

2016 Virtual Dialogue on Harmony with Nature - Theme Earth Jurisprudence

By Linda Sheehan - Earth-centered Law

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?

I have been practicing “traditional” environmental law and policy for over 20 years, in California and nationally, with a focus on freshwater and ocean issues. Tools that I have typically used include national statutes (e.g., the federal Clean Water Act, Magnuson-Stevens Fisheries Act) and state laws (e.g., Porter-Cologne Water Quality Control Act, California water use laws). I have also conducted litigation and applied court decisions, as well as drafted and ensured passage of numerous state and local laws and environmental budget provisions.

In my 20-plus years of advocacy, I have seen success on a number of battlefronts, but an overall loss on the war. Waterways are drying, species are rapidly going extinct, and climate change threatens the coast with sea level rise and ocean acidification. The number of lobbyists for unsustainable use of the environment is increasing, while representatives for environmental NGOs struggle for funding. The course is unsustainable – not because NGOs are not trying hard enough, but because the rules are rigged in favor of continued exploitation of the Earth. We will never achieve a healthy environment under the current governance structure, which views nature (water, species, trees, soil, plants, atmosphere, etc.) as property to be exploited for short-term profit. Environmental laws may slow the degradation, but the path is clear. We must change the rules, and the philosophy of “Earth as property” underlying the rules, in order to succeed.

Earth Jurisprudence is a philosophy of law that recognizes that we are part of the Earth, not masters of it. It calls for relationship, not ownership. It recognizes the inherent rights of ecosystems and species to exist, thrive and evolve, rather than only recognizing inherent rights for humans. From this grounding in Earth Jurisprudence, we can build a broad-based system of law (statutes, courts, government administration, economic incentives and disincentives, etc.) that guides us toward life in responsibility toward the Earth. This new system of law would not be limited to environmental law. Indeed, that approach would be counter to the philosophy that we – and all of our interactions with the Earth – need to act with respect for the inherent rights of ecosystems and species to exist, thrive and evolve. All laws, as well as the accompanying economic system, would need to be re-envisioned for consistency with the foundational philosophy of Earth Jurisprudence.

This approach would be notably different in practice and result than we see with environmental laws currently. For example, in California water use “rights” are held privately and are subject to market-based trades for profit, relatively regardless of the health of affected waterways (and sometimes regardless of affected communities, as an increasing number of Californians do not have access to clean water for basic needs). This antiquated and unsustainable approach threatens the well-being of all Californians and the environment, especially with climate change stressing water sources. An Earth Jurisprudence approach would place private water use “rights” for profit under significant scrutiny. It would recognize as first priority the need to protect the life needs of natural systems and human communities, over water allocated for profit. This would benefit the state as a whole by guiding us to live within the means of waterways, which we are currently failing to do.

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).

Implementation of an Earth-centered worldview in the area of law and policy involves a two-fold approach: (a) raising awareness about the need for change to build public support, and (b) enacting and implementing laws that reflect a grounding in Earth Jurisprudence, rights of nature, and associated responsibilities towards nature. Lessons can be taken from prior rights-based movements, such as for gay marriage, civil rights (including the right to vote), anti-slavery movements, etc. Such movements have shown that both legal and outreach strategies are key; laws can be more successfully passed and implemented when there is a critical mass of the public in support of the concept behind the laws (with gay marriage the most recent example). Conversely, the passage and successful implementation of rights-based laws helps further build awareness of their viability and importance. Examples of such strategies include the following:

- Raising awareness about the need for change to build public support
 - Education: K-12 through university level (Earth Law Center has been teaching Earth Law to law, policy and philosophy students for the last five years, for example)
 - Outreach: This can involve local and international Tribunals on the Rights of Nature (see <http://therightsofnature.org>), which build local awareness of what nature's rights violations look like and how we can prevent and address them. It also can involve speaking to groups large and small, social media, art and music, and writing.
 - Collaboration with other disciplines: Scientists, economists, political scientists, sociologists, ethicists and others should be consulted and brought into the movement. For example, ecological economists have been instrumental in describing what an alternative economic system would look like if consistent with Earth Jurisprudence. Also, Earth Law Center has begun working with marine scientists to define a "healthy ocean," which is a far higher bar of well-being from the "less degradation" bar that current regulations set.
 - Collaboration with other advocacy groups: As Earth Law Center discussed at length in our *Fighting for Our Shared Future* report (<http://www.earthlawcenter.org/co-violations-of-rights>), violations of nature's rights often co-exist with violations of human rights, especially violations of the rights of indigenous peoples. Collaboration with human rights and indigenous rights groups can help address the increasing number of such co-violations by taking on their root causes, which lie in our obeisance to neoliberal economics at the expense of people and planet.

