

2018 Harmony with Nature – Theme: Earth Jurisprudence

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

Earth Jurisprudence is an emerging philosophy of law and governance that is based on the recognition that human beings are part of and dependent upon Nature. These insights are conveyed by the notion that human beings are members of an Earth Community, where it is acknowledged that the health and welfare of the human species is inextricably linked to the health and welfare of the Earth Community as a whole. Earth Jurisprudence derives its epistemological foundation both from scientific knowledge (which increasingly views Nature in terms of ecology: i.e. with a focus on interrelationships, interconnectedness, and dynamism) and ecological ethics (which postulates that Nature has intrinsic moral value on the same footing as human beings). The combined insights from science and ecological ethics produce a set of principles and an overarching framework for human legal and governance systems aimed at enhancing rather than undermining the resilience of human beings – and the non-human species and ecological systems that have co-evolved with human beings – to co-habit the Earth for generations to come. These principles include interdependence, interconnection, and community, the inherent value of all beings, cooperation, mutual support, holism, ecological sustainability, and more.

It is my understanding that Earth-centred Law is a term referring to legal rules and instruments that are in themselves compatible with the philosophy of Earth Jurisprudence. On this view, an example of Earth-centred Law would be legislation and judicial pronouncements recognising the rights of Nature. Despite existing on the law books, these elements of Earth-centred Law (such as rights of Nature laws) are not (yet), at least in most instances, practiced in accordance with the philosophy of Earth Jurisprudence. One reason for this is that the overall system of law and governance (into which rights of Nature are incorporated) is itself geared towards the old anthropocentric, mechanistic and individualistic paradigm. To avoid this, legal structures, procedures, and institutions must re-orient themselves in order to foster a transition towards legal and governance practices that cohere with the principles underlying Earth Jurisprudence.

Environmental law too reflects many of the (anthropocentric, mechanistic and individualistic) assumptions and values about Nature and human-Nature relationships that are embedded in current legal and governance systems. The mere term “environment” in environmental law is indicative of the view that Nature is “out there”, the periphery, while human beings are the central point, the pivot around which all considerations of importance must spin. Certain environmental legal texts explicitly recognise the instrumental value of Nature, as a resource to support human needs for energy, food and transport, and some even acknowledge Nature’s aesthetic value. References to the intrinsic value of Nature are few and far between. Moreover, it is expressly noted in many environmental legal instruments that Nature is to be protected *to the extent* that such protection is for example compatible with “sustainably” growing (or developing) the economy, does not place an “undue” burden on the private sector, or otherwise cause disruption to “business as usual” (hence, e.g. austerity measures).

Human legal systems in their current state are incapable of reducing the rate of human destructive impacts on Nature, let alone revert them. The principles underpinning the philosophy of Earth Jurisprudence may help to re-orient legal and governance systems on a new trajectory, one that will enable human beings to develop ecologically sustainable societies that thrive in harmony with Nature.

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 prioritised).

(1) Educational and training programmes. Educational programmes must be developed for all ages, from the first years of school, through to universities and post-university training, to impart knowledge about Nature, ecology, and the ecological ethics of Earth Jurisprudence. In legal educational and training programmes, Earth Jurisprudence and Earth-centred Law should be taught as compulsory components, to enable the lawyers, policy-makers and judges of the future to be eco-literate and able to further the development of Earth-centred Law and Earth Jurisprudence.

(2) Research into the implementation of rights of Nature. With an increasing number of countries recognising, in one way or the other, the rights of Nature, it is necessary to develop research programmes related to the implementation of the rights of Nature and the supporting Earth Jurisprudence framework. As Earth Jurisprudence and the rights of Nature entail fundamental overhauls of the legal system as we know it today, implementation will impact many legal (as well as policy and economic) sectors, and will require creativity, innovation, and the sharing of experiences, ideas and solutions.

(3) Powerful social movements. Powerful social movements, wide mobilisation and public support (both volume and visibility) is imperative in order to force governments to fulfil their legal promises (such as to implement 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?

(1) The structural preponderance of legal systems towards the anthropocentric paradigm. There is a risk that instances of the new, Earth-centred worldview (such as rights of Nature laws) are merely swallowed by the anthropocentric, mechanistic and individualistic legal structures into which they are adopted. The very structure of law maintains the current power dichotomies and the illusion of human separation from and superiority over Nature that is responsible for driving humanity towards extinction.

(2) Lack of attention to norm-interaction and integration. Existing rights of Nature laws focus on substantively articulating what rights Nature have under the law. Relatively little attention has been paid to the interactions between rights and right-holders (e.g. rights of Nature and human rights) and to hierarchies of rights (which and whose rights prevail and under what circumstances). This lack of internal legal coherence is problematic in and of itself and may also open up for an (excessively) anthropocentric approach being snuck in at the moment of balancing the rights of Nature with other rights and right-holders.

