

2018 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 how 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 might look like persuading our fellow humans that we are part of Nature, not its proprietors, persuading more governments to incorporate Rights of Nature into their laws, and helping them effectuate Her rights. Public education would be central to this practice with emphasis on the “big picture” tenets of Earth Jurisprudence because that picture is the easiest to see and the most likely to inspire public support. Overall, the focus might be on acting locally, where people are personally connected to Nature and where government is most accessible and best connected to the public it serves.

The present practice of Earth-centered law in the United States has successfully established and effectuated significant protections for components of the natural world. That effort will continue. However, the current practice is often very technical and does not engage the public. Environmental protection regulations are detailed, difficult to read, and comprehensible mainly to those with scientific, legal or other specialized training. While the legal process for formulating and adopting them is technically public, it is unfamiliar and unengaging to most people. Similarly, complex statutory and regulatory systems for slowing environmental degradation, which require business entities to buy or trade for the right to pollute, are complex; and they function outside the public purview. Litigation brought to enforce environmental protection standards is vital, but it is often too substantively technical to engage broad public interest. More basically, litigation in the United States is adversarial by definition and therefore unlikely to build public consensus about the necessity of living in harmony with Nature.

The benefit of practicing Earth-centered law from an Earth Jurisprudence perspective is that the public can understand and embrace that perspective. Technical regulations and complex litigation are not part of most people’s lives. But, Nature is. People know they depend on Her for life’s necessities: air, water and food. And, they are personally and emotionally connected to surrounding natural communities: the wild birds outside their windows, the rivers that flow through their cities, and the mountains and forests they visit for recreation and rejuvenation. Showing people the big picture of Earth Jurisprudence, focused through the lens of their local experience, will help them embrace an holistic world view rooted in respect for Nature.

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

One universal concern seems to inspire action everywhere: water. Legislators and courts around the World appear most likely to recognize and enforce the Rights of Nature to avert significant threats to water sources they depend upon. In the U.S., cities first adopted Rights of Earth laws where fracking polluted local waters. Santa Monica, California was the first U.S. city to adopt such a law absent an immediate threat. However, Santa Monica had previously weathered a major environmental crisis resulting from contamination of local water wells by the gasoline additive commonly known as MTBE; and Santa Monica has a long history of environmental stewardship. These successes can be duplicated, most readily in places where surface and subsurface waters are or have been threatened or where residents are committed to environmental sustainability. Existing laws can be utilized as models to facilitate the process.

It is also promising that Earth-centered lawyers have successfully enlisted government workers in the promotion of Earth's rights. In the U.S., all levels of government have adopted laws and regulations that protect the natural environment; and they have incorporated into their organizational structures worker groups, including attorneys, who develop proposed environmental protection laws and regulations, draft sustainability plans and administer environmental programs. Experience shows that, these workers can participate in effort to promote an Earth-centered world view and Earth-centered Law. In Santa Monica, members of the environmental community, who routinely make proposal to city officials and staff, proposed preparation and adoption of a Sustainability Rights Ordinance. Legal and environmental staff worked with them, and the City Council unanimously adopted the law. It recognizes the rights of people, natural communities and ecosystems to exist, regenerate and flourish; and it authorizes individuals to sue to effectuate rights of the natural world.

Likewise, government resources can be used to educate the public about the Earth-centered world view. Local environmental protection laws, plans and programs can be enfolded within the mantle of Earth Jurisprudence by incorporating its language and tenets into their text. Also, every time a local environmental protection law or sustainability plan is adopted or amended, and every time that a local environmental program is instituted or publicized, the commitment to effectuate Earth's Rights can be reiterated clearly and publicly to promote general recognition and support.

Finally, recent developments in Earth-centered law and legal scholarship show promise. For instance, climate-change litigation based on the Public Trust Doctrine has been allowed to proceed in court, as has "animal rights" litigation seeking legal "personhood" for nonhuman animals. Some commentators have explored harmonizing these approaches with Earth Jurisprudence. Further exploration could be valuable in obtaining formal judicial recognition of Earth's rights.

