

## **Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology & Law – Part 1**

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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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**Note:** This article is published in two parts. Part 1 commences the exploration of the emerging field of ecology and law through the examination of Earth Jurisprudence developed in the work of Berry, Cullinan, and Burdon. 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. Part 1 ends with the initial introduction to Earth Jurisprudence through Cullinan's reconceptualization of legality.

## Introduction

The aim of this article in a first approach is to survey the emerging field of ecology and law through an analysis of the Earth Jurisprudence developed in the work of Cormac Cullinan and Thomas Berry. The paper considers the motivation for Earth Jurisprudence and Wild Law, and the common premises of abandoning the dominant modern worldview on nature and social organisation, of appreciation of developments in contemporary science, of shift in thought and feeling in relation to nature and the Earth, and of the need for a transformation in our conceptualisation of legality. Earth Jurisprudence and Wild Law are explored in this article in terms of the following elements: a Great Jurisprudence, an Earth Jurisprudence (including a theory of Earth rights, ecological concept of land, theory of Equity), and Wild Law (substantive new law of Earth rights, materialist land law, and inter-species and inter-generational equity and justice).

In a second approach the aim of this article, as well as surveying the emerging field of law and ecology through an analysis of Earth Jurisprudence, is to put this material in connection with the terms of ecology and legality as they are articulated in the philosophical work of Deleuze & Guattari,<sup>2</sup> and as they are explored in *Deleuze & Guattari: Emergent Law*.<sup>3</sup> The proposal of this connection is a result of putting the Earth Jurisprudence material of Cullinan and Berry together with Deleuze & Guattari's philosophy of nature and social organisation. In *Deleuze & Guattari: Emergent Law*,<sup>4</sup> in line with the terms of Deleuze & Guattari and much commentary,

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<sup>2</sup> Deleuze & Guattari (1984, 1986, 1988, 1994)

<sup>3</sup> Murray (2013)

<sup>4</sup> *Ibid.*

there is an account of Deleuze & Guattari's work on social organisation as inherently ecological and that there is no discussion of social organisation in Deleuze & Guattari without placing it in its relation to Earth systems. In this book there is the production from Deleuze & Guattari's work a concept of emergent law as an ecological legality for a new Earth. Putting together the literature on Earth Jurisprudence, particularly Cullinan's *Wild Law: Manifesto for Earth Justice*,<sup>5</sup> with the Deleuze & Guattari philosophy of nature and social organisation, despite being produced in very different contexts, there appeared very clear commonalities and a convergence of both Earth Jurisprudence and Deleuze & Guattari on a concept of a new legality for a new Earth. After introducing Earth Jurisprudence, the article therefore puts this material in connection with the material of Deleuze & Guattari's legality for a new Earth, and concludes with an assessment of the potential for the connection of Deleuze & Guattari with Earth Jurisprudence, and with the field of ecology and law more widely.

### **The Emerging Field of Ecology & Law**

The development of a field of ecology and law, and within that field the development of Earth Jurisprudence and Wild Law, is the realisation of an Earth-centric ecology and ecosystems informed understanding of the Earth in legal studies:

'For present purposes we define 'Earth Jurisprudence' [and the emerging field of ecology and law] as: the philosophy of law and regulation that gives formal recognition to the reciprocal relationship between humans and the rest of nature.'<sup>6</sup>

Perhaps the first indication of the realisation in legal studies of an Earth-centric ecological understanding and framing of a legal problem was Professor Christopher Stone's 1972 paper 'Should Trees Have Standing'<sup>7</sup>, advocating the novel move of attributing rights to nature, and the first proposal of an Earth right. Professor Stone's paper provoked some controversy, but the suggestion of Earth rights was not substantively developed, nor the existing framework of environmental law opened up.<sup>8</sup> It was the publication in 2002 of *Ecology & Law: The Rise of the Ecosystem Approach* that drew together all the initial strands of what would develop as a field of ecology and law, marks a consolidation of ecology and law concerns, and a new phase

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<sup>5</sup> Cullinan (2011)

<sup>6</sup> Filgueira & Mason (2011) p.196

<sup>7</sup> Stone (2010)

<sup>8</sup> Brooks, Jones and Ross (2002) p.118-154

in the development of a field of ecology and law.<sup>9</sup> This wide ranging discussion of the relationship between ecology and law, its genealogy of the field of law and ecology over the period of thirty years, and particularly its charting of the centrality of systems theory (complexity theory and autopoiesis) to the field of ecology and law, from the start registers many of the key features of the field of ecology and law. In the last couple of years there has been a major expansion in ecology and law studies, with Anna Grear's 'Ecology, Environment, Justice' Routledge book series, commencing with Andreas Philippopoulos-Mihalopoulos's collection of the theoretical underpinnings of law and ecology *Law and Ecology*,<sup>10</sup> joined by Utomo & Mussawir's *Law & the Question of the Animal*,<sup>11</sup> and the soon to be published Burdon books.<sup>12</sup>

