

The Earth Community and Ecological Jurisprudence

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Abstract

Legal philosophical discourse tends to be animated by some conception of self and the parameters of community. Reflecting a vast heritage of humanist philosophy and theology, western legal concepts reflect anthropocentric values. Theories of law and legal concepts promote human beings as separate to the environment and define frameworks for the exploitation of nature. Against this paradigm, environmental philosophers have sought to redefine human beings as integral members of a greater Earth community – nature is a community of subjects, not a collection of objects. This alternative conception of self carries important consequences for legal philosophy. This paper explores these consequences first by analysing the ecological conception of self and community articulated by ‘geologist’ Thomas Berry (1914-2009). Second, this paper uses Berry’s analysis to develop an ecological theory of jurisprudence. This theory connects human law with ecological integrity and holds that human law attains legal quality (in part) when enacted for the common good of the comprehensive Earth community. Throughout this analysis, the paper also highlights the limitations Berry’s philosophical and legal writing and seeks dialogue with leftist political theory.

Key words

Earth community; earth jurisprudence; ecology; legal theory; sociology; environmental philosophy; social ecology; Thomas Berry; Murray Bookchin; natural law

Resumen

El discurso filosófico jurídico tiende a estimularse por una concepción del individuo y por parámetros de comunidad. Como reflejo de una vasta herencia de la filosofía

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humanista y la teología, los conceptos jurídicos occidentales reflejan valores antropocéntricos. Teorías del derecho y conceptos legales promueven seres humanos separados del medio ambiente y definen los marcos para la explotación de la naturaleza. Frente a este paradigma, los filósofos ambientales han tratado de redefinir los seres humanos como miembros de una comunidad de la Tierra más amplia – la naturaleza es una comunidad de sujetos, no una colección de objetos. Esta concepción alternativa del individuo conlleva importantes consecuencias para la filosofía del derecho. Este artículo explora estas consecuencias, primero mediante el análisis de la concepción ecológica del individuo y de la comunidad articulada por el geólogo Thomas Berry (1914-2009). En segundo lugar, este trabajo utiliza el análisis de Berry para desarrollar una teoría ecológica de la jurisprudencia. Esta teoría conecta el derecho humano con la integridad ecológica y sostiene que el derecho humano alcanza (en parte) la calidad jurídica cuando se promulga por el bien común de la comunidad global de la Tierra. A lo largo de este análisis, el informe también pone de relieve las limitaciones de la escritura filosófica y jurídica de Berry y busca el diálogo con la teoría política de izquierdas.

Palabras clave

Comunidad de la tierra; jurisprudencia de la tierra; ecología; teoría jurídica; sociología; filosofía ambiental; ecología social; Thomas Berry; Murray Bookchin; derecho natural

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1. Introduction

Legal systems and philosophies emerge from a social context and tend to be animated by the worldview and moral horizon of the political class of a given society (Pashukanis 1989). This class has historically been closed on the basis of race and gender and continues to be represented predominately by the wealthy (Wallerstein 2011, p. 77). Law is one of the key mechanisms through which this class analyses itself and projects their image to the world. It also represents the dominant operative theory of society and environment within that society. The instant we begin to approach law from this perspective, the questions we ask about law and the ideas we have regarding its development shift. This point is explicitly recognised by Kermit Hall (2009, p. 1) in his description of law as a 'magic mirror'. This description has two aspects. First, law is understood as a social artefact and analysts are encouraged to explore the social and political underpinnings of a legal system. Further, Hall contends that a proper understanding of the relationship between law and society is a prerequisite for any attempt to influence the future direction of law.

Reflecting a vast heritage of anthropocentric philosophy and theology, the dominant concept of law in analytic jurisprudence is fundamentally human centred. Orthodox conceptions of natural law and legal positivism are concerned with relations between individuals, between communities, between states and between elementary groupings of these categories. Only in rare circumstances does legal theory consider the environment as being relevant to our idea of law. Indeed, the "separation and hierarchical ordering of the human and non-human worlds constitutes the primary assumption from which most Western legal theory begins" (Graham 2011, p. 15). Legal positivism promotes the view that only human beings or corporate 'persons' are subjects and that nature is an object: Nature is not considered to possess inherent value and receives instrumental value and protection from human property rights. Most theorists also begin from the assumption that all of nature should be privately owned and that owners should be provided freedom to use their property as they desire or exchange at will.¹ The image of nature that emerges from legal scholarship is that of a lifeless, inert machine that exists to satisfy the needs, desires (and greed) of human beings.²

Against this dominant paradigm, this paper presents an ecocentric analysis of law. Part Two explores the ecological thought of Thomas Berry. It begins by foreshadowing two limitations to his intellectual method – namely his focus on cultural ideas as being determinative of broad social change and also his use of religious terminology. The paper then unpacks Berry's concept of 'Earth community'. According to this concept, human beings are one interconnected part of a broader community of life. All parts of this community are subjects and have value. Berry uses the concept of Earth community as a platform to advocate for the extension of ethics beyond interpersonal human relationships to include the comprehensive Earth community. Further, Berry argues that paradigmatic shifts in cultural ethics have the potential to induce change in a range of human institutions, including the law. To this end, Berry began the process of formulating an ecocentric theory of law termed 'Earth Jurisprudence'.

Part Three of this paper investigates Berry's juridical writing and develops his ideas regarding Earth Jurisprudence. This theory advocates for the recognition of two kinds of 'law' organised in a hierarchy. At the apex is the Great Law, which represents the principle of Earth community and which is measured with reference to the scientific concept of ecological integrity. Beneath the Great Law is Human Law, defined as being rules articulated by human authorities that are consistent

¹ This view is particularly strong in neoliberal economics (Harvey 2006).

² Deprived of any autonomous life force, nature was open to be manipulated without restraint according to the human will. Nature became, as Heidegger later noted, "one vast gasoline station for human exploitation" (Heidegger 1982).

with the Great Law and enacted for the comprehensive common good. The interrelationship between the Great Law and Human Law is also discussed below. Specifically, I interpret Berry as contending that Human Law derives its legal quality and authority from the Great Law. In this function, the Great Law acts as a bedrock standard or measure for Human Law. Laws that contravene the Great Law and risk the health and future flourishing of the Earth community are considered to be a corruption of law and do not attain legal quality.

