

What Is Earth Jurisprudence?
By Herman Greene, Esquire
Written for the Center for Earth Jurisprudence

Earth Jurisprudence has an affinity with many current fields of law, including environmental law, animal rights law, rights of indigenous people, and jurisprudence. The distinctive features of Earth Jurisprudence are that it looks at law from the standpoint of the health of ecosystems and the focus is on how legal norms may be established and disputes may be settled involving human-Earth relations. The field opens the door to fundamental re-thinking of the basis of law.

As an inquiry into the basis of law, Earth Jurisprudence falls within the field of jurisprudence. As an inquiry into effective regulation and dispute settlement in matters relating to human-Earth relations, Earth Jurisprudence involves interdisciplinary studies. As an inquiry into how to prepare lawyers to deal with increasingly important issues relating to global ecosystems, resource limitations and environmental health, Earth Jurisprudence involves legal education.

Jurisprudence

When the authors of the Declaration of Independence wrote, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,” they appealed to a “natural law,” a theory hardly recognized in contemporary writings on jurisprudence. Natural law presupposes that there is something more fundamental than written law (positive law) that is the true moral basis of law. This true moral basis establishes law even if it isn’t (the written law). Contemporary jurisprudence has focused on positive law, legal realism (written law can justify both sides of an issue, so let’s look at what really happens), and critical legal studies (a deconstruction of law to show what cultural and political influences are behind laws and their application).

Earth Jurisprudence begins where it has not begun before, at least in the classical Western civilization. It begins with what Cormac Cullinan of EnAct International, Capetown, South Africa, calls the “Great Jurisprudence.” The Great Jurisprudence is the laws or principles that govern how the universe functions. Usually we deal with these laws in relation to how Earth functions and in particular how Earth functions to promote and sustain life. By this jurisprudence “nature functioning as it should” provides guidance for human laws and law making.

Global warming and other natural disturbances have brought attention to limits we may be crossing that are “beyond political negotiation” (Lester Brown). James Lovelock and others developing “earth system science” offer an understanding of Earth as a “self-regulating system able to keep the climate and chemical composition comfortable for organisms.” While the scientific basis for this understanding remains somewhat controversial, it is now generally accepted that we tamper with “nature” at our own risk and that the dynamics of nature must be taken into account in regulating human affairs. Earth Jurisprudence gives explicit recognition to this principle and the “jurisprudence” aspect of Earth Jurisprudence is an inquiry into how this affects the basis of law.

Interdisciplinary Studies

The origins of what we have come to accept as “the law” has many sources, from morality, to religious beliefs, texts or practices, political wrangling for advantage, concerns about public health, safety and welfare, and so on. The “common law” came down as the nonstatutory law based on custom or court decision in response to the many situations presented to courts, especially in England, for legal redress.

The sources of Earth Jurisprudence might be said to lay in Earth “science.” Science is used here in its broadest sense to mean “knowledge” generally. This knowledge comes from wherever humans have given attention to learning from or about Earth and human relations to Earth. Indigenous societies, unlike classical civilizations, were often oriented to knowledge of Earth and the wisdom of these societies is a source of Earth Jurisprudence. Modern sciences, including physics, geology, mathematics, chemistry and biology, provide knowledge of the operations of Earth and the proper functioning of life systems. Humanistic and religious traditions provide insight into moral behavior in relation to other-than-human nature and an understanding the human place in the universe and how to value human and natural beings in various settings.

Earth jurisprudence is a companion of environmental law in seeking to address the health of the environment. It is either different from, or an extension of, environmental law in broadening the field of study of Earth-human relations and their regulation to include Earth science as developed in scientific, humanistic and religious disciplines.

Legal Education

In the words of Yogi Berra, “The future ain’t what it used to be.” Storms like Hurricanes Katrina and Andrew have made imminently clear that the human world and the world of nature are being brought into juxtaposition in unprecedented ways. On the one hand, legal systems such as insurance law, building codes, states of emergency and evacuation, police systems and rescue systems seem equipped to deal with such natural disasters, which after all are not new. It is not as clear, however, that present understandings of law are prepared to deal with how fertilizers and pesticides flowing down the Mississippi River from Minnesota affect the ability of Louisiana’s wetland ecosystems to sustain themselves, or how draining land for development has unexpected consequences of causing Louisiana marshland to subside causing damages far beyond what tort law’s “reasonable man” can “foresee.”

Earth Jurisprudence is a departure from the contemporary law school’s emphasis on teaching students the law that is and how to apply that law as advocates, administrators or judges. It is an anticipation that today’s students need to be equipped to deal with environmental challenges that *are* foreseeable, but for which there may be no contemporary rule or remedy in law. For example, in a world of biodiversity loss, perhaps a new answer will have to be found to Christopher’s Stones classic question, “Do Trees Have Standing?”⁴ (or river systems, carbon and hydrological cycles, glaciers or biological hot spots?) Earth Jurisprudence takes on the challenge of preparing students for a future that in geo-biological terms will not be what it used to be.