

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 Earth-centered Law is generally practiced now? And, what are the benefits of practicing Earth-centered Law from an Earth Jurisprudence perspective?

From the law perspective, the burgeoning Earth jurisprudence movement offers a deep philosophical anchor and a range of practical and multi-disciplinary approaches necessary to create law reform and societal change that will better support the natural world and human societies than our current system. Indeed, the Earth jurisprudence can be used to offer a cohesive framework within which law, politics, science, economics, ethics, traditional wisdom and human spirituality can be woven together to create a more effective governance approach to nurturing the Earth.

The introduction of the Earth jurisprudence could contribute to reorient the traditional environmental law, based on human needs rather than nature needs. Traditional Environmental law has been criticized as being embedded in industrial society's pro- growth governance culture, and simply legalizing severe environmental harm, rather than effectively protecting the Earth community. Moreover, it has also been incapable of calculating or 'managing' the cumulative impacts of human activities nor the reality of ecological limits. The need to introduced the principle in dubio pro natura into the different legal systems could promote the biocentric approach to preserve the environment. At the same time, it could provoke a new conception of natural elements being a common good rather than private property.

Earth jurisprudence contrasts with the current western legal system, which grants rights only to humans and selected human constructs such as corporations. Granting rights to nature is a radical rethinking of the role of our anthropocentric legal system, and yet the idea appears to be taking hold in many jurisdictions. Under an Earth jurisprudence approach, human rights are an interdependent and correlative subset of Earth rights; humanity cannot be healthy and secure if Earth is veering towards depletion and over- extraction. Ecological integrity is the principle, which has to guide the new environmental law in a way to protect the dignity of creation, recognition of address the most fundamental constitutional level to protect nature.

A vision of a world based on inclusive Earth-centered approach may be found in the Earth Charter, which emphasizes the links between social and environmental justice. For example, the Earth Charter affirms building "democratic societies that are just, participatory, sustainable, and peaceful." The Earth Charter joins meaningful and secure livelihood for all humans with ecological responsibility.

Finally, just to point it out that this new approach will promote the so-called "Earth Democracy", which has been defined as an attempt to fuse eco-centric ethics with deeper forms of human democracy and public participation. It promotes the idea that all human and non-human life forms

are borne of Earth (principle of communion), and as evolutionary companions, we all have a right to exist, thrive and evolve.

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

From the theoretical point of view, the introduction of the Earth Jurisprudence could contribute a better and strengthen protection of nature from different ways:

1. The recognition of the legal personality of Nature
2. The recognition of the Nature rights: the right to life; the right to non corruption of the diversity of life; the right to water necessary to maintain living systems; the right to clean air; the right not to have the balance of the Earth cycles altered; the right to restoration of harm caused directly or indirectly by humans; and the right to live free of contamination including from toxic substances and radioactivity.
3. The recognition not only of the right to environment but also and above all the duty of care to protect Earth's natural systems: in this sense, our current legal system allows for guardians and trusteeships for people and entities that cannot care for, or protect, themselves. There is the public trust doctrine that could be expanded so as to create a trust/trustee relationship with Earth's natural systems and entities.
4. Introducing changes in the locus standi for defending nature: There are many arguments to expanding the standing doctrine to include natural entities, especially when non-living entities such as corporations and trusts are already granted legal standing. The doctrine of guardianship is well established in civil law and could serve to protect the best interests of natural entities in legal proceedings.
5. Introducing the crime of "ecocide".
6. Introducing the principle in dubio pro natura
7. Introducing an action popularis to protect nature rights, public interest litigation and collective rights protection.
8. Granting rights for the future generations

To overcome the flaws of environmental law, mere reform is not enough. We do not need more laws, but different ones with no area of the legal system exempted. Practical approaches should be necessary too as:

1. Building rights of nature movements internationally and domestically: like the Global Alliance for the Rights of Nature, which was created at the World People's Congress for Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia in 2010 or the creation of the International Rights of Nature Tribunal. As in the history of all struggles for rights, social pressure is what moves things forward. Also, reach the convergence of schools of Ecological law as Earth jurisprudence/Earth Law with the other schools as the Rights of nature, Ethical approach to Environmental Law, critical Environmental Scholarship, Ecological integrity/Earth charter, Ecocide law and Eco-constitutionalism.

An emerging ecological consciousness is driving many grassroots organizations to consider new legal initiatives respecting Earth's integrity. For example, the UN Report of the Secretary General on Harmony with Nature released August, 2014 provides an historical overview of global initiatives wherein different governmental entities are adopting laws and policies providing legal consideration of nature or Mother Earth.

2. Rights of nature legislation and advocacy: for instance, the Community Environmental Legal Defense Fund (CELDF), which is responsible for assisting more than 150 communities in the USA to pass local ordinances that assert community self-determination and the rights of nature. Rights of nature legislation was also passed in Bolivia in 2010 and the introduction of Rights of Nature provisions into the Ecuadorian Constitution in 2008. The Ecuadorian Constitution and Ecuador's Rights of Nature case (the Vilcabamba Case) have offer important real-world examples of how the rights of nature can be legislated into modern legal systems, and interpreted by modern courts. The ecological approach to law is based on ecocentrism and holism.

From this perspective, the law will recognize ecological interdependencies and no longer favour humans over nature and individual rights over collectives responsibilities. Essentially, ecological law internalizes the natural living conditions of human existence and makes them the basis of all law including constitutions, human rights, property rights, corporate rights and state sovereignty. The transformation from the traditional environmental law to the Earth Law will not occur without people committed to it. For environmental law scholar will supposed to have a very critical self-reflection and courage, and for environmental lawyers to transform into "eco-lawyers". The environmental activism is crucial in a way towards to Earth-centred world-view.

