is only superficial. For example, under the 'Global Situation' heading, the Charter acknowledges the local, noting that "[c]ommunities are being undermined". Also under the heading "Universal Responsibility' the Charter emphasises a local dimension to 'universal responsibility' by "identifying ourselves with the whole Earth community as well as our local communities". Here the discourse identifies two scales, the local and the global, and suggests a strong link between the two due to the high interdependence of our world. Up to this point, the Charter seems to be saying: think globally, act locally. But later on, as I explain next, this set up becomes diluted with the introduction of other scales, in particular the national and regional scales.

The marginalisation of localism as the root cause to the ecological crisis is evident from the way the Charter identifies the causes of the crisis. For example, under the 'Global Situation' heading, the Charter identifies the 'dominant patterns of production and consumption' as the causes of the ecological crisis. Under the same 'Global Situation' heading, the Charter identifies a consequence, of the 'dominate patterns of production and consumption', namely the 'rise in human population' as resulting in 'overburdened ecological and social systems'.

The Charter does not define the 'dominant patterns of production and consumption', at least not directly. But it provides glimpses of their characteristics under its Principles. In particular, Principle 7 suggests that the 'dominant patters' do not emphasis 'material sufficiency in a finite world'. They are not efficient in that they do not require 'restraint and efficiency when using energy' (7(b)), and do not rely enough on 'renewable energy sources such as solar and wind' (7(b)). The 'dominant patterns of

production and consumption' do not '[i]nternalize the full environmental and social costs of goods and services in the selling price…' (7(d)).

As I argue in Chapter II, the 'dominant patterns' can be linked to the root cause of the ecological crisis, namely decentralisation. From the above indirect interpretation of the 'dominant patterns' we can establish a link between these patterns and: (1) existing technologies flowing from the industrial revolution, and (2) to the current organisation of societies under the nation state (no internalisation given the alliance between the state and the economy). The 'dominant patterns of production and consumption' are the product of state policies, including those favouring the economy in the positivist sense, namely where communities are seen as means towards economic growth rather than ends in themselves. As I argue in Chapter II, the industrial revolution and the nation state can be interpreted as arising from delocalisation of the decision making, which is then identified as the root cause of 'environmental devastation'.

But this interpretation is too creative to be captured by the average reader. The 'dominant patterns' marginalises localism by not explicitly positioning delocalisation at the centre of the causes of the ecological crisis.

Under the heading 'Challenges Ahead', the Charter provides the available choices for a response to the crisis: either a 'global partnership' or 'destruction of ourselves'. The identified 'global partnership' would require 'fundamental changes' in 'values, institutions' and our 'ways of living' that would lead to reducing our 'impacts on the environment'. The 'global partnership' would lead to the emergence of a 'global civil society' and the emergence of a 'world community' that creates new opportunities to build a democratic society. Later on, when I discuss the 'Way Ahead' it becomes clear that the proposed partnership is one driven mainly by the nation state. But first I analyse the Charter's principles.

The Principles:

The Earth Charter Principles are organised under four pillars which I discuss below. Please refer to the Appendix for the complete text.

(I) Respect and care for the community of life: (1) Respect Earth and life in all its diversity; (2) care for the community of life with understanding, compassion, and love; (3) build democratic societies that are just, participatory, sustainable, and peaceful; (4) secure Earth's bounty for present and future generations. Under this principle the interdependence of all beings is emphasised (1(a)). In 2(a) the natural rights discourse is explicitly qualified with the existence of duties, namely "duty to prevent

environmental harm". Similarly, in 2(b) there is "increased responsibility to promote the common good". Under 3(a) there is reference to "communities at all levels" guaranteeing "human rights".

(II) Ecological integrity: (5) protect and restore the integrity of Earth's ecological systems, with special concern for biological diversity and the natural processes that sustain life; (6) prevent harm as the best method of environmental protection, and when knowledge is limited, apply a precautionary approach; (7) adopt patterns of production, consumption, and reproduction that safeguard Earth's regenerative capacities, human rights, and community wellbeing [including acting with efficiency and restraint when using energy; the development, adoption and equitable transfer of environmentally sound energy; and internalising the environmental cost of goods and services]; (8) advance the study of ecological sustainability and promote the open exchange and wide application of the knowledge acquired. In 5(a) there is again explicit reference to adoption of policies "at all levels". In particular, there is explicit emphasis on the 'complexity imperative' in 6(c) where the Charter requires ensuring "decision making addresses the cumulative, long-term, indirect, long distance and global consequences of human activities".

(III) Social and Ecological Justice: (9) eradicate poverty as an ethical, social, and environmental imperative; (10) ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner; (11) affirm gender equality and equity as prerequisites to sustainable development and ensure universal access to education, health care, and economic opportunity; (12) uphold the right of all, with no discrimination, to a natural social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the rights of indigenous peoples and minorities [including the elimination of all forms of discrimination]. Under 9(a) the Charter distinguishes only two levels of resources (scales): "national and international". The same dichotomy is seen in 10(a): "within nations and among nations" in relation to distribution of wealth. A reference to 'indigenous peoples' is found in 12(b); and a reference to 'our communities' is found in 12(c). Again there is no direct reference to locality here.

(IV) Democracy, non-violence and peace: (13) strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice; (14) integrate into formal education and life-long learning the knowledge, values, and skills needed for a sustainable way of life; (15) treat all living beings with respect and consideration; (16) promote a culture of tolerance, non-violence, and peace. Here a more elaborate hierarchy is referred to under 13(b): "local, regional, and global civil society". The protection of rights features again in 13(c). In 13(f) the most important statement in relation to localism is stated in a recommendation to "[s]trengthen local communities, enabling them to care for their environments,

and assign environmental responsibilities to the levels of government where they can be carried out most effectively". However, as in the previous text, the Charter is quick to introduce all other "levels of government" into the discourse. To me, this still point to an instrumentalist approached to local, albeit strengthened, communities.

The Way Forward:

In the Way Forward, the Charter explains that to commit to the above principles we need a change in heart and mind. This means making choices between different values. According to the Charter, the partnership of government, civil society, and business is essential for effective governance. Moreover, the Charter emphasises the "need to renew commitment to the United Nations". Here there is further appeal to 'global interdependence' and 'universal responsibility'. A higher hierarchy is referred to. Now the local is part of "locally, nationally, regionally, and globally".

In essence, the 'Way Forward' is predicated on 'nations' renewing "their commitment to the United Nations…"

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From the above analysis, the Charter, at best, has a confused consciousness of the importance of localism. As we move down the text we see the local scale pushed further down a hierarchy of scales: first the global scale is introduced, then the regional one is added, and finally the national scale. The 'local' of the Earth Charter is not very different from the local in a positivist sense. It is instrumental in a top-down hierarchy.

This becomes evident when the discourse of the Earth Charter is compared to the draft World Charter of Local Self-Government, also provided in the Appendix.[66] The preamble of the draft world Charter reads as follows: "…many global problems…must be dealt with at the local level and cannot be successfully resolved without intensified dialogue and cooperation between the State [sic] level and local authorities". The key word in that sentence is 'authorities'. Here the discourse is of 'local authorities' rather than 'local communities' as under the Earth Charter. This emphasises a tension between the nation state and local communities, and hence there is a need for 'dialogue'. The draft World Charter elevates the status of 'local authorities' to partners of the state: "…local authorities as the closest partners of central governments and as essential in the implementation of Agenda 21 and

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[66] This draft is inspired by the European Charter of Local Self-Government, ETS No 122, concluded 15 Oct. 1985 and entered into force on 1 Sept. 1988.

the Habitat Agenda". The draft World Charter in fact makes explicit reference to the principle of subsidiarity, one of the enablers of localism, suggesting that "the principle of subsidiarity is the basis for democratic and participatory development and that any allocation of tasks and responsibilities should abide by this principle". The word 'decentralisation' is used explicitly in the draft World Charter: "…promoting decentralization through democratic local authorities and to strengthen their financial and institutional capacities".

While I do not suggest that the draft World Charter of Local Self-Government goes far enough in enabling localism, contrasting its language with that of the Earth Charter reveal how marginalised localism is under the later.

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In the rest of this chapter, I formulate a new critique of the international law approach, one based on questioning the crux of the approach, namely the justification for the move from the local to the global.

How the modern response marginalised localism—the fiction of 'indigenous peoples'

While the environmental and economic strategies of today have diluted the colonial notions of sovereignty, and limited state autonomy by 'sustainable development', 'intergenerational equity', 'common heritage of mankind' and 'shared responsibility', there is still vivid evidence of the hostility that the modern state (with its concept of sovereignty, even as diluted by globalisation) has to localism (with its requisite of self-determination). In this part I argue that the modern response to the ecological crisis marginalised the idea of localism by, first limiting its applicability to minorities and what came to be known as the 'indigenous people', and second constructing the discourse of 'indigenous peoples' self-determination as an extension of the natural rights approach. The invention of the idea of the 'indigenous people' by the modern state, and its continued use in international law discourse are living testaments of that marginalisation.