- Enacting and implementing laws that reflect a grounding in Earth Jurisprudence, rights of nature, and associated responsibilities towards nature
 - Laws are being passed at the local (e.g., Santa Monica, CA) and national (e.g., Ecuador) levels that recognize nature's rights. Court decisions and administrative actions in Ecuador support the rights of nature, and Santa Monica is examining applying its law to controls on groundwater extraction. New Zealand has adopted and is beginning to implement treaty agreements that reflect indigenous worldviews of rights and responsibilities for nature. These and other legal efforts will help build a groundswell of support for broader change.

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

The entrenchment of the current worldview of “nature as property” throughout all of our laws and policies, including environmental laws and economic policies, is perhaps the second most difficult obstacle to overcome with regard to implementation of an Earth-centered worldview. It will take time to change our laws and economic policies to reflect an Earth Jurisprudence perspective, but this is not an insurmountable obstacle once identified and acknowledged.

The most difficult obstacle is the general blindness to even the *idea* of inherent rights for nature, in light of the currently-overpowering strength of the “nature as property” worldview. Many of us have difficulty even conceptualizing the worldview of rights of nature, or the corresponding responsibilities we have towards nature consistent with those rights. This is not an unprecedented experience, however. In fact, it is relatively common in rights-based movements that granting rights to an entity or person currently not holding such rights seems initially unthinkable or ridiculous. Christopher Stone reflected extensively on this point in his groundbreaking “Should Trees Have Standing?”

The response of course is not to give up, but to keep presenting the case clearly, passing laws strategically, and continuing the movement until it takes hold. As Donella Meadows states in her “Leverage Points: Places to Intervene in a System”:

there’s nothing physical or expensive or even slow in the process of paradigm change. In a single individual it can happen in a millisecond. All it takes is a click in the mind, a falling of scales from eyes, a new way of seeing. Whole societies are another matter — they resist challenges to their paradigm harder than they resist anything else.

So how do you change paradigms? ... In a nutshell, you keep pointing at the anomalies and failures in the old paradigm, you keep coming yourself, and loudly and with assurance from the new one, you insert people with the new paradigm in places of public visibility and power. You don’t waste time with reactionaries; rather you work with active change agents and with the vast middle ground of people who are open-minded.

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

- Pass and implement local, state and national laws that recognize nature’s rights. The implementation piece is key: a law that is not implemented becomes marginalized and forgotten. Implementation will also demonstrate to the world what Earth Jurisprudence looks like in practice. “Laws” includes all forms of law – statutes, judicial decisions, administrative law, treaty law, etc.
- Hold rights of nature tribunals at the local and international levels to demonstrate the gaps in our laws and the need for courts and laws that take action on violations of nature’s rights (including co-violations of nature’s rights and human rights).
- Work with communities, Earth Jurisprudence-minded business leaders, ecological

economists and others to build the language and practice (through small-scale pilot efforts) of economics consistent with Earth Jurisprudence. Economics is implemented through law, and so the law of economics will need to specifically shift to reflect an Earth-centered legal worldview.

- Seek support for scientists to prioritize research into the definition of and metrics for assessing ecosystem health.
- Create Earth Jurisprudence and Earth Law curriculum at the K-12 and undergraduate level, similar to the Earth Law curriculum in practice at the graduate level; teach nationally and internationally to bring up tomorrow's leaders in an Earth Jurisprudence worldview.

Longer-term

- Ensure U.N. adoption of a Universal Declaration of the Rights of Nature (either the same as or stronger than the current Universal Declaration of the Rights of Mother Earth). Work to pass and implement national rights of nature laws consistent with this Declaration.
- Create rights of nature courts, and/or incorporate rights of nature causes of action into existing human rights courts.
- Set and meet a goal of a certain percent of communities and nations internationally that have adopted nature's rights laws and are implementing them.
- Ensure all public school and university curricula are built around an Earth Jurisprudence perspective. This is not limited to solely law and policy; all disciplines would need to shift and integrate to reflect this perspective.