3. Expanding legal education to consider the Earth Community: the work of the Center for Earth Jurisprudence the expansion of legal education to critique existing environmental law. Educate a new generation of lawyers about Earth Jurisprudence.

4. Challenging culture and building Earth centered governance: i.e. the work done by the Australian Earth Laws Alliance.

5. To promote the "Earth Democracy" approach as the one that is premised on the idea that the best decisions for nature's wellbeing are those decided by the principle of subsidiarity: decisions should be made at the lowest (closest to the parties) and most appropriate level of governance. For instance, the Community Environmental Legal Defense Fund (CELDF), when it works with organized communities to help draft local ordinances banning corporate actors from bringing into the community-unwanted commerce such as factory hog farms and hydraulic fracking for natural gas.

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

The traditional approach of environmental law raises some of the most obstacles. The environmental law should be re-assessed and revised. Main failures is that the traditional legislation have based on at managing negative environmental externalities of economic activities.

A primary cause of environmental destruction is the fact that current legal systems are designed to perpetuate human domination of nature instead of fostering mutually beneficial relationships between humans and other members of the Earth community. Major criticalities of the regulatory trends are focused on the emergency response approach; the lack of medium-long term vision and the support of the mainstream economic model (infinite growth paradigm on a finite planet).

(De)regulatory trend of environmental law has been characterized by an attempt to revise existing environmental legislation in order to streamline, simply and reduce it all the environmental law. The consequences are the decrease in the level of environmental protection, continued support of the mainstream economic model (infinite growth, paradigm on a finite planet. The result has been the increase deterioration of the environment.

The issue of compliance mechanisms to guarantee the enforcement of rights is just as important as the rights themselves. After the experiences of the TIPNIS in Bolivia and Yasuni ITT in Ecuador, there is no doubt that the governments of Ecuador and Bolivia have lost an historical opportunity to show in practice what could have been positive examples of the implementation of the Rights of Nature/Mother Earth, with these projects that have contradicted the Rights of Nature. These contradictions have shown us the limitations of their own discourse. The adoption of new laws to promote and enforce the Earth Jurisprudence and nature rights approach depends on the will of the government and an active civil society. However, these experiences have not closed all doors to developing and reinforcing these rights further.

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? (Note: give 3 to 10 priorities for action).

In order to guide domestic and international law to the Earth Jurisprudence approach, it would be necessary to rethink our environmental law and promote a shift to a new regulatory system based on the Earth Law. Most effective protection of the environment through law has to be based on the ecological sustainability and to promote sustainable pattern to promote the human development in harmony with nature. Ecological dimension has to be the starting point. In this sense, it is necessary to recognize the reality of ecological boundaries and bring our laws in touch with ecological realities, accepting the following hierarchy: Environment, Humans and Economy. The recognition of planetary boundaries should be considered as a non-negotiable bottom-line for all human activities. This hierarchal order has to be reflected in the design and interpretation of all laws governing human behavior.

It is necessary that legislators start to recognize that human well-being is a consequence of the well-being of the Earth systems that sustain us. In addition, it will necessary:

- to promote restorative justice (which focuses on restoring damaged relationships) rather than punishment (retribution);

-to recognize that all members of the Earth community are subjects before the law, with the right to the protection of the law and to an effective remedy for human acts that violate their fundamental rights and

- to recognize the need for legal systems to take an evolutionary leap forward by recognizing legally enforceable rights for nature and other-than-human beings.

It is crucial to consider the acceptance of ecological integrity, planetary boundaries, rights of nature as legal principles, which could be applied to the entire legal system rather than just environmental law (all levels of law).

Therefore, at present the most promising prospects for promoting “eco-centric” law and governance appear to be at the local level, where appeals to traditional values and cultures of resistance have increasing resonance. The development of a strategy would be a good beginning. It would base on helping communities to draft local ordinances that re-assert their right to prohibit activities harmful to their well-being, recognizing rights for natural communities, enabling local governments and individuals to sue for damages to be used for the restoration of any damage to ecological communities, and stripping away the legal personality of corporations who contravened the ordinances. The ordinances empower local communities to assume the role of guardian for nature, and damages are measured with reference to the actual harm caused to the ecosystem, rather than to a human property owner.

The speed and the extent to which existing environmental and social justice organizations and networks adopt this perspective is likely to be a crucial factor in determining the impact of eco-centric governance initiatives. If these organizations realize that they could greatly enhance their effectiveness by collaborating based on the common understanding that sustaining human well-being requires protecting the whole Earth community, the ecocentric approach would spread rapidly through the web of relationships that already connects them. This could foster a rapid uptake of this approach of Earth jurisprudence.

The long-term action would be the recognition of the new crime of the “Ecocide”, making an undeniable link between humanity, the environment on which it depends and the increasing risk of war created by resource depletion and land degradation, creating a mandatory duty for all people to respect the Earth in all circumstances in their relation with each other. At the same way, this recognition gives practical recognition of the Earth as an entity worthy of protection, it focuses on preventing the harm not on blame and this regulatory characteristic shifts the “emphasis from the protection of individual interests to the protection of public and societal interests.

The premise also utilizes the punitive technique of social control by holding responsible natural persons who do not take regard of their proper Duty of Earth Care. To achieving fast results, it is crucial the rule of strict liability, removing the need to prove intent and ensuring only the extent, gravity and effects of the harm need to be proved. Absolute liability will allow swift punishment of individuals to act as a deterrent and lead quickly to the prevention of further harm.