2. The ecological thought of Thomas Berry

2.1. A note on method

William Nathan Berry (1914-2009) was a cultural historian and a scholar devoted to the study of world religions and ecology. He entered the Passionist order of the Roman Catholic Church and upon ordination took the name Thomas after Thomas Aquinas, whose *Summa Theologica* he admired. He received his PhD from the Catholic University of America in European intellectual history, with a thesis on Giambattista Vico (1949). Berry then learned Chinese and Sanskrit to study the culture and traditions of Buddhism (Berry 1989a) and Hinduism (Berry 1992). For more than twenty years, Berry directed the Riverdale Center of Religious Research. During this period he taught at Fordham University where he chaired the History of Religions program. From 1975-1987 he was President of the American Teilhard Association, and it was from Teilhard de Chardin that he was inspired to develop a scientific cosmological narrative that explained the origin and evolution of the universe (Swimme and Berry 1992).³ Berry was also active in the environment movement from the 1960's and published a series of works that examined the ecological self, community and the transformation of the modern industrial age toward an ecological society (Berry 1982, 1999 and 2006).

Before examining Berry's ideas, two aspects of his method deserve specific mention. First, influenced by his training as a cultural historian, Berry sought not only explanations but answers to the present environmental crisis in cultural analysis – primarily religion and cosmology. Even when Berry considers other explanations, such as growth economics (Berry 1999, p. 117-150) or failings in university education (Berry 1999, p. 72-86), he interprets them as manifestations of a single cultural crisis: “[t]he deepest cause of the present devastation is found in a mode of consciousness that has established a radical discontinuity between the human and other modes of being” (1999 p. 4). The ultimate aim of Berry's writing (1999, p. 4) is to use the medium of story to catalyse a paradigm shift in human culture from a destructive anthropocentric view of nature, toward an ecocentric vision when “humans would be present to the planet in a mutually beneficial manner”. In undertaking this project, Berry contends that anthropocentrism is the root cause of the environmental crisis and that cultural narrative is the key to social transformation.

By way of critique, it is arguable that Berry's explanation of social change suffers from mental determinism. This is the notion that ‘ideas’ are the sole determinant of social change. As a cultural theorist, Berry is not alone in seeing social change as being determined by a narrow range of factors. Karl Marx, for example, is often accused (quite wrongly in my view) of technological determinism (Cohen 1978) or class struggle determinism (Marx and Engels 1879). Other theorists place the nature dictates argument (Diamond 2005), the process of production (Holloway 2002), changes in lifestyle or consumption (Hawken 2007) or mental conceptions of the world (Klein 2008) as being sufficient to cause social change.

Certainly, Berry's exclusive focus on mental ideas is as insufficient as any other narrow project for social change. This does not invalidate his analysis, however, it

³ See also Swimme and Tucker (2011).

is essential that one approach his work through this critique. While arguably necessary, Berry's insights in cosmology and cultural theory are insufficient to shift contemporary industrial society onto a sustainable footing. In practice, major social transformations occur through a dialectic of transformations across a range of moments and develop unevenly in space and time to produce all manner of local contingencies.⁴ A deterministic stance fails to capture this complex interplay and produces a contingency in social development (Harvey 2010 p. 196).

A second aspect of Berry's method that requires attention is his use of metaphor and religious language to describe scientific insights.⁵ For example, Berry uses the word "communion" or "intimacy" to describe concepts such as interconnectedness. As will be seen below, Berry also invokes spiritual concepts such as the "psychic energies of the universe" and "numinous energy". In other works, Berry contends that a viable human presence on the Earth requires the "reinvention of the human at the species level ... by means of story and shared dream experience" (Berry 1999, p. 159), a "new cultural coding" (Berry 1982, p. 211) and that human beings should "descend into our prerational ... instinctive resources (Berry 1982, p. 207)".

Statements such as these have been criticised by both religious and nonreligious writers. For example, libertarian socialist Murray Bookchin (1999, p. 227) describes Berry as an "antirationalist" and "intuitionist mystic". Bookchin contends further that Berry's eco-mysticism abounds among deep ecologists who "accept biocentrism and seek 'ecological consciousness' and mystical experiences of self-in-Self" (Bookchin 1999, p. 227). Bookchin abhors such sentiments and other attempts to animate the ecology movement through "degrading" and "simple minded" forms of spirituality or nature worship (Bookchin 1991, p. 36). He also criticises ecospirituality on the basis that it "deprecates human activity in the biosphere, as though its ill-effects had no social basis" (Bookchin 1991, p. 36) and has the potential to diminish political activism into therapeutic "encounter-groups" (Bookchin 1990, p. 163).

In establishing this critique, Bookchin is not denying the need for a renewed ecological sensibility or suggesting that ecological spirituality is an intrinsically negative pursuit. Rather, Bookchin is attempting to preserve the "decent" and "wholesome sensitivity to nature" that spirituality *can* provide and to challenge non-rational and individualistic mysticism (Bookchin 1991, p. 35). In this respect, I am sympathetic to Bookchin. However, I contend that Bookchin's critique fails to engage with Berry's use of metaphor and ultimately amounts to a misrepresentation. For example, Berry's use of the phrase "dream experience" refers to collectively held aspirations or ambitions,⁶ not to individual inscendence,⁷ which results in a vision of how to personally contribute to life. Other terms, such as "cultural coding", are explicitly defined by Berry as referring to "cultural traditions" rather than to biological matter (Berry 1982, p. 194).⁸ Another shortcoming of Bookchin's critique is that he does not engage with Berry's later work, which is deliberately more secular in style and employs scientific concepts to concretize mythic interpretations (Dalton 1999, p. 77-101). Had Bookchin been

⁴ Despite his representation as a deterministic social theorist, Marx offers an interesting analysis of social change in volume one of capital (Marx 1990, p. 494-495, footnote 4). Here, he argues that social change is predicated upon a complex interplay of six identifiable conceptual elements. These include, technology, relation to nature, the process of production, the production and reproduction of daily life, social relations and mental conceptions. For further analysis, see Harvey (2010 p. 189-212).

⁵ See also, Matthews (1991, p. 48).

⁶ Berry did not define this term, but left clues for its proper interpretation. See in particular Berry (1999, pp. 165 and 201).

