

2016 Virtual Dialogue on Harmony with Nature – Theme Earth Jurisprudence

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

The practice of Earth-centered law from an Earth Jurisprudence perspective would impact upon all areas of law. This is because Earth-centered law is not an “area” of law in the way that Corporate Law or Environmental Law are areas of law within the legal system as a whole. Rather, Earth Jurisprudence is a radically holistic way of relating to the Earth that sustains us. So, if it is founded on Earth Jurisprudence, Earth-centred Law would underpin all our human actions, and impact upon all levels of law, whether international, constitutional, national or local. To be totally clear - Earth-centred Law underpinned by Earth Jurisprudence cannot be an “add on” to the existing systems of law, governance, economics, etc. It requires a fundamental reappraisal of our place on the planet, of what we value most, of what we need most, and of the things that we patently do not need in order to have a chance of surviving another century and beyond.

In shifting to Earth-centered Law underpinned by Earth Jurisprudence, policies, governance systems and laws would focus on promoting mutually enhancing relationships that benefit not only humankind but also other species and the ecosystems that we all depend on for our continued existence. We would approach life through a whole systems lens. So much has already been lost or damaged that existing and proposed activities must be viewed through a lens that makes the Precautionary Principle and “do no harm” its leading axioms. In fact, we need to go much further at this point, to encompass regenerative and restorative activities that aim to put back or clean up some of what we have already destroyed or damaged, to the extent that this is possible. We would also be much less interested in optimal efficiency of markets and more interested in building resilience into human systems, for example, in terms of how our food and energy needs are sourced and supplied.

This is of course anathema to current, mainstream economic doctrine, which is based on the underlying presumption that growth and development of almost any kind is good for society and for the country’s all important GDP, no matter how destructive. These underlying presumptions are exactly what has created the problems we are now facing. So retaining the attitude and presumptions and simply tweaking the current system is not going to solve the systemic problems that individuals and societies as a whole are now facing. For example, applying Earth-centered Law, we would be rather more discerning about the kind of products that we allow to be developed and sold, and items that are essentially unnecessary and which cause significant damage to the planet would be phased out, if they cannot be rehabilitated into more ecologically benign products.

In terms of how Earth-centered law would be different if it was underpinned by Earth Jurisprudence, if we were operating with a full understanding and appreciation of the radical interconnectedness of all life, we would see ourselves as part of, and in deep relationship with the rest of nature, not separate from or having dominion over it. In objectifying nature under the current system of law, and sanctioning its exploitation and destruction for profit-making ends, we deprive other complex and amazing life forms that have emerged on this planet of the right to be. Earth jurisprudence subjectifies nature, and so restores its dignity and intrinsic right to exist - a “right” that arises from the existence of the universe, as opposed to a right given by mankind. The benefit of this approach is that it actually makes a life-sustaining society possible. In a life-sustaining society, we may not have access to everything we *want*, in terms of material “stuff”, but we will have access to everything we *need* to live a good life, including a habitable planet.

2. What promising approaches do you recommend for achieving implementation of an Earth-centered worldview for Earth-centered Law?

Working to achieve the implementation of an Earth-centered worldview is a critical task, if we are to continue to have a habitable planet to live on. The Paris Climate Agreement of December 2015 was a milestone in terms of the fact that 196 nations reached a consensus on the urgent need to curb CO₂ emissions. However, the emissions pledges made so far could still see global temperatures rise by 2.7°C (we are told that a reliably safe level would be 1.5°C or less). Meanwhile, governments continue to award licences to drill for oil and gas, even in the most ecologically sensitive areas of the planet. An Earth-centered Law approach based on Earth Jurisprudence would no doubt conclude that a global agreement to leave two-thirds of the planet's oil, coal and gas in the ground would be a more effective and life-supporting means of achieving the desired outcome than the current regime of emissions reduction targets. If we could reach an agreement such as this we would at last stop playing Roulette with all our futures.

In terms of promising approaches for implementing an Earth-centered worldview, education is absolutely critical to achieving this. Ecological literacy must be at the core of every school's curriculum around the planet, from infancy onwards. And this does not only mean teaching children *about* ecosystems and how they function and remain resilient and healthy. We also need to give children experiences in and with nature, so that they are able to develop a deep connection with Earth and other species. In higher education, all courses would be taught with the philosophical underpinning of Earth Jurisprudence and systems thinking – this is really the key way to shift our collective thought processes and to sow the seeds for the next generation to embody and embrace life-sustaining solutions and ways of being. In terms of legal education, Earth Jurisprudence would infuse all law courses, as foundational concepts upon which our legal system is (or will be) based.

Earth-centered legal measures that are perhaps most achievable in Western societies in the short-term are laws that still sit to some extent within the current human-centric legal paradigm. For example, a robust law of Ecocide at international and national level would send a clear message to companies and governments that large-scale destruction of nature is intolerable, and would also serve to divert investments into cleaner technologies and better business practices.

Existing property law mechanisms could be used to codify governments' duty to preserve our natural inheritance for this and future generations, using the concept of the public trust doctrine, which maintains that certain elements of nature are held in trust by the state, on behalf of all citizens, because of their fundamental importance to ecological wellbeing.

A further option would be to support the establishment of commoners rights, as per the proposed *“Universal Covenant Affirming a Human Right to Commons- and Rights-based Governance of Earth's Natural Wealth and Resources”*. This proposal includes recognition of nature's rights and of the Universal Declaration of the Rights of Mother Earth and states that “If and when the application of human rights and nature's rights differ or conflict, such disagreement shall be resolved in a way that best promotes the integrity, balance, and health of Earth for the benefit of present and future generations and other beings”. This is essentially an Earth Jurisprudence approach.