However, perhaps the work that presently defines the potential of the emerging field of ecology and law is Cormac Cullinan's 2002 *Wild Law: A Manifesto for Earth Jurisprudence*,<sup>13</sup> the associated work of Thomas Berry that is so heavily drawn upon by Cullinan, and Peter Burdon's extremely valuable collection *Exploring Wild Law*.<sup>14</sup> Earth Jurisprudence is a distinctive philosophical framework for thinking through Earth-centric systems of legality and governance, and a distinctive program within the field of ecology and law. In Earth Jurisprudence Wild Law is the law that is produced from the framework of Earth Jurisprudence in relation to human-Earth assemblages.

The details of Earth Jurisprudence and Wild Law will be explored below, but an outline of the consequences of adopting an Earth-centric ecology and ecosystems informed understanding of the Earth in relation to law and legal studies, whether within the broad field of ecology and law or within Earth Jurisprudence specifically understood, will be sketched by way of introducing what is at stake in this field of legal studies. The starting point for ecology and law, from the key texts of Berry and Cullinan, together with all the other scholarship of Earth Jurisprudence and Wild Law, appears to be nothing short of a paradigm shift in our worldview from the modernist western nature/culture dualism anthropocentric representational worldview to a new Earth-centric nature-culture continuum intensive and affective worldview for a new Eozoic age. The motivation expressed in the ecology and law literature for making this

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<sup>9</sup> *Ibid.*

<sup>10</sup> Philippopoulos-Mihalopoulos (2012)

<sup>11</sup> Utomo & Mussawir (2013)

<sup>12</sup> Burden (2014); Maloney & Burdon (2014).

<sup>13</sup> Cullinan (2011)

<sup>14</sup> Burdon (2011)

paradigm shift are intellectual, affectual, and practical necessity, and involve a critique of the modernist worldview and of the ecological crisis that it is fostering, a renewal of our scientific understanding of the Earth and nature in a contemporary philosophy of Nature, a change in our image of thought and how we feel our relationship as humans to the Earth, and a radical change in our understanding of legality and governance to align them with the creative forces of the Earth. The pressing contemporary reality for the connection of ecology and law is large scale ecological overshoot, over consumption, global climate change, deteriorating capacities for the Earth to support life, mass extinctions and loss of biodiversity, decreasing human well being, and the complete inadequacy of any responses to this ecological crisis.<sup>15</sup> The coming together of the field of ecology and law, given this context, poses the necessity of complete radical transformation in the very idea of legality and governance: ‘My argument is simply that Thomas Berry is correct when he points out that the present form of law and governance are not only unhelpful but positively obstructive, and that an entirely new philosophical approach is needed’.<sup>16</sup> In Berry’s own words: ‘The time has come when human laws and Earth laws must be brought together’.<sup>17</sup>

The following four sections draw out the concerns and common premises of both Cullinan’s Earth Jurisprudence and of the wider field of ecology and law, and cover a critique of the modern worldview, the contemporary scientific and philosophical understanding of nature, a transformed affectual relationship to the Earth, and a radical transformation in the conceptualisation of legality and governance.

### **Critique: Modernist Worldview and Accompanying Ecological Crisis**

Earth Jurisprudence and the emerging field of ecology and law of necessity incorporate a first moment of critique and realisation of that critique. The critique is of the image of thought and worldview that structures and informs the law and legal institutions of the modern western world. Cullinan exemplifies the critique developed in the law and ecology literature of the modern western image of thought: ‘For centuries now we humans have been enthusiastically engaged in constructing a delusionary human world that is separate from the real universe’.<sup>18</sup> The western dominant worldview and image of thought can be traced back to the turn of

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<sup>15</sup> Cullinan (2011) p.43