⁷ Berry argued that to establish a viable human culture, we must root our effort in revelatory visions that sprout from the depths of the human psyche and from our encounters with the natural world. He coined the word 'inscendence' to refer to this descent to the soul that, with good fortune, ignites visionary experience, which in turn guides transformational action. See further, Berry (1988, pp. 207-208).

⁸ Another controversial term used by Berry is 'genetic coding'. For an examination into the metaphorical meaning of this term, see Plotkin (2011, pp. 57-63).

more sensitive to these points, he may have recognised the 'decent' and transformative potential of Berry's cultural analysis.

One must keep these comments in mind as we move into a more thorough examination of Berry's ecological thought and its implications for legal theory. The next section will investigate Berry's concept of Earth Community and consider its relevance to human ethics.

2.2. *The Earth community*

In this section, I outline Berry's analysis of the Earth community. My starting point is Berry's claim (1992, p. 243) that the "universe is communion of subjects and not a collection of objects". Berry's use of the term 'communion' is metaphorical and intends to communicate something richer than an impersonal description of human-nature relations. Indeed, he suggests that existence is "derived from and sustained" by an "intimacy of each being with every other being of the universe" (Berry 1992, p. 243). In making this claim, Berry also seeks to dissolve the anthropocentric dichotomy between human beings and the environment. The community consists of ecological subjects who interact through horizontal relationships across time and place.

At the ecosystemic level, Berry's term 'Earth community' provides four fundamental insights. First, ecosystems are comprised of and influenced by natural and social systems (Berry 1999, p. 4). Secondly, ecosystems involve the individual behaviours of organisms. These organisms are understood as members (not isolated parts) of ecosystems (Berry 1999, p. 4). Thirdly, members of ecosystems have various degrees of interiority or subjectivity (Berry 1999, p. 162-163). Finally, members of ecosystems interact within and across species to create horizons of shared meaning and understanding (Berry 1999, p. 4). These broad points share some similarity with the discipline of integral ecology (Wilber 1995). In particular, both make the radical claim that nature is more than a complex network of exterior strands of energy flows and holistic input/outputs. Rather, nature is also a space of intimacy and communion between ecological subjects. From this perspective, organisms are not just parts of an ecosystem – they are partners within an Earth community and intersubjective space. All organisms are subjects – they have interiors and life worlds.⁹ Berry (1990, p. 15x) is very clear on this point:

Nothing on earth [is] a mere "thing". Every thing [has] its own divine, numinous subjectivity, its self, its center, its unique identity. Every being [is] a presence to every other being.¹⁰

From this quote, it is clear that Berry's description of the Earth community is not limited by the strict Cartesian dichotomy between 'alive' and 'dead' matter.¹¹ Indeed, Berry often talks about the numinous, psychic aspects of species and matter in the context of the Earth as a sacred community. In making this description, Berry draws heavily from the French Jesuit, Pierre Teilhard de Chardin. In the *Phenomenon of Man*, Teilhard maintained that there was an intimate unity between human beings and the rest of the universe. He claimed that this unity was not merely physical or genetic. Rather, Teilhard (1959, p. 56) held that matter had an inner and an outer reality – "coextensive with their Without, there is a Within to things". Besides the physical that one senses, there was a mental aspect to the

⁹ Perhaps the most illustrative example is Uexküll (1957, p. 11). See also Evernden (1993).

¹⁰ Berry (1988, p. 133) argues further: "If the demand for objectivity and the quantitative aspect of the real has led scientists to neglect subjectivity and the qualitative aspect of the real, this has been until now a condition for fulfilling their historic task. The most notable single development within science in recent years, however, has been a growing awareness of the integral physical-psychic dimension of reality".

¹¹ In support of this interpretation see Berry (1990, p. 15x): "The universe is not a vast smudge of matter, some jelly-like substance extended indefinitely in space. Nor is the universe a collection of unrelated particles. The universe is, rather, a vast multiplicity of individual realities with both qualitative and quantitative differences all in spiritual-physical communion with each other".

whole universe;¹² this was the aspect that came to self-reflective consciousness in the human species (Teilhard 1959, p. 54-56). Thus, because there is consciousness in human beings and because we have evolved from the Earth, then from the beginning some form of consciousness or interiority has been present in the process of evolution. Consciousness is an intrinsic part of reality and is the thread that links all members of the Earth community (Teilhard 1959, p. 56).

Reflecting on these comments, Berry observes (1990, p. 15x) that “while Darwin saw the human appearing only out of the physical earth, Teilhard de Chardin saw the human emerging out of both the physical and the psychic dimensions of the earth”. From this perspective, matter is not simply dead or inert but a numinous reality consisting of both a physical and spiritual dimension.¹³ In his early writing, Berry was clear that the psychic-dimension of the universe identified by Teilhard was a key element that needed to be further developed. This concern is consistent with a fundamental tenant of integral ecology – with exterior ecosystems come interior ecocommunities (Esbjörn-Hargens 2011, p. 101). Berry (1990, p. 15x) makes this point in the following terms:

That there is an organizing force within the earth process with both physical and psychic dimensions needs to be acknowledged in language and in imagery. It needs to be named and spoken of in its integral form. It has a unified functioning similar to the more particular organisms with which we are acquainted. When we speak of Earth we are speaking of a numinous maternal principle in and through which the total complex of Earth phenomena takes its shape.

For both Teilhard and Berry, the perspective of evolution provides the most comprehensive context for understanding human beings in relation to other members of the Earth community. In this regard, Berry (Swimme and Berry 1992, p. 66-78) frequently noted that since the publication of the *Origin of Species* we have become aware that the universe exists not as part of a static cosmos, but as an unfolding cosmogenesis. The theory of evolution provides a distinctive realization of development in the universe that resituates human beings in a huge sweep of geological time. This implies that human beings are one species among others. Further, Berry argues that as self-reflective beings, we have a unique responsibility for the continuation of the evolutionary process. We have reached a juncture – the ‘anthropocene’ – where human choices will determine which life forms and natural systems survive and which are destroyed (Crutzen and Stoermer 2000). Yet, while human beings have become a “macrophase power” we only recognise a “microphase sense of responsibility and ethical judgment” (Berry 1999, p. 101).¹⁴

Consistent with other ecological thinkers, Berry maintains that the integral nature of the Earth necessitates reciprocity for future health and survival. I quote his argument at length:

[O]ur concern for the human community can only be fulfilled by a concern for the integrity of the natural world. The planet cannot support its human presence unless there is a reciprocal human support for the life systems of the planet. This more comprehensive perspective we might identify as macrophase ethics. This is something far beyond our ordinary ethical judgments involving individual actions, the actions of communities, or even of nations. We are presently concerned with ethical judgments on an entirely different order of magnitude. Indeed, the human community has never previously been forced to ethical judgments on this scale because we never before had the capacity for deleterious actions with such consequences (1999, p. 101).

