2020 Harmony with Nature – Theme: Earth Jurisprudence

By Helen Dancer – Earth-centred Law

1. What would the practice of Earth-centred Law look like from an Earth Jurisprudence perspective? How is that different from how Earth-centred Law is generally practiced now? And, what are the benefits of practicing Earth-centred Law from an Earth Jurisprudence perspective?

In Europe, concepts of Earth Law do not yet form part of the public consciousness generally and there are currently very few examples of Earth Law in statutory legal frameworks. In such contexts, Earth jurisprudence offers one useful starting point for law and policy debates, amongst other posthuman and holistic approaches. Part of the development of Earth Law should involve ongoing dialogue between these different approaches, some of which reject the concept of a 'centre'. It is likely that at least initially, the development of Earth Law in practice will involve a step change, incorporating principles of Nature as subject into laws and legal practice through a reframing of existing constitutional and human rights laws that are already well established and understood. In litigation, non-human species and ecosystems may be recognised as subjects through guardianship. However, if Earth laws are to resonate on a social and cultural level, it is important to ensure that Indigenous laws, religious and customary practices and local community relationships with the Earth that already exist (or that existed historically) are researched and recognised as part of the process of developing Earth laws in practice.

Currently, in parts of the world where Earth-centred laws incorporating ideas of Rights of Nature are practiced, some states have drawn upon the cosmovisions of Indigenous Peoples and Earth jurisprudence to develop Earth laws in statutory legal frameworks. Their approaches vary, from the recognition of Indigenous Peoples' cosmovisions, and enshrining concepts of Rights of Nature in national Constitutions, state laws and local ordinances; to the recognition of ecosystems as legal persons, with Guardians appointed to represent them, as in New Zealand and Colombia. Here, it is important to acknowledge that in these and many other human societies and civilisations around the globe, socio-cultural human-Earth relationships were already well established, although their ontological basis may be very different from Earth jurisprudence. In these contexts, Rights of Nature provisions in state law represent a fusion, or "hybrid" (Santos 2018) of Indigenous laws and other eco-conscious ontologies.

The benefits of applying concepts of Earth Law to legal practice are significant. Earth laws require us to let go of unsustainable ideas of property in the Earth and foster an ethic of care and respect for Nature, both in our daily lives and in our laws and legal practices. In contexts that currently operate within an anthropocentric paradigm; when Nature is recognised as a legal subject, this may precipitate radical changes in legal cultures concerning human-Earth relationships. Part of this process involves citizen engagement in rediscovering and strengthening human-Nature connections and developing Earth Law at a community level based on shared values that are culturally understood.

2. What promising approaches would you recommend for achieving implementation of an Earth-centred worldview for Earth-centred Law? (Note: depending on the discipline, approaches could also be theoretical, although practical approaches should be prioritized).

The implementation of eco-conscious worldviews through law is important work. It shifts law and legal practice away from the anthropocentric and re-orientates global policy discourses on sustainable development. However, in such processes of implementation, it is essential to recognise the diversity of ontologies of human-Earth relations that exist in practice, and to ensure that implementation of Earth laws is not a top-down process where any one ontological worldview becomes dominant.

At the international level, the United Nations Harmony with Nature programme is a space that has the capacity to integrate dynamic, pluralist approaches to recognising the diversity of human-Earth relations in its processes, frameworks, and policies. It can also promote spaces for collaboration across governments and non-state actors and interest groups within (not just alongside) other central UN fora. More needs to be done throughout the UN institutions to bring this diversity of knowledge into the mainstream of law and policy debates across the international legal order.

At the national level, it is important that frameworks of Earth Law have sufficient constitutional strength to ensure that Nature is protected and respected in the practice of law. Just as qualifying clauses in human rights laws have been instrumentalised by states to pursue their own agendas, case law from states that have enshrined Rights of Nature reveals a somewhat chequered record in terms of outcomes for Nature in practice. The empirical fact of legal pluralism also needs to be integrated into Earth Law frameworks. The New Zealand model for the Whanganui River and the Te Urewera forest currently offer the closest example to date as to how a loosening of legal hierarchies and pluralist legal frameworks for ecosystem governance based on Indigenous cosmovisions may be developed within a national legal order.