<sup>16</sup> *Ibid.* p.158

<sup>17</sup> Berry (2011) p.229

<sup>18</sup> Cullinan (2011) p.51

modernity in the sixteenth, seventeen century Enlightenment, commencing with Galileo, Bacon, Descartes, and Newton.<sup>19</sup> This image of thought is resolutely anthropocentric, rationalistic and representational thinking, with an active subject pole (gendered masculine) and a passive object pole. It is a universalist and universalising model of thought that abstracts as far as possible from the material, isolating uniform forms of passive matter, and imposes a transcendent plane of gridded organisation over all of nature. In particular, the western dominant image of thought embeds a culture/nature dualism paradigm at the centre of its worldview.<sup>20</sup> The anthropocentrism of this image of thought pits the human as the cultural, and as opposed and separate from nature. In order to found the image of thought, nature and the real are repressed from thought, founding the symbolic and imaginary framework and language, and within this framework nature becomes a passive inert matter socially and discursively structured as culture's other. There is, thus, in this image of thought and worldview a conceptual segregation of the world into the mutually exclusive categories of culture and nature, a state of affairs that is considered to be universally correct, legitimate and desirable. This worldview: 'reserves all rights and privileges to use and enjoy Earth to humans and reduces all other aspects and creatures of the Earth status of objects for the use of humans'.<sup>21</sup> This framework of thought produces a dominant worldview of individual liberalism and structuring concepts of private property, dominion, and sovereignty in western law and legality.<sup>22</sup>

It is this image of thought and worldview that structures and facilitates the capitalist economic relation of humans over nature and the Earth. The economic relation to nature and Earth is anthropocentric, and it is taken as given that nature and the Earth are simply resources to be owned by humans to be exploited and depleted for present profit. Land and nature are passive matters to be improved and owned on the basis of that improvement, and to be used irrespective of the unique capacities or limits of the land or ecosystem ('land is irrelevant to the laws of ownership'<sup>23</sup>), and ownership includes the right to surpass the ecological limits of the environment, in the limitless pursuit of money and power. This worldview develops in industrial growth society, where the worldview of the economic relation of human and the Earth is one of unlimited economic growth, that the free market can solve all problems of

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<sup>19</sup> *Ibid.* p.45

<sup>20</sup> *Ibid.* p.47

<sup>21</sup> *Ibid.* p.65

<sup>22</sup> *Ibid.* p.52

<sup>23</sup> Graham (2011) p.261

production, well being is defined as consumption, a functional separation of humans from the biosphere, and exclusively recognised rights for humans and corporations.<sup>24</sup>

This modern worldview tracks through the economic relation also to the modern worldview of legality and governance and its conceptualisation of the legal relation between humans and the Earth. The problem is that this worldview is based on 'philosophies from the sixteenth and seventeenth centuries' and that 'we continue to govern ourselves on the basis of a discredited understanding of how the universe functions'.<sup>25</sup> Cullinan tracks the modern image of thought into the heart of contemporary legality and governance:

'These philosophies [Descartes, Hobbes] also obstruct us from developing governance systems based on a respectful relationship with land and Earth, and prevents us recognising that this is a reciprocal relationship between subjects with inherent Earth. In this way they increase our alienation from nature.'<sup>26</sup>

Further, 'the dominant paradigm in governance is, I believe, still largely a mechanistic, Cartesian, human centred worldview'.<sup>27</sup>

The critique culminates in the conclusion that the modern worldview cannot address the ecological crisis because the very image of thought and the existing framework of legality and governance are completely unable to think the real and the present ecological catastrophe of the Earth. It is just not possible to address ecological crisis within existing current economic, political, and legal systems 'without challenging underlying values'.<sup>28</sup>

### **Renewal of Scientific Understanding of Nature and Earth: Contemporary Philosophy of Nature**

The connection of ecology and law, and the development of Earth Jurisprudence, are not only marked by the critique of the dominant worldview paradigm but also marked by the

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<sup>24</sup> Bosselmann (2011) p.206

<sup>25</sup> Cullinan (2011) p.48

<sup>26</sup> *Ibid.* p.141

<sup>27</sup> *Ibid.* p.59

<sup>28</sup> Bosselmann (2011) p.210

appreciation of some of the major scientific developments of the last hundred years that have fundamentally changed the way we understand how the cosmos, Earth, and nature operates.

These developments include the theoretical physics of relativity and quantum mechanics (Einstein, Bohr, Schrodinger, Heisenberg), particle physics (Higgs Boson), string theory and high dimensionality manifolds, developments in cosmology (cosmic expansion, dark matter, dark energy), deepened understanding of evolution, chaos science and theory, complexity science and theory (Santa Fe Institute), systems theory more generally, information theory and computer science (in particular artificial intelligence and life), ecology and related earth sciences, together with much work in process philosophy and social theory informed by these developments.<sup>29</sup> Of course, these fields are extremely vast and complex, and these developments and ideas are only very gradually entering ecology and law and Earth Jurisprudence. Yet it is in the emerging field of ecology and law that these new scientific developments are entering into legal study's broad understanding of how the universe operates, and, in particular, into legal study's understanding of how social organisation and legality can operate, and into legal study's understanding of potential relations between legal systems and Earth systems.