¹² This mental aspect was shaped with reference to the concept ‘noosphere’ developed by Russian mineralogist and geochemist, Vernadsky (1992) [first published 1926].

¹³ Berry uses the term ‘numinous’ variously in his writing to indicate the powerful experience of a place where one is compelled to contemplate the mysteries and meanings of the universe. The best example of Berry’s experience with such energy is found in Berry (1999, p. 12-20).

¹⁴ Jonas (1984, p. 130) notes: “In sum: that which binds (free) will and obligation together in the first place, power, is precisely that which today moves responsibility in[to] the centre of morality”.

Berry's argument for extending human ethics relies on rationality and human decision-making. The 'ought' or 'obligation' arises as a form of self-control to consciously exercised power. In constructing this argument, Berry consistently affirms the moral value of human beings. Yet, in an important break with many deep ecologists, Berry does not claim that all life forms and nonhuman or inert nature have moral equivalence.¹⁵ Instead he asserts that there is a "single integral community of the Earth" and that all components of this community have value (Berry 1999, p. 4). He also argues that every being has rights (moral) that should receive legal protection (Berry 1999, p. 4).¹⁶ The challenge is to place the meta-context of the whole planet and its ecological correlations at the centre of our ethical thinking, rather than humanity alone. Berry (1999, p. 105) contends:

When we discuss ethics we must understand it to mean the principles and values that govern that comprehensive community. Human ethics concerns the manner whereby we give expression at the rational level to the ordering principles of that larger community ... our human ethics are derivative from the ecological imperative. The basic ethical norm is the well-being of the comprehensive community and the attainment of human well-being within that community.

For Berry, the concept of Earth community is a necessary perspective for implementing specific kinds of social, political, economic and legal changes that will be required to sustain and foster a viable human presence on the planet (Berry 1993). Because of the integral link between human exploitation and environmental degradation, this necessarily involves both the protection of ecological integrity and human rights.¹⁷ As Mary-Evelyn Tucker notes, "[t]he assumption is that, when one's worldview shifts to comprehend the interrelatedness of all life, one's ethics likewise will be affected to encourage human justice and environmental sustainability" (cited in Berry 2006, p. 154).

Shortly before his death, Berry began to investigate the implications of his ecological thought for legal theory. For Berry, our concept of law was of fundamental importance for both the protection of nature and human beings (a goal which he often expressed in terms of rights). The emerging field of Earth Jurisprudence is the continuation of this task, and in section three of this paper I will both outline and build upon Berry's attempt to formulate an ecocentric jurisprudence.

3. Earth jurisprudence

Although we are integral with the complex of life communities, we have never been willing to recognize this in law, economics, morality, education or in other areas of the human endeavour (Berry 1982, p. 21).

Earth Jurisprudence is an emerging philosophy of law, proposed by Thomas Berry in 2001.¹⁸ While not explicit, I contend that it is possible to discern in his writings an argument for the existence of two types of 'law' that are organised in a hierarchical relationship. I term the first order of law the Great Law and define it with reference to the concepts of Earth community and ecological integrity. The second order of law is Human Law, which I define as binding prescriptions, articulated by human authorities, which are consistent with the Great Law and enacted for the common good of the comprehensive Earth community.

Two matters typify the interrelation between the Great Law and Human Law. First, Human Law derives its legal quality and power to bind in conscience from the Great

¹⁵ For further discussion, see Low and Gleeson (1998, p. 97) and Ott (2008, p. 48). Ott argues that the division of the moral community into subclasses is necessary 'since any environmental ethics needs a basic conception for conflict resolution which can meet different types of conflicts.'

¹⁶ Berry (2006, p. 149-150) recognises qualitative differences in the nature and form of these rights.

¹⁷ Arguably, the most sophisticated analysis of this duality is provided by Bookchin (2005), who states at p. 1 that '[t]he very notion of the domination of nature by man stems from the very real domination of human by human'.

¹⁸ For a brief history, see Cullinan (2011, p. 12).

Law. Because human beings exist as one part of an interconnected and mutually dependant community, only a prescription directed to the comprehensive common good has the quality of law. Thus, in decisions concerning the environment or human-Earth interactions, it is necessary that lawmakers construct human law with reference to the Great Law. Secondly, any law that transgresses the Great Law can be considered a corruption of law and therefore not morally binding on a population.

It will be clear to anyone familiar with legal philosophy that the basic structure and relationship between these different types of law resembles the Thomist and neo-Thomist natural law traditions. Lynda Warren comments on this resemblance:

At first sight, the similarities seem obvious. The classical doctrine of natural law is based on the existence of a body of law – natural law – that is universal and immutable. It has been described as a higher law against which the morality of ‘ordinary’ laws can be judged. This higher law is discoverable by humans through a process of reason (Warren 2006, p. 13).

Many advocates of Earth Jurisprudence, however, are dismissive of natural law philosophy and have expressed concern about becoming locked in the unproductive rivalry between positivism and natural law (Bosselmann 1995, p. 236).¹⁹ However, while this rivalry has traditionally occupied much territory in legal philosophy, it must be stated that there is no *necessary* conflict between the two ideas. As Margaret Davies (2008, p. 79) points out – ‘it all depends on what view of natural law and positivism is taken’. For example, someone who advocates the position that an immoral rule created by parliament is not really law is putting forward a perspective that is incompatible with the view that rules obtains their legal status only when articulated by a authoritative legislative body. Further, a person who advocates for objective morality is putting forward a position that is directly inconsistent with the view that morality is arbitrary or relative. However, these are not the only ways that the relationship between natural law and positivism can be understood (Beylevel and Brownsword 1985).

