

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?

What Earth jurisprudence means and why it is necessary

Earth jurisprudence is a philosophy of law based on the understanding that the primary purpose of law and governance should be to guide human beings to pursue their own well-being by contributing to the integrity, health and beauty of the community of life we call “Earth” (“Earth community”). Earth jurisprudence is ecocentric rather than anthropocentric in that it is based on the understanding that humanity is part of an indivisible, living community of interrelated and interdependent beings and that maintaining the integrity, balance and health of the Earth community as a whole is of paramount importance because that is a pre-requisite for long-term human wellbeing. For further information in this regard see the *Universal Declaration of the Rights of Mother Earth* (2010)

The customary laws and practices of many indigenous peoples throughout the world reflect their understanding that if a human society is to prosper it must have a good understanding of the functioning of the ecological systems within which it is embedded, and have effective techniques for ensuring that people maintain respectful relationships with the other components or members of those ecosystems.

However most contemporary legal systems reflect the erroneous understanding that humans are separate from nature, and that our role is to subdue and dominate nature, and that the best way to increase human well-being is through exploiting all the other beings. Consequently these legal systems define humans and juristic persons as legal subjects with rights, and everything else as property which it is lawful to exploit. This ensures the short-term financial or material interests of those that own significant amounts of property (primarily companies and a small minority of human beings) will take precedence over the long-term wellbeing of the Earth community, including humanity as whole. Redressing this imbalance requires the development of new legal techniques that indigenous societies did not require. One technique is to recognize in law that the Earth community and all the beings that constitute it have inherent rights (usually referred to as rights of Nature or of Mother Earth) and corresponding duties on humans to respect and defend those rights.

Features of a legal system based on Earth jurisprudence

A legal system based on Earth jurisprudence would:

- reflect the reality that our collective interests are best served by protecting the ecological communities from which we derive everything that is essential to our well-being (rather than being reflecting the delusion that we can dominate, control and exploit Earth infinitely);
- recognise that the Earth community and all the beings that constitute it (e.g. rivers, forests, and other species) have the right to exist and to continue to play their specific roles in continuing vital ecological and evolutionary cycles and processes;
- impose legal duties on all human beings and juristic persons to take measures to ensure that they do not infringe on the inherent rights of other member of the Earth community and to restore

- any harm that they cause, and so begin the process of restoring healthy relationships between humans and the other members of the community;
- have courts or tribunals that decided conflicts between humans, and between humans and other beings, on the basis of what outcome would best maintain the integrity, balance and health of the Earth community;
- promote accountability in order to achieve restorative justice (which focuses on restoring damaged relationships and ecosystems) rather than on retribution or punishment.

Despite the huge increase in the number and range of international and national legal instruments since the 2002 Earth Summit in Rio de Janeiro, Brazil, the rate at which human activities are degrading ecological systems has increased. The hypothesis that industrialized consumer societies can be transformed into ecologically sustainable societies without making fundamental change to the purpose and nature of governance systems is no longer sustainable. The evidence of the past 25 years (and more) shows that despite the achievements of environmental governance, the worldviews, social forces and structures of society that are responsible for driving the acceleration of environmental degradation have not changed significantly. Millenium Development Goal (MDG) 7: *Ensure environmental sustainability*, cannot be achieved using existing governance systems (indeed even the achievement of the targets relating to this goal will not result in the achievement of this goal). A failure to achieve MDG 7 will prejudice the attainment of most of the other MDGs such as *Goal 1: Eradicate Extreme Hunger and Poverty*.

Benefits of implementing Earth jurisprudence

Earth Jurisprudence:

- changes the purpose and structure of legal and governance systems in ways that address the systemic flaws that prevent existing governance systems from being able to respond adequately to the major challenges of the 21st Century (e.g. climate change and biodiversity loss) because the activities that are driving the harm are lawful under current legal system;
- enables governance systems at all levels (e.g. local, national, international) and across all cultures to be developed in a manner that is mutually consistent and reinforcing and that is guided primarily by our understanding of how ecosystems function rather than by ideology;
- results in better decision-making because the impacts on the whole system must be considered and the interests of the whole Earth community (including of humanity) take precedence over the short-term economic interests of corporations and human beings;
- facilitates the necessary shift away from strongly anthropocentric world views by explicitly recognizing and enforcing the duties on human beings to seek ways of living well without compromising the ability of other-than-humans to play their ecological roles;
- promotes the integration of science and governance and enable scientific findings (e.g. regarding ecological limits that must not be exceeded) to be guide legal decision-making about what human activities should be permitted and how disputes should be resolved;
- provides a framework within which human rights and environmental issues can be integrated and a platform for collaboration between environmental and social justice advocates; and
- empowers those who defend ecosystems and local communities by giving legal recognition to the fact that they are upholding pre-existing and fundamental rights instead of prosecuting them for infringing on private property rights (e.g. for the crime of trespass).

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 following approaches have proven to be successful to date but in all cases limited access to funds is a key constraint.

Building a global movement

The adoption by civil society and community based organization of Earth jurisprudence as a means of framing and explaining their work creates a platform for uniting a wide range of organizations (e.g. organizations concerned with human rights, social justice, climate change, environmental justice, or conservation). This is being promoted by organizations such as the Global Alliance for the Rights of Nature (see <http://therightsofnature.org>). Rights of Nature/ Mother Earth is gaining momentum as more and more organizations realize that human rights cannot be sustained without protecting the ecosystems on which human well-being is based, that a common approach is necessary and that the objectives which they seek to achieve are unattainable within existing legal and economic systems. For example, climate change cannot be prevented without system change.