I concede that the redefinition of the doctrine of state sovereignty has largely been observed and is becoming visible in the relationship between states and ethnic minorities and indigenous peoples. But even then, international law still has a state-cantered paradigm that is counterproductive to self-determination. While environmental issues have shifted the paradigm of international law from competition to cooperation, from international to transnational governance, and as a consequence,

and while today international law seems more willing to accommodate indicia of self-determination such as autonomy, control over natural resources, preservation of land, education, language and cultural identity, it cannot be said that a rigorous right of self-determination has been or will ever be fully endorsed by international law.

There are today agreements with direct involvement of indigenous people and their right to self-determination. For example, the International Labour Organisation (ILO) Convention 169, which is a legally binding international instrument. Article 2 of the Convention stipulates measures for the realisation of cultural rights. Article 7 acknowledges the right of indigenous people to determine their priorities for development and preservation of the environment. And Article 14 recognises the right of ownership of traditional areas as well as use rights.

There is also the United Nations Declaration on the Rights of Indigenous Peoples. Article 3 asserts the right of indigenous people to self-determination. Article 31 defines the right as local autonomy in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activity, land and resource management, environment and entry by non-members, as well as means of financing these autonomous functions. Article 25 talks about strengthening the distinctive relationship to land (material and spiritual) and Article 26 acknowledges the right to restitution to land or compensation. Finally, Article 28 talks about restoration and protection of the total environment. Here the right to self-determination covers a wide range of cultural rights and land rights and links itself to the right of autonomy and self-government, but nevertheless in doing so it makes no claim to territorial sovereignty or secession. The Declaration is subjugated to international principles of territorial integrity.

However, the United Nations Conference on Environment and Development (UNCED) agreements of the 1992 Rio Declaration with its Agenda 21 and Statement of Forestry Principles and Biodiversity Convention avoid any recognition of a right to self-determination. They do however reflect much of the content forming this right.

Article 22 of Rio Declaration on Environment and Development mandates that indigenous people play a vital role in environmental management, and states should enable their effective participation. The ILO Convention 169 and Draft Declaration and the NGO UNCED treaties offer valuable guidelines on what constitutes "vital role" and "effective participation".

Chapter 26 of Agenda 21 is on indigenous people. Section 26.1 notes the historical relationship with tier lands. Section 26.2 specifically refers to the ILO Convention 169 and the Draft Declaration.

Section 26.3 requires full partnership between governments and indigenous peoples. Chapter 26 also describes important aspects of the right to self-determination in the notions of intellectual property and protection of indigenous lands and culture.

Similarly, Principle 5(a) of the statements for sustainable development of forests is on sustainable management. Principle 12(d) regulates the utilization of indigenous knowledge.

As to the Convention on Biological Diversity, there is a gap between indigenous objectives and the Convention. The same may be said for the gap between the right to self-determination and the whole UNCED process. While Article 10 protects customary use of biological resources, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (non-binding) provides a more comprehensive response to the Convention. Article 2.6 states that flora and flora and fauna bound to territory. Article 2.7 requires that commercialisation of traditional plants managed by indigenous people. Article 2.8 calls for a moratorium on commercialisation of indigenous genetic resources until indigenous communities have developed appropriate measures.

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While there is no commonly agreed definition of 'indigenous people', in 1982, the Working Group on Indigenous Populations (WGIP) provided a widely accepted definition. Other definitions such as the ILO or the World Bank provided specific-purpose definitions of indigenous people. The WGIP defines 'indigenous people' as "the descendants of the original inhabitants of conquered territories possessing a minority culture and recognising themselves as such". While this definition is widely accepted today, it contains a number of inaccuracies.[67] First, they are not necessarily a minority in the host state. Second, they might not have been conquered but have entered into a treaty as the means of colonisation. Third, the notion of descendants lacks a clear definition (e.g. by self-identity, blood quantum or cultural practice?). Finally, if broadly conceived, the WGIP definition means that any stateless group is 'indigenous': e.g. the Basques, Tibetans, etc. But is this broad conception an inaccuracy?

Two ideas are at the heart of the WGIP definition. These are embodied in the phrases: (1) 'original inhabitants', and (2) 'conquered territories'. There is here reference to locality in both time (original) and space (territories). But there is also a reference to a singularity or an interruption of that locality

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[67] Klaus Bosselmann "The Right to Self-Determination and International Environmental Law: An Integrative Approach" (1997) 1 N.Z. J. Envtl. L. 1.

through the act of conquering. If we remove that singularity we can define 'indigenous people' as the original inhabitants of a given locale. Here then we can see that 'indigenous peoples' are basically local communities, but ones that have their own 'jurisdictional footprint' that is separate and distinct from that of the conqueror.

It is not a radical proposition to assert that all local communities, especially those endowed with or vying for self-determination are 'indigenous people'. Even the conqueror (whether the Europeans in the last five hundred years, or other ancient civilizations) are 'indigenous people'; the difference being that these conquerors mutated from their 'Dionysian' roots to an 'Apollonian' existence where they monopolised the evangelisation (of one form or another) of a *universal* discourse (Christianity, Islam, Communism, etc.)

But seeing all local communities as 'indigenous people' vying for self-determination is problematic to the unitary nature of the modern state. This explains why the notion of 'peoples' has been controversial in international law. The notion is referred to in Art 1(2) of the UN Charter: "respect for the principles of equal rights and self-determination of *peoples*". However, for fear from competition with sovereignty, states are adamant that indigenous groups refer to themselves as 'indigenous people' rather than 'peoples'. This way the self-determination that 'indigenous people' seek is prevented from rolling out to all local communities.

The trend towards self-determination in the context of 'indigenous people' had a number of implications: (1) resort to international human rights rather than the approaches traditionally pursued for self-determination, namely the treaty approach and the territorial approach entailing a home land or a reservation (rather than a secession) (the approach is under Art 73 of the UN Charter); (2) the human rights approach to self-determination accords with the general development of international human rights; and (3) the third and most important application of the human rights approach is that it allows for flexibility and solutions appropriate to individual situations.

There is now a strong argument for a collective human right to self-determination. The UNCED agreement of 1992 acknowledges that successful environmental management depends on some form of indigenous self-determination. The idea is that indigenous and environmental rights are mutually supportive. The right of environmental self-determination of indigenous people is a prerequisite for effective strategies to protecting the environment.[68]

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[68] Klaus Bosselmann "The Right to Self-Determination and International Environmental Law: An Integrative Approach" (1997) 1 N.Z. J. Envtl. L. 1.

This leads to the second instrument that the nation state used to marginalise localism, namely the paradigm of 'natural rights'.

How the modern response marginalised localism—the 'natural rights' paradigm

The other instrument of delocalisation was what came to be known as the concept of 'universal human rights'. Weston postulates the following attributes to rights:[69] (i) rights limit state power; (ii) the human rights spectrum extends from the most justiciable to the most aspirational; (iii) a human right is universal in character, possessed by all humans everywhere; (iv) rights are restricted as much as necessary to secure the comparable rights of others; (v) human rights are commonly assumed to refer to fundamental rather than non-essential claims. The lack of an accepted definition of human rights means that creating new ones is a slow and contentious process. It is the third and fifth attributes that are hostile to the locale: the perceived universality of human rights, and the related perceived (Enlightenment) rationality. Let me explain further.

Following the taxonomy proposed by Karel Vasak, there are three generations of human rights:[70] (i) Lockean individual liberty rights; (ii) 19th century economic, social, and cultural rights; and (iii) 21st century collective group rights—the self-determination right being a prime example. Such third generation rights are acknowledged e.g. in Article 27 of the UN Covenant on Civil and Political Rights which addresses the problem of minorities. However, while instruments such as the Genocide Convention 1948, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights acknowledge the basic right to cultural preservation, such instruments are laden with paternalistic and assimilationist tones.

Detractors from the theory of human rights include Burke, Mill, Hume, Bentham, Kant, Montesquieu, Wittgenstein and Austin. Their utilitarian and positivist theories gained ground in the nineteenth century. This reflected a desire to move away from the metaphysical nature of rights and towards a more 'scientific' approach to legal discourse. Hence, we see the introduction of Bentham's theory of morality. The rights approach got a further hit in the twentieth century through Marxist ideology, which saw rights as an egoistic bourgeois property concept. Rights nevertheless played a major role in the transformation from a revolutionary state to communist society.

