

KEEPING THE FIRE: IMPRESSIONS OF EARTH JURISPRUDENCE

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In October 2009 I was fortunate enough to attend the First Australian Conference on Wild Law and Earth Jurisprudence, organised by Peter Burdon and Friends of the Earth Adelaide, among the beautiful Adelaide hills. Nested in a magical environment, the conference allowed philosophers, thinkers, lawyers and activists to exchange ideas, hopes, dreams and projects around an emerging theory of law termed 'Earth Jurisprudence'. Inspired by the work of Thomas Berry¹ and Cormac Cullinan,² the participants to the conference concentrated on the question 'What if Nature had Rights?'

Earth Jurisprudence is an emerging area of law in which the integrity and health of ecosystems become a central concern of human legal and political institutions. This emerging legal philosophy argues that non-human entities are to be considered not as objects but rather as subjects with rights to be represented within the legal community. At that conference I suggested that the legal terrain occupied by this emerging legal theory is truly revolutionary.³ I stated then that Earth Jurisprudence is to law what theoretical physics is to science. It represents the ultimate frontier of the discipline; it stretches the theoretical boundaries of law beyond what is perceived as comfortable, suggesting possibilities, visions and new realities.

UK lawyer and activist Elizabeth Rivers observed very aptly that Earth Jurisprudence and 'Wild Law' (the powerful and provocative term used by Cormac Cullinan) are truly spreading 'like wildfire' in Australia. Indeed, within a year, interest in Earth Jurisprudence prompted the University of Wollongong to hold a Second Australian Conference on Wild Law and Earth Jurisprudence. This second conference revolved around the recognition that many cultures across the planet have operated for centuries, even millennia, around the normative principles advocated by Earth Jurisprudence. Indeed,

1 See, for example, Thomas Berry, *The Great Work* (Three Rivers Press, 1999).

2 Cormac Cullinan, *Wild Law: A Manifesto For Earth Justice* (Green Books, 2003).

3 The suggestion is, of course, not new. Professor Christopher Stone asked the provocative question in 1972 'Should Trees Have Standing?' See Christopher D Stone, *Should Trees Have Standing?* (Oxford University Press, 3rd ed, 2010). Professor Stone's question raised eyebrows in 1972. Nonetheless, it has gained momentum in recent years. Several countries have recently proposed constitutional recognition of ecosystems' 'rights to exist'. In September 2008, Ecuador became the first country in the world to declare constitutional 'rights of nature' and to codify a new system of environmental governance.

Indigenous cultures have always dialogically included the non-human other within their political and legal structures.

As a result of this acknowledgement, we asked ourselves whether it is possible to develop a new environmental awareness and embed it into current environmental law by comparing different cultural models, some of which have been structured and articulated around sustainable practices of steady-state economies for thousands of years. Although we were not expecting a final answer, we were prepared to embrace the question and the explorations that such question would have entailed. The result of our question was a dialogue between the University of Wollongong and the Sandon Point Aboriginal Tent Embassy. Indigenous voices led the discussion on the proposed topic, giving all participants a precious insight into the depth of the question we had asked.

The Legal Intersections Research Centre and the Faculty of Law at the University of Wollongong, the Sandon Point Aboriginal Tent Embassy, the World Movement of the Schools of Ethics and Economics and the School of Law and Justice at Southern Cross University, all cooperated in supporting the organisation of a truly unique conference. Titled *Keeping the Fire – Cultural Integrity, Wild Law and Economic Development*, the conference hosted both the Fifth Forum North/South of the Movement of the Schools of Ethics and Economics (*Harmonia Mundi: Cultural Integrity and Sustainable Development*) and the Second Australian Conference on Wild Law and Earth Jurisprudence (*Keeping the Fire: Ecologies, Ontologies and Myth-making*). Furthermore, the conference focussed the community's attention on the struggle of the Sandon Point Aboriginal Tent Embassy.⁴

Indigenous elders and activists from the area engaged in a dialogue with Indigenous guests from Hawaii, Taiwan and North America and with over one hundred non-Indigenous participants. Ceremonies that encapsulate the normative articulation of Country by local Indigenous people were interwoven with moving and thought-provoking presentations, allowing participants to immerse in a rather unique cross-cultural atmosphere.