Earth laws are complex in their implementation and practice because they require not only a fundamental shift in the way humans understand their relations with the Earth, but also an equitable sharing of power by states with Indigenous Peoples and other non-state actors. This creates a tension to be reconciled between deep legal pluralism and the centralist nature of statutory legal frameworks as well as the concept of Earth-centred law. However, awareness and openness to working with these tensions is constructive, and could ultimately lead to a radical shift in international and national frameworks for law and governance. Deep legal pluralist approaches that decentre anthropocentric thinking on the environment and decentre the state in the development of Earth laws would place responsibility for the environment and the equitable sharing of power at the heart of legal frameworks on human-Earth relations. This would also recognise the diversity of ontologies that shape these relationships in law and practice (Dancer 2021).

3. What key problems or obstacles do you see as impeding the implementation of an Earth-centred worldview in Earth-centred Law?

The role and power of states in implementing Earth laws presents complex challenges ontologically and in terms of power relations. Ontologically, there are challenges in how, or whether, humans can speak for Nature. In Berry's (1999) theory, the ecological source of Earth jurisprudence is beyond human codification. Translating this philosophy into an approach to governance, Cullinan (2002) also points out that we as humans cannot in fact grant rights to other species because they already have them in a way that is beyond our ability to conceive of them. This means that legally enshrining Rights of Nature carries inherent ontological challenges.

As a matter of empirical observation, there are many non-state normative orders, including Indigenous Peoples' laws and customary and religious laws that are intrinsically associated with human-Earth relationships and have the full force of law. This means that from a legal pluralist perspective, there can be no one overarching vision or legal approach that speaks for human-Earth relations. Earth jurisprudence should therefore be regarded as just one way in which humans can interpret their relationship with the Earth.

If we accept that a notion of the legal is not necessarily dependent on any relation to the state, this leaves more room for uncertainty in terms of how states engage with multiple legal orders in practice. Unequal power relations can lead to the domination of state normative frameworks over others. The aim should be to find context-specific power-sharing solutions that protect and respect Nature, human rights and relationships with the Earth, and legal and cultural diversity.

4. What are the top recommendations for priority, near-term action to move Earth-centred Law toward an Earth Jurisprudence approach? What are the specific, longer-term priorities for action? (Note: give 3 to 10 priorities for action).

In the near-term, in international fora, the move away from the anthropocentric should seek to embrace as diverse a range of knowledge and perspectives on human-Earth relations as possible. It should avoid a move towards any one Earth-centred approach but promote a pluralist approach that recognises and promotes the diversity of eco-conscious worldviews that already exist, including Earth jurisprudence, and looks for common ground between them.

In the longer-term, international organisations and states will need to change existing hierarchies of recognition and ensure that their legal processes and frameworks recognise legal pluralism as an empirical fact. In most countries and international fora, Indigenous laws and worldviews have yet to be fully recognised and realised in ways that do not ultimately subvert them to state law. The integrity of a move towards Earth Law depends on full recognition of Indigenous cosmovisions of human-Earth relations.

In countries where Earth laws are not culturally or legally embedded currently, including most European countries, Earth Law approaches based on shared values that are culturally

understood, could be grown from the diversity of spaces where human-Nature connections are already being nurtured and rediscovered. These include the arts, museums, schools and universities, media, charities for Nature conservation, environmental associations, forest school and *shinrin-yoku* (forest bathing), community groups, religious organisations, National Parks, and other protected landscapes.

Within academic and professional legal education, programmes on Earth Law, as well as activist and test case litigation can illuminate the limitations in existing law and point towards new ways to foster human-Earth relations. Alternative judgment projects, such as the Australian Wild Law Judgment Project (Rogers and Maloney 2017) and the UK Earth Law Judgments Project, provide one approach to this. They can inspire law students and legal professionals to think about the practice of law from eco-conscious perspectives, and further critical debates around the development of Earth Law.

References

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