The historical development and theories of human rights of the seventeenth and eighteenth centuries reveal a common theme. Some rights belong to individuals by virtue of their being humans rather than subjects to a certain state. These rights are inherent, inalienable and *universal*—but always individual and never communal. Chief among these are the rights to life, liberty, and property. The

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[69] Burns H. Weston *Human Rights* (1986) 6 HUM. RTS. Q. 257 at 262.
[70] Karel Vasak "Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights" (1997) UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization.

social contract entails surrendering to the nation state (through liberal democracy) the right of enforcing these rights rather than the rights themselves. Limits to the exercise of rights could be determined or abrogated only by law (rights protected by constitutional provisions).

The emergence of third generation (communal) human rights is closely associated with the awareness of the international dimensions of human rights. Today there are arguments for ecological rights. Ecological rights are human rights subject to limitation that recognise that individual freedoms are exercised in an ecological context. There is now a tendency to recognise environmental values at the constitutional level.

One of the primary arguments against an environmental human right is that it is like social justice: it promises something that cannot be fulfilled. On the other hand, international law has adopted the notion of "sustainable development" (e.g. the 1992 Rio Declaration and Agenda 21 and the 1994 Draft Declaration of Principles on Human Rights and the Environment). Arguably, sustainable development requires linking human rights with the environment. However the development of the proposed ecological limitations on individual freedom will face political, social and economic hurdles.[71] Why? Because communal rights are in opposition to the nation state, and its distrust of local autonomy. There is something much more sinister about the rights approach.

There is a direct link between the unitary nation state and natural rights:[72]

> As it is, the modem state masks itself in moral ideologies which obscure its actual conduct…One of the most compelling and insidious of these ideologies is the doctrine of natural rights. It was to secure these rights that the modern state was invented in the first place…But it is nonetheless a philosophical superstition.
>
> The reason is this. Whatever they might be, natural rights are universal and apply to all men. Further, they are known by reason, independent of any inherited moral tradition. From the point of view of natural rights, moral traditions are tainted with particularity even when they make universal claims. For example, Christianity is a moral tradition that makes universal claims; it is open to all men, and it applies to all men. But its ground is the incarnation of God in one man, which is a scandalous particularity that logically contradicts the abstract universality of natural rights. Now all inherited moral traditions that give life to those communities that cultivate the goods of human excellence are tainted with this sort of scandalous particularity. It follows, therefore, that the doctrine of natural rights must be in a condition of permanent hostility to all inherited moral tradition. Any such tradition, no matter how noble the goods of excellence cultivated in it, can always be seen as violating someone's natural rights under some interpretation or another.

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[71] Prudence Taylor "From Environmental to Ecological Human Rights: A New Dynamic in International Law" (1998) 10 Geo. Int'l Envtl. L. Rev. 309.
[72] Donald W Livingston "Secession and the Modern State" (1996) Stalking the Wild Taboo <www.lrainc.com/swtaboo/taboos/dwliv01.html>.

A modern state obsessed with the doctrine of natural rights, if consistent, will attempt to destroy, suppress, or otherwise remove from public life all independent social authority. This was the force of the doctrine when it made its first appearance in the French Republic. Benjamin Constant, a keen observer of the French Revolution, put his finger on the tendency to totalitarianism of all modern states (including liberal regimes): "The interests and memories which spring from local customs contain a germ of resistance which is so distasteful to authority that it hastens to uproot it. Authority finds private individuals easier game; its enormous weight can flatten them out effortlessly as if they were so much sand. Tocqueville gave melancholy witness to the process since repeated over and over: "The old localized authorities disappear without either revival or replacement, and everywhere the central government succeeds them in the direction of affairs.... Everywhere men are leaving behind the liberty of the Middle Ages, not to enter a modern brand of liberty, but to return to the ancient despotism; for centralization is nothing else than an up-to-date version of the administration seen in the Roman empire." By "medieval liberty" Tocqueville meant what I have called a federative polity of independent social authorities, and he hoped in vain for a modern version of such a polity. The French revolutionary leader Sieyes explains that such cannot be tolerated in a modern state: "France must not be an assemblage of small nations each with its own democratic government; she is not a collection of states; she is a single whole, made up of integral parts; these parts must not have each a complete existence of its own, for they are not whole joined in a mere federation but parts forming a single whole.... Everything is lost once we consent to regard the established municipalities, the districts, or the provinces as so many republics joined together only for the purposes of defense and common protection."

…

This promiscuous explosion of individual rights has been at the expense of those independent social authorities and communities that cultivate the goods of human excellence that go into the formation of noble and virtuous character. It is for this reason that public moral discourse today is the discourse of rights and seldom ever the discourse of virtue. Indeed, the United States has become what is proudly, but foolishly, called a culture of rights. But it is in fact a regime in a condition of chronic low-grade civil war; an endless number of new rights generating an endless number of new victims and oppressors; strident protest and counter-protest that one's rights have been violated; a country held together not by the obligations and sympathies of a common vision of human excellence but by legalism. Our rulers are Supreme Court judges, our parish priests are lawyers, and our entertainment watching trials and talk shows about trials on television.

…

The modern unitary state is only two hundred years old. Its great achievement is to have produced a condition of unparalleled material prosperity. But it has also been one of the most destructive forces in history. Its wars and totalitarian revolutions have been without precedent in their barbarism and ferocity. But in addition to this, it has persistently subverted and continues to subvert those independent social authorities and moral communities on which eighteenth-century monarchs had not dared to lay their hands. Its subversion of these authorities, along with its success in providing material welfare, has produced an ever increasing number of rootless individuals whose characters are hedonistic, self-absorbed, and without spirit. We daily accept expropriations, both material and spiritual, from the central government which our ancestors in 1776 and 1861 would have considered non-negotiable.

How the modern response marginalised localism — the 'complexity imperative' illusion

The explanation for the shift from the local to the global is based on the suggestion that there is a fundamental difference between the agricultural and industrial revolutions. Industrialisation and the ensuing globalisation resulted in a high level of complexity that represents itself in environmental, social, and economic terms. Bosselmann argues the differences as follows:[73]

> Despite such consistent patterns, there is a fundamental difference between the agricultural and the modern industrial stages of civilization. The problem of ecological sustainability in the pre-industrial stage was very different from ours today. Agricultural societies were embedded in natural resource cycles and modified them for their purposes. The risk of losing the entire resource base did not normally occur and when it did, as in the case of Europe's forests, more radical management strategies were adopted…In the period between the late Middle Ages (1350) and the beginning of the modern age (1800) complex management strategies with strict norms and sanctions were used to protect the 'substance'. We can also say that the pre-industrial age had no other option. To ensure survival, unsustainable economics had to be detected quickly. Industrialism, by contrast, allowed rapid economic progress without paying the environmental costs—they could be externalised.
>
> Today, we are in a profoundly different situation. The industrialised, globalised world has reached a level of complexity that makes quick fixes impossible. Using traditional sustainability methods will not make much difference. The higher complexity presents itself in environmental, social and economic terms. First, the resource crisis today is global in its dimensions meaning that any local sustainability strategy is bound to fail if not followed through everywhere. Second, socio-economic relationships are no longer purely local. Everything we do in our local communities has effects on communities around the world, especially in poor countries. Third, the economy seems far removed, almost immune from its natural resource base. Where so much money at stake, fertility of soils, diversity of life, and stability of climate appear as a luxury we cannot afford.

The discourse suggests that the complexity of the current system means that local challenges have global ramifications.[74] The globalisation of our challenges is the signum of our age. Any global governance system must reflect this fact. "Governance is created as a result of individuals recognising that they are interdependent".[75] This growing interdependence will lead to conflict given the diversity in goals within society. This growing interdependence requires new forms of governance. Given the new challenges, we need to re-assess the purpose of governance and how we can measure its success. Under this logic, the concept of governance for sustainability needs to start from two observations: (1) an honest and accurate realization that the world is on an unsustainable path; (2) the other is a strong sense of ethics to guide our search for a sustainable path. The concept of governance for sustainability requires a profound shift towards ecological thinking. This does not require sustainable development, but sustainable communities. Hence, rather than balancing economic and

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[73] Klaus Bosselmann *The Principle of Sustainability* (Ashgate, Aldershot (UK), 2008) at 22.
[74] Klaus Bosselmann, J Ronald Engel and Prue Taylor *Governance for Sustainability* (IUCN, Gland, 2008) 3-17.
[75] Bosselmann et al at 5.

environmental interests, we need an ecological decision making process. Accordingly democratic processes, while necessary at all levels, will not be alone sufficient to achieve sustainability.