An alternative version of the relationship between natural law and positivism, from the perspective of the natural lawyer, is that an unjust law is still a law, but that lawmakers ought to follow the natural law. In this interpretation there is no *necessary* relationship between law and morality but conformity is strongly recommended. The existence of objective morality is defended, but it is also accepted that lawmakers can make unjust prescriptions and that the State will enforce them. This sort of natural law theory is not incompatible with positivism, since it is accepted that the two systems can co-exist as laws (MacCormick 1992). It is just that the natural law is regarded as ‘higher’ and in need of implementation.

A second major criticism that advocates of Earth Jurisprudence have made against adopting a natural law framework is that the anthropocentric and patriarchal legacy of the latter makes it a poor, and potentially confusing, point of comparison for explaining an ecocentric legal philosophy (Cullinan 2003, p. 77). This criticism is undeniably potent for many strands of the Thomist and neo-Thomist natural law traditions. However, it must also be stated that natural law comes in many shapes and sizes in addition to the Thomistic interpretation. Perhaps the most relevant to the present paper is Aldo Leopold’s natural law environmental ethic (Rolston 1986, Engel 2010) which is articulated in ‘The Land Ethic’. In this paper Leopold advances arguments from personal experience, scientific observation and theory and inductive (as well as deductive) reasoning for the ontological reality and moral intimacy of ecological integrity (1999, p. 311-313) – or what Leonardo Boff calls

¹⁹ Klaus Bosselmann (1995, p. 236) makes a similar point: “Structurally the ecocentric orientation of values is a turning towards the ideas of Natural law. In this context some authors point towards understanding in a natural-law sense. I do not believe that it is necessary to revert in this way, nor that it could be of any help – considering the unproductive rivalry between positivism and Natural law”.

“the dignity of Earth” (Boff 1995, p. 87). Consider for example this syllogism in which Leopold (1999, p. 311-313) derives ‘ought’ from ‘is’:

1. All ethics rest upon a single premise: that the individual is a member of a community of interdependent parts.
2. We are all members of the land community.
3. Therefore, we need to exercise the same constraints on our relation to the other members of the land community – soils, waters, plants and animals – as we do in our relation to other people.
4. Thus, the land ethic: A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.

Following Leopold, Arne Næss continued the tradition of natural law environmental ethics in ‘The Shallow and the Deep, Long-Range Ecology Movement’. Here Næss sets forth an argument for ‘intrinsic value’ as the axiological root for human duties of respect toward the environment. Further, in 1979, Hans Jonas published *The Imperative of Responsibility*, arguing on clear natural law grounds that only an ethic grounded in the inherent intentionality of each organisms ‘yes’ to life could be strong enough to convince humanity to take actions necessary for environmental protection (Engel 2010).

Following this tradition in environmental ethics, I contend that Berry’s juridical writing and the legal categories he describes are most accurately articulated within a natural law framework. In particular, Berry’s advocacy for ecocentric ideas becoming *inherent* to our idea of law and his recognition of ‘higher laws’ cannot be fully accommodated from within the constraints of legal positivism or any other self-referential concept of law. Further, following the reasoning of feminist theologian Carol Christ, I suggest that we should not simply abandon a negative word or concept. Rather, we should attempt to find new meaning in the term or else the “the mind will revert back to familiar structures at times of crisis, bafflement or defeat” (Christ 1979, p. 275). Thus, while the Thomist natural law tradition has historically been used for anthropocentric and patriarchal goals, this paper attempts to employ its broad framework for ecocentric goals.

3.1. Legal categories

The influence of Thomas Aquinas on Berry’s intellectual development has been chronicled by many authors (Fox 2011, p. 16-31) and is acknowledged frequently by Berry himself (1999b, p. vii). What has not yet been studied, however, is the influence of Aquinas on Berry’s legal writing. In this section, I illustrate that the framework of law developed by Aquinas – in particular his regard for ‘higher laws’ – exerted a tremendous influence on the outline of Earth Jurisprudence offered by Berry.

The Natural Law tradition represents the most significant jurisprudential legacy left by Aquinas and has inspired generations of neo-Thomist theorists. For Aquinas, the term ‘law’ has analogous applications to different orders of law, and accordingly, does not have consistent meaning with each use (McInerny 1956, p. vi). His legal theory encompasses four orders of law organised in a hierarchy. At the apex is Eternal Law, which comprises of God-given rules or divine providence, which govern all of nature (McInerny 1956, p. ix). The second order is Natural Law, which is that portion of Eternal Law that one can discover through a special process of reasoning, involving intuition and deduction, outlined by Greek authors (Harris 2004, p. 8). Divine Law refers to the law of God as revealed in scripture. Human Law sits at the bottom of this ordering and consists of rules, supported by reason and articulated by lawmakers, for the common good of human society.

Speaking of this ordering, Ralph McInerny (1956, p. vi) comments: “[t]o speak of God’s governance of the universe as a ‘law’ and of the guidelines we can discern in

our nature as to what we ought to do as 'laws' can puzzle us because what the term 'law' principally means is a directive of our acts issued by someone in authority". Nonetheless, it is clear from Aquinas' discussion in Question 90 of the *Summa Theologica* on the 'essence of law' that human positive law is at the forefront of his mind when using the term 'law' (McInerny 1998, p. 611). Indeed, in Question 90, paper 4, Aquinas (1956, p. 10-11) defines law as "nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated". The relationship between Aquinas's hierarchy and that proposed by Earth Jurisprudence is outlined in table 1 below:

Table 1: Natural law and Earth Jurisprudence

Natural law	Earth Jurisprudence
Eternal Law	N/A
Natural law	The Great Law
Divine Law	N/A
Human Law	Human Law

This table illustrates the structural relationship between Earth Jurisprudence and Aquinas's theory of Natural Law. Both adopt a higher view of law and describe the consequences of contradicting their unique focus. The categories of Eternal Law and Divine Law are absent from my description of Earth Jurisprudence. Aquinas (1956, p. 29) describes Divine Law as revelation revealed in Christian scripture. This reference point was deliberately absent from Berry's analysis²⁰ and is unnecessary for a secular description of Earth Jurisprudence. For Aquinas, Eternal Law represents the source and foundation for the other orders of law. Aquinas (1956, p. 46) describes Eternal Law in Question 93, paper 4, as being "the very Idea of the government of things in God the Ruler of the Universe". Put otherwise, it is the divine system of government, providence, the divine plan and the timeless universal order, which acts as the measure for all other laws. Because of his religious background, one might reasonably inquire into whether Berry would have included reference to Eternal Law in a more detailed study of Earth Jurisprudence. I think that there is some evidence in support of this point.²¹ However, answering this question is beyond the scope of this paper and unnecessary for the description of Earth Jurisprudence that I wish to outline.