In terms of the enforcement of nature's rights, Environmental Courts and Tribunals will be needed at local, national and international level, to ensure that sufficient weight is given to these new laws. In these courts, citizens would be able to bring claims to enforce the rights of nature.

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

The UK's uncoded constitution comprises a host of diverse laws, practices and conventions that have evolved over a long period of time. In order to bring Earth-centered Law into being in the UK, it will be necessary to enshrine in law some kind of foundational document. This document would set out our recent (and ancient) understanding of the relationship between humankind and the rest of nature, i.e. moving us from a mechanistic to an ecosystemic paradigm. It would also recognise the rights of nature. In recent years, there has been discussion in the UK about the need for a modern "Bill of Rights". Such a document could of course include rights of nature provisions. With or without a new Bill of Rights, the UK could enact a "Nature Rights Act", similar to the Human Rights Act 1998, although such an Act would inevitably carry more weight if it was backed up by some kind of constitutional recognition of nature's intrinsic rights.

Even more of an obstacle than the above is the current fixation on economic growth and the unfettered freedom of markets as the "cure all" for societal and global problems. Not all growth is bad of course, but an Earth-centered worldview is impeded by a mindset that is willing to sacrifice nature with destructive and exploitative forms of growth. Managed degrowth and moving to a steady state economic paradigm must be fully appraised as potentially better long-term options than the current myopic and self-destructive addiction to maintaining growth.

Following on from the focus on free markets and economic growth, government powers in relation to planning laws in the UK have been diminished by a series of legal reforms, while the power of private economic actors has increased. This has resulted in the decline of proactive planning policies and a 'laissez-faire' attitude to development. There is a strong argument for a more proactive form of planning, in order to reduce the threats of ecological harm, even though current and future uncertainties and the complex and fluctuating nature of ecosystems would inevitably preclude the finding of a perfect balance between human socio-economic systems and the rest of nature. The need for such proactivity applies equally to the terrestrial and marine environments.

The financialisation of nature is a key obstacle in the implementation of an Earth-centered worldview. For example, for so called 'ecosystem services' to be traded on capital markets, nature has to be parcelled up into separate, quantifiable units, in a way that undermines ecosystem integrity and existing relationships with the land (usually of indigenous people), by giving no recognition to existing social, cultural or spiritual links. Furthermore, offsetting seems largely to be a way of granting corporations a licence to destroy, because offsets provide a cheaper option than changing the business model that relies on the destruction of nature. Any kind of economic activity that relies on the financialisation of nature is about as far from an Earth Jurisprudence approach as it is possible to get and simply serves to cultivate an unhealthy attitude towards nature's immense (non-monetary) value and importance.

The unnatural and potentially limitless ability of money to grow and grow through the mechanism of compound interest is a further threat to the implementation of an Earth-centered worldview. This is because nothing in nature grows and grows – natural cycles include growth and decay. This means that on a purely economic analysis, at present it may well be more "profitable" to cut down a forest, sell the wood and invest the money in the financial markets, rather than to leave the forest in place. The ability to earn interest on money invested is purely a human invention, which needs to be revisited. Another issue is the thousands of international trade agreements that threaten government sovereignty and democracy and which appear to have seeded the insidious notion that companies are entitled to make a profit (for example, the Canadian-based Infinito Gold mining company's legal action against the Government of Costa Rica in 2013).

4. What are the top recommendations for priority, near-term action to move Earth-centered Law toward an Earth Jurisprudence approach? What are the specific, longer-term priorities for action?

In the short-term, a major and vital step forward would be for the UN to acknowledge the importance of the Rights of Nature by adopting the Universal Declaration for the Rights of Mother Earth, which is already supported by over 830,000 people in 122 countries worldwide.

The UN must also acknowledge that a new, life-sustaining economic system is urgently needed in industrialised countries. To push for continuing growth of certain kinds of destructive or depleting activity, when 4 of the 9 Planetary Boundaries have already been breached, is both negligent and a form of slow, collective suicide.

The establishment of a system of enforcement through specific Earth Law Courts and Tribunals is a critical way to ensure adherence to this new legal framework.

UNEP, the World Bank and the World Business Council for Sustainable Development would drop their support for false solutions to climate change and agriculture and false solutions to the preservation of ecological integrity. These developments simply serve to reinforce the primacy of the kind of financial mechanisms and derivative instruments that have resulted in climate change and the crises of food, energy and economic systems in the first place.

The UN would become a major proponent of Earth-centered Law and Ecological Governance systems. The UN would promote “best practice” methodology in Ecological Governance for governments, policy-makers and communities, based on the pressing need to restore ecosystems so that we can remain within (or return to be within) the limits of the 9 Planetary Boundaries, and by promoting the Precautionary Principle and “do no harm” ethos.

As a practical, easily implementable step forward, it would become mandatory for every commercial enterprise, governmental body and other service-provider to apply the principles of a systems-based methodology such as The Natural Step to their activities. They would have a number of years to transition to a way of conducting business that adheres to the “Four System Conditions for a Sustainable Society”. They would then be subject to external audit, not just of their financial reporting, but also of their business processes and supply chains and how they measure up in terms of their adherence to the Four System Conditions.

The education of all educators in systems thinking would become a top priority, as a means to facilitate the swift introduction of ecoliteracy at all levels of education.

Reference Materials:

Ecological Governance: Reappraising Law's Role in Protecting Ecosystem Functionality (2014) Olivia Woolley

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Nature's Trust: Environmental Law for a New Ecological Age (2013), Mary Christina Wood

Sacred Economics (2011), Charles Eisenstein

Earth is Our Business: Changing the Rules of the Game (2011) Polly Higgins

Last Child in the Woods (2008) Richard Louv