International Tribunal for the rights of Nature

The formal establishment of the International Tribunal for the Rights of Nature by the signature of a People's Convention in Paris in December 2015 is particularly significant. The Tribunal:

- is effectively a pilot study of how a tribunal comprised of experts from different disciplines could apply the Universal Declaration of the Rights of Mother Earth (and international human rights law) in specific circumstances; and
- will generate judgements that will develop Earth jurisprudence in practice and map out a way forward by identifying what should be done to rectify any contraventions (i.e. restorative justice in practice) and who is accountable for doing so. (See <http://therightsofnature.org/rights-of-nature-tribunal>.)

Some of the reasons for the success of the Tribunal are that it demonstrates that the myriads of local environmental crises are symptoms of the systemic, global violation of the fundamental rights and duties recorded in the *Universal Declarations of the Rights of Mother Earth*. The hearings communicate the terrible degradation of Earth (most of which has been authorized by law) in a manner that makes a powerful intellectual and emotional impact on the audiences and the judgements explain what should be done to restore ecological health and who should be held responsible.

Community self-determination

The adoption by local communities (particularly in the United States of America) of legislation and charters that recognize rights of Nature as part of a wider process of community self-determination shows that this approach can be applied effectively by local communities to protect their rights and to enhance sustainability, simultaneously. (For example see: <http://celdf.org/rights/rights-of-nature>). This approach is effective because it addresses specific problems which local communities experience as a consequence of dysfunctional governance system (e.g. an inability to prevent hydraulic fracturing where they live) and reveals how many state institutions act in the interests of corporations instead of in the interests of the community or the common good.

Living well in harmony with Nature

Several states and many organization in the Andean region reject the idea that the primary role of the state is to maintain consistent growth in gross domestic product ("GDP") and full employment. Instead they view the primary role of the state as being to safeguard the conditions necessary to enable people and communities to live well by living in harmony with nature. The legal recognition of the rights of nature or *Pachamama* (for example in the Constitution of Ecuador and in Bolivian

legislation) is understood as a means to achieve this larger objective. One of the advantages of this approach is that people more readily embrace the larger goal of “living well” (*el Buen Vivir/ Sumak Kawsay*) than of sustainability or even rights of Nature in isolation.

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

- Earth jurisprudence is not simply a new idea, it requires a very fundamental shift away from an anthropocentric worldview towards an ecocentric worldview. Many important policymakers and decision-makers do not have the capacity or motivation to make that shift.
- There are insufficient institutions devoted to developing and disseminating Earth jurisprudence or that have the capacity to do so. Few law schools teach Earth jurisprudence or have the staff to do so. Most educational, religious, economic, political and legal institutions continue to perpetuate the anthropocentric myth that human beings are exceptional and are separate from, and superior to, all other beings despite the fact that there is no scientific basis for these beliefs.
- The transformation of legal systems to reflect Earth jurisprudence is likely to be resisted by financially powerful corporations and sectors of society that regard Earth jurisprudence as inimical to their interests (e.g. mining and oil and gas companies).
- Inadequate funding (from both public and private sector donors) for the development and disseminating of Earth jurisprudence ideas and the establishment of institutions that apply it (e.g. the International Tribunal for the Rights of Nature).

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).

1. Adopt a United Nations resolution endorsing the importance of exploring the potential of Earth jurisprudence as a framework for developing international, national and local governance systems that will enable human communities to live well in harmony with nature, and encouraging public and private sector institutions to make resources available for this purpose. (This is a short-term priority intended to catalyse investment in developing and implementing these ideas.)
2. Establish a fund under the auspices of the United Nations to fund on-going research into the practical application of Earth jurisprudence in relation to: (a) the achievement of the MDGs and of specific goals and plans of actions such as the Aichi Biodiversity Targets adopted by the Conference of the Parties to the Convention on Biological Diversity; and (b) the implementation of the mandates of certain UN agencies (e.g. UNEP and the FAO). (Short-term priority aimed at disseminating these ideas within the United Nations.)
3. Involve indigenous people’s organisation (including the United Nations Permanent Forum on Indigenous Issues) in all UN initiatives concerning Earth jurisprudence in order to benefit from their deep understanding of how to maintain respectful relationships between human beings and the ecological communities within which they live.
4. Build a global civil society movement committed to implementing Earth jurisprudence. (This would have to be done on a continuous basis by civil society organisations and local communities.)

5. Provide expert technical assistance to communities, municipalities, states and governments which wish to enact legislation that gives effect to Earth jurisprudence (e.g. recognises rights of nature). This is an immediate and on-going priority.
6. Develop global capacity to undertake the development of Earth jurisprudence and means of implementing it in practices and to educate and train others, including establishing or strengthening learning/teaching hubs in areas around the world where there are people receptive to these ideas, establishing collaborative relationships between hubs, and developing courses and curricula to be offered by institutions throughout the world and via the internet. This is a priority in the short, medium and long-term.
7. Replacing the dominant societal goal of pursuing “development” (i.e. GDP growth) with the goal of enhancement of individual and collective fulfillment through participation in healthy Earth communities. This is a priority in the medium to long-term.