Of all these recent developments in the sciences there is one overwhelming theme that tends to pull all the disparate developments together. This is that in the operation of the cosmos, the Earth, and nature, that everything is univocal, processual, self-organising, and interconnected.<sup>30</sup> In this understanding of the interconnected cosmos and nature 'matter appears to have an inherent capacity to organise itself and to evolve in infinitely creative ways', and the universe is 'a single integral whole composed of a dynamic network of relationships'.<sup>31</sup> This puts forward a new understanding of the cosmos, cosmology, nature, and of organisation generally.<sup>32</sup> In cosmogenesis and biogenesis there is a unified inner reality, in which everything is animated through one immanent univocal power of the cosmic interconnectedness that everything participates in, and the cosmos and nature are continually evolving.<sup>33</sup> In Swinne & Berry (1999) the universe is understood in terms of three key processes of differentiation, autopoiesis, and communion (modern science 'presents a description of the Earth that is characterised by communion, autopoiesis, and

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<sup>29</sup> Capra (1996); DeLanda (2006); Halpern (2004)

<sup>30</sup> Cullinan (2011), p.48; Capra (1996)

<sup>31</sup> Cullinan (2011) p.47

<sup>32</sup> *Ibid.* p.54; DeLanda (2002)

<sup>33</sup> Greene (2011); Lyon (2011)

differentiation')<sup>34</sup>. It is in drawing these three fundamental operations of immanence, self-organisation, and emergent complexity from contemporary science that Earth Jurisprudence and the field of ecology and law can find a contemporary philosophy of nature to drive the development of the relation between ecology and law.

Indeed, it is in the contemporary science of ecology, together with the related Gaia Earth system theory, that Earth Jurisprudence find two examples of the new science and the new thinking that are specifically influential.

Ecology focuses upon the processes of life on Earth and upon the operation of nature. In particular, ecology studies interactions among organisms and their environment, and interactions among different organisms and their shared environments.<sup>35</sup> In studying the processes of life on Earth the interactions among species and abiotic environments are theorised in terms of immanence, self-organisation, and vastly interconnected complex ecosystems. Of particular importance to ecology are concepts of biodiversity, sustainability, and evolution, with specific attention paid to: life processes, interactions and adaptations in ecosystems; movements of materials through ecosystems; the development of ecosystems; and the distribution of biodiversity within ecosystems.<sup>36</sup> The ecosystems studied are characterised by living and non-living elements, diversities of chemicals, genes, and species, degrees of stability and resilience, a net flow of energies, differing carrying capacities for particular kinds of organism, overall non-equilibrium dynamics, and a system evolution on an irreversible arrow of time. Ecology introduces the two key system theory concepts of community and network, and shifts from any precondition of structuring hierarchy towards 'an assemblage of organisms bound into a functional whole by their mutual relationships'.<sup>37</sup> The ecological understanding of the operation of nature exemplifies the immanent, self-organising, interconnectedness that characterises the new science and new thinking about nature. This understanding dispenses with the culture/nature dualism paradigm, and theorises the intersection of human-Earth relationships upon a nature-culture continuum of mixed assemblages. Further, ecology directly connects this understanding to a non-anthropocentric

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<sup>34</sup> Swinne & Berry (1999) quoted Burdon (2011b) p.92

<sup>35</sup> Begon, Townshend, and Harper (2006)

<sup>36</sup> *Ibid.*

<sup>37</sup> Burdon (2011b) p.87

understanding of the human-Earth relationship to issues of governance and legal organisation of human-Earth systems.<sup>38</sup>

The Gaia thesis, developed primarily in the work of Lovelock, embodies the immanent, self-organising interconnectedness that characterises new thinking about nature and Earth.<sup>39</sup> The Gaia thesis is that we humans live symbiotically with the Earth as a single vast, evolving, sentient creature that regulates its own surface conditions within the narrow limits suitable for life.<sup>40</sup> The Earth is an emergent, self-organising system that has kept our world habitable since the appearance of life three and a half thousand million years ago. This is the result of interactions between living beings and the atmosphere, rocks and water that surround them.<sup>41</sup> The surface of the Earth is an interconnected, living, gas swapping, gene trading, growing, evolving organism, regulating itself in a manner that keeps the composition of the atmosphere and the average temperature within a range conducive to the existence of biotic life.<sup>42</sup>

### **A Change in How Humans Think and Feel the Relation to Nature and Earth**

Even beyond the new awareness that accompanied the development of environmental law through the 1960's and 1979's, the start of the 21<sup>st</sup> century is marked by new ecological concerns and new awareness in the light of climate change and highly disturbing collapses in biodiversity. This awareness encompasses an awareness that humans are only part of the Earth community, an awareness that the Earth has an intrinsic value beyond the interests of just one species, an awareness that the Earth is a living self-regulating Gaia entity, and an awareness that human activities are damaging ecosystems, at Earth scales and irreversibly in terms of climate change and massive reductions in biodiversity. This global ecological crisis provokes the realisation that we must re-think our relationship to nature and the Earth. The realisation of our new relation to nature is the emergence of an Earth-centric ecology and ecosystem informed understanding of the Earth.