4 At Sandon Point, on the coast between Sydney and Wollongong, the Aboriginal Tent Embassy represents the struggle for a sustainable future, championing both environmental conservation and social justice. Built after the discovery of skeletal remains identified by the Local Aboriginal Land Council as belonging to a Kuradji, or clever man, the Embassy stands for the protection and preservation of Aboriginal Culture and Heritage. The Embassy is also an example of sustainable living practices – it is built of recycled timber and tin, is powered by solar panels and all waste is composted and recycled on site. Even the Aboriginal flag is held aloft on a recycled boat mast. The place represents the embodiment of the concept of sustainability from a Koori perspective, wherein caring for country is central both to a culture and to a cause.

Synchronously, while we were organising the conference, similar topics were discussed in South America. In April 2010, Bolivian President Evo Morales had convened a World Conference of Peoples on Climate Change and Mother Earth's Rights in Cochabamba, Bolivia. The main result of this conference was the drafting of a *Universal Declaration of the Rights of Mother Earth*, a document which 'demands a paradigm shift and a conscious effort on the part of man [sic] to own up to our errors and settle on amending our patterns of production and consumption.'⁵ The Declaration articulated Indigenous perspectives within the legal language of international institutions, expressly substituting the term 'Nature' with the term 'Mother Earth', a direct albeit limited translation of the Andean term 'Pachamama' used by the peoples who hosted the conference. The event and the Declaration thus became the global interlocutor for our local gathering, grounding our exploration within a path of discovery that currently appears to occur at an international level.⁶

During the conference, the School of Law and Justice at Southern Cross University proposed a special edition of its Law Review to bring further attention to the event. The consequence of this proposal is this very special edition. Although it would have been impossible to capture all the invaluable contributions to the conference, a selection of articles and conference proceedings has been collected. This short collection offers valuable glimpses into the variety of ideas, feelings and theoretical possibilities proposed by the emerging discourse on Earth Jurisprudence and the Rights of (or for) Nature. The fertile and uncertain terrain occupied by Earth Jurisprudence is thus creatively, and at times wildly, encapsulated in the articles presented in this special edition.

The first section of this edition collects two articles already published elsewhere and generously offered by the authors, as well as the transcript of a beautiful presentation given at the conference. The second section offers a number of refereed articles, most of which presented at the conference. The third section displays some of the poetry that was shared at a special evening reading during the event. Auntie Barbara Nicholson, Aboriginal elder, poet, activist and scholar from Wollongong (and one of the organisers of Keeping the Fire) also generously donated some of her poetry for this special edition of the Law Review. The final section concludes this special edition with the full text of the *Universal Declaration of the Rights of Mother Earth*.

5 Nnimmo Bassey, 'Vision: The Declaration of the Rights of Mother Earth is our roadmap to a liveable future' in Council of Canadians, Global Exchange and Fundacion Pachamama (ed), *The Rights of Nature. The Case for a Universal Declaration on the Rights of Mother Earth* (Global Exchange, 2011).

6 In April 2011, Bolivia has submitted the *Universal Declaration of the Rights of Mother Earth to the UN General Assembly*, while Turkey, Iceland, Hungary and the UK are currently discussing and, or, drafting laws along similar lines.

We would like to thank all the contributors to this edition for their invaluable scholarship. We would also like to thank all those participants who could not be included, acknowledging their presence and their exchanges. Finally, we would like to invite the reader to embark in the ongoing journey of exploration offered by Earth Jurisprudence, a journey of which this special edition is just one beautiful step.