Earth Jurisprudence: Legal Rights for Gaia

Contributed by Susan Meeker-Lowry
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Man takes his law from the Earth; the Earth takes its law from Heaven; Heaven takes its law from the Tao. The law of the Tao is its being what it is.
- Tao The King (Tao Te Ching), ch. 25

Have you noticed a shift in the dialog around climate change lately? There's less talk of prevention, or even avoiding the worst of it, in favor of finding ways of adapting to the coming changes.

Partly this is thanks to our having elected a president who acknowledges climate change and seems determined to enact policies, limited though they are, to thwart it. But the real story is more scientists speaking out about how the situation is more dire than anyone thought. Every day, it seems, brings more bad climate news. At my age I assumed I wouldn't live to see too many dramatic shifts, and admittedly I felt grateful though extremely despairing for my children and grandchildren. But that reprieve may not be granted. Everything is speeding up. The last week of February there was an article in a local Maine paper about how officials are (finally!) beginning to address how Maine's changing climate, and coastline, will impact the state and what can be done now to plan for these changes.

But we are not going to be able to deal with the many and varied impacts of climate change by analyzing or planning in any conventional manner. Climate change came about because we believed we were somehow independent from the Earth, living on it, taking from it, but not part of it. We created what Cormac Cullinan in his book Wild Law calls the homosphere, "a delusory 'human world' that is separate from the real universe... an ideal hothouse within which our egos can grow disproportionately large, swollen with the conceits of having mastered the universe... where only human beings matter, and some matter a lot more than others."

Over the years I have often been reminded by those who would temper my obsession with the plight of the Earth that every civilization felt at one time or another that whatever catastrophe it faced would bring about ultimate doom. And that while civilizations rose and fell, over time the human-caused damage would heal thanks to the resilience of Earth's biological systems. But as I would point out, the difference between the rise and fall of ancient civilizations and ours is one of scale. Never before has a worldview as destructive as ours dominated, and, combined with our advanced technologies, massive industrialization, and exploding population, the result may very well be deadly, and permanent -- at least with regard to the human chapter of the story.

As I have said often enough, if the human journey is to continue we must let go of the illusion of separation and open our minds, hearts, and spirits to the reality that we are, as Thomas Berry states, "a communion of subjects," not only with other human beings but with all of nature. And it is becoming increasingly obvious that not only must our economic system be transformed* but so must our legal system.

In our culture nature does not have legal standing. All of our laws, even those dealing with the environment, are human focused. We protect water for human uses, we protect wild areas so that people will be able to enjoy them into the future. We do not protect nature for nature's sake but rather because doing so somehow benefits us. Even those in the legal professions who understand the deeper issues must ultimately couch their reasoning in pro-human language to be taken seriously. And while there are numerous organizations fighting to protect old growth forests, orangutans, mountains, rivers, estuaries and so on it's a struggle and too often a losing one. Not to mention that what one policy or judge gives, another can take away. So nothing is ever completely safe. How many times has the battle to keep oil drilling out of the Arctic National Wildlife Refuge been "won," then brought to the table again? And consider the plight of indigenous peoples up against a worldview totally at odds with what they know to be true. Tribal peoples have a continuous understanding of how to live with Gaia and they know how to communicate and participate with nature such that the balance is maintained and honored. This is something that western cultures have long forgotten, though I believe the ability lies within each of

us, waiting to be awakened.

In his book The Great Work, Thomas Berry writes, “[E]very being has rights to be recognized and revered. Trees have tree rights, insects have insect rights, rivers have river rights, mountains have mountain rights. So too with the entire range of beings throughout the universe. All rights are limited and relative. So too with humans. We have human rights. We have rights to the nourishment and shelter we need. We have rights to habitat. But we have no rights to deprive other species of their proper habitat. We have no rights to interfere with their migration routes. We have no rights to disturb the basic functioning of the biosystems of the planet.” This, I believe, should form the foundation for an Earth-centered legal system, what Berry and now others are calling Earth Jurisprudence. It would be a system that takes human rights and needs into account but not at the expense of the whole. For we are embedded in the Earth and the Earth is embedded in the universe and the universe is embedded in the cosmos. There is no separation in reality and nothing we do or believe will change it. We have been able to create our human-centered legal system because we live in that bubble of illusion, the homosphere.

