

Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology & Law – Part 2

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Abstract The article does two things. First, it explores the emerging field of ecology and law through the examination of Earth Jurisprudence developed in the work of Berry, Cullinan, and Burdon. Second, it puts this Earth Jurisprudence and the emerging field of ecology and law in connection with the wide ranging philosophical work of Deleuze & Guattari. Earth Jurisprudence and the emerging field of ecology and law are introduced through the exploration of four themes that characterise the field of study: a critique of the dominant western worldview and image of thought; a new philosophy of nature widely informed by contemporary science and cosmology; a new relation to the Earth and nature in affectual intensities, image of thinking, and investment of the social field; and, the realisation of the necessity and centrality of a fundamental reconceptualization of legality and governance. The Earth Jurisprudence of Berry, Cullinan, and Burdon (particularly Cullinan's *Wild Law: A Manifesto for Earth Justice*) is then explored substantively in Cullinan's reconceptualization of legality, the Grand Jurisprudence that informs Earth Jurisprudence, the Earth Jurisprudence of the promotion of mutual ecocentric human-Earth enhancement, the development of Earth rights, the reconceptualization of property and land, and the Wild Law that Earth Jurisprudence produces as the outcome of its creativity. Earth Jurisprudence and the emerging field of ecology and law are a far-reaching development within legal studies, with potentially profound implications for our contemporary conceptualisation of legality and governance and the creation of a concept of law for a new Earth. When put into connection with the wide ranging philosophical joint work of Deleuze & Guattari there emerge striking commonalities, convergences, and a common jurisprudential project of the creation of a legality for a new Earth. The article concludes with the argument that the work of Deleuze & Guattari could provide a key resource for the development of Earth Jurisprudence and the emerging field of ecology and law, particularly the Deleuze & Guattari jurisprudential concept of emergent law.

Keywords Deleuze & Guattari, Earth Jurisprudence, Ecology, Emergent Law, Great Jurisprudence, Wild Law

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Earth Jurisprudence: the Great Jurisprudence

The Earth Jurisprudence project places the concept of legality as fundamental to how a society socially organises and how a society organises a worldview and what it is to think. For Berry and Cullinan the fundamentals of the problematics of social organisation and of the formation of a society's worldview are how it relates to cosmic forces, Earth forces, and the processes of nature. A society worldview will have an understanding of how the society fits into the universe, on what is the relation of humans to the Earth, and how human organisation fits into natural processes and systems. The dominant contemporary worldview that structures social organisation, the critique of which Earth Jurisprudence commences with, is of a complete separation of human organisation from the cosmos, the Earth as a passive resource to be exploited, and human organisation as both separate from and dominant over nature's processes in the culture/nature dualism. The development of Earth Jurisprudence, building upon the reconceptualization of legality, is in a philosophy of social organisation that relates legality to the forces of the cosmos and the forces of the Earth, and practices of legality and problem solving to the processes and systems of nature.

It is in the Great Jurisprudence that the relation of jurisprudence to the forces of the cosmos and to modalities of thinking is explored and developed. In this Great Jurisprudence there is a central connection between the cosmology of a society and its idea and system of legality, and the position that the kernel of a society's idea of law is also the kernel of its cosmology. This connection between the cosmology of a society and the governance of a society is through how a society thinks of itself, and, thus, through the society's idea of what thinking is and modality of thought: 'law is the way in which a society analyses itself, and projects its image to the world'.² Held together in the cosmology are a society's idea of itself and a society's idea of what thinking is. Changing a society's understanding of legality and governance systems, thus, 'involves changing the entire understanding of their universe and society, in short, their cosmology'.³

Against a clear predominance of acosmic thinking in modern social theory and jurisprudence, the Great Jurisprudence of Earth Jurisprudence seeks to reconnect thinking about social organisation to cosmic forces and reactivate an energetic and spiritual ethos of being at home in the universe.⁴ The intimate connection of cosmic forces to social organisation is something that has been a fundamental feature of many indigenous concepts of legality and operations of social organisation.⁵ The Great Jurisprudence is not, though, about directly drawing upon indigenous legal traditions, but about re-thinking the cosmic dimension of social organisation given all that is now discovered and known in 20th and 21st century cosmology, theoretical and experimental physics. The new cosmology includes the Big Bang, cosmic inflation, black holes, dark matter, dark energy, exoplanets, and the understanding of how the universe operates in the special relativity, quantum mechanics, particle physics and string theory of contemporary physics. In Great Jurisprudence this cosmology and understanding of how the universe operates can be connected to the reconceptualization of legality and the understanding of potentials for social organisation. In the Great Jurisprudence: 'the universe is the primary law giver'.⁶ The cosmos has fundamental principles by which it functions, and it is from these fundamental principles that the Great Jurisprudence can derive the principles that inform Earth Jurisprudence. This cosmic dimension to Earth Jurisprudence is central to Berry's *The Great Work*, developed in Swinne and Berry's *The Universe Story*, and very usefully surveyed in

²Burdon (2011a) p.59

³Cullinan (2011) p.54

⁴Berry (1999)