In the Earth-centric ecology it is 'the Earth as a sacred mode of being of the Universe' (Cashford 2011, p.7) that is brought to the fore, and calls forth a new relationship to the Earth in sensation and affect, in the modality of thinking the Earth, and in the manner of the

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<sup>38</sup> Burdon (2011a); Burdon (2011b)

<sup>39</sup> Lovelock (1979); Margulis & Sagan (1995)

<sup>40</sup> Harding (2011) p.80

<sup>41</sup> *Ibid.* p.82

<sup>42</sup> *Ibid.* p.82

investment of the social field and investment of the future of the Earth. In short, it calls forth a poet, a philosopher, and a prophet in ecology and law (Cashford 2011, p.3-10).

Ecology and law, and Earth Jurisprudence, entails a new way of feeling our relationship with the Earth and the development of an Earth-centric affectivity. This affectivity is a personal and collective intimacy and communion with nature, with both an intensive and energetic relation with nature and the Earth, and a spiritual relation to the Earth and nature. The relationship to nature becomes spontaneous, intimate, passionate, a sense of wonder in nature, and the sensation of the Earth as sacred (Cashford 2011, p.3). This new relationship to the Earth summons the affect and sensation of a poet, a role of learning the intimate language of nature. This language of nature is inherently 'poetic, musical, symbolic, subjective, a language of feeling and intuition' (Cashford 2011, p.5).

This new relation to the Earth and understanding of how nature organises has profound implications on how we think about the cosmos and Earth, that is, on our image of thought and on how thinking is organised. The new relation and understanding calls forth a new thinker, a new philosopher of nature: 'Yet if the poet opens up the multivalent language of the Earth, the philosopher is also necessary to perceive and reflect upon the creative power of the universe' (Cashford 2011, p.6). The fundamental realisation of cosmos and Earth interconnectedness means: 'this is an intellectual approach that focuses on understanding anything by looking at its context or role within a larger system, rather than by dissecting the system and analysing the component parts in isolation' (Cullinan 2011, p.47). The image of thought in the new understanding and emergent new worldview becomes itself also interconnected, processual, self-organising, and turns away from representational dualisms to thinking continuous and emergent organisation. It is the emergence of a new immanent image of thinking that is the corollary of the critique and rejection of the modernist dualistic representational image of thought. Indeed, developments within contemporary science and social theory lead to a materialist theoretical framework for thinking social organisation on a culture-nature continuum rather than a culture-nature dualism that characterises the understanding of social organisation and legality in the modern worldview paradigm (DeLanda 2006).

This involves a new way of investing the social field that is nothing less than a reinvention of what it is to be human as integral to the whole Earth community. It is to live the Earth as a

sacred mode of the becoming of the universe, and calls forth a prophetic social movement to 'reinvent the human as integral with the whole Earth community' and of the forging of a new Earth (Cashford 2011, p.8). Following the new Earth ethos, the social field is expanded to admit all of nature and Earth with the social realisation that it is impossible for there to be a social field if not for its participation in a whole Earth field. The new organisation of the Earth-social field is re-thought and lived in terms of a guardianship and trusteeship, with the overarching commitment to the ecological integrity of human-Earth ecosystems, and the health and sustainability and mutual enhancement of human-Earth relations (Freyfogle 2011, p.270; Bosselmann 2011, p.204). In terms of affect, there is a new belonging, a new home, and a new ethos in the ecological relationship to the Earth (Berry 1999; Cullinan 2012). This calls forth new Earth-centric forms of social organisation and social practices that are aesthetic, ethical and visionary of an Ecozoic era:

'If it would be the poet who feels the sacrifice [the degradation of the Earth] passionately as his own, and the philosopher who makes it intelligible as a deviation from the true path of cosmogenesis – the continual unfolding of the universe – then it may be the prophet who finally refuses the sacrifice, setting up an opposing value in its place.' (Cashford 2011, p.8)