The basic idea is that the increasing magnitude of complexities and magnitude of social, economic, and ecological problems means that we need a new framework of governance. This is so because conventional theories of governance have their origin in western values and priorities. These values do not reflect the fact that the economic system (and society) is dependent on the ecosystem. To address these problems we must shift towards ecological thinking. Governance does not require creating organisations associated with government. 'Government' means a centralised institutional arrangement as the basis of authority and order. On the other hand, governance adopts a flexible approach to achieving effectiveness and legitimacy of political arrangements. This flexible manner encompasses networks, informal regimes, and customary linkages; with a minimum of bureaucratic centralism and a maximum of political space for exploration and diversity.

Good governance depends on the rule of law. The rule of law can be thought of as a social norm guiding individual and societal behaviour. Governance for sustainability has its origins in holistic awareness and competence, benign empowerment, social equality, and responsible values, visions, and actions. Governance for sustainable development has key features:[76] (1) Policy integration based on common overall objectives; coordinated and cooperative implementation; (2) common objectives, criteria and trade-off rules and indicators: including shared sustainability objective, sustainability-based criteria for planning and approval of significant undertakings, specified rules for making trade-offs and compromises; (3) widely accepted indicators of needs for action and progress towards sustainability; (4) information and incentives for practical implementation: use of tax instruments such as tax reform, procurement laws, liability laws, product labelling, and tenure agreements; (5) programs for system innovation: policymaking frameworks should actively seek to identify, nurture and coordinate action for more sustainable technological niches. These need to be accompanied by formal and informal institutional changes.

The conceptual basis for this form of governance is described by the Earth Charter. Principle 13 of the Earth Charter exhorts strengthening democratic institutions at all levels... transparency...accountability...participation in decision making...access to justice. Here democracy is only a means for achieving sustainability (Principle 3). A benevolent authoritarian system may well be able to enforce more sustainable behaviour, but it can just as easily block any move towards

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[76] Bosselmann et al at 6.

sustainability (the example of China). To assess the tension between democracy and sustainability we introduce the third way of civil societies.

The above rationale is flawed. The key idea justifying the need for a globally coordinated response to the ecological crisis is 'complexity' arising from the interconnectedness and interdependence of our world. The higher level of complexity following the industrial revolution is seen as the primer of the need for a global response to the ecological crisis.

In layman's terms, complexity is used to characterize intricate arrangement in a system or a network with many parts. However, the above logic seems to conflate two different types of complexity, namely organised and dis-organised complexity.

According to Warren Weaver complexity comes in two forms: disorganized complexity, and organized complexity.[77] Disorganized complexity results from a particular system having a very large number of parts—imagine a large billiard table with millions of balls rolling over its surface, colliding with one another and with the side rails. This type of complexity suggests randomness. It is a problem in which the number of variables is very large, and one in which each of the many variables has a behaviour which is individually erratic, or perhaps totally unknown. The source of disorganized complexity is the large number of parts in the system, and the lack of correlation between its elements.

In contrast, organized complexity, resides in the non-random interaction between the parts. These correlated relationships create a differentiated structure which can, as a system, interact with other systems. An example of organized complexity is a city neighbourhood as a living mechanism, with the neighbourhood people composing the system's parts. It is this type of complexity that is referred to in rationalising the shift from the local to the global.

However, the rationalisation above seems to identify the complexity of the globalised world as a disorganised complexity. This is evident in that the proposed solution is to internationalise the response to the ecological crisis. The idea is to enable a higher level of coordination (correlation) between the different parts of the system (the globalised world), and this will enable tackling the challenges of the high level of complexity identified. According to the rationalisation, sustainability strategy would be bound to fail if not followed everywhere. Socio-economic relationships are no longer purely local—they have global ramifications. Hence, in order to respond to the ecological crisis,

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[77] Warren Weaver "Science and Complexity" (1948) 36(4) American Scientist 536.

we need to ensure that the sustainability principle (as the cornerstone of the response to the ecological crisis) is an integral part of international environmental law.[78]

However, the type of complexity seen in the global world is in fact of the second type, the 'organised complexity' type. It is this type of complexity that underlines all ecosystems, including the city neighbourhood example I cited earlier. The source of this complexity, and the challenges it represents do not require a higher level of coordination as suggested by the international response. Instead, this type of complexity emerges from the very existence of the coordination or correlation between the myriad of parts making the system. To address its challenges, we need to reduce the correlation between the parts, rather than increase it through an international response.

The same critique can be formulated through a different analytical concept, that of hierarchy. In 1962, Herbert Simon argued that "[h]ierarchy…is one of the central structural schemes that the architect of complexity uses".[79] By a hierarchy Simon is referring to a system that is composed of interrelated subsystems, each of the latter being, in turn, hierarchic in structure until we reach some lowest level of elementary subsystem. Simon adds:[80]

> Empirically, a large proportion of the complex systems we observe in nature exhibit hierarchic structure. On theoretical grounds we could expect complex systems to be hierarchies in a world in which complexity had to evolve from simplicity. In their dynamics, hierarchies have a property, near-decomposability, that greatly simplifies their behaviour. Near-decomposability also simplifies the description of a complex system, and makes it easier to understand how the information needed for the development or reproduction of the system can be stored in reasonable compass.

Here, the differences between the agricultural and industrial revolutions are seen as one of degree where organised complexity increased due to an increase in the hierarchical topology of the world. Today there is more interdependence between local communities and between subsystems of the natural world including manmade ones. It is this increased interdependence that is causing the

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[78] Note that since 1972, and especially since the Earth Summit in Rio in 1992, the concept of sustainability lost its contours. The current approach of "Sustainable development" has no bearing on the original meaning of sustainability. However, sustainability remains a distinct, relevant principle. The 1987 Brundtland Report shaped the new concept of sustainable development around the old concept of sustainability. It did so by demanding global, long-term economic justice without sacrificing the Earth's ecological integrity. But this one-size-fits-all approach is also suboptimal. The continued existence of the principle of sustainability has two important consequences: (1) sustainable development is given meaning and direction; (2) the existing treaties, laws, and legal principles need to be interpreted in light of the principle of sustainability.
[79] Herbert A Simon "The Architecture of Complexity" (1962) 106(6) Proceedings of the American Philosophical Society 467 at 468.
[80] Simon at 481-482.

organised complexity which in turn gives the illusion that delocalisation is essential to tackling the ecological crisis.

Here it is imperative to point out that I am not arguing for a purely localised response to the ecological problem. I am simply arguing that the same local community-based response should be at the centre of mitigating the ecological crisis. The global response should be subsidiary to the local one.

This is in line with the approach endorsed by other commentators who did not forsake localising the response as the key component of any response to the current crisis. For example, Miller analyses the modes of environmental organizing since the seventeenth century canvassing conservationism (management of natural resources), preservation-ism (preservation of natural resource) and post conservationist concerns for an environmentally augmented quality of life. [81] Miller then goes on to analyse the Regan-era Environmentalism which exemplified the lash-back on the environmental movement, not due to environmentalist assault on the industry, but due to government succeeding in controlling organized environmental movement and/or co-opting its leadership. Miller identifies an Ideological rift between environmental movements today on how to respond to the governmental lash-back. The rift is reflected in approaches to issues and on organizational form. According to Miller, the questions of ethics and work standards are best dealt with by grassroots ordinary people. He asserts that:

> If such [government opposition] can push us back to our roots...to local organizing, to the building of powerful community coalitions, to the development of broadly conceived social strategies and careful delineation of first principles—then the government opposition...may be successfully survived.

Miller puts emphasis on the central role of local communities. He suggests that our history is a reminder of the absolute requirement that people work (organize) in their communities and take to the streets to repair injustice of any kind. For our purposes, the importance of what Miller says is his emphasis on "local organizing". The only way we can reverse the adverse effects of the agricultural and industrial revolutions is through a return to "local organising".

What I am endorsing resonates with the ideas disseminated by Mark Granovetter, in particular those in his seminal paper "The Strength of Weak Ties". Granovetter argues that: [82]

> [a] fundamental weakness of current sociological theory is that it does not relate micro-level interactions to macro-level patterns in any convincing way. Large-scale statistical, as well as qualitative, studies offer a good deal of insight into such macro phenomena as social mobility,

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[81] A Miller "Perspectives on Environmental Change" in Rowman &Littlefield (eds) *GAIA Connections: An Introduction to Ecology, Ecoethics and Economics* (Rowman & Littlefield, Savage (Maryland), 1991) 265-283, at 266.
[82] Mark Granovetter "The Strength of Weak Ties" (1973) 78(6) AJS 1360.

community organization, and political structure. At the micro level, a large and increasing body of data and theory offers useful and illuminating ideas about what transpires within the confines of the small group. But how interaction in small groups aggregates to form large-scale patterns eludes use in most cases.