⁵Greene (2011) p.132

⁶Cullinan (2011) p.82

Greene's 'Cosmology and Earth Jurisprudence'.⁷ Cullinan discovers the Great Jurisprudence in the following terms:

'This Great Jurisprudence is manifest in the universe itself. For example, the phenomenon of gravity is expressed in the alignment of the planets, the growth of planets, and the cycle of night and day. All are manifestations of the existence of this law...Its existence and how it operates can be observed in the phenomenon of the natural world.'⁸

The Great Jurisprudence in Earth Jurisprudence is thus the cosmos and cosmogenesis, extending in Earth Jurisprudence to nature and biogenesis. However, this Great Law of Earth Jurisprudence should not be taken to be a closed set of immutable universal laws. The cosmos and cosmogenesis of the Great Jurisprudence should be understood as the open continually evolving universe of contemporary cosmology and science. Thus, the Great Jurisprudence, including the developments noted above, can expand into insights from complexity sciences, and also be informed by process philosophies and metaphysical philosophical projects that seek to explore discoveries of contemporary science and cosmology. The Great Jurisprudence is thus the exploration of an ontology, cosmic in scope, with an understanding of cosmic organisation and evolution. The kernel of the reconceptualization of legality can be developed in the exploration and creation of the model of the relations of cosmic forces and social organisation, and how cosmic forces may be tapped in assemblages of social organisation. This understanding of cosmic organisation and evolution in the Great Jurisprudence also informs potential new understanding and models of thinking the relation between cosmic forces and social organisation.

From this ontology and cosmology the Great Jurisprudence introduces into Earth Jurisprudence a new modality of thinking with concepts such as the fundamental interconnection of all things, the continuous underlying flux in all things, order out of chaos, creativity in far-from-equilibrium processes, complexity, self-organisation, and evolving emergence.⁹ This contemporary cosmology grounds the radical break in Earth Jurisprudence from the dominant approaches to jurisprudence, and also opens Earth Jurisprudence to new ways of both only thinking of ontology but also thinking about legality and governance: 'the

⁷Berry (1999); Berry & Swinne (1992); Greene (2011)

⁸Cullinan (2011) p.78

⁹Greene (2011)

realignment of human governance systems with the fundamental principles of how the universe functions'.¹⁰ The exploration of the Great Jurisprudence allows thinking about Earth systems and social organisation as all interconnected, and to think of all systems as ontologically interconnected on a single univocal cosmic plane of immanence.

Earth Jurisprudence

It is Earth Jurisprudence that directly addresses the problematic of legality and social organisation at the level of and in relation to the Earth. With an Earth-centric approach prevailing over an anthropocentric approach, Earth Jurisprudence addresses the problematic of social organisation as an Earth problematic of social organisation, and which would be the problematic of social organisation for any species evolving and developing complex and large scale social organisation.¹¹ Earth Jurisprudence is the development of the Great Jurisprudence at the level of the relation between human governance systems and myriad Earth systems: 'Earth Jurisprudence refers to the legal philosophy developed by humans that are derived from and consistent with the Great Jurisprudence'.¹²

The overall approach of this Earth Jurisprudence is Earth-centric and that humans are considered as only part of a wider whole Earth community, and the aim of human governance is the integrity and enhancement of the whole Earth community:

'Earth jurisprudence is a philosophy of law and human governance that is based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole.'¹³

For Berry and Cullinan the relation between legal organisation and the Earth has become completely lost in modern societies:

'We have not only forgotten how to live in accordance with the rhythms of the planet, we have also forgotten that doing so was once the chief purpose of human

¹⁰Filgueria and Mason (2011) p.197

¹¹Murray (2006)

¹²Cullinan (2011) p.78

¹³Cullinan (2011a) p.13

regulatory systems...The problem is that we are no longer aware that our legal systems exist within the Earth system and that consequently we do not see the need for any connection or continuity between our legal systems and the Earth systems.’¹⁴

Thus, drawing upon the altered and more intimate relation to nature and Earth, the overall aim of Earth Jurisprudence is to re-think our understanding of law and governance in a manner that will benefit the whole Earth community.¹⁵ The aim of Earth Jurisprudence encompasses, of course, social justice of the health and well being of human communities, but more broadly an Earth justice of the health and well being of all the ecological communities of the Earth. It is a matter of human communities and the whole Earth communities being organised and regulated in a manner that considers the Earth has having value independent of its relation to human communities, and the consideration that ‘human societies will only be viable and flourish if they regulate themselves as part of the wider Earth community’.¹⁶ The hope for Earth Jurisprudence is to establish a benign or mutually enhancing human presence on the planet’.¹⁷

