

2019 Harmony with Nature – Theme: Earth Jurisprudence

By Bruno Petriccione – 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?

For millennia, legal systems the world over have evolved around the anthropocentric premise that humanity is separate from the rest of the Earth system and has a paramount right to shape and exploit the planet's "resources" for the exclusive advancement of the human species. According to time and place, this right has been justified by a range of beliefs and philosophies, perhaps the most incisive being the Judeo-Christian version of creation in which humans are given explicit instructions to "subjugate" the Earth and "have dominion" over all other living creatures. This concept of the separateness of man as a species was further reinforced by the new scientific thinking heralded by the Enlightenment in the 17th century, when man's belief in his right (if not his duty) to exploit the planet's natural resources was underpinned by his conviction that science and technology gave him the tools not only to do so ever more efficiently, but also to control any ensuing negative outcome.

Science has moved on since then. Once viewed as an assortment of facts, figures and certainties divided between distinct and largely unconnected disciplines, modern scientific thinking now acknowledges uncertainty and embraces the concept of universal interconnectedness, to the point where on an epistemological level it resembles more closely the circular holistic worldview of certain indigenous cultures than the linear dualism dominant in Western thinking. This is never more true than in the science of ecology, the study of the connections, interactions and interdependencies between all living beings (including man) and their environment, bound inextricably together in the ecosystems that make up our planet.

But while science has evolved, the law has not, except in very rare and exceptional cases. Our legal systems are still based almost exclusively on the outdated premise that man is separate from, and superior to, the other inhabitants of the Earth. All other living beings, the ecosystems themselves and their functions are fundamentally considered as the "property" of man to be disposed of at will, with a right to exist and prosper only in relation to his material and immaterial needs. Given the predominant schools of thought in past centuries, this could hardly be otherwise.

But there is a problem. In such a legislative system, environmental law, even when implemented with the best possible Earth-centered motivations, inevitably places man in a category apart, whether as instigator, aggressor, beneficiary, victim, or even defender. The relationship between humanity and the other components of the Earth system is linear. It starts from and/or ends with the human species. The science of ecology, on the other hand, clearly and indisputably demonstrates that *Homo sapiens* is merely one constituent element in a complex, inextricable, dynamic and above all finite system of biotic and abiotic elements

governed by laws which go way beyond those conceived by man; laws which must be respected, not just for ethical reasons, not only in the name of justice, but because to ignore them means ripping apart fiber by fiber the very networks which hold together our planetary ecosystems (of which we are an integral part).

Throughout legal history, over and above human-invented legislation, there has also been widespread recognition of Natural Law, eternal and absolute, existing irrespective of man, uncreated and immutable and therefore in some ways a higher form of law. The concept of Divine Natural Law laid down or inspired by a god or deity was later supplemented, and largely replaced by the Secular Natural Law of the Enlightenment, originating from man's understanding of the scientific disciplines. Ecology now demonstrates the existence of another even higher level of "Natural Law" by which we are inescapably bound, whether we like it or not, by our very biological existence on this planet and which we try and evade at our risk and peril, the Law of Nature, or Earth Jurisprudence, the only logical basis for a new generation of Earth-Centered Ecological Law able (perhaps) to mitigate the ecological imbalances and malaises affecting our planet today.

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

While fully acknowledging the significant contribution potentially deriving from the more Earth-oriented mindsets of many indigenous cultures, to achieve widespread credibility at economic, political and grassroots level, the argument for an Earth-centered worldview needs to be founded on solid, holistic, ecological paradigms. No human conduct or phenomenon not respecting the basic precepts of ecology can in fact be sustained in the medium/long term without causing fundamental and irrevocable damage to the planet's ecosystems, of which man is inescapably an integral component.

Earth-centered Law based on this awareness is a revolutionary concept, able to radically overturn the very foundations of current legislative thought and practice. It cannot, however, do this alone. The legislative revolution must be accompanied by a parallel top-down and bottom-up evolution on cultural and political level.

In the top-down approach, the United Nations and other key supranational institutions (from the non-governmental such as the IUCN to organizations such as the European or African Unions) have a key role to play, both directly through unambiguous and public endorsement of Earth-oriented policies and recognition of the Rights of Nature, and indirectly, with the adoption of "Earth-friendly" language in institutional documents and statements.

At the same time, it is necessary to raise on-the-ground public awareness of the critical importance of adopting an Earth-centered approach to tackling the numerous more-or-less high profile environmental and ecological issues of today and tomorrow, starting from the biodiversity crisis and climate change. This requires action at all levels, from the very earliest school years through to adult education, with the aim of providing both the scientific knowledge necessary to comprehend the current situation and its practical implications in

the short and long term and the cultural framework/sensitivity needed to elaborate the societal and individual implications of both action and inaction.