I will argue, in this paper, that the analysis of processes in interpersonal networks provides the most fruitful micro-macro bridge. In one way or another it is through these networks that small-scale interaction becomes translated into large-scale patterns, and that these, in turn, feed back into small groups.

Granovetter defines the strength of ties as a "combination of the amount of time, the emotional intensity, the intimacy (mutual confidence), and the reciprocal services which characterize the tie".[83] Using this framework, the response to the ecological crisis can be seen as a continuation of the traditional localised response, but with an added layer of weak ties linking the local (micro) to the global (macro), while eliminating all other (miso) levels (the national and the regional). Such an approach would be in complete discord with the international law approach that dominates the current response to the ecological crisis.

A similar idea to Granovetter can be seen in the concept of diakoptics (or method of tearing) in systems theory. This method enables solving problems associated with large-scale systems.[84] The method involves breaking a system down into subsystems which can be solved independently before being joined back together to obtain a solution to the whole problem. The logic behind this method is the ability to reduce the 'complexity' of large-scale systems by breaking these down into smaller, simple systems, and then re-joining these in a loose network. The method accentuates the effect of scale on complexity. The argument I am making here is analogous to diakoptics. In order to provide an effective response to the ecological crisis, we need to breakdown nation states (the large-scale systems) into autonomous local authorities (subsystems) which can respond to the ecological crisis *independently* before being joined back together in a bottom-up globalised response.

Summary:

This chapter looks at the responses to the ecological crisis both historically and in modern times. What is apparent is that localism was at the crux of the historical response. However, since the rise of the nation state, localism was marginalised through three main instruments: the universal human rights paradigm, the indigenous people discourse, and the complexity imperative illusion. This marginalisation of localism can be seen in the international law approach to the crisis and in its instruments. Even the Earth Charter is guilty of such marginalisation.

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[83] Granovetter at 1361.
[84] G Kron *Diakoptics—The piecewise Solution of Large Scale Systems* (London, MacDonald, 1963).

*"Let us accept the fact that states have lifecycles
similar to those of human beings who created them.
Hardly any Member State of the United Nations has existed within its
present borders for longer than five generations.
The attempt to freeze human evolution has in the past been
a futile undertaking and has probably brought about more
violence than if such a process had been controlled peacefully.
Restrictions on self-determination threaten not only
democracy itself but the state which seeks its legitimation in democracy".*

Prince Hans-Adam II of Liechtenstein,
speaking to the International Institute
for Strategic Studies on 25 January 2001.[85]

IV.   Conclusion

Today, there is probably no meme that carries the promise of deliverance from the evils of the unitary nation state than 'organisation'—'re-organisation' to be precise. The issue turns on whether that reorganisation will take us 'back' to a localised, morally driven, social organisation, or 'forward' towards a globalised top-down organisation.

Through the lens of the historical and modern responses to the ecological crisis, an alternative interpretation of history emerges: as a struggle between alternating forces of (power) centralisation and decentralisation—from the small to the large to the colossal and then eventually (which is my prophecy) back to the small, analogous to a sinusoidal wave, to sound propagation, or even the beating of the human heart. While both centralisation and decentralisation are required at different junctures in the human saga, now it seems the pendulum is shifting to decentralisation.

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[85] The four pillars of Pridnestrovie's statehood <http://pridnestrovie.net/fourpillars.html>.

The above weltanschauung integrates strands from philosophy, economics, systems theory, and organisation theory. In particular, it builds on the emerging perception that the nation state is moribund. A new world order is emerging. This new order is based on the decentralisation of governance structures towards local communities. At the same time cooperation between local communities will expand to continental dimensions.

In this dissertation I argue that the cause of the ecological crisis can be understood as a problem of scale resulting from a move away from localisation. This started with the agricultural and intensified under the industrial revolutions. Parallel to these revolutions there was a rise of the nation state, their enabler; and its universal natural rights—adding to the alienation of decision making from local communities. Today there is yet a new wave of power centralisation through the international society and its push towards globalisation. The end result will be more adverse to local communities than under any national state.

The historical response to the ecological crisis was alive to the importance of re-embedding the decision making process back into local communities to ensure responding effectively to the crisis. In contrast the modern response puts more emphasis on the global coordination of a response to the crisis. The modern literature on the response to the ecological crisis suggests that the move from the global to the local is inevitable given today's world is far more complex than that of the Middle Ages where the historical response to the crisis took place. However, I argue that the nature of this complexity is not inherent in our world. This complexity is manmade and is due to the very reason that caused the ecological crisis in the first place. By assuming that the complexity is here to stay, we simply defeat all effective responses to the crisis. This complexity needs to be reduced by devolving the responsibility to respond to the crisis to local communities, and then using only weak (organisational) links between local communities to enable coordination where negative environmental externalities so require.

The only way forward is to relegate the nation state to a supporting role to local authorities. No more should there be a monopoly by the nation state on the legislative process. The future political world map should have only small jurisdictional footprints representing local communities that do not go beyond the scale of cities or small regions. The future should look like Qatar, Luxembourg, Kosovo, Kuwait, Lichtenstein, Singapore, Hong Kong, etc. This organizational mode, coupled with a tendency to enable local communities to be self-sufficient in all aspects of production and consumption, will

simplify the complexity seen in the world today, and therefore provide the hope for an effective response to the ecological crisis. In the words of Livingston (and in the context of the United States):[86]

> What we must begin to do is throw into question the legitimacy of the modern consolidated state itself. We must stop working on the Tower of Babel. Constitutionally, this means that the states must reassert their sovereignty under the Ninth and Tenth Amendments and recall those powers they have allowed to slip out of their hands to the central government. We must restore the Jeffersonian and Madisonian tradition of state interposition. The States must once again become constitutional members of a genuine federative polity as they were during the ante-bellum period and beyond when states throughout the union interposed their authority and even nullified actions of the central government that they judged unconstitutional. History textbooks present nullification as a wild and unpatriotic policy of John C. Calhoun. But a genuinely federative polity, designed to preserve distinct social and political societies, must allow some form of legal corporate resistance.

> …

> Finally, the modern state, from the very first, was thought of as a large state. Hobbes rightly called it "Leviathan." Its main goal was what Hobbes called commodious living, and it was thought that economic integration required political integration into a larger polity. But economic viability should not be confused with self-sufficiency. Few if any states are self-sufficient. Japan is not self-sufficient. It imports ninety-eight percent of its oil, and it cannot feed itself. Little Singapore is a city state that seceded from the Malaysian federation, but it is integrated into a world economy and is not only viable, but flourishing.

> Even the United Nations now understands this. Upon its founding, it insisted that member states have a certain size. Today it has abandoned that requirement. There are fifty-five member states with populations under a million, and a number of these have populations under 100,000. There are twenty-three states smaller than New York City, and some smaller than Central Park. There is no reason today why, here and there, an order of city states cannot again flourish. The little city state of Athens, in three generations, produced such a flourishing culture that much of Western civilization may be said to be a series of footnotes to it. The city state of Medici Florence produced the Renaissance; the free cities of Germany produced Goethe, Hegel, Mozart, and Beethoven.

> The modern state is not a fated existence; it is a human artifact only two hundred years old. And it no longer has the authority it once had. The secession and devolution movements in the world today, along with the demonstrated viability of small states, raises new and exciting possibilities. Americans have not rejected these possibilities; they simply have never occurred to them. The reason is that they are still under the spell of the centralized modern state founded in the Lincoln myth. Ours is the uphill task of refuting that myth both as an historical account of the American polity and as a moral and philosophical account of the best form of political association. That form is and has always been some form of federative polity with the right of secession. Its primal symbol is the Exodus from Egypt. And, as Mel Bradford has taught us, we must refute also the blasphemous puritan ideology of the Lincoln myth which pretends to speak the speech of God and, in the Cromwellian "Battle Hymn of the Republic," teaches slaying and laying waste in the name of the Lord. The Union was not in 1861 and is not now the last best hope on earth. We must teach

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[86] Donald W Livingston "Secession and the Modern State" (1996) Stalking the Wild Taboo <www.lrainc.com/swtaboo/taboos/dwliv01.html>.

Americans to lay down their tools, stop building the Tower of Babel, and return to their respective homes.

What Dr Smith and Mr Morrison fail to realise is that today, notwithstanding failures of the modern response to the ecological crisis, international law is increasingly viewing local governments as vehicles for the advancement of policies on a global scale. Yishai Blank explains:[87]

> Local governments are…increasingly used as a means for disseminating and implementing global political programs, financial schemes, and governance strategies. The traditional legal focus on state actors is shifting on to local governments, giving them independent legal status in the new global order. Local governments are obtaining international duties, powers, and rights; enforcing international standards; forming global networks involved in the creation of international standards; and becoming objects of international regulation. It has indeed become impossible to understand globalization and its legal ordering without considering the role of localities: They have become prime vehicles for the dissemination of global capital, goods, work force, and images.