Just as with the Great Jurisprudence that explores the forces and organisation of the cosmos by following contemporary cosmology and physics in order to draw out fundamental principles and strategies of organisation, Earth Jurisprudence flows on from this aspect of the overall Earth Jurisprudence project to explore the forces and organisation of the Earth. It explores the forces and organisation of the Earth not only in the intimate and intuitive direct relation to nature, and not only by the Great Jurisprudence, but also through the following of developments in contemporary Earth and life sciences. In Earth Jurisprudence principles, structures, modes of organisation, and potential candidates for laws, are drawn from the exploration of Earth systems, and Earth Jurisprudence develops organisational and regulatory resources in ‘a way that is consistent with the fundamental laws or principles that govern how the universe functions’.¹⁸ It is also from the exploration of Earth systems and the fact of existence within Earth systems that Earth Jurisprudence establishes Earth rights for subjects of the Earth systems. Earth Jurisprudence, thus, takes the reconceptualised legality and problematic of social organisation and aligns it on the Earth, and encompasses the human legal system within the whole Earth community. In this human legal governance must re-orientate

¹⁴Cullinan (2011) p.68/72

¹⁵Ibid. p.44

¹⁶Burdon (2011a) p.60

¹⁷Berry, quoted Cullinan (2011) p.49

¹⁸Burdon (2011a) p.60

humanity and social organisation. For Koons 'to take a lesson from natural systems on Earth, humanity must begin to function as a component of a larger natural community'.¹⁹ For Cullinan 'human jurisprudence and governance is part of a larger system of Earth self-governance... the role of humans is to fit in with primarily, and contribute towards, the larger Earth system and processes'.²⁰

In the overall project to align legality on the Earth and the well being of the whole Earth community, Earth Jurisprudence is characterised by a number of other specific features.

Earth Jurisprudence, like Great Jurisprudence, is primarily a philosophical activity and philosophy of law but becomes an exploration of the philosophical basis of the relation between human governance systems and Earth systems and of the philosophical basis of Earth rights. Earth Jurisprudence works to:

'assist in establishing mutually enhancing human presence upon the Earth is to develop a coherent philosophical foundation for the development of more appropriate laws to govern human behaviour'.²¹

Earth Jurisprudence develops as creative and pragmatic in the development of ideas for human governance systems of the relations between mixed human systems-Earth systems. In this philosophical exploration, Earth Jurisprudence specifically develops, drawing upon contemporary Earth sciences and philosophies of nature, in terms of ecology and complex systems theory. Indeed, in Earth Jurisprudence the reconceptualization of the problematic of legality and the philosophy of legality develops as a dynamic ecology of the relations between mixed human systems and Earth systems ('I contend that the Great Law should be defined with reference to the first principles uncovered in the scientific discipline of ecology').²² Earth Jurisprudence organises, operates, regulates and evolves the relation and interconnection of human systems and Earth systems. This ecology-legality, as with the human and Earth systems that the ecology-legality regulates, is immanent, heterogeneous, self-organising and emergent complex assemblages, as are the relations between human-Earth systems, and as are the assemblages of ecological law and governance that organise and regulate relations between

¹⁹Koons (2011) p.55

²⁰Cullinan (2011) p.117/105

²¹Ibid. p.170

²²Burdon (2011a) p.66

diverse human-Earth assemblages. The specific jurisprudential aim of Earth Jurisprudence is to organise and steer ecological assemblages of legality and governance with the goal of sustaining and evolving the integrity of all ecosystems, the well being of the whole Earth community, and the well being and diversity of the complex ecology of human-Earth community. In this Earth Jurisprudence develops an overriding aim of ecosystem integrity and diversity: 'such a rule requires the acceptance of sustainability as an overarching legal principle'.²³ Earth Jurisprudence cumulatively develops as the philosophy of how the Earth functions, how legality and social organisation function, and of the ecological legality of the sustainable relations of mixed human systems and Earth systems. This jurisprudence derives the principles, laws, and rights of the ecological relation between mixed human-Earth systems from the Great Jurisprudence and the Earth systems themselves. In establishing an Earth-centric intimacy with nature forming the core of the jurisprudence, Earth Jurisprudence develops a guiding ethos of living on the Earth, together with ethics, laws, rights, institutions, a pragmatics of Earth rights, and the striving for both Earth and social justice.²⁴ Earth Jurisprudence is the evolution of the idea and practices of law and justice to a global biosphere level, with new legal subjects, Earth rights, an ecological reconceptualization of land, principles of equity and guardianship, culminating in an ethos and ethics of the human-Earth relationship.

On the basis of the universe and of the whole Earth community as a communion of subjects, Earth Jurisprudence extends rights to all of nature in Earth rights:

'From a Earth-centric perspective, the myopia of a philosophy that cannot recognise the "right" of a river to flow, of a species to remain free of genetic pollution or even of the Earth to maintain its climate, beggars belief...If the term "rights" as used in our legal system is incapable of being applied to other members of the community it is simply an indication that the legal system is insufficiently developed to reflect the reality of their existence.'²⁵

Earth rights give the Earth community and its constituents fundamental rights that derive from existence in itself and are determined by existence.²⁶ The rights are the result of the intrinsic

²³Bosselmann (2011) p.205

²⁴Cullinan (2011)

²⁵Cullinan (2011b) p.235

²⁶Greene (2011) p.128

relations of the interconnected planet Earth and the communion of Earth subjects. The Earth rights are of freedoms to thrive and evolve, and are of three main types: the right to exist, the right to the habitat and the preservation of habitat, and the right to participate in the ever renewing processes of the Earth community and of the evolution of the Earth.²⁷ The abandonment of an exclusively anthropocentric conceptualisation of rights and the extension of rights to all subjects of the Earth community constitute the central pragmatic aspect of the Earth Jurisprudence project.