These two independent but synergic top-down and bottom-up approaches would ideally meet at national political level, acting as a model and dual incentive to politicians and other policy-makers to introduce and actively implement an Earth-centered bias in policies and legislation from constitutional level down.

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

In common with every other organism, the primary instinct of *Homo sapiens* is to advance his own species. In this, he is simply following the “natural law” of evolutionary biology. But unlike other species of flora and fauna, science and technology have given man the capacity to alter the planet to such an extent that he is irreparably destroying large tracts of its ecological fabric, to the point of risking his own survival. However, despite the indisputable evidence, attempting to convince man as a whole to act in a way that apparently goes against his own self-interest and weakens the dominant position of humanity (thus in conflict with his biological instinct to protect and advance his own species) is extremely problematic and usually comes to an abrupt halt at the point where recognizing the Rights of Nature to exist and prosper is seen to jeopardize in some way the well-being and prosperity of human beings and to compromise their right to self-determination and freedom of action, whether at an individual, community or national level.

While on an ideological level, ecological Earth-centered legislation may clearly demonstrate the incontrovertible medium to long term benefits to the planet’s ecosystems, and therefore also to man, of a Rights of Nature based approach, in the case of possible (and probable) real or apparent conflicts between respecting the Rights of Nature and the Rights of Man, the pressure will always be for short-term anthropocentric ethical, political or economic considerations to take precedence.

Humanity’s reluctance to renounce a dominant role is also underpinned by some schools of theological thought that consider man as the unique creation of a divinity and therefore with a divine right, or even duty, to exploit the natural resources of the Earth for his own advancement and prosperity. As this outlook is deeply rooted in theological belief, it is particularly difficult to overcome by the logic of scientific reasoning or more Earth-centered ethics.

There are also more basic economic reasons for rejecting Earth-centered Law. The vast majority (if not all) of the destructive practices that would become illegal if the rights of Nature were to be recognized in a court of law are aimed largely or exclusively at financial gain, with the wealth remaining predominantly in the control of relatively few large corporations, institutions (political or otherwise) and individuals. Unlike Nature, the rights of these entities are already well protected by current legislation and this fact, together with the enormous resources and influence they are able to field to defend their interests, makes their opposition extremely difficult to overcome, particularly as their activities generate jobs and

financial well-being for large parts of the population in many countries, even outside their direct sphere of influence.

Finally, a certain school of thought maintains that recognition of the Rights of Nature cannot be divorced from analogous recognition of its duties and responsibilities. Some critics argue that this would be impractical, thereby challenging the feasibility of the concept as a whole. Others fear that attributing duties and responsibilities to natural elements could paradoxically transform recognition of their legal personhood into a liability. Would giving a river the right to defend itself against its polluters also mean that, for example, a property developer could sue that same river if flooding damaged a housing development on its banks? If so, who would pick up the bill? How would the precise boundaries of the river's legal responsibility be defined. And by whom?

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?

The priority actions should be in the short term:

1. Compilation of a readily accessible inventory of international, and where possible national, rulings in which Earth-centered Law and the Rights of Nature were a decisive factor in determining a positive outcome, with the aim of building up a body of jurisprudence to inform and guide future litigation.
2. Establishment of an institutionally recognized global network of legal practitioners, ecologists and other stakeholders able to provide authoritative and well-informed support and consultancy for individuals or collectives wishing to embark on Earth-centered litigation.
3. Implementation of a campaign to heighten awareness of the Earth Jurisprudence and Rights of Nature movement internationally (and where possible nationally), able to engage the layman on an emotional level, while at the same time emphasizing the solid institutional and scientific foundations in order to overcome possible resistance to the concept as excessively "New Age".
4. Production, publication and distribution of material for all ages, at all levels and in as many languages as possible introducing and developing the concept of Earth Jurisprudence, from an ecological, legal and ethical point of view.

Medium to long term priorities should include:

5. Obtaining the explicit and unambiguous endorsement of the founding concepts of Earth Jurisprudence and Rights of Nature by the United Nations General Assembly and other supranational bodies such as the European Union, African Union, Association of Southeast Asian Nations etc..
6. On the basis of these international precedents, introduction of the Rights of Nature concept into national bodies of law, from the relative constitutions, through the various levels of ordinary legislation down to their concrete application in national and local courts and tribunals.
7. Introduction of obligatory environmental/ecological teachings at all levels of education worldwide.

8. Promotion of courses in ecology and ecological law for law professionals and magistrates.
9. Establishment of specialist tribunals with the specific knowledge necessary to understand the complex nature and far-reaching implications of ecological law and earth jurisprudence.
10. The widespread revision of international treaties to incorporate the principles of earth jurisprudence.