(3) *Lack of structural mechanisms and institutions to support implementation.* There is also a need to build structural mechanisms in law and beyond law that support the implementation of the Earth-centred worldview. In relation to the rights of Nature, it is necessary to establish structural mechanisms and institutions responsible for ensuring their implementation, fulfilment and enforcement (including procedural tools to enable e.g. access to justice for communities and individuals engaged to protect the rights of Nature).

(4) *Lack of educational and training programmes on Earth-centred Law and Earth Jurisprudence.* Many law schools either omit environmental law as an obligatory part of the legal educational programme or, if it is obligatory, teach an environmental law that is steeped in the anthropocentric vision of Nature as a resource for human exploitation. There is, therefore, an urgent need to develop educational and training programmes on Earth-centred Law and Earth Jurisprudence, both as compulsory components of undergraduate and postgraduate legal educational programmes and as post-educational training programmes for policy-makers, legal practitioners, government officials, and judges – i.e. the persons who will be directly responsible for ensuring that Earth-centred Laws are implemented and enforced.

(5) *Lack of political will and corruption.* Implementing an Earth-centred worldview requires immense political will to that end, through inter alia the allocation of resources, legal and policy changes, etc. Such political will may be lacking, or fleeting (given short political terms). Corruption, conflicts of interest and bribery are also widespread.

(6) *Social movements not (sufficiently) visible and lack funding.* Social movements and public pressure are needed to effectuate the legal and policy changes to e.g. recognise and implement the rights of Nature. Ultimately, someone has to propose the legislation and/or bring the court case. In most cases, policy-makers will not act as the initiators. Civil society groups with such ambition do exist but often lack the financial and human resource means to engage in litigation or to mobilise large masses of the public (and thereby put pressure on politicians to act).

(7) *Cultural and ideological practices and beliefs.* The role of (dominant) cultural, societal and ideological beliefs, practices and discourses on the question of human-Nature relationships is not to be undermined. Religious scriptures, especially in Christianity, have played a major role in supporting such discourses. Cultural and ideological beliefs, rooted in emotion, are difficult to change even where there is strong empirical evidence to call them into question.

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).

Near-term action:

- Get rights of Nature into strategic legal jurisdictions where the rule of law and institutional capacities are robust, so that, once rights of Nature are adopted, the legal obligation to implement the rights of Nature and re-orient the legal system to fulfil the rights of Nature is taken seriously and put into effect. New Zealand is one good example of a legal system with promising potential in that regard. The strategic value lies in the likelihood that adopting the rights of Nature framework in legally-robust jurisdictions would enable legal practice and jurisprudence to develop, and could result in the development of best practices and models, which may be taken up by other countries and regions.

- Increase public and political awareness around the rights of Nature as a practical instrument for achieving the necessary societal transition towards ecological sustainability. This means enhancing visibility, campaigning, and lobbying. It also means increasing the number of researchers working on Earth-centred Law, with the aim particularly to explore and shed light on the potential of an Earth-centred framework and the rights of Nature for societal transformation. Focusing on the practical value of Earth-centred Law, such as the potential of the rights of Nature to supersede procedural barriers and enable access to justice, may serve to persuade those actors who are less motivated by the philosophy of Earth Jurisprudence (it is better to bring them along with pragmatism than not at all).
- Work strategically with receptive States (“low hanging fruits”) to support and encourage their efforts to propose Earth Jurisprudence and the Earth-centred paradigm at global negotiations, and to take action at the domestic level, in preparation for moving towards the development of an international legally-binding instrument in the future.
- Develop summer schools and shorter university-level courses on Earth-centred Law, Earth Jurisprudence and the rights of Nature.

Long-term priorities for action:

- Incorporate Earth Jurisprudence as a part of both compulsory educational programmes (from the first years of school) and the curriculum at University-level. In addition, require a discipline-specific integration of Earth Jurisprudence and the Earth-centred worldview into University-level degree programmes.
- Mainstream Earth Jurisprudence and rights of Nature into global governance processes designated with tackling the global ecological crises: e.g. the Convention on Biological Diversity, the UN Framework Convention on Climate Change, the UN Sustainable Development Goals process, UN Ocean, and more.
- Develop best practices, and innovative platforms for sharing best practices among communities engaged in implementing Earth-centred Law and Earth Jurisprudence across the world. Capitulate on promising technological developments to enable the development of global networks of interactive and collaborative communities, e.g. the Blockchain.
- Establish necessary institutions, at global, national and local level (e.g. Ombudsmen for the rights of Nature), charged with monitoring the implementation of e.g. the rights of Nature and Earth Jurisprudence.