A second major pragmatic proposal of the Earth Jurisprudence project is the rejection of the private property model of land ownership accompanied by an ecological reconceptualization of land and land law. The reconceptualization of land and land law focuses upon the land itself as a unique relationship of human-Earth interconnectedness rather than a human held unilateral right of ownership. The realisation that drives the reconceptualization of land and land law is in the contemporary global ecological crisis that there is a fundamental role and responsibility of the modern land law paradigm and its core view of land as a private resource to be exploited²⁸:

‘The costs of continuing to maintain our current ideas of property rights are expatriation and virtual excommunication from the Earth community as well as alienation from our deeper selves. Radical as completely rethinking property law may seem, on a wider evaluation of the costs and benefits, it seems fully justified. The challenge that now faces us is how to begin the process of undoing the property systems that impede a proper relationship with land, and build a workable alternative in its place.’²⁹

The reconceptualization proceeds on the basis of ecosystem integrity, ecosystem sustainability, protecting and increasing biodiversity, and the uniqueness of place and ecosystem, and directs land law to develop a new materialism centred on human-Earth relationships based on the knowledge of the land itself, and upon the reopening of commons as a model for land participation.³⁰

²⁷Berry (2011)

²⁸Cullinan (2011) p.142; Graham (2012)

²⁹Cullinan (2011) p.145

³⁰Graham (2012); Graham (2011) p.267

The reconceptualization of land law further develops the third major pragmatic proposal and development of Earth Jurisprudence into the renewal of the jurisdiction of equity and concepts of guardianship for land and ecosystems. There is much in the jurisdiction of equity that the philosophy of Earth Jurisprudence can open up and reactivate, notably the creativity and ethics of the jurisdiction of equity itself, the expansion of trusteeship and guardianship as models for relationships to land and ecosystems, the idea of the public trust, and ways forward to legally instituting inter-species, intra-generational, inter-generational accountability and justice.³¹ In these developments the ecological Earth-centricism of Earth Jurisprudence opens up to an active engagement with matters of social justice, as it becomes clear that the goals of Earth Jurisprudence that centre of ecological justice necessarily go hand in hand with social justice.

Drawing together all the aspects of ecology and law, there is in Earth Jurisprudence finally a basis for evaluating any legality and any law, and so constitute Earth Jurisprudence as both an ethos and ethics for living on Earth:

‘Earth Jurisprudence is concerned with maintaining and strengthening relations between all members of the Earth community. If our concern is to maintain the integrity or wholeness of the Earth community, it is more useful to evaluate the extent to which an action increases or decreases the integrity and health of the whole system and the quality or intimacy of the relationship between the component parts.’³²

For Earth Jurisprudence nature is a striving to persist, an immanent assessment of what is good or bad for health, and a continuous variation and experimentation, and the ethic of Earth Jurisprudence is to create an ecology in which diversity and emergence arise rather than the imposition of uniform universal forms, and the promotion of the health and integrity of all ecosystems and social organisation, piloting growth and evolution through maintaining a dynamic balance.³³ In Earth Jurisprudence legality becomes the ecology of the whole Earth community and the ecology of the human-Earth relationship. This legality develops as an ecology rich with philosophy, ethics, science, and political practices of ecological and social justice.

³¹Cullinan (2011) p.117; Sax (1970)

³²Ibid. p.114

³³Lyon (2011) p.141

So expanded, Earth Jurisprudence becomes an onto-ecology and onto-ethology of a fundamental interconnectedness of all human systems and Earth systems, and it brings forth an Earth-centric image of thought and new worldview paradigm for thinking about legality and governance, and for the human relationship with the Earth.

Wild Law

Wild Law is the law that flows from Earth Jurisprudence, and which is, therefore, in accordance with the ecological and intellectual principles of Earth Jurisprudence:

‘Wild Law expresses Earth Jurisprudence...Giving effect to Earth Jurisprudence and bringing about systematic change in human governance systems will also require the conscious fostering of Wild Law...Wild Laws are laws that regulate humans in a manner that creates the freedom for all the members of the Earth Community to play a role in the continuing co-evolution of the planet. Where wild laws prevail, cultural and biodiversity, creativity and the freedom to play a creative role in co-evolution of the planet will be found.’³⁴

Wild Law is the legality reconceptualised by Earth Jurisprudence as the legality of the dynamic ecology of the whole Earth system: ‘[Wild Law] recognises and embodies the qualities of the Earth system in which it exists’.³⁵ Wild Law starts out with the premise that nature is not a resource to be exploited, nor is it a wilderness to be tamed, but an immanent Earth force from which the law of the Earth is allowed to self-organise and emerge. Wild Law in its expression, and in its operation in complex nature-social assemblages, is very different from both the form and content of existing dominant modern legality. For Cullinan the ‘wild’ in Wild Law is intended to indicate that these laws derived by Earth Jurisprudence express and tap the forces of nature that connect up all of life both natural and cultural. Wild law is:

‘another name for the creative life force that flows through us all and drives the evolutionary process. In this sense it has an eternal, sacred quality that both defines us and connects us most intimately with the planet.’³⁶

³⁴Cullinan (2011) p.29-31

³⁵Ibid. p.30

³⁶Ibid. p.30-31

Though the expression 'Wild Law' at first may sound a little dissonant it is precisely the breaking down of the nature/culture dualism that is at the heart of Earth Jurisprudence and Wild Law: 'it is precisely the rigidity of the false dichotomy between "wild" and "law", between "nature" and "civilisation" that we need to overcome'.³⁷ Wild Law is Earth-centric, working towards whole Earth system well being, and well being of the Earth community as a communion of Earth right subjects. Wild Law is centred upon sustainability, biodiversity, dynamic balance ecosystems, mutual human-Earth enhancement, system health, on going co-adaptation and evolution, and co-evolution of human systems and Earth systems in dynamic flux.³⁸ It focuses on processes, fostering diversity, allowing freedom for bio-regional communities of people-Earth systems to self-regulate and adapt, and develops as ecology and fostering of ecosystem integrity. It is primarily concerned with land, ecosystem, human-land-ecosystem interconnectedness, interrelation and interdependency. Wild Law fosters ecological integrity, an ecological conceptualisation of territories and land, relations of trust and custodianship, equitable jurisdiction and Earth democracy. Wild Law processes are expressed and operated in ecological assemblages of heterogeneous dynamic components of location, place, territory, and not the imposition of uniform universalising forms.³⁹

Thus, Wild Law 'is better understood [than in the structures of conventional legal definitions] as an approach to human governance, rather than a branch of law or collection of laws', particularly given the focus of Wild Law on processes of becomings rather than universal prescriptions.⁴⁰ Indeed, the relation of dominant legality towards the processes and assemblages of Wild Law is that the vast majority of dominant legality and law suppresses and stifles the wildness forces of nature, and though there are scraps of law that may somewhat resemble Wild Law in existing legality.⁴¹ The majority of the dominant law actively facilitates the exploitation of nature, and the whole paradigm of dominant legality is inadequate to capture Wild Law and is the very anti-thesis of the Wild Law paradigm:

'Almost all our laws and our social governance structures suppress and stifle expression of wildness and promote uniformity and control.'⁴²

³⁷Ibid. p.30

³⁸Cullinan (2011b) p.234

³⁹Cullinan (2011) p.157-68

⁴⁰Ibid. p.30; Ibid. p.159

⁴¹Filguiera & Mason (2011)

⁴²Cullinan (2011) p.32

In particular, it is stressed by Cullinan, and reiterated in *Exploring Wild Law*, that in no way should Earth Jurisprudence and Wild Law be subsumed within existing environmental law as a sub-branch.⁴³ The reasons for not subsuming Wild Law in environmental law are both theoretical and pragmatic. The theoretical concern is that environmental law is both firmly based in an anthropocentric regime of rights and as a body and practice of law it is intellectually embedded within the paradigm of dominant modern legality. The pragmatic consideration from the perspective of Wild Law is the environmental law and regulation, despite the considerable development over the 1960s and 1970s, have failed to maintain the ecological integrity of the Earth and ecosystems, and have not successfully addressed sustainability in any robust way. Indeed, Wild Law is developed to 'help those involved in the mainstream of law to understand that the environment cannot be adequately dealt with simply by creating a new category of environmental law.'⁴⁴

As with the concerns of Earth Jurisprudence, Wild Law tends to focus upon developing out the detail and substance on Earth rights, ecological land law, and contexts of ecological and social justice.⁴⁵

At first, Wild Law works to extend the scope of standing in existing systems of law to subjects beyond human or corporate actors. All subjects of the Earth community have Earth rights embodied in Wild Law rights: geological rights, biological rights, habitat rights, landscape rights, ecosystem rights, bioregional rights.⁴⁶ The orientational principle of Wild Law Earth Rights is: 'Nature, or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain itself and regenerate its own vital cycles, structure, functions and evolutionary processes'.⁴⁷

In the ecological reconceptualization of land Wild Law is the long gradual process of opening up private ownership of land to other models of land and ecosystem guardianship. In thinking about alternative models of land ownership, Wild Law can draw upon indigenous models of land and ecosystem guardianship:

⁴³Burdon (2011)

⁴⁴Cullinan (2011) p.177; Bosselmann (2011)

⁴⁵Filguiera & Mason (2011)

⁴⁶Berry (2011)

⁴⁷Engel & Mackey (2011)

‘Changing how we understand and recognise this relationship is at the heart of shifting to a new governance paradigm...Resurrecting and adapting ancient notions of people and communities as guardians of land, with a sacred obligation to care for it in perpetuity is likely to be an important part of emerging Earth Jurisprudence.’⁴⁸