²⁰ Berry (1996) said we should "we need to put the Bible on the shelf for twenty years until we learn to read the scripture of life". Berry (1999, p. 71) argued further that "the only effective program available as our primary guide toward a viable human mode of being is the program offered by the Earth itself".

²¹ Evidence for this possibility can be noted in Berry's argument for recognising and acting in accord with the Universal Logos which he regarded as "the ultimate form of human wisdom" (Berry 1982, p. 20). The term Logos can be traced back to ancient Greece and the philosophy of Heraclitus (535-475 B.C). Heraclitus introduced the term *Logos* to describe a similar immanent conception of divine intelligence and the rational principles governing the universe. Logos is relevant to the present discussion, because as Lloyd Weinreb (1987, p. 56) notes: "Eternal Law is little more than a Christianised version of Logos and the Platonic vision of a universe ordered with a view to the excellence and preservation of the whole".

3.2. *The Great Law*

In my interpretation of Earth Jurisprudence, the Great Law represents the ecological conception of community articulated by Berry. More specifically, I interpret it to refer to human interconnectedness with nature and the ecological integrity of the Earth community. In this respect, the term 'nature' in Earth Jurisprudence has a different focus to the way the term is interpreted in Thomist theories of natural law – here 'nature' refers specifically to 'universal truths' that are derived from human reason.

In response Berry (2006, p. 20) argues that human society should broaden its present focus from human beings to recognise the "supremacy of the already existing Earth governance of the planet as a single, interconnected community". Berry (1999, p. 64) contends that an orientation toward the natural world should animate all human activities and upholds "Earth" as our primary teacher and lawgiver. Importantly, constructing this argument, Berry does not theorise 'nature' or the Earth community in a romantic or altruistic way.²² Central to his analysis is the amoral status of nature and the fatal consequences that follow from transgressing ecological limits (Berry 1999, p. 4).

Cormac Cullinan's book *Wild Law* represents the first attempt to concretise Berry's writing in traditional legal form. Here, Cullinan describes the Great Law²³ broadly, as "laws or principles that govern how the universe functions", and notes that they are "timeless and unified in the sense that they all have the same source" (Cullinan 2003, p. 84).²⁴ This law is manifest in the universe itself and can be witnessed in the "phenomenon of gravity", "the alignment of the planets", the "growth of plants" and the "cycles of night and day" (Cullinan 2003, p. 84).

Before continuing, it is important to pause and consider whether theorising Earth Jurisprudence with reference to the 'laws of nature' is a practicable reference point for human law. What exactly is a 'law of nature'? A careful investigation into the scientific literature reveals that there is a complete lack of agreement on this seemingly simple question (Dretske 1998, p. 805).²⁵ In response, two mutually opposed philosophical accounts have developed. The first, termed 'necessitarian' contends that there is exactly one way for the world to be. Moreover, it holds that there are real necessities in nature, over and above the regularities that they allegedly produce, and that law-statements are descriptions of these necessities. The second account, 'regularist', posits that there are no necessities but only regularities – that is correlations and patterns – and that laws are descriptions of regularities (Curd and Cover 1998, p. 805).

Both philosophical accounts address four interrelated issues: (i) the semantics of the meaning of law statements; (ii) metaphysical questions concerning the 'fact' to which law statements refer; (iii) epistemological questions pertaining to the basis upon which claims of knowledge of a law are justified; and (iv) explanations of the various role of scientific laws (Hooker 2005, p. 550). In answering these questions, both philosophical accounts encounter distinct difficulties. CA Hooker (2005, p. 550) provides a pertinent example:

[I]f there are necessities in nature, as the first account claims, how exactly do we identify them: how can we tell which of the inductively confirmed regularities are laws? On the other hand, if there are only regularities, as the second account

²² Note the fascinating critical literature on the use and abuse of the term 'nature' (Code 2006, Evernden 1992).

²³ Cullinan uses the term 'Great Jurisprudence' rather than 'Great Law'. For reasons of clarity and consistency, I will use the latter term throughout.

²⁴ Note that many other authors suggest that human laws should be reconciled with the laws of nature. Bosselmann (1995, p. 73) contends that "we may be able to bring the laws of society and the laws of nature into reconciliation". See also Robinson (2010, p. 8): "We are still far from realizing the objective of confirming human laws to the laws of nature".

²⁵ See also, Armstrong (1983).

claims, does this mean that our intuitions and scientific practices are awry and that there really is no distinction between laws and accidental generalizations?

Compounding the puzzles emphasised by this comment is the wide variety of laws supplied by current science and the complexity of the relationship between those laws, regularities, and causes. Beyond this is a nagging uncertainty about the relevance of scientific laws of nature to human law. How, for instance, can Newton's law of motion or Boyle's law of mass and pressure meaningfully assist in the drafting of legislation? Of what possible importance are they to an institution that seeks to articulate enforceable norms that govern human relationships and behaviour? Through which mechanism are certain laws prioritised over others? In response, I contend that even if agreement can be reached concerning what constitutes a law of nature it is difficult to see how taking such a broad focus can assist human lawmakers.

Rather than describing the Great Law with reference to universal laws of nature, I contend that the Great Law should be limited to ecological science and measured with respect to the concepts such as ecological integrity.²⁶ This approach seeks to strengthen the relationship between science and law by prescribing normative standards that are directly referable to verifiable information.

The term ecological integrity originated as an ethical concept as part of Leopold's 'Land Ethic' (1999) and has been recognised in legislative instruments such as the *Clean Water Act U.S.* (1972).²⁷ As described by Laura Westra (2005, p. 574), the generic concept of integrity "connotes a valuable whole, the state of being whole or undiminished, unimpaired, or in perfect condition". Because of the extent of human exploitation of the environment, wild nature provides the paradigmatic example of ecological integrity.

