

**Oregon State Bar  
Sustainable Future Section**

Photo: J. Michael Mattingly

# The Long View

## Seeking a New Jurisprudence...for Earth Matters



By Pat Siemen, JD, OP

### What is Earth Jurisprudence?

Earth jurisprudence is an emerging field of law that encompasses both environmental ethics and legal practices. It builds on the pioneering work of Christopher Stone<sup>i</sup>, Aldo Leopold<sup>ii</sup>, and Thomas Berry<sup>iii</sup>, as well as indigenous traditions<sup>iv</sup>. Thomas Berry, a priest, cultural historian, scholar, and self-described “geologian” first used the term “Earth jurisprudence.” In April 2001, Berry presented his outline of “The Origin, Differentiation and Role of Rights,” an articulation of the quantitative rights of nature that has been foundational in shaping the field of Earth jurisprudence. This document, later revised as “Ten Principles for Jurisprudence Revision,”<sup>v</sup> continues to provide critical conceptual foundation for the advancement of a “rights-of-nature” movement. In it, Berry sets forth his assertion that the rights to exist, flourish and fulfill one’s purpose in the Universe are not only innate to humans, but also apply to the nonhuman world because the rights are grounded in the Universe, rather than any of human law.

Earth jurisprudence examines the “wisdom or philosophy of law” for the sake of the viable functioning of the Earth community. Recognizing that we face unprecedented ecological challenges that impact the physical and spiritual health of both humans and the larger natural world, Earth jurisprudence calls for a major shift in consciousness. It requires an understanding of humanity’s integral relationship with larger, interdependent natural systems, and therefore, the recognition that laws, policies and economics need to be designed to protect the natural systems, species and entities that sustain life. In Earth jurisprudence, the natural world is not just property to be used, it also has inherent value. Earth jurisprudence assumes that humanity is an integral part of the interdependent Earth and Universe community with correlative responsibilities and obligations to protect and sustain a viable Earth community for current and future generations. To paraphrase Thomas Berry, one cannot have well humans on a sick planet.

Earth jurisprudence believes that a truly sustainable future must be based on healthy ecosystems. It posits that the dominant legal system is inadequate to address the ecological tipping points facing the global community. For example, United States’ laws and regulations routinely apply a cost-benefit analysis that uses an economic measure to prioritize short-term human interests over the undervalued, externalized benefits of living ecological systems. Statutory and common law are both premised on property law concepts that generally fail to consider the rights and necessities of ecosystems that sustain thriving life processes. Current laws seldom consider the true welfare or common good of future generations.

### Development of Earth Jurisprudence

The concepts of Earth jurisprudence articulated by Berry have given birth to a growing international movement with various labels: Earth jurisprudence, wild law<sup>vi</sup>, rights of nature<sup>vii</sup>, Earth law<sup>viii</sup>, Earth democracy<sup>ix</sup>, community ecological governance<sup>x</sup>, “*vivir bien*”<sup>xi</sup> and other expressions of indigenous and tribal peoples’ customs. The adoption of the Universal Declaration on the Rights of Mother Earth<sup>xii</sup> at the World Conference on Climate Change and the Rights of Mother Earth held in Cochabamba, Bolivia in April, 2010 was a momentous event for the Earth jurisprudence movement. The Declaration looks to the experience and traditions of indigenous and native communities in demonstrating the capacity to “*vivir bien*” – (i.e., to live well), in part through the recognition of the rights of nature. This Declaration also was presented in the form of a resolution at the United Nations in April 2011. Alt-

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though the resolution was not adopted, its concepts are working their way into various UN commissions addressing ecological sustainability and climate change and in the UN Permanent Forum on Indigenous Issues.

For a truly sustainable future, laws, governance and economics must adopt an Earth or eco-centric framework that recognizes the limited carrying capacity of nature. It is essential for future guardians and trustees of nature to partner with scientists, conservation biologists and ecologists in order to give a voice in legal proceedings. Strategic alliances with community groups who care deeply about their local economies, cultures, ecosystems and watersheds are also required.

To that end, The Center for Earth Jurisprudence was founded in 2006. Since that time, there has been significant expansion of community-based organizations and legal initiatives integrating legal protections for bio-diversity and natural systems into laws. For example, in September 2008, Ecuador became the first country to acknowledge the rights of nature in its newly-adopted constitution, stating that “*nature in all its forms has the right to exist, persist, maintain and regenerate its vital cycles.*”<sup>xiii</sup> People in Ecuador now have the legal authority to bring enforcement actions on behalf of ecosystems. The ecosystem is given standing by the constitution and can therefore be named as a plaintiff in a claim.<sup>xiv</sup> Last spring, an Ecuadorian provincial court in Loja, ruled in favor of the Vilcabamba River, upholding the first challenge under the Ecuadorian constitution of the right of a river to be free from road construction debris.<sup>xv</sup> Other universities and law schools are beginning to adopt programs and courses exploring Earth jurisprudence and rights-of-nature theory and practice.<sup>xvi</sup>

Within the United States and elsewhere, the Community Environmental Legal Defense Fund<sup>xvii</sup> (CELDF) has led the way in creating working examples of Earth jurisprudence by working with local organizing committees to insert rights of nature language into city ordinances. In addition, the Rights of Nature campaign organized by Global Exchange is working with CELDF to extend the adoption of ordinances protecting the rights of ecosystems into laws of the United States and internationally.<sup>ixx</sup>

