



The Young Lawyer, July 2008

Earth Jurisprudence: The Future of Law and The Planet

Judith E. Koons

Judith E. Koons teaches professional responsibility and jurisprudence at Barry University School of Law in Orlando, Florida, and is the chair of the governing committee of the Center for Earth Jurisprudence. Contact her at jkoons@mail.barry.edu. For more information on this emerging field of law and its authors see www.earthjuris.org.

A notable shift of consciousness is underway in the United States that is calling citizens to integrate ecologically responsible actions into their daily lives. Living lightly on the land means making Earth-conscious choices, such as avoiding the use of water bottles that litter landfills, eating locally, planting trees and water-conserving xeriscapes, using biodegradable and energy-efficient household products (e.g., compact fluorescent light bulbs), and reducing, reusing, and recycling.

Simply adjusting human lifestyles to minimize our impact on the Earth, however, does not address the underpinnings of the law, which allow nature to be subordinated to profit. The effects of our system of jurisprudence are reflected in a paradigm of relentless development by which nature has been exploited to a sometimes irreversible degree. We have entered the largest mass extinction since the age of the dinosaurs 65 million years ago. More than 16,000 species of plants and animals are facing a high risk of extinction. And respected scientists are warning that global warming is reaching a tipping point that, if not reversed, will change the physical geography of the world.

What roles do laws and lawyers play in looming questions about the health and future of the planet?

An emerging field of law called "Earth Jurisprudence" is based on respect for nature and is drawing together lawyers, law professors, students, theologians, scientists, economists, philosophers, and members of indigenous communities to engage in a fundamental rethinking of law for the health of the comprehensive Earth community. Earth Jurisprudence recognizes the perils facing Earth and her inhabitants and the need to make a marked shift in the way we think about law, governance, and lawyering.

Key principles of Earth Jurisprudence, as authored by Thomas Berry and Cormac Cullinan, among others, include:

- Widening the moral community from centuries of failed anthropocentricity to include species, ecosystems, and entities in nature.
- Giving life, meaning, and application to an Earth ethic that recognizes humanity as a part of a larger whole and that presupposes that a thing is right to the extent that it preserves the health of the wider Earth community.
- Recognizing that beings, entities, and systems in nature have rights to fulfill their roles within the Earth community: a being has a right to be, a species has a right to habitat, a river has a right to flow without being canalized. Human rights should not be understood to cancel out the rights of species, entities, and systems to exist in nature.
- Considering ways to reframe the law of property to reflect the health of the land.
- Infusing into Western law the landed wisdom of indigenous communities.
- Shifting into ecosystem-based governance approaches that support particularized knowledge, collaboration of interests, counting of ecosystem services, and adaptive management practices to reflect interconnections among ecosystems, people, and governance.

How can young lawyers help advance these principles? The call to participate in Earth Jurisprudence may be vocational or personal. Some practical legal applications of Earth Jurisprudence are:

- Revitalizing the ancient public trust doctrine to safeguard nature.
- Reformulating the notion of community land trusts to recognize that collective ownership imparts usufructory rights—rights to use, not destroy the land.
- Broadening the principles of standing to acknowledge the justiciability of the interests of beings, entities, and systems in nature.
- Expanding guardian ad litem concepts to support human representation of threatened species and ecosystems.
- Adopting the precautionary principle (the standard that requires precautionary measures to be taken when an activity raises a threat of harm to the environment, even if the scientific understanding of the cause is incomplete) as the basis for local, state, regional, national, and international environmental policy.
- Imbuing international law with protection for biodiversity through such measures as the Biodiversity Protocol.
- Safeguarding biodiversity and food security on the national level, e.g., revising food and drug regulations to require the labeling of products containing genetically modified organisms.
- Revising corporate codes to recognize the goal of conducting business in a manner that is environmentally responsible.
- "Greening" law offices, court systems, government offices, law schools, work places, transportation systems, building standards and operations, and corporate practices.

We live not in a time of despair but in an epoch-shifting era of opportunity. The early twenty-first century is a season of rapid transition from environmental destruction to ecological consciousness. Consider the differences that would arise out of moving from a human-centered to an Earth-centered jurisprudence. The great work of this generation of young lawyers includes guiding the changes in law to support mutually enhancing relations among all parts of the comprehensive Earth community.

READY RESOURCES

- What Every Real Estate Attorney Needs to Know about Environmental Law session at 2008 Annual Meeting, New York, Aug. 8 (sponsored by YLD)
www.abanet.org/yld/annual08/.
- Basic Practice Series Programming at Fall Meeting of Section of Environment, Energy & Resources, Sept. 17-20, Phoenix (cosponsored by YLD)
www.abanet.org/envIRON/fallmeet/2008/bps.shtml.
- Environmental Career Paths for Young Lawyers and Law Students (Free Podcasts/MP3 Downloads) www.abanet.org/envIRON/programs/teleconference/0708/careerpaths/home.shtml.

American Bar Association | 321 N. Clark St. | Chicago, IL 60654 | 800.285.2221
ABA Copyright Statement ABA Privacy Statement Web Site Feedback