Wild Law is also developing through developing ideas of trust and equity from the jurisdiction of equity, with notions of interspecies and intergenerational equity, the care of nature as a sacred trust, and the reactivation of the doctrine of public trust for land and ecosystems (see ‘Public Trust Doctrine in Natural Resources Law’ Sax 1970).⁴⁹

Wild Law develops across these three areas with novel practices of lawyering. The operation of lawyering is transformed in Wild Law regimes to focus upon decentralisation, self-organisation, self governance, localism, bioregionalism, experimentation, and continual processes of juridical evolution.⁵⁰ In these processes Wild Law encompasses both a practice of a philosophy of nature and ecology, and a practice of local assembling, problem solving at many different levels, and ethical and ecologically informed practice of co-adapting and evolving people-Earth assemblages at maximum integrity and sustainability. Wild Law is an affective practice of justice: ‘I suggest the thinking about governance in an “ecological” way requires not only grounding theory in practice, but also engaging on an emotional and physical level’.⁵¹ Wild Law proceeds ‘on self-organising solutions to local problems that are repeated in a manner that allows more complex patterns of organisation to emerge’.⁵² In addition, Wild Law draws on restorative justice as the primary method for addressing incidents where any infraction of the Wild Law has occurred.

In Wild Law Earth Jurisprudence becomes processual, emergent, self-assembling of complex assemblages, local and diverse solutions and experimentations. It is an active and creative natural philosophy continually reconceptualising the relations of human systems and Earth systems, together with an ethical, affective, aesthetic practice of exploring problems and experimental assembling of heterogeneous assemblages and dynamic systems, with a local knowledge of place, belongings and becomings. Wild Law as the pragmatic unfolding of Earth

⁴⁸Cullinan (2011) p.142

⁴⁹Koons (2011) p.46; Mason (2011) p.41

⁵⁰Filgueira & Mason (2011)

⁵¹Cullinan (2011) p.128

⁵²Ibid. p.151

Jurisprudence is the activity of those who are concerned with creating new societies based on social justice and ecological integrity and sustainability⁵³:

‘Ultimately, all law must be based on and reflect Earth Jurisprudence, as must all the institutional structures of our societies.’⁵⁴

Two key examples of emerging Wild Law are community ecological governance and the development of the Earth Charter).⁵⁵ Community ecological governance arises when local communities realise that they can only secure their own well being as a local community from economic threats by protecting the integrity and functioning of the ecological community within which they live.⁵⁶ This ecological governance operates through self-organisation, and by asserting the right to prohibit activities harmful to the well being of the local ecosystem, then recognise rights of these natural local communities, strip offending corporations of legal personality if local law allows it, and demand restorative justice for any damage caused to the ecological community.⁵⁷ On a larger scale the Earth Charter is a self-organising enterprise to establish the viability of Earth rights on a global scale, and to establish the ethical and juridical framework for achieving a sustainable society.⁵⁸

Conclusion: Convergences in Earth Jurisprudence and Emergent Law

Emergent Law is the jurisprudential theory that the philosopher Gilles Deleuze and the psychoanalyst Felix Guattari developed across their four book collaborations *AntiOedipus*, *Kafka: Towards a Minor Literature*, *A Thousand Plateaus*, and *What is Philosophy?*.⁵⁹ The aim of this final section is to put Berry & Cullinan’s Earth Jurisprudence, together with the emerging field of ecology and law, in connection with Deleuze & Guattari’s concept of emergent law. To my knowledge these two lines of thought have not been directly put into contact. It is important to put them directly into contact for two main reasons. First, despite independent development, there are some very striking commonalities and convergences between Earth Jurisprudence and emergent law, in particular their convergence on an Earth-

⁵³Harding (2011) p.82

⁵⁴Cullinan (2011) p.177

⁵⁵Filgueira & Mason (2011) p.192

⁵⁶Cullinan (2011a) p.19

⁵⁷Cullinan (2011) p.20; ‘Margil (2011), p.249

⁵⁸Sheehan (2011) p.236

⁵⁹see Murray (2013)

centric new jurisprudence of a legality for a new Earth. Second, there may be considerable scope for the work of Deleuze & Guattari and the concept of emergent law to add to the field of Earth Jurisprudence and to the field of ecology and law more generally.

The case for connecting Berry and Cullinan's Earth Jurisprudence and Deleuze & Guattari work directly is evidenced in a couple of developments in the recent ecology and philosophy literature. Over the last few years a body of work in the field of ecology has developed connecting Deleuze & Guattari to ecology, and within philosophical studies of Deleuze & Guattari there has developed an increasing awareness that their work has a central ecological theme. Herzogenrath's edited collection *Deleuze/Guattari and Ecology*⁶⁰ firmly connects ecology and Deleuze & Guattari, and joins Halsey's *Deleuze & Environmental Damage*⁶¹ that links Deleuze & Guattari to environmental regulation. In the Deleuze & Guattari philosophical commentary their characterisation of their philosophy as a geophilosophy in *What is Philosophy?* has been stressed with Alliez defining their philosophy as an 'etho-ontology'⁶², and Bonterra & Protevi have long stressed the centrality of ecological and geographical themes to their work⁶³. A further recent development in the emerging literature on ecology and law is the editor's introduction by Philippopoulos-Mihalopoulos in *Law and Ecology* which is clearly informed by Deleuze & Guattari in its formulating of new directions for ecology and law⁶⁴.