> The evolving global status of local governments manifests itself in international legal documents and institutions, transnational arrangements, and legal regimes within many countries. To date, however, there has been almost no academic account of this significant legal transformation. International legal theory has remained captive to the centralist and unitary conception of local governments, according to which they are mere subdivisions of states and thus undeserving of any theoretical analysis. And while international legal theorists have analyzed the extension of international law over nonstate entities such as private persons, non-governmental organizations ("NGOs"), and transnational corporations, those same theorists have ignored the profound transformation of localities into independent actors in the international arena. Likewise, local-government scholars have ignored the impeding global pressures on localities, treating the interaction of localities with global and international norms and institutions only sporadically.

> In contemporary international legal practice and policy making, however, localities are already being recast as independent semi-private entities, no longer mere state agents subsumed by their national governments. United Nations agencies, the World Bank, and various transnational institutions emphasize both the need to delegate and devolve power to local entities and the potential of localities to act like private corporations or other components of civil society. As such, localities' ability to generate wealth and economic growth, their need to be financially viable and self-reliant, and their capacity to promote good governance are given prominence over other traits of local governments. With this reshaping of localities comes a new set of ideas about the desirable relationship between state and local governments, including the ideal level of local autonomy, the ideal division of power between national and local levels, and the amount of flexibility that should exist to adjust that division of power.

> Many of the legal changes accompanying the new global vision of local entities are only beginning to appear. The activities of a special U.N. agency aimed at formulating a World Charter on local self-government have not yet given rise to a binding international legal document. Regional treaties and transnational agreements such as the North American Free Trade Agreement ("NAFTA") and membership in the General Agreement on Tariffs and Trade ("GATT," now the World Trade Organization ("WTO")) have only started to affect localities and local-government laws, while states'

[87] Yishai Blank "Localism in the New Global Legal Order" (2006) 47(1) Harv. Int'l L.J. 263.

and local governments' compliance with emerging international standards is slow and far from complete. Nonetheless, it is possible to predict the results of this transition as well as to analyse its justifications and normative ramifications.

The only effective response to the ecological crisis is through an economy as understood in the original sense of the word—pertaining to the management of the household, to the local. Self-sufficiency, even subsistence as practised historically by peasant communities for local need, is still and will always be as relevant to the response today as it was historically.

While I have not argued directly any of the following propositions, I hope to have at least hinted to them by arguing the fact that localism reduces complexity, and reducing complexity reduces many of the problems we face today. Localism is not just a response to the ecological crisis, but a mode of organising for the resolution of many of our problems. Localism is the best medicine against terrorism. It removes the 'Tower of Babel Syndrome' at the heart of Islamist dreams of a fifth empire. It vanishes the phobias we already have from the rise and rise of China. It eradicates poverty by rendering effeminate the hegemonic agenda of 'superpowers'. Localism is the only long-term exist-strategy from Iraq and Afghanistan. It even holds the key for a lasting peace in the Levant. Localism should be the new 'democratic' project for this century.

I hope to have highlighted important lessons for New Zealand, especially the newly created Auckland supercity. This dissertation should be interpreted as endorsing a proposition for an Emilia-Romagna (*Terza Italia*) approach to governance in New Zealand.[88] In essence, Auckland should be given local autonomy and self-determination; potentially as wide as that granted independent cities such as Vienna, or even Hong Kong. In particular, the status of Hong Kong and Macau as Special Administrative Regions (SARs) with high degree autonomy (except acts of state like diplomatic relations and national defence), seems more conductive for the wellbeing of Auckland, and by implication, of New Zealand as a whole.

This is the emancipatory project of our time.

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[88] Emilia-Romagna is a region in Italy with a high level of local autonomy. The region is the home of iconic brands such as Ferrari and Lamborghini, and is one of the richest in Europe. It has its own (Romance) language.

Appendices

Office of Hon Dr Nick Smith

MP for Nelson
Minister for the Environment
Minister for Climate Change Issues
Minister for ACC

- 7 OCT 2010

Ben Gussen
ngus003@aucklanduni.ac.nz

Dear Mr Gussen

Thank you for your email of 4 September 2010 regarding UNESCO Biosphere reserves.

To establish a biosphere reserve, New Zealand would need to sign up to the Biosphere Reserves programme. There is considerable overlap between the Biosphere programme, RAMSAR and UNESCO World Heritage. New Zealand has listed six sites covering almost 55,000 hectares in the List of Wetlands of International Importance (RAMSAR) and three World Heritage sites.

The sustainability and public engagement focus of the Resource Management Act 1991 largely covers what a biosphere reserve status aims to achieve. The government is focussing its energies on a range of programmes relating to indigenous biodiversity protection and enhancement. This includes supporting local government through the development of non-statutory best practice guidance and a proposed national policy statement for freshwater management.

The current programmes provide the appropriate level of protection to New Zealand's flora and fauna. I consider that there is little value in adding another programme at this stage.

Yours sincerely

Hon Dr Nick Smith
Minister for the Environment

cc. Hon. Kate Wilkinson, Minister of Conservation
Nikki Kaye, MP for Auckland Central

Department of Conservation
Te Papa Atawhai

17 November 2010

Benjamin Gussen
ngus003@aucklanduni.ac.nz

Dear Ben

Thank you for the material you sent me regarding the possibility of creating a Biosphere Reserve on Waiheke Island which I have read with interest. I do not think that there is value in adding another layer of international designation to the New Zealand system at present.

As you are aware, the key regulator of resource use in New Zealand is the Resource Management Act with its underpinning principle of sustainability. In the case of Waiheke this is reinforced by the Hauraki Gulf Marine Park Act. Laying the principles of biosphere reserves on top of these requirements would not seem to add greatly to the approach already in place.

In terms of governance, New Zealand is a small country and we already have significant local participation in local resource management. This results in elected representatives working through existing legislative provisions to represent local interest in decision making. Additionally there are bodies such as the Auckland Conservation Board and the Hauraki Gulf Forum to which people are appointed to offer advice to officials and elected bodies.

Designation as a biosphere reserve would not seem to add significant value to the management of resources but would incur costs, not only to local people but also to the Government through participation in the programme. It is hard to see how these costs can be justified.

As I argued in my Lincoln address, there is a need for good integration of resource management by all sectors of society to ensure we maintain the highest possible quality of life. I am not sure that bringing the Biosphere Reserve paradigm into New Zealand significantly advances our achievement of this.

Yours sincerely

Alastair Morrison
Director-General
Department of Conservation

National Office
Conservation House – Whare Kaupapa Atawhai
18-32 Manners Street, Wellington, New Zealand
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A2

THE EARTH CHARTER

We stand at a critical moment in Earth's history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations.

Earth, Our Home

Humanity is part of a vast evolving universe. Earth, our home, is alive with a unique community of life. The forces of nature make existence a demanding and uncertain adventure, but Earth has provided the conditions essential to life's evolution. The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples. The protection of Earth's vitality, diversity, and beauty is a sacred trust.

The Global Situation

The dominant patterns of production and consumption are causing environmental devastation, the depletion of resources, and a massive extinction of species. Communities are being undermined. The benefits of development are not shared equitably and the gap between rich and poor is widening. Injustice, poverty, ignorance, and violent conflict are widespread and the cause of great suffering. An unprecedented rise in human population has overburdened ecological and social systems. The foundations of global security are threatened. These trends are perilous—but not inevitable.

The Challenges Ahead

The choice is ours: form a global partnership to care for Earth and one another or risk the destruction of ourselves and the diversity of life. Fundamental changes are needed in our values, institutions, and ways of living. We must realize that when basic needs have been met, human development is primarily about being more, not having more. We have the knowledge and technology to provide for all and to reduce our impacts on the environment. The emergence of a global civil society is creating new opportunities to build a democratic and humane world. Our environmental, economic, political, social, and spiritual challenges are interconnected, and together we can forge inclusive solutions.

Universal Responsibility

To realize these aspirations, we must decide to live with a sense of universal responsibility, identifying ourselves with the whole Earth community as well as our local communities. We are at once citizens of different nations and of one world in which the local and global are linked. Everyone shares responsibility for the present and future well-being of the human family and the larger living world. The spirit of human solidarity and kinship with all life is strengthened when we live with reverence for the mystery of being, gratitude for the gift of life, and humility regarding the human place in nature.

We urgently need a shared vision of basic values to provide an ethical foundation for the emerging world community. Therefore, together in hope we affirm the following interdependent principles for a sustainable way of life as a common standard by which the conduct of all individuals, organizations, businesses, governments, and transnational institutions is to be guided and assessed.