Among the most important aspects of ecological integrity are first the autopoietic capacities of life to regenerate and to evolve over time at a specific location (Swimme and Berry 1992, p. 75-77). Thus, ecological integrity provides a place-based analysis of the evolutionary and biogeographical process of an ecosystem (Angermeier and Karr 1994). A second aspect concerns the requirements that are needed to maintain native ecosystems (Karr and Chu 1999). Climatic conditions and other biophysical phenomena can also be analysed as interconnected ecological systems. A third aspect is that ecological integrity is both "valued and valuable as it bridges the concerns of science and public policy" (Westra *et al.* 2000, p. 20). To bridge the chasm between science and public policy, models such as the multimetric Index of Biological Integrity allows scientists to measure the extent to which systems deviate from verifiable integrity levels calibrated from a baseline condition of wild nature (Karr 1996, p. 96). Degradation or loss of integrity is thus comprised of any human-induced positive or negative divergence from this baseline standard (Westra *et al.* 2000, p. 21). Finally, if given appropriate legal status, 'ecological integrity' recognises the intrinsic value of ecosystems and can help curb the excess of human development and exploitation of nature.

Measuring the Great Law with reference to ecological integrity does not purport to be static or able to render consistent application across jurisdictions. Instead, the role of ecological science in Earth Jurisprudence is to provide approximate descriptions of ecosystem data in such a way that the information can be interpreted and applied by human lawmakers. Put otherwise – Earth Jurisprudence retains the lawmaking authority of human beings. It seeks to provide 'reasons for action' and to compel lawmakers to consciously align human law with the Great Law and ensure that ecological integrity is respected and ultimately protected.

²⁶ This position is also adopted by Andrew Kimbrell (2008, p. 5) who argues: '...we can now bolster the teleological tenets of Natural Law with the profound insights offered by modern ecology, effectively marrying Natural Law with the Law of Nature.'

²⁷ Section 101(a) has its objective as being "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters".

This approach to law also maintains that the moral ends of human action, including our most fundamental rights and obligations are grounded in the constitution of nature itself (Lyon 2011, p. 137). Contrary to David Hume's well-rehearsed argument of noncognitivism (or the naturalistic philosophy), Earth Jurisprudence contends that it is possible for a rigorous rational analysis of human experience to derive what 'ought' to be from what 'is' or as Holmes Rolston III argues, discover them together (Rolston 1986, p. 12-29).

3.3. Human Law

In Question 90, paper 4, Aquinas (1956, p. 10-11) defines Human Law as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated".

The description of Human Law advanced in Earth Jurisprudence shares many of these elements. However, three points of refinement need to be briefly outlined: (i) in Earth Jurisprudence, the 'common good' is understood with reference to the wellbeing of the comprehensive Earth community and not simply its human component; (ii) in Earth Jurisprudence the 'common good' is *not* defined in utilitarian terms as pertaining to the greatest good for the greatest number.²⁸ Instead, it refers to the securing of conditions that tend to favour the health and future flourishing of the Earth community (Berry 2006, p. 149). While this view encourages human flourishing, it also limits the ambit of liberty to actions that are consistent with the flourishing of the Earth community. In this sense, Earth Jurisprudence is intimately concerned with ecological integrity and the flourishing of the environment; and (iii) Aquinas' appeal to reason is supplemented by the use of scientific description. As articulated in Earth Jurisprudence, acknowledging these standards in one's deliberations is part of what it means to be reasonable.

Drawing on these points, I define Human Law as being rules, supported by the Great Law, which are articulated by human authorities for the common good of the comprehensive whole. As indicated in the discussion above, this definition does not contradict the conceptual claims of legal positivism. Indeed, Earth Jurisprudence retains the presumptive authority of human beings to make binding prescriptions for the community. Further, Earth Jurisprudence does not contest the benefit of positive law in achieving social/common goods that require the deployment of state power or the co-ordination of public behaviour. The dividing line between Earth Jurisprudence and Legal Positivism rests on several fine distinctions, which nonetheless carry theoretical significance.

The most obvious difference between Earth Jurisprudence and positivism is the appeal to a higher law that I have termed the 'Great Law'. Further to this point, this paper argues that human law ought to be described as a project with a purpose. This is consistent with the description of law offered by Aquinas and by secular natural law theorist Lon Fuller (1964, p. 53). Aquinas (1956, p. 6) articulates his purposive interpretation of law in Question 90, paper 2 of the *Summa Theologica*:

[S]ince the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save in so far as it regards the common good. Therefore every law is ordained to the common good.

This statement is supported by Fuller (1964, p. 123), who argues that the central purpose of law is human flourishing and for people to coexist and cooperate within society.²⁹ On this account, human law cannot truly be understood without understanding the ideal or 'common good' towards which it is striving. However,

²⁸ Note that Aquinas defined the common good in similar terms. The utilitarian description of Natural Law is exemplified in neo-Thomist writers such as John Finnis (1980, p. 193).

²⁹ Note that for Fuller the telos of law is order. This is in contrast to the Thomist and Neo-Thomist tradition, which is more concerned the common good of human beings.

while Natural Law jurisprudence defines the parameters of community by exclusive reference to human beings (Finnis 1980, p. 134-161), the focus of Earth Jurisprudence is on the comprehensive Earth community.

From this perspective, legal authorities are not entirely free to create law without constraints. They must acknowledge and respond to factors that have consequence for law's purpose – the attainment of the comprehensive common good. To be clear, not every human law will be affected by this standard. For example, Earth Jurisprudence does not have an obvious or direct relationship to criminal law or contract law. Further, unlike the Thomist tradition of natural law philosophy, Earth Jurisprudence does not seek to enter broad ethical discourse and advance opinion on sexual preference or on matters concerning life and death. Instead, Earth Jurisprudence is concerned primarily with matters concerning the environment and human-Earth interactions. It has obvious implications for property law, environmental law, planning law, natural resource management, and conservation heritage, to name a few. Furthermore, in so far as environmental degradation is linked to human exploitation, Earth Jurisprudence has the potential to provide the jurisprudential foundation for human rights law (an area which has traditionally been defended on anthropocentric grounds).