This concluding discussion will only touch on the relevant aspects of Deleuze & Guattari work, and is intended very much as an invitation and encouragement to readers interested in ecology and law, and specifically Earth Jurisprudence, to explore the thought of Deleuze & Guattari.

The work of Deleuze & Guattari is vast in scope, but centrally includes a univocal ontology based philosophy of nature and philosophy of social organisation both thought and existing on mutual nature-culture continuum plane. A first of many commonalities between Deleuze & Guattari and Earth Jurisprudence is an orientational Earth-centrism. This is particularly so in *A Thousand Plateaus* with the chapter '10,000 B.C.: The Geology of Morals (Who Does the

⁶⁰Herzogenrath (2009)

⁶¹Halsey (2006)

⁶²Alliez (2004)

⁶³Bonterra & Protevi (2004)

⁶⁴Philippopoulos-Mihalopoulos (2012); Philippopoulos-Mihalopoulos (2012a); and see Philippopoulos-Mihalopoulos (2013)

Earth Think It Is?'⁶⁵ and in the installing of thought in the Earth in the geophilosophy of *What is Philosophy?*⁶⁶, though the centrality of the theme of territorialisation through all of their work establishes an inherently ecological outlook ('1837: Of the Refrain')⁶⁷. This Earth-centric orientation is also matched in Deleuze & Guattari by a transformed relation to the Earth, with the exploration of intensive intimate Earth based becomings and becomings animal ('1730: Becoming-Intense, Becoming-Animal, Becoming Imperceptible...')⁶⁸. As with Earth Jurisprudence, Deleuze & Guattari's work is premised upon a critique and abandonment of the dominant western model of thought and rejection of its nature-culture dualism. This critique is pervasive throughout their work, though the full statement of their critique of the dominant model of thought can be found in Deleuze's most far-reaching book of philosophy *Difference & Repetition*⁶⁹. Indeed, it is in this book that Deleuze most fully develops an alternative new image of thought, although Guattari brings much to this image of thought, and it is this search for a new image of thought that also characterises Earth Jurisprudence. A further commonality between Deleuze & Guattari and Earth Jurisprudence is the absolute centrality of ideas drawn from developments in evolutionary science and twentieth century science to the formulation of a understanding and philosophy of nature and thought. As with Earth Jurisprudence, Darwin, relativity and quantum mechanics, systems theory, catastrophe theory, chaos theory, and the process philosophy of Whitehead are all taken up in Deleuze & Guattari, and their work is unthinkable without this science (this is particularly the case for *Difference & Repetition*). All these commonalities converge on the commonality of the realisation of the need to completely reconceptualise legality, and to completely re-think the problematic of social organisation in a way that irreducibly connects social organisation to ecology and Earth systems.⁷⁰

What is striking about Cullinan's Earth Jurisprudence in the context of the emerging field of ecology and law is that the project in connected ecology and legality concludes that nothing less than the complete reconceptualization of legality and institutional transformation of legality is necessary for us to find a way to live on Earth in a sustainable way. For Berry and Cullinan, this reconceptualization will need to connect to and participate in the forces of the cosmos as it is not possible to separate human social organisation from these forces (their

⁶⁵Deleuze & Guattari (1987) p.39-74

⁶⁶Deleuze & Guattari (1994) p.85-116

⁶⁷Deleuze & Guattari (1987) p.310-50

⁶⁸Ibid. p.232-309

⁶⁹Deleuze (1994)

⁷⁰Murray (2013)

Great Jurisprudence), and this social organisation is inseparable from a society's image of thought and image of legality (Earth Jurisprudence). Although it is not an exact expression used by Berry and Cullinan, Earth Jurisprudence culminates in nothing less than the conceptualisation and creation of a legality for a new Earth. The culmination of Deleuze & Guattari's jurisprudential philosophy is also the conceptualisation and creation of legality for a new Earth.⁷¹ From independent and different starting points both Earth Jurisprudence and Deleuze & Guattari converge on the problematic of ecologically sustainable social organisation and the convergent conclusion that so many transformations are required to take place in how we think and affectively live our relations to the Earth, and that there further needs to be the great task of thinking and creating a new legality for the relation to Earth transformed.

