

What does the global Earth laws movement mean for Australian law?

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Around the world, the ecological crisis is stimulating many people to search for new ways of governing human communities, including new legal and economic structures. An international movement of lawyers and other professionals are using Earth jurisprudence as a basis for transforming our legal, economic, political and governance systems so that we can live in a mutually enhancing relationship with the Earth community. So what is Earth jurisprudence and the “Earth laws movement” and can it have any impact on Australian law?

Earth jurisprudence

Earth jurisprudence, a term coined by deep ecologist and “Earth scholar” Thomas Berry, is an emerging theory of Earth-centred law and governance.¹ Advocates for Earth jurisprudence propose that the primary cause of the ecological crisis is anthropocentrism — a belief by people in the industrialised world that we are somehow separate from, and more important than, the rest of the natural world. Berry argues that this anthropocentric world view underpins all the governance structures of contemporary industrial society — economics, education, religion, law — and has fostered the belief that the natural world is merely a collection of objects for human use. He and other Earth jurisprudence advocates also claim that although traditional environmental law has worked hard to protect aspects of the natural world (eg, clean air, clean water, protected areas), most of our existing environmental laws can only mitigate around the edges of a fundamentally pro-growth, pro-development cultural and legal system. They do not question — indeed, they typically support — the systemic, underlying culture of “using up” the Earth for human purposes.

In contrast, Earth jurisprudence suggests a radical rethinking of humanity’s place in the world, to acknowledge the history and origins of the Universe as a guide and inspiration to humanity and to see our place as one of many interconnected members of the Earth community.² By “Earth community”, Berry refers to all human and “other than human” life forms and components of the planet, including animals, plants, rivers, mountains, rocks and the atmosphere — our entire Earth.³ Berry and the broader Earth jurisprudence movement acknowledge

the important role of indigenous cultures and indigenous wisdom, and urge industrial societies to learn from existing and historical Earth-centred cultures. Berry suggests that “our great work” is to transform human governance systems from allowing the destruction of the natural world, to creating a harmonious and nurturing presence on the Earth.

Responding to Berry’s work, Cormac Cullinan’s *Wild Law: A Manifesto for Earth Justice* was a direct call to shift our legal and governance systems to support the Earth community.⁴ Wild Laws are laws that express principles of Earth jurisprudence and are derived from the laws of nature. They can be seen as one sub-set of the broader Earth jurisprudence philosophy; as the “legal thread” that weaves together with so many other aspects of governance, including economics, institutional structures and politics, to give expression to Earth jurisprudence. In his book Cullinan discusses law, regulation and governance, acknowledging that all these concepts need to be made “wild” and Earth centred.

Many of the key elements of Earth jurisprudence and eco-centrism have long been debated in environmental philosophy and human ecology, and eco-centrism in the law has been explored by many writers, including Christopher Stone,⁵ Roderick Nash⁶ and Klaus Bosselmann.⁷ The work of Berry and Cullinan builds on this body of work, but arguably also offers something new. In addition to being a critical theory stimulating a growing body of literature,⁸ Earth jurisprudence and Wild Law are increasingly becoming practical and constructive tools as well. This is reflected in the growing international movement of people and organisations who are advocating for Earth-centred law and governance, and who are explicitly building their movements on the work of Berry and Cullinan.⁹ For example, more than 80 organisations from around the world are now working in partnership, as the Global Alliance for the Rights of Nature, to advocate for legal rights for the Earth community.¹⁰ The growth of Earth jurisprudence has also been demonstrated by the introduction of Earth-centred laws, such as Ecuador’s 2008 Constitution, Bolivia’s 2010 legislation “The Act for Mother Earth”¹¹ and the 150 local level Rights of Nature ordinances that now exist in the United States, and which were drafted by

rights of nature advocates, the Community Environmental Legal Defence Fund (CELDF).¹²

Rights of nature

The “rights of nature” concept is one of the many elements that make up the complex web of Earth jurisprudence. It is receiving significant attention within the Earth laws movement, so is worthy of discussion here. Many advocates of Earth jurisprudence have argued that the Earth community and all the beings that constitute it have “rights”, including the right to exist, the right to habitat or a place to be and the right to participate in the evolution of the Earth community. Berry argued that “nature’s rights should be the central issue in any ... discussion of the legal context of our society”.¹³ From this view, nature deserves to be valued for its own inherent worth. This contrasts with the approach in western legal systems, which grant rights only to humans and selected social constructs such as corporations, and treats plants, animals and entire ecosystems, as human property. Granting rights to nature is a radical rethinking of the role of our anthropocentric legal system, and yet the idea appears to be taking hold in many jurisdictions. The legislation mentioned above, in Ecuador, Bolivia and the United States, move Earth-centred ideas from merely a theory, to a practical framework for action. It should be noted that a rights-based approach is not just about conferring rights on nature. It is a means of giving legal recognition to nature’s inherent worth by recognising what is already there. In operational terms, it is largely for the purpose of redressing the balance between humans and nature. It empowers those in the human community who are “anxious to restore balance when they find themselves in conflict with powers and authorities who prefer to see nature as solely a resource to be exploited for human ends”.¹⁴