Another example of Earth jurisprudence in action is the resolution adopted in January 2012 by the Santa Monica City Council. The resolution supports a Sustainability Bill of Rights that

guarantees citizens a series of ecological rights based on sustainability. An excerpt<sup>xviii</sup> of that resolution provides:

*“The right to clean, affordable and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes; the right to a sustainable energy future based on sustainable renewable energy sources; the right to a sustainable natural climate unaltered by fossil fuel emissions \* \* \* the right to clean indoor and outdoor air, clean water and clean soil that pose a negligible health risk to the public; and the right to a sustainable food system that provides healthy, locally grown food to the community \* \* \*.”*

### Conclusion

The field of Earth jurisprudence is expanding at the same time that we are reaching significant ecological and economic tipping points. Each variation of Earth jurisprudence, be it Earth law, Earth democracy or the Rights of Nature, articulates a concrete approach to reframing legal protection for the environment and its natural functions. Different strategies and approaches are needed to best respond to the unique factors of bio-diversity and cultural diversity. Each strategy shares the common goal of building a framework supporting nature’s inherent rights to co-exist, thrive and evolve. This framework is essential to weigh and balance the competing and cooperative interests of the various inhabitants of the Earth community. It will require the creativity and resiliency of all – lawyers, engineers, educators, economists, scientists, artists, media, social networking gurus and politicians – to develop the capacity to reinvent a less anthropocentric paradigm. Earth jurisprudence would have us remember that we are “kin” to all that exists and that we have an appropriate and critical role to play in repositioning ourselves in relation to the larger community. Thomas Berry says that we must reinvent ourselves at the species level and enter into mutually-enhancing relationships with the Earth community. Law is one way for us to give this concrete expression to what we value as a society and culture.

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Patricia Siemen is an attorney and the Director of the Center for Earth Jurisprudence, which was founded in 2006 at two law schools in Florida. Siemen was personally influenced by Thomas Berry who first used the term "Earth jurisprudence" in 2001. The mission of the Center is to advance legal principles, laws, economics and governance that reflect a transformative Earth-centered legal system that supports the viability and well-being of all members of the comprehensive Earth community. See [www.earthjuris.org](http://www.earthjuris.org).

### End Notes

<sup>i</sup> In 1972 Christopher Stone wrote a law articles, "Should Trees Have Standing? – Toward Legal Rights for Natural Objects." Shortly thereafter Justice Douglas cited it in his notable dissent in *Sierra Club v. Morton*.

<sup>ii</sup> Aldo Leopold. *A Sand County Almanac*, "The Land Ethic". Oxford University Press, 1949, 201.

<sup>iii</sup> Thomas Berry co-authored *The Universe Story* with Brian Swimme and wrote *The Dream of the Earth* (1989), *The Great Work* (1999), and *Evening Thoughts* (2006). He has played a significant role in shaping the field of Earth jurisprudence, and has been a mentor for the Center for Earth Jurisprudence.

<sup>iv</sup> Many native and indigenous peoples continue to practice a cosmology that evidences a deep understanding of their core relationship with the natural world, or Mother Earth. This was particularly evident in the adoption of "The Universal Declaration of the Rights of Mother Earth."

<sup>v</sup> See, Thomas Berry, *Evening Thoughts*, Sierra Club Books, 2006, 149.

<sup>vi</sup> See Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*. Chelsea Green Publishing, Second Edition, 2011.

<sup>vii</sup> See Global Alliance for the Rights of Nature at [www.therightsofnature.org](http://www.therightsofnature.org).

<sup>viii</sup> See Linda Sheehan at the Earth Law Center at [www.earthlaw.org](http://www.earthlaw.org).

<sup>ix</sup> See Vandana Shiva at Navdanya at [www.navdanya.org](http://www.navdanya.org); also *Earth Democracy: Justice, Sustainability and Peace*, South End Press, 2006.

<sup>x</sup> See Liz Hoskens and Carine Nadal at Gaia Foundation at [www.earthjurisprudence.org](http://www.earthjurisprudence.org).

<sup>xi</sup> See the cosmovision and inclusion of "living well" in the Universal Declaration of the Rights of Mother Earth adopted at the World's People Conference

on Climate Change and the Rights of Mother Earth, April 2010 at <http://pwccc.wordpress.com/2010/04/24/peoples-agreement/>.

<sup>xii</sup> See <http://therightsofnature.org/universal-declaration/>.

<sup>xiii</sup> Constitution of the Republic of Ecuador, National Assembly Legislative and Oversight Committee, published in the official register, October 20, 2008, Title II, Chapter 7, Article 7.1.

<sup>xiv</sup> See <http://therightsofnature.org/ecuador-rights/>.

<sup>xv</sup> See <http://www.pachamama.org/news/first-successful-case-enforcing-rights-of-nature-in-ecuador>.

<sup>xvi</sup> See Southern Cross University, Earth Laws Research Network, Lismore, Australia and Vermont College of Law summer offering of Earth Law course, July 2012.

<sup>xvii</sup> See [www.celdf.org](http://www.celdf.org), Co-founder Thomas Linzey and Mari Margill continue to advise various community initiatives in advancing a bill of rights for communities that include the rights of local environmental communities. Linzey was instrumental in advising the Ecuadorian Constitutional Revision Committee in its inclusion of a "rights-of-nature clause" in its 2008 constitution.

<sup>xviii</sup> See <http://www.scpr.org/blogs/environment/2012/02/06/4560/santa-monica-signs-resolution-towards-sustainability/>.

<sup>ixx</sup> See Shannon Biggs at <http://www.globalexchange.org/communityrights/campaigns/rightsofnature>.