Imagine how different it would be if, to quote a famous article, trees had rights in our system (“Should Trees Have Standing?” by Christopher Stone). And rivers and mountains and lynx, more than just protection under some act or policy. Accepted rights, understood rights, a concept we grew up with and didn’t think twice about. We’d be living a lot differently, that’s for sure. And we probably wouldn’t have gotten ourselves into such a mess.

In many ways I was raised differently than the mainstream with regard to nature. Growing up in the mountains and especially having the father I did (see Gaian VoicesM “To Daddy”, Vol. 6, No. 1 & 2), I was taught that it was wrong to develop wild places, that certain places were sacred (though that’s not the word Daddy used) and belonged more to the animals that inhabited them than to humans. And not only was I taught these things, I was shown. I was led to experience it. I consider this the most important gift my father gave me.

The thing is, it’s not so much about specific laws to do this or not do that (though that would have to be a part of it), it’s more about relationship and respect, paying attention, listening and honoring what you hear, acting on it, all of which would form the basis for an Earth-centered jurisprudence. We would have to find ways of awakening our innate ability to hear the voices of Earth, to feel deep within ourselves what is needed. I am reminded here of the work of bioregionalists, of permaculture, gardening with the spirits/devas, talking to trees, getting to know a particular place deeply, to reinhabit it. When we begin to feel within ourselves that our relationship with the Earth is becoming reciprocal, and we are actually participating with it all -- living within the biosphere, not the homosphere -- then we will know how to create the kind of legal system that can work for all beings.

The way we govern ourselves, and the laws under which we live, are no longer suited to the reality in which we find ourselves today. If we persist in our human-centered folly we will end up completely destroying, either directly or indirectly through omission and ignorance, the diversity of life and spirit that took millions of years to evolve. We have already destroyed so much, and more with each passing day. I can’t imagine living in West Virginia, for example, where mountaintop removal mining has destroyed close to 500 mountains to get at thin seams of coal. In a dream one night not long ago I saw a man standing in his back yard looking out a war-torn landscape where a mountain used to be. His back was stooped, his face leathery and lined, but it was his eyes that haunt me. Pale blue and full of such pain words cannot describe. When we destroy the beauty and vitality of the Earth, we also destroy ourselves. Even if our bodies live our spirits, our souls wither and become depleted. This reality, that we are one with the Earth, must be understood and integrated into our legal system. Thus mountaintop removal mining would be illegal, as would clearcutting and drift net fishing practices and underwater sonar.

There is some good news. Last year Ecuador actually voted in a new constitution that includes five revolutionary articles granting legal rights to nature, described in the document as Pachamama, the Mother Earth Goddess of the indigenous Andean people. Closer to home, citizens in Shapleigh, Maine at a special town meeting recently passed a rights-based ordinance asserting local self-governance, giving rights to ecosystems but denying rights of personhood to corporations. The ordinance allows the people to protect their groundwater resources from exploitation by Nestle for its Poland Spring bottled water label. My town of Fryeburg has been in litigation with Nestle for six years and I just learned today (writing on the Spring Equinox) that the Maine Supreme Court ruled in Nestle’s favor and work will begin on a new water pipeline

and pumping station, completely disregarding the wishes of local residents and certainly the well-being of the aquifer. We're supposed to feel better because the company will hire "local contractors" to do the work. Other Maine towns are considering adopting similar rights-based ordinances -- I only wish Fryeburg had been one of them. Two communities in New Hampshire, Barnstead and Nottingham, have also passed rights-based ordinances. All of these communities (and Ecuador) were assisted by the folks at the Community Environmental Legal Defense Fund (CELDF), based in Pennsylvania. In addition to providing technical support, CELDF also offers classes, workshops, a speaker's bureau, and a Democracy School. Check out their website: www.celdf.org.

To learn more about the concept of Earth Jurisprudence I recommend the eminently readable Wild Law: A Manifesto for Earth Justice by Cormac Cullinan. A London-based lawyer who has practiced and taught about environmental law and policy, Cullinan is also a student of Thomas Berry. As always, I recommend Thomas Berry's books, especially The Dream of the Earth, and The Great Work: Our Way Into the Future. "Imagine," Cullinan asks, "what might happen if we consciously set out to play a constructive part in co-creating the future of Earth and applied these abilities for the benefit of the whole Community?"

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* as addressed in the last issue of Gaian Voices

Community Environmental Legal Defense Fund:

CELDF