In *Deleuze & Guattari: Emergent Law*⁷², the Deleuze & Guattari jurisprudential philosophy of a legality for a new Earth is explored in resources drawn from their joint work in the concept of emergent law. Emergent law is the legality for a new Earth, and it is both legality reconceptualised and this legality assembled in new juridical practices that create the philosophy and transformed practices of this legality (a new conceptual framework of legality. The reconceptualization of legality places legality as fundamental to social organisation, in a defining abstract machine of social machines and social assemblages. The concept of emergent law draws upon the *nomos* theory of legality that Deleuze & Guattari develop as an immanent, self-organising, evolving legality, that is very different from the *logos* theory of legality as universal, transcendent, hierarchical legality, and that the *nomos* legality is ontologically and ethically superior to *logos* legality as *nomos* legality directly connects to the forces of the cosmos and of Earth.⁷³ Emergent law as an assemblage and practice has two key operators: one a philosophically active and creative set of practices of continually exploring the changing nature-culture continuum, operating with cosmic forces, and creating new concepts of legality; the other operator is entwined within intensive and affective processes of human-Earth assemblages where it is a matter of ethical engagement with human-Earth problems and the creative experimentation of problems and solutions. Following Deleuze & Guattari's conceptual experimentation and practices of conceptual personae, the first operator is theorised as schizo law and schizo lawyering (it could equally be termed nomad law and nomad lawyering, or philosopher law and philosopher lawyering), and the second operator is theorised as vagabond law and vagabond lawyering (it could equally be termed affective law

⁷¹Ibid. p.150-58

⁷²Ibid.

⁷³Ibid. p.133-49

and affective lawyering, or equity law and equity lawyering). A legality for a new Earth is, thus, the activation and creation of the *nomos* concept of law as emergent law, and emergent law is created in the interconnected operations of the philosophical and creative schizo connected to the forces of the cosmos and Earth and the operations of the affective and embedded vagabond lawyer in intensive human-Earth assemblages of self-organisation and emergence.⁷⁴

At the risk of over simplification, and in the spirit of invitation and encouragement to think through the potential productivity of directly connected Earth Jurisprudence and Deleuze & Guattari, the following parallels and connections can be proposed between key constituent operations and elements of Earth Jurisprudence and key constituent operations and elements of emergent law. The Earth Jurisprudence as developed by Berry and Cullinan has several constituent operations and elements of the Great Jurisprudence, the central enterprise of Earth Jurisprudence, and the productivity from this jurisprudence of Wild Law. The Great Jurisprudence is openly and creatively philosophical and connects to cosmic forces, and there is a potential correspondence between this activity and the activity of schizo law within emergent law. Wild Law is the practical and pragmatic productivity of Earth Jurisprudence and creates dynamic assemblages of human elements and systems together with Earth elements and systems, and there is a potential correspondence between this activity and the activity of vagabond law within emergent law. Earth Jurisprudence holds together the Great Jurisprudence and the Wild Law in an overarching project of complete reconceptualization of legality and governance and the jurisprudential creation of a transformed legality for a new relation with the Earth, and there is a potential correspondence between the overall enterprise of Earth Jurisprudence and the overall enterprise of jurisprudence of Deleuze & Guattari's emergent law of the complete reconceptualisation of legality and governance and the creation of a transformed legality for a new Earth.

If the commonalities, convergences, and potential correspondences between Deleuze & Guattari's jurisprudence of emergent law and Berry and Cullinan's Earth Jurisprudence hold good, then the project to conceptualise and create a legality for a new Earth within the emerging field of ecology and law can then absorb the entire philosophical and theoretical framework and depths of Deleuze & Guattari's work. Deleuze & Guattari can supply the emerging field of ecology and law with a highly sophisticated ontology of nature and social

⁷⁴Ibid. p.133-49

organisation on a univocal nature-culture continuum plane⁷⁵, an advanced critique modern western image of thought and highly sophisticated philosophy of thinking and thinking differently⁷⁶, and a highly sophisticated social ontology and theory of machines of legality and assemblages of legality.⁷⁷ The Deleuze & Guattari social ontology may be a very useful theoretical framework for problems of ecology and law as it works to theorise assemblages of mixed social-nature processes and elements, and in many respects has claim to be an ecology of mixed human-Earth assemblages. Further, there is the potential for direct connection in the concept of emergent law as a legality for a new Earth for Earth Jurisprudence and the emerging field of ecology and law.

However, the one feature that Deleuze & Guattari could bring to the emerging field of ecology and law, and indeed ecology in its own right, is the ontology of the two further registers of the virtual and the intensive to that of the actual. The actual is the ontological register that we are accustomed to living within, but Deleuze & Guattari argue that to understand the actual it is also necessary to theorise an intensive register of morphogenetic processes that create the actual, and further argue that to understand the intensive and the actual it is also necessary to theorise an ontological register of the virtual in which abstract operators of self-organisation and emergence pilot the intensive processes and sample the actualisation.⁷⁸ This ontology allows a very considerable expansion of the philosophical reach of ecology, and opens out ecology as an ecology of the virtual and an ecology of intensive processes in addition to simply an ecology of the actual. The potential for ecology in the Deleuze & Guattari's work was explored by Guattari himself in his *Three Ecologies*⁷⁹ that extends the reach of ecology to an ecology of not only Earth environmental conditions but also social relations and human subjectivity, all three ecologies necessarily interconnected. Indeed, it is here that emergent law has perhaps its greatest potential in substantially contributing to the emergent field of ecology and law by introducing the virtual and intensive ontology into the core of the relations between legality and ecology.

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⁷⁵Ibid. p.13-32

⁷⁶Ibid. p.33-54

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⁷⁹Guattari (2000)

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