Importantly, other developments — separate from the philosophical origins of the Rights of Nature movement — are taking place around the world which strengthen the call for Earth jurisprudence and the recognition of the Rights of Nature. In New Zealand, Maori iwi (tribes) have been successful in negotiating agreements with the New Zealand Government under the Treaty of Waitangi that have, for the first time, granted legal rights to ecosystems. Under this process, the New Zealand Government has acknowledged the Whanganui River as “a legal entity with standing in its own right” and the legal interests of the river will now be managed by representatives from the Whanganui iwi and the Crown. The governance of the Te Urewera Forest has also been the subject of negotiations between Maori iwi and the Crown, and in 2014 the Forest was removed from the National Parks system and recognised as an independent legal entity, with its own rights and governance structure.¹⁵

Finally, around the world we are also seeing legal systems increasingly reject the notion that animals are merely human property. During the past two years, we have seen courts in France decide that companion animals are “not like furniture” but rather they are sentient creatures; a court in Argentina decide that an orang-utan had the right to a free and comfortable life and should not be held in captivity and we saw India ban the keeping of whales and dolphins in theme parks, as they recognised their sentience and right to be free.

Implications for Australian law and governance

But what does any of this mean for Australian law? Right now our environmental laws are struggling to keep up with the rising tide of pro-mining and pro-development bias in our political system, so how could concepts such as the rights of nature ever gain traction here? The answer lies in the fact that our legal system can shift from “the bottom up” as well as “the top down”. Over the past 4 years, we have seen an increase in the discourse about Earth jurisprudence and the rights of nature in Australia, and a growing network of lawyers and law students who are interested in finding new, multi-disciplinary approaches to transforming environmental governance in Australia. These activities are often centred in local organisations, such as the Australian Earth Laws Alliance, and are connected to the international movement through the Global Alliance for the Rights of Nature.

Such organisations are interested in exploring the implications of Earth jurisprudence, Earth democracy and the “community and nature’s rights” local law-making approaches that are advocated by the Community Environmental Legal Defence Fund (CELDF) in the USA. The approach of using local laws to assert community and nature’s rights utilises a unique combination of local law making and peaceful civil disobedience. The aim is to create a framework for communities to push the boundaries of what’s possible in local law making in Australia, to assert their own rights to a clean and healthy environment, and to assert the rights of nature to exist, thrive and evolve.

In addition to a rising interest in Earth jurisprudence theory and discourse in this country, we may see an increase in the number of communities demanding Earth democracy and asserting that nature has legal rights in Australia. As Australian climate policy continues to go backwards, and fossil fuel interests continue to dominate public policy across the nation, it may be that the strategies of Earth jurisprudence and Earth democracy empower local communities to play a much greater part in transforming environmental law and governance in Australia.

Portions of this article also appear in M Maloney “Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal” (2015) Griffith Journal of Law and Human Dignity 3(1).

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Footnotes

1. T Berry *The Great Work: Our Way Into the Future* Bell Tower 1999; T Berry “Rights of the Earth: We Need a New Legal Framework Which Recognises the Rights of All Living Beings” (2002) *Resurgence* www.resurgence.org.
2. B Swimme and T Berry *The Universe Story: From the Primordial Flaring Forth to the Ecozoic Era - A Celebration of the Unfolding of the Cosmos* Harper Collins 1992.
3. Berry 1999, above n 1, at [125].
4. C Cullinan *Wild Law: A Manifesto for Earth Justice* Green Books, 2003.
5. C Stone “Should Trees Have Standing? Law, Morality and the Environment” (1972) 45 *Southern California Law Review*.
6. R F Nash *The Rights of Nature: A History of Environmental Ethics* University of Wisconsin Press 1989.
7. Bosselmann K “Governing the Global Commons: The Ecocentric Approach to International Environmental Law” in *Droit de l’environnement et développement durable*, Limoge 1994.
8. Cullinan, above, n 4; P Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* Wakefield Press 2011; M Maloney and P Burdon (eds) *Wild Law - In Practice* Routledge 2014 (see “Law, Justice and Ecology”).
9. For example, see the Global Alliance for the Rights of Nature website, which lists organisations from around the world advocating for Rights of Nature and Earth centred governance <http://therightsofnature.org/founding-organizations/>.
10. For more information about the Global Alliance, please visit their website — <http://therightsofnature.org/>.
11. See D Bick, *Stepping in the Right Direction: Giving Mother Earth Rights*, December 2012, www.pachamama.org.
12. For an overview of the legal ordinances being drafted by local communities in the USA see www.celdf.org.au.
13. Berry 1999, above n 1, p 80.
14. L Warren, B Filgueira and I Mason *Wild Law: Is there any evidence of Earth jurisprudence in existing law and practice?* Gaia Foundation 2009.
15. For an overview of the developments in New Zealand, see C I Mallagan “Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology that Protects the Environment” *Widener Law Journal* (forthcoming), or visit the Treaty of Waitangi website to read the Settlement Agreements — www.ots.govt.nz.