### **The Necessity of a Transformation in Our Understanding of Legality**

In many respects the development of Earth Jurisprudence, and the field of ecology and law, is driven by the experience and assessment of ecological crisis at multiple regional ecosystem levels and global level: 'The reason for Earth Jurisprudence is to provide a legal response to planetary ecological crisis'.<sup>43</sup> Our local and global ecological crises are inseparable from processes of industrialisation and patterns of consumption most often organised through capitalist economic production. However, In Berry and Cullinan's Earth Jurisprudence, and the field of ecology and law generally, the response to the ecological crises is not to develop a direct economic critique and attack on global capitalist economic production. Rather, the response to ecological crises is to develop a central critique of dominant western legality and its conceptualisation of legality, together with an assessment on ecological grounds that this

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<sup>43</sup> Greene (2011) p.126

legality must be abandoned and replaced by a completely reconceptualised legality adequate to an Ecozoic age.<sup>44</sup>

Before exploring the grounds for the critique of the modern concept of legality and the necessity to completely reconceptualise it, it is I think important to examine the role that Earth Jurisprudence assigns to the concept of legality in relation to social organisation and change. What is crucial is that Cullinan is proposing a very significant centrality and importance of a concept of legality to the operation and theorisation of social organisation and change. This is to theorise concepts of legality as fundamental and definitional of social organisation, and effectively promotes jurisprudence to the highest form of analysis of social organisation and change (with the consequent necessary expansion of jurisprudence). The following passage from Cullinan is quoted in full as it merits careful consideration because it forms the central assumption of Earth Jurisprudence and goes to the heart of the Earth Jurisprudence project:

‘In order for any fundamental change in how a society perceives itself to be translated into any actual change in how it functions, it is necessary first to change that society’s idea of law. By this I mean not only changing the content of the laws themselves, but rather how the society conceives of law and its role. In other words, the fundamental reorientation of our societies that Berry ‘Great Work’ demands cannot be achieved unless we simultaneously entirely reconceptualise the jurisprudence of the dominant culture.’<sup>45</sup>

Cullinan’s position is that the necessary fundamental social change required to address ecological crisis is jurisprudential: to change society’s idea of law, how it conceives of law, what it considers the role of legality to be. Cullinan is placing jurisprudential revolution and creativity at the very centre of fundamental social change, and that the necessary fundamental social change to address ecological crisis can only be effected through the entire reconceptualization of society’s concept of legality.

Cullinan’s starting point is that, just as the dominant modality of thought is entirely caught up in and responsible for ecological crisis, the dominant concept of legality and governance is entirely caught up in and responsible for ecological crisis, and needs to be abandoned and reconceptualised anew:

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<sup>44</sup> Cullinan (2011)

<sup>45</sup> *Ibid.* p.58

‘The human societies that presently dominate the world govern on the basis of a false understanding of the universe. The core falsehood is that we humans are separate from our environment and that we can flourish even as the health of the Earth deteriorates...The governance structures , legal philosophies (jurisprudence), and laws established by many societies reflect and entrench the illusion of separation and independence.’<sup>46</sup>

The dominant concept of legality and governance must now be recognised as deeply involved in the contemporary ecological problems of human-Earth relationships: ‘this requires us first to recognise that at the moment the governance systems of most countries and the international ‘community’ actually facilitate and legitimise the exploitation and destruction of the Earth by humans’.<sup>47</sup> Cullinan’s critique, again exemplifying the more general critique in the ecology and law literature, is that our laws constitute and give effect to a violent and abusive worldview: ‘our legal and political establishments perpetuate, protect, and legitimise the continued degradation of the Earth by design, not by accident’.<sup>48</sup> Thus, Earth Jurisprudence, and the field of ecology and law, starts with a ‘critique of any law, legal system, jurisprudence that allows the surpassing of ecological limits of the environment to satisfy needs of any one species’.<sup>49</sup>

Further, in dealing with ecological crises through legality, it is not a matter of reforming existing law, or changing the content of environmental law:

‘As the gravity and extent of human induced damage to the planet becomes increasingly apparent, more and more people are realising that we cannot solve the environmental challenge of the 21<sup>st</sup> century by merely tweaking existing systems of governance.’<sup>50</sup>

Neither reforming national environmental legislation nor entering into new international environmental agreements will address the ecological crisis.<sup>51</sup> Rather, ‘Earth desperately needs a completely new paradigm for social governance’.<sup>52</sup>

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<sup>46</sup> *Ibid.* p.44

<sup>47</sup> *Ibid.* p.29

<sup>48</sup> *Ibid.* p.62

<sup>49</sup> Burdon (2011) p.15

<sup>50</sup> Cullinan (2011) p.7

<sup>51</sup> *Ibid.* p.29

To address ecological crises it is necessary that there is a paradigm change in legality and how society conceives of and conceptualises legality. For Cullinan, this paradigm change requires a abandonment of the existing dominant concept of law and the fundamental and entire reconceptualization of legality in a new jurisprudence. Just as addressing ecological crises could not be simply a matter of reforming existing law, in jurisprudence it cannot be a matter of some superficial re-thinking of legality and concepts of law. Specifically, there is the necessity to reconceptualise legality on an ecologically prioritised concept of legality and governance. What is required is an Earth-centric reconceptualization of legality and governance:

