

2018 Harmony with Nature – Theme: Earth Jurisprudence

By Elizabeth Macpherson – Earth-centered Law

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

In my view Earth-centered Law can only be practiced from an Earth Jurisprudence perspective. The dominant approach to the design, implementation and practice of law, all over the world throughout history, has been that humans are the masters of the Earth, and natural resources are to be exploited for human benefit. That is the basis for our education as lawyers, and is the assumption underlying the laws and institutions that regulate the use of natural resources across the globe. We can only challenge those assumptions by changing the way that we conceptualise, teach and practise law and other disciplines impacting on the regulation of natural resources and the environment, by using an Earth Jurisprudence perspective.

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).

The recognition of legal rights for nature, something that has been led by Latin America (principally Bolivia, Ecuador and Colombia) and Aotearoa New Zealand, is an example of a novel and promising approach to implement an Earth-centered worldview for Earth-centered law. Key examples of this approach are the recognition of the Whanganui River (Te Awa Tupua), Urewera Forest and Taranaki Mountain as legal persons in Aotearoa New Zealand and the declaration that the Rio Atrato is a legal person by the Constitutional Court of Colombia. In Ecuador and Bolivia the rights of Mother Nature have been recognised more broadly in constitutional documents. There are a number of other countries around the world beginning or attempting to implement similar laws.

However, as promising as these creative legal developments are, they are *ad hoc*, and exist within a western, utilitarian, property-based system of natural resource regulation. In this context, legal rights for nature are limited, and they are vulnerable to being suspended or overridden by other rights – like the rights of the state to manage and distribute natural resources and the rights of third parties who hold property rights to use and exploit them. As well as recognising legal rights for nature, and recognising natural resources as legal persons, we need to consider in more detail their interface with existing regulatory regimes. For example, can a river that is a legal person do enough to protect the rights of the river where the river doesn't 'own' its water? For as long as we have a propertised system of natural resource regulation we need to answer these questions, or we need to consider whether another, more Earth-centered system of natural resource regulation is more appropriate.

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

In my view there are two key impediments to implementing an Earth-centered worldview in Earth-centered Law. The first is culture. Many people, both in governments and in the general public, are opposed, or at least skeptical, of the idea that nature can have rights. They are comfortable with established legal fictions, like the concept of the corporation having legal personality, but they cannot understand how a natural feature like a river or a tree can be conceived of as a 'person'. Furthermore, they do not see any point in doing so, and they suspect that legal rights for nature might be merely symbolic, and result in no practical change. In order to overcome this challenge we need to educate people from the youngest age that the Earth is something to be cared for and looked after, and not something to be used or wasted for the benefit of humans. Indigenous peoples have been taking a more Earth-centered approach for millennia, and there is much we can learn from their culture about environmental symbiosis, harmony and respect.

The next problem is institutional. Bolivia and Ecuador are often put forward as examples of strong constitutional protections of the rights of nature, but such protections have proved difficult to implement. The Earth cannot become the centre of our laws and legal systems if we do not have strong institutions to uphold the Earth's rights. A river cannot enter into a contract to buy a house, or physically turn up to court. This means, ultimately, that upholding the rights of nature (an *ecocentric* approach) depends on humans to fight for those rights. There has been an emphasis in both the Whanganui River and Rio Atrato cases on designing strong, representative, collaborative and Indigenous-led institutions to plan, implement and defend the rights of each river. More research is needed to track the work of these institutions as they begin the task of implementing the necessary legal and policy frameworks.

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).

I would identify 3 key priorities for action:

1. Work with national governments, NGOs and local communities to promote the creation of laws that recognise and protect the legal rights of nature and the necessary accompanying institutional frameworks. Laws protecting the legal rights of nature must be made at the constitutional level in connection with existing human rights protections like the right to a clean environment, and thereby have the ability to override other inconsistent laws. These protections must also be enforceable by any member of the public. There is currently significant international public interest and momentum behind recognising natural resources as legal persons (especially rivers). Now is the right time to use direct communication and social media to support more countries to implement such laws. This approach must be reinforced by an international declaration recognising the rights of nature.
2. Work with national governments, NGOs and local communities to encourage more Earth-centered education. This does not begin and end with the training of lawyers and judges, although Earth-centered Law should be taught as a core component of a law degree. However, children should learn about the inherent rights of nature, and the

conception of natural resources as rights bearing entities, from their earliest education. Physical and technological resources will need to be developed to communicate these messages to students, and the Earth-centered approach will need to be incorporated into the national curriculum. In order to support the cultural shift needed to perceive nature as bearing rights, Earth-centered education must be scaffolded at all levels of the education system from kindergarten to university. This will obviously require public funding and commitment from politicians.

3. Consider what broader changes might be needed within domestic and international law, beyond recognising legal rights for nature, to move towards an Earth-centered approach. The United Nations and domestic governments need to begin a research programme to study how law and policy is impacting on the Earth now and into the future. The result of this research programme should be clear recommendations for fundamental and sustainable change in how we design and organise laws and institutions to regulate the sustainable use and protection of nature, in a way that is both culturally appropriate and consistent with existing human rights expectations.