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

In the United States, the political impediments to implementation are obvious, particularly at the national level. As Herbert Hoover famously stated: “The business of America is business.” Our capitalistic economic system strongly favors the private acquisition of wealth through the formation of corporations, which serve the financial interests of their stockholders and have no legal responsibility for the general welfare. Their money and the wealth of the “top 1%” of the population dominate U.S. politics at the federal level. Likewise, the impediments within the legal system are clear. Our real property law staunchly protects private ownership rights, and our national jurisprudence rests on the principle of “stare decisis”. So, the courts stand by precedent and do not disturb settled points. They avoid overtly establishing new policy, except at the appellate level through constitutional and statutory interpretation. Thus, it is difficult to gain judicial recognition of new rights through the court system, unless and until the society supports their creation. Finally, in a business-oriented and legalistic society, officials, attorneys and others may have difficulty embracing the language and concepts of Earth Jurisprudence. The phrases “Mother Earth” or “Rights of Nature” may be dismissed as imprecise and ambiguous.

At the local level, political impediments are less formidable, perhaps because human communities tend to depend on local water supplies and to relate to natural communities near their homes. Also, local government and local officials are nearby. Thus, local government may tend to be somewhat more transparent, accountable, and responsive to the whole community, as opposed to financially powerful individuals and entities. The adoption of Rights of Nature laws in numerous U.S. cities likely reflects these realities.

Nonetheless, local obstacles certainly exist. In some states, they arise, in part, from the financing mechanisms available to local governments. Cities and counties in the U.S. depend heavily upon tax revenues and fees to fund public services. However, most local elected officials are reluctant to raise taxes; and the power to tax property has been circumscribed in some states through initiative measures. Thus, cities and counties turn to business and real estate development to raise revenues. These economic realities mean that local elected officials and local public executives, e.g., city managers, may favor business interests and resist adopting policies that they perceive as being anti-business and anti-development.

Local officials may also favor short-term, common place goals, over novel, long-term innovations. Little incentive may exist for officials to take on unfamiliar causes and champion change. They may be particularly cautious about recognizing, and even more cautious about implementing, new rights. Whether the community is a small town, a city, a nation or the Earth, the gains of one community member may be perceived as another’s loss and vigorously opposed as such.

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?

Near term priorities should include expanding legal and public recognition of Earth Jurisprudence by promoting adoption of more Rights of Nature laws, using existing models. Once, such laws are adopted, implementation should be a near-term priority. It could occur in a variety of ways. For example, the local environmental community could work with city staff members and attorneys to engraft into the local development approval process consideration of any proposed project's impacts on Nature's Rights. A city ombudsperson could be appointed to represent Nature and Her rights at any public hearing on a proposed development or other project that would impact the natural environment. Any attorney practicing from an Earth Jurisprudence perspective, could appear at any such hearing and provide input from that perspective. Informal dispute resolution or non-binding mediation services could be created to address controversies relating to adverse impacts on Nature's Rights outside of the judicial system or even as adjuncts to it.

Public education should also be a near-term priority. Our law usually changes slowly, but it does evolve to reflect public norms and values. So, moving Earth-centered law toward Earth Jurisprudence may require broad public acceptance of the Rights of Mother Earth. Explaining and publicizing Rights of Nature laws in all types of official government statements and publications is one way to enhance public awareness, interest and support. The priority should be taking the message to people in ways that are easily understood and relevant to their lives. For instance, municipal signage along a river walkway might say: "No littering." But, it could be improved to say: "Nature has rights too. Respect the river's right to be clean. No littering." Likewise, press releases and public newsletters about environmental programs could highlight municipal recognition of Nature's Rights. And, education programs could be established for school children by local officials; and government employees and Earth-centered lawyers volunteering their time to speak in public schools and share the perspectives of Earth Jurisprudence.

Longer term priorities include securing formal judicial recognition of Mother Nature's rights and establishing the means to adjudicate legal disputes involving Her rights. Extensive interdisciplinary collaboration among philosophers, ethicists, scientists, educators, lawyers and others will continue to be required. Legal scholars will need to continue exploring possibilities for broadening concepts of standing and legal personhood and for addressing issues raised by the existence of political boundaries in a natural world which has none. Nature's rights will need to be incorporated into international law. New forums may need to be created.

Co-ordinating and facilitating of this world-wide effort must continue to be a priority.