‘I believe the only realistic prospect of securing the kind of future to which most of us aspire is to effect fundamental changes to how we regulate our societies inspired by an Earth-centric perspective.’<sup>53</sup>

This new understanding reorientates how we think about regulating our social organisation based upon:

‘a new understanding that the essential *purpose* of human governance systems should be to support people to play a mutually enhancing role within the community of life on Earth.’<sup>54</sup>

This is to adopt an Earth-centric worldview of legality, accepting not only that the cosmos, Earth, and nature have intrinsic value in themselves, but also that the cosmos, Earth, and nature are the sources of Earth-centric legality, and that the way in which they organise, operate and evolve are models for how Earth-centric legality can regulate social organisation.

This necessary Earth-centric reconceptualization of legality calls for both the resources of contemporary science, and the transformed ethical relation to the Earth, to inform the reconceptualization:

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<sup>52</sup> *Ibid.* p.60

<sup>53</sup> *Ibid.* p.7

<sup>54</sup> *Ibid.* p.29

‘Our ethical and practical survival now calls us to the table to develop a system of Earth based law that reflects our growing scientific and ethical awareness about our place in the Earth community.’<sup>55</sup>

In the necessary reconceptualization of legality the opportunity is to draw upon recent scientific awareness of the interconnection and continuity of all relationships in cosmos, Earth, nature and social organisation, informing a worldview of society that does without the old culture-nature dualism in favour of a nature-culture continuum.<sup>56</sup> This understanding of the fundamentally interconnectedness of cosmos, Earth, nature and social organisation brings with it the corollary of the altered affectual and ethical relation to the Earth and new responsibilities to nurture the mixed Earth-social organisation relations.<sup>57</sup> The reconceptualization of legality develops informed by the collective sensing of a new ethos for living and belonging as humans on Earth.

In short,

‘In order to change completely the purpose of our governance systems we must develop coherent new theories or philosophies of governance (‘Earth Jurisprudence’) to supplement the old.’<sup>58</sup>

Koons reiterates Cullinan’s necessity for the entire reconceptualization of legality in the following terms:

‘It is not too late for a renewal of systems of law and governance. The time is right for humanity to envision new systems of jurisprudence for the well being of the entire Earth community. Earth Jurisprudence is in bud.’<sup>59</sup>

### **The Reconceptualisation of Legality: Introduction to Earth Jurisprudence**

The details of the Earth Jurisprudence new concept of legality and practices of human-Earth governance are explored in the following two sections. In this section it is the

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<sup>55</sup> Sheehan (2011) p.244

<sup>56</sup> *Ibid.* p.243

<sup>57</sup> *Ibid.* p.243

<sup>58</sup> Cullinan (2011) p.29

<sup>59</sup> Koons (2011) p.56

reconceptualization of legality in Earth Jurisprudence that is considered. As noted above, the reconceptualization of legality proceeds on the basis that in Earth Jurisprudence concepts of legality are the fundamental operators for a society's organisation and social change. It is a society's idea of legality that organises the relations of the society to the cosmos, Earth, and nature, organises the structures and processes of the society, and organises the society's modalities of thinking. This significant assessment of the centrality of concepts of legality to social organisation in Earth Jurisprudence makes the reconceptualisation of legality all the more important.

In line with the assessment that the dominant concept of legality and governance needed to be abandoned and a new concept of Earth-centric legality developed, the first and main task of Berry and Cullinan's Earth Jurisprudence is to develop the outlines of a new concept of legality. The first feature of the new concept of legality is that legality is conceptualised as philosophy. In *Wild Law: A Manifesto for Earth Justice* and elsewhere Cullinan centrally and repeatedly reconceptualises legality as philosophical activity. Earth Jurisprudence legality is 'a philosophy of law and human governance'<sup>60</sup>, and the reconceptualization of legality is to 'develop the philosophical basis on which we regulate our species'<sup>61</sup>. Indeed:

'The main role of Earth Jurisprudence in a human governance system is to provide a philosophical basis to guide the development and implementation of that governance system (which may include ethics, laws, institutions, policies, and practices.'<sup>62</sup>

The importance of the reconceptualization of legality in Earth Jurisprudence as a philosophy of legality is crucial for the overall development of Earth Jurisprudence. The reconceptualization in Earth Jurisprudence is the transformation of legality and governance from the rejected dominant concept of law to a concept of law as an active philosophy and a new philosophy of legality and social organisation.