PRINCIPLES

I. RESPECT AND CARE FOR THE COMMUNITY OF LIFE

1. Respect Earth and life in all its diversity.

a. Recognize that all beings are interdependent and every form of life has value regardless of its worth to human beings.

b. Affirm faith in the inherent dignity of all human beings and in the intellectual, artistic, ethical, and spiritual potential of humanity.

2. Care for the community of life with understanding, compassion, and love.

a. Accept that with the right to own, manage, and use natural resources comes the duty to prevent environmental harm and to protect the rights of people.

b. Affirm that with increased freedom, knowledge, and power comes increased responsibility to promote the common good.

3. Build democratic societies that are just, participatory, sustainable, and peaceful.

a. Ensure that communities at all levels guarantee human rights and fundamental freedoms and provide everyone an opportunity to realize his or her full potential.

b. Promote social and economic justice, enabling all to achieve a secure and meaningful livelihood that is ecologically responsible.

4. Secure Earth's bounty and beauty for present and future generations.

a. Recognize that the freedom of action of each generation is qualified by the needs of future generations.

b. Transmit to future generations values, traditions, and institutions that support the long-term flourishing of Earth's human and ecological communities.

In order to fulfill these four broad commitments, it is necessary to:

II. ECOLOGICAL INTEGRITY

5. Protect and restore the integrity of Earth's ecological systems, with special concern for biological diversity and the natural processes that sustain life.

a. Adopt at all levels sustainable development plans and regulations that make environmental conservation and rehabilitation integral to all development initiatives.

b. Establish and safeguard viable nature and biosphere reserves, including wild lands and marine areas, to protect Earth's life support systems, maintain biodiversity, and preserve our natural heritage.

c. Promote the recovery of endangered species and ecosystems.

d. Control and eradicate non-native or genetically modified organisms harmful to native species and the environment, and prevent introduction of such harmful organisms.

e. Manage the use of renewable resources such as water, soil, forest products, and marine life in ways that do not exceed rates of regeneration and that protect the health of ecosystems.

f. Manage the extraction and use of non-renewable resources such as minerals and fossil fuels in ways that minimize depletion and cause no serious environmental damage.

6. Prevent harm as the best method of environmental protection and, when knowledge is limited, apply a precautionary approach.

a. Take action to avoid the possibility of serious or irreversible environmental harm even when scientific knowledge is incomplete or inconclusive.

b. Place the burden of proof on those who argue that a proposed activity will not cause significant harm, and make the responsible parties liable for environmental harm.

c. Ensure that decision making addresses the cumulative, long-term, indirect, long distance, and global consequences of human activities.

d. Prevent pollution of any part of the environment and allow no build-up of radioactive, toxic, or other hazardous substances.

e. Avoid military activities damaging to the environment.

7. Adopt patterns of production, consumption, and reproduction that safeguard Earth's regenerative capacities, human rights, and community well-being.

a. Reduce, reuse, and recycle the materials used in production and consumption systems, and ensure that residual waste can be assimilated by ecological systems.

b. Act with restraint and efficiency when using energy, and rely increasingly on renewable energy sources such as solar and wind.

c. Promote the development, adoption, and equitable transfer of environmentally sound technologies.

d. Internalize the full environmental and social costs of goods and services in the selling price, and enable consumers to identify products that meet the highest social and environmental standards.

e. Ensure universal access to health care that fosters reproductive health and responsible reproduction.

f. Adopt lifestyles that emphasize the quality of life and material sufficiency in a finite world.

8. Advance the study of ecological sustainability and promote the open exchange and wide application of the knowledge acquired.

a. Support international scientific and technical cooperation on sustainability, with special attention to the needs of developing nations.

b. Recognize and preserve the traditional knowledge and spiritual wisdom in all cultures that contribute to environmental protection and human well-being.

c. Ensure that information of vital importance to human health and environmental protection, including genetic information, remains available in the public domain.

III. SOCIAL AND ECONOMIC JUSTICE

9. Eradicate poverty as an ethical, social, and environmental imperative.

a. Guarantee the right to potable water, clean air, food security, uncontaminated soil, shelter, and safe sanitation, allocating the national and international resources required.

b. Empower every human being with the education and resources to secure a sustainable livelihood, and provide social security and safety nets for those who are unable to support themselves.

c. Recognize the ignored, protect the vulnerable, serve those who suffer, and enable them to develop their capacities and to pursue their aspirations.

10. Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner.

a. Promote the equitable distribution of wealth within nations and among nations.

b. Enhance the intellectual, financial, technical, and social resources of developing nations, and relieve them of onerous international debt.

c. Ensure that all trade supports sustainable resource use, environmental protection, and progressive labor standards.

d. Require multinational corporations and international financial organizations to act transparently in the public good, and hold them accountable for the consequences of their activities.

11. Affirm gender equality and equity as prerequisites to sustainable development and ensure universal access to education, health care, and economic opportunity.

a. Secure the human rights of women and girls and end all violence against them.

b. Promote the active participation of women in all aspects of economic, political, civil, social, and cultural life as full and equal partners, decision makers, leaders, and beneficiaries.

c. Strengthen families and ensure the safety and loving nurture of all family members.

12. Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention to the rights of indigenous peoples and minorities.

a. Eliminate discrimination in all its forms, such as that based on race, color, sex, sexual orientation, religion, language, and national, ethnic or social origin.

b. Affirm the right of indigenous peoples to their spirituality, knowledge, lands and resources and to their related practice of sustainable livelihoods.

c. Honor and support the young people of our communities, enabling them to fulfill their essential role in creating sustainable societies.

d. Protect and restore outstanding places of cultural and spiritual significance.

IV. DEMOCRACY, NONVIOLENCE, AND PEACE

13. Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice.

a. Uphold the right of everyone to receive clear and timely information on environmental matters and all development plans and activities which are likely to affect them or in which they have an interest.

b. Support local, regional and global civil society, and promote the meaningful participation of all interested individuals and organizations in decision making.

c. Protect the rights to freedom of opinion, expression, peaceful assembly, association, and dissent.

d. Institute effective and efficient access to administrative and independent judicial procedures, including remedies and redress for environmental harm and the threat of such harm.

e. Eliminate corruption in all public and private institutions.

f. Strengthen local communities, enabling them to care for their environments, and assign environmental responsibilities to the levels of government where they can be carried out most effectively.

14. Integrate into formal education and life-long learning the knowledge, values, and skills needed for a sustainable way of life.

a. Provide all, especially children and youth, with educational opportunities that empower them to contribute actively to sustainable development.

b. Promote the contribution of the arts and humanities as well as the sciences in sustainability education.

c. Enhance the role of the mass media in raising awareness of ecological and social challenges.

d. Recognize the importance of moral and spiritual education for sustainable living.

15. Treat all living beings with respect and consideration.

a. Prevent cruelty to animals kept in human societies and protect them from suffering.

b. Protect wild animals from methods of hunting, trapping, and fishing that cause extreme, prolonged, or avoidable suffering.

c. Avoid or eliminate to the full extent possible the taking or destruction of non-targeted species.

16. Promote a culture of tolerance, nonviolence, and peace.

a. Encourage and support mutual understanding, solidarity, and cooperation among all peoples and within and among nations.

b. Implement comprehensive strategies to prevent violent conflict and use collaborative problem solving to manage and resolve environmental conflicts and other disputes.

c. Demilitarize national security systems to the level of a non-provocative defense posture, and convert military resources to peaceful purposes, including ecological restoration.

d. Eliminate nuclear, biological, and toxic weapons and other weapons of mass destruction.

e. Ensure that the use of orbital and outer space supports environmental protection and peace.

f. Recognize that peace is the wholeness created by right relationships with oneself, other persons, other cultures, other life, Earth, and the larger whole of which all are a part.

The Way Forward

As never before in history, common destiny beckons us to seek a new beginning. Such renewal is the promise of these Earth Charter principles. To fulfill this promise, we must commit ourselves to adopt and promote the values and objectives of the Charter.

This requires a change of mind and heart. It requires a new sense of global interdependence and universal responsibility. We must imaginatively develop and apply the vision of a sustainable way of life locally, nationally, regionally, and globally. Our cultural diversity is a precious heritage and different cultures will find their own distinctive ways to realize the vision. We must deepen and expand the global dialogue that generated the Earth Charter, for we have much to learn from the ongoing collaborative search for truth and wisdom.

Life often involves tensions between important values. This can mean difficult choices. However, we must find ways to harmonize diversity with unity, the exercise of freedom with the common good, short-term objectives with long-term goals. Every individual, family, organization, and community has a vital role to play. The arts, sciences, religions, educational institutions, media, businesses, nongovernmental organizations, and governments are all called to offer creative leadership. The partnership of government, civil society, and business is essential for effective governance.