The features of the Earth Jurisprudence concept of legality are drawn from contemporary understandings of cosmos, the Earth and nature: 'Nature is necessary to our

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<sup>60</sup> Cullinan (2011a) p.13

<sup>61</sup> Cullinan (2011) p.108

<sup>62</sup> *Ibid.* p.112

reconceptualization of law'.<sup>63</sup> In the Earth Jurisprudence concept of law the cosmos, Earth and nature are 'the primary source of law'<sup>64</sup>, and the operations and organisations of the cosmos, Earth and nature are 'the greatest inspiration for Earth Jurisprudence'<sup>65</sup>. In this the development of the features of the concept of legality reflects and corresponds to the attributes of natural systems.<sup>66</sup> In this reconceptualization of the correspondence of the concept of legality with the attributes of cosmos, Earth and nature, these attributes are as they are understood in contemporary cosmology, science and philosophies of nature. As discussed above, the central features of contemporary philosophies of nature, cosmology and science are interconnectedness, immanence, self-organisation and complex emergence. In terms of the reconceptualization of legality, therefore, the features of the Earth Jurisprudence conceptualisation of legality and governance reflects and corresponds to central features of interconnectedness, immanence, self-organisation and complex emergence:

'The challenge is to reconceptualise and develop the philosophical basis on which we organise and regulate our species so that it accords more closely with the reality of an interconnected universe of subjects.'<sup>67</sup>

Human legal and governance systems are, therefore, conceptualised as immanently interconnected and continuous with all other systems including all the Earth systems on a single shared culture-nature continuum plane.<sup>68</sup> In this conceptualisation of legality, 'human systems of governance would reflect the attributes of the natural systems in which they are embedded'<sup>69</sup>, and 'a governance system must to some extent reflect or at least correspond with the qualities of that which it is seeking to regulate'<sup>70</sup>.

The conceptualisation of legality as a philosophy of legality and social organisation, therefore, draws directly upon contemporary philosophies of nature, cosmology and science, and is theorised in terms of law systems/assemblages that are necessarily embedded in all other systems including all Earth systems. Thus, the reconceptualization of legality is to concentrate upon 'the realignment of human governance systems with the fundamental principles of how

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<sup>63</sup> Burdon (2011a) p.69

<sup>64</sup> Burdon (2011b) p.89

<sup>65</sup> *Ibid.* p.80

<sup>66</sup> Koons (2011) p.47; Cullinan (2011) p.26

<sup>67</sup> Cullinan (2011) p.108

<sup>68</sup> Graham (2011) p.260

<sup>69</sup> Koons (2011) p.47; Graham (2011a)

<sup>70</sup> Cullinan (2011) p.26-7

the universe functions'.<sup>71</sup> The concept of legality becomes aligned on the cosmos, Earth and nature, and legality becomes conceptualised as complex systems that draws their laws and fundamental principles from how the complex systems of the cosmos, Earth and nature within which they are embedded function, operate and evolve.

When joined to the critique and abandonment of the dominant model of legality, Earth Jurisprudence's reconceptualization of legality is intended to do nothing less than set out to provide 'a new conceptual framework for law' (Cullinan 2011b, p.235). The Earth Jurisprudence reconceptualization of legality is juridically revolutionary. Not only does it completely abandon the terms and thinking of the dominant concept of legality, but it fundamentally opens up the entire problematic of legality and social organisation to an on going creative philosophical exploration. At the same time, this new conceptual framework for legality aligns itself on cosmos, Earth and nature, and populates this conceptual framework with ideas from contemporary philosophies of nature, cosmology, and sciences. Earth Jurisprudence, as does the broader field of ecology and law to a certain extent, proceeds on the basis of a complete reconceptualization of legality and the development of a new concept of law.

From the fundamental reconceptualization of legality Earth Jurisprudence develops in three substantive ways. First, it develops an understanding of the Great Jurisprudence, philosophically exploring the modality of its concept of legality and its relation to the cosmos. Second, it develops an Earth Jurisprudence, exploring the ecology of the morphogenetic field of the interconnection and continuity of legal systems and Earth systems, and exploring the first principles of Earth Jurisprudence and Earth rights. Third, Earth Jurisprudence develops a Wild Law as the juridical and political outcomes of the creative activities of Earth Jurisprudence. It is the reconceptualization of legality for the Ecozoic ecological age, in which our systems of legality rediscover the wisdom of Earth-centric legality and discover a legality for a new Earth.

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<sup>71</sup> Cullinan (2011) p.29

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