In order to build a sustainable global community, the nations of the world must renew their commitment to the United Nations, fulfill their obligations under existing international agreements, and support the implementation of Earth Charter principles with an international legally binding instrument on environment and development.

Let ours be a time remembered for the awakening of a new reverence for life, the firm resolve to achieve sustainability, the quickening of the struggle for justice and peace, and the joyful celebration of life.

INITIAL DRAFT OF A WORLD CHARTER
OF LOCAL SELF-GOVERNANCE

Preamble

The States Parties to the present Charter:

Recognizing that many global problems, as evidenced in Agenda 21 and the Habitat Agenda, must be dealt with at the local level and cannot be successfully resolved without intensified dialogue and cooperation between the State level and local authorities;

Recognizing local authorities as the closest partners of central governments and as essential in the implementation of Agenda 21 and the Habitat Agenda;

Recalling the principle, recognised in article 21 of the Universal Declaration of Human Rights, that the will of the people is the basis of the authority of governments at all levels;

Convinced that the principle of subsidiarity is the basis for democratic and participatory development and that any allocation of tasks and responsibilities should abide by this principle;

Committed to promoting decentralization through democratic local authorities and to strengthen their financial and institutional capacities;

Convinced that gender equality and social inclusion must go hand in hand with local democracy and participation and that these goals are mutually reinforcing;

Further committed to facilitating and enabling the broad-based participation of all people and their community organizations in decision-making and in the implementation and monitoring of human settlements strategies, policies and programmes;

Convinced that strong local democracy through freely elected local authorities, together with professional standards and conduct in local administration, offer the means of fostering public accountability and strengthening our societies against corruption;

Convinced that the existence of strong local authorities with clear roles and responsibilities and adequate resources ensures services which are both effective and close to the citizens.

Have agreed as follows:

Article 1

The States Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 14 of this Charter.

Part I

Article 2 - Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in national legislation, and where practicable guaranteed in the constitution.

Article 3 - Concept of local self-government

Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them.

Article 4 - Scope of local self-government

Local authorities shall have full discretion to exercise their initiative with regard to all matters which are not excluded by law from their competence nor assigned to any other authority.

The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by law. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes.

In accordance with the principle of subsidiarity, public responsibilities shall generally be exercised by those authorities which are closest to the citizen. In the same spirit, any allocation of responsibility to another authority must be based on the requirements of technical or economic efficiency.

Powers given to local authorities shall normally be full and exclusive. They should not be undermined, and may not be limited by another authority except as provided for by law.

Where powers are delegated to them by a central or regional authority, local authorities shall be given discretion in adapting their implementation to local conditions.

Local authorities shall be involved in due time and in an appropriate way in the planning and decision-making processes for all matters which affect them.

Article 5 - Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is legally permitted.

Article 6 - Appropriate administrative structures and resources for the tasks of local authorities

Local authorities shall be enabled to determine their own internal administrative structures, to adapt them to local needs, and to ensure effective management.

Local authorities shall be supported by higher levels of government in the development of administrative, technical and managerial capacities and of structures which are responsive, transparent and accountable.

The conditions of service of local government employees shall be such as to permit the recruitment and retention of high-quality staff on the basis of professional competenceand experience, and of gender equality; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 - Conditions under which responsibilities at local level are exercised

The conditions of office of locally elected representatives shall guarantee free exercise of their functions.

They shall allow for appropriate reimbursement of expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social protection.

Any functions and activities which are deemed incompatible with the holding of local elective office shall be specified by law.

Article 8 - Supervision of local authorities' activities

Any supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by law.

Any supervision of the activities of local authorities shall aim only at ensuring compliance with the law and with constitutional principles. In respect of tasks the execution of which is delegated to local authorities, administrative supervision by higher level authorities may however go beyond legal control to ensure conformity with national policy.

Supervision of local authorities shall be exercised when necessary in due proportion to the interests which it is intended to protect.

If the constitution or national law permits the suspension or dissolution of local councils or the suspension or dismissal of local executives, this shall be done in accordance with due process of law. Their functioning shall be restored within as short a period of time as possible which shall be prescribed by law.

Article 9 - Financial resources of local authorities

Local authorities shall be entitled to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

Local authorities' financial resources shall be commensurate with their tasks and responsibilities.

A reasonable proportion of the financial resources of local authorities shall derive from local taxes, fees and charges of which they have the power to determine the rate.

Taxes which local authorities shall be entitled to levy, or of which they receive a guaranteed share, shall be of a sufficiently general, buoyant and flexible nature to enable them to keep pace with their responsibilities.

The protection of financially weaker local authorities requires a system of vertical and horizontal financial equalisation.

Local authorities shall participate in framing the rules governing the general apportionment of redistributed resources.

As far as possible, financial allocations to local authorities shall respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

For the purpose of borrowing for capital investment, local authorities shall have access to the national and international capital markets.

Article 10 - Participation of citizens and partnership

Local authorities shall be entitled to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership.

Local authorities shall be empowered to establish and develop partnerships with all actors of civil society, particularly non-governmental organizations and community-based organizations, and with the private sector and other interested stakeholders.

Article 11 - Associations of local authorities

Local authorities shall be entitled, in exercising their powers, to form associations for the defence and promotion of their common interests as well as in order to provide certain services to their members, and to cooperate and form legal entities with other local authorities in order to carry out tasks of common interest.

Other levels of government shall consult associations of local authorities when preparing legislation affecting local government.

Article 12 - International cooperation

Local authorities' right of association shall include that of belonging to international associations of local authorities.

Local authorities shall also be entitled, by law or international treaties, to cooperate with their counterparts in other countries, including in transfrontier regions.

Local authorities shall be involved, in the spirit of partnership, in the negotiation and implementation of international plans of action concerning their roles and areas ofresponsibility.

Article 13 - Legal protection of local self-government

Local authorities shall have the right of recourse to judicial remedy in order to safeguard their autonomy and to ensure compliance with the laws which determine their functions and protect their interests.

Part II - Miscellaneous provisions

Article 14 - Undertakings

Each State Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:

Article 2,

Article 3, paragraphs 1 and 2

Article 4, paragraphs 1,2 and 4,

Article 5,

Article 7, paragraph 1,

Article 8, paragraph 2,

Article 9, paragraphs 1, 2 and 3

Article 11, paragraph 1,

Article 13.

Each State Party, when depositing its instrument of ratification or accession, shall notify to the Secretary-General of the United Nations the paragraphs selected in accordance with the provisions of paragraph 1 of this Article.

Any State Party may, at any later time, notify the Secretary-General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this Article.

Such undertakings subsequently given shall be deemed to be an integral part of the ratification or accession of the State Party so notifying, and shall have the same effect as from the thirtieth day after the date of the receipt of the notification by the Secretary-General.

Article 15 - Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the State Party. However, each State Party may, when depositing its instrument of ratification or accession, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary-General of the United Nations.

Article 16 - Provision of information

Each State Party shall forward periodically to the Secretary-General of the United Nations all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Article 17 - Monitoring

For the purpose of assessing progress in the implementation of the present Charter, a monitoring committee shall be established by States Parties. This committee shall include representatives of local authorities. Its secretariat shall be provided by the United Nations.

Part III

Article 18 - Signature and ratification

The present Charter shall be open for signature by all States.

The present Charter is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The present Charter shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 19 - Entry into force

The present Charter shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

For each State ratifying or acceding to the Charter after the deposit of the twentieth instrument of ratification or accession, the Charter shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 20 - Territorial clause

Any State Party may, at the time of signature or when depositing its instrument of ratification or accession, specify the territory or territories to which this Charter shall apply.

Any State Party may at any later date, by a declaration addressed to the Secretary-General of the United Nations, extend the application of this Charter to any other such territory specified in the declaration. In respect of territory the Charter shall enter into force on the thirtieth day after the date of receipt of such declaration by the Secretary-General.

Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary-General. The withdrawal shall become effective on the thirtieth day after the date of receipt of such notification by the Secretary-General.

Article 21 - Denunciation

A State Party may denounce the present Charter by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 22 - Notifications

The Secretary-General of the United Nations is designated as the depositary of the present Charter.

The Secretary General shall notify the member States of the United Nations of:

any signature;

the deposit of any instrument of ratification or accession;

any date of entry into force of this Charter in accordance with Article 19;

any notification received in application of the provisions of Article 14, paragraphs 2 and 3;

any notification received in application of the provisions of Article 15;

any other act, notification or communication relating to this Charter.

Article 23 - Authenticity of text

The original of the present Charter of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Charter.

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