3.4. The interaction between the Great Law and Human Law

Earth Jurisprudence requires Human Law to be articulated with reference to the Great Law. Cullinan supports this interpretation, holding that the Great Law should be understood as being the “design parameters within which those ... engaged in developing Earth Jurisprudence for the human species must operate” (Cullinan 2003, p. 84-85). This approach requires lawmakers to respect the Great Law and to enact legislation that recognises the ecological integrity of the environment as a bedrock value and limit for human law. Because the Great Law requires human interpretation, there are likely to be a range of rules that are consistent with the Great Law, rather than only one correct application. Further, the rules actually chosen by lawmakers need not coincide with the rules that specific individuals within that community would have chosen (Finnis 1980, p. 289). Such individuals need not even regard the rules as being sensible or desirable.³⁰ However, by advocating a necessary connection between Human Law and the Great Law, Earth Jurisprudence seeks to ensure that environmental ideas are not imposed from the outside in an ad hoc or limited way. Instead, the Great Law is inherent to our concept of law and provides an immediate measure of legal quality.

In one of his final essays, Berry (2003, p. 13-14) outlined how his expanded understanding of community could set the design parameters for human law. He argued that the prologue of national constitutions should begin by recognising the human existence and well-being is “dependent on the well-being of the larger Earth community” and that “care of this larger Earth community is a primary obligation of the nation being founded.”

These comments recognise the critical role of primary governance documents for implementing the broad changes required by Earth Jurisprudence. They are also consistent with other proposals for an Eco-Constitutional State (Eckersly 2004), the recognition of the rights of nature in national Constitutions (Burdon 2010) and attempts in international law to formulate a covenant for ecological governance (Engel and Mackey 2011).

Today, the most significant political movement that is advocating radical changes to human governance mechanisms is the Project for Earth Democracy (Shiva 2005). Distilled to a sentence – the project is an attempt to fuse ecocentric ethics with deeper forms of democracy and public participation (Burdon 2012). The scope of ideas circulating in this space is stunning and includes bioregional governance

³⁰ For example, the rule might place limits on economic growth.

(Plant *et al.* 2008) and methods of participatory democracy (Bookchin 2007). Arguably the most visible example of Earth Democracy is the International Earth Charter. The preamble to the charter reads:

To move forward we must recognise that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice and a culture of peace. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace.³¹

As described in the Charter, democracy is not an end in itself – it is a means for achieving social and environmental goals. Thus, the Charter's positive affirmation of democratic ideals should not be confused with a general endorsement for existing States. As Bosselmann (2010, p. 92) notes: "Any attempt to find an example of successful governance for sustainability among existing states must fail. It simply does not exist."

While relatively new in its development, I contend that the Project of Earth Democracy has the potential to provide the positive law foundations for the theory of Earth Jurisprudence. However, their relationship must be viewed as being one of mutual support. As should be clear from the proceeding sections, Berry and other proponents of Earth Jurisprudence are articulating an alternative concept of law and seek to displace the narrow limits of legal positivism. They claim that the Great Law is prior to human law and is not something created by lawmakers. In this sense, the Great Law can be considered analogous to other fundamental principles such as liberty, equality and justice. While these ideals are considered to be the three pillars of western civilization, the Great law provides their foundation and supports the conditions under which they can thrive. As such, the Great law provides a standard through which to judge the legal quality of existing laws.

One concrete example of the relationship between the Great Law and Human Law can be seen in a statement made by former Vice President Al Gore in 2007. Gore stated: "I can't understand why there aren't rings of young people blocking bulldozers, and preventing them from constructing coal-fired power plants" (Leonard 2007). These comments were followed in a 2008 address to the Clinton Global Initiative: "If you're a young person looking at the future of this planet and looking at what is being done right now, and not done, I believe we have reached the state where it is time for civil disobedience to prevent the construction of new coal plants that do not have carbon capture and sequestration" (Nichols 2008). In the example raised by Gore, we can presume that the proponent in question has applied for and received the relevant legal permits and licenses to carry out construction of a coal plant. Consistent with other large-scale projects, there has likely been some form of community consultation, opportunity for public comment and negotiation with stakeholders. However, because of the known ecological damage caused by coal-fired power plants and the risk they pose to the long-term common good, Gore questions the legitimacy of the project. More than this, he expresses his dismay that individuals are not positively breaking the law to stop it.

To understand these comments for the purposes of the present argument, it is useful to refer once more to the Natural Law tradition. From this perspective, it is possible to interpret Gore's statements in (at least) three different ways. First, as saying that the law authorising the construction of a coal fired power plant has the potential to cause such great harm to the Earth community that there is no moral obligation to obey that law.³² Secondly, that the law in question is not legally valid

³¹ Read the Earth Charter online at <http://www.earthcharterinaction.org/>.

³² While this is a legitimate interpretation of Gore's statement, it says nothing about the nature of law. It is also contrary to the goal of Earth Jurisprudence, which is to recognise the Great Law as being integral to law. Other adherents to Natural Law philosophy would similarly reject this 'moral reading', on the

or that there is no law at all. Finally, that while the law is legally valid, it is not law in the true sense of the word. That is – because the law is strongly contrary to ecological integrity, it is defective as law. Mark C Murphy (2007, p. 44) elaborates on the use of the term defective:

To say that something is defective is to say that it belongs to a certain kind and there are certain standards of perfection that are internal to it (that are intrinsic to it, that necessarily belong to) members of that kind. To be an alarm clock just is, in part, to be the sort of thing that if it cannot sound an alarm when one wishes to be awakened, it is defective. But something can be an alarm clock even if it cannot sound an alarm: it might be broken, or poorly constructed, or whatever.

According to the third interpretation of Gore's statement, law has certain standards that are internal to it and a failure to meet these standards renders a purported law defective. Consistent with the purposive description of human law detailed above, it is the third interpretation that is advanced by Earth Jurisprudence. From this perspective, Earth Jurisprudence advocates a particular methodological approach. It suggests that theorising about law should not be a neutral exercise that is divorced from the broader context of our existence and which fails to have appropriate regard for the common good of the comprehensive Earth community.

4. Conclusion

In his final book Thomas Berry identified a 'Great Work' that lies before humankind. "The Great Work now" he writes "is to carry out the transition from a period of human devastation of the Earth to a period when humans would be present to the planet in a mutually beneficial manner" (Berry 1999, p. 3). Berry was under no illusion concerning the immensity of this task, nor its urgency. Indeed, reflecting on the present environmental crisis, he argues that perhaps the most 'valuable heritage' we can provide for future generations, is some indication of how this work can be fulfilled in an effective manner (Berry 1999, p. 7). This is not a task we have chosen for ourselves. However, Berry maintains that "[t]he nobility of our lives...depends upon the manner in which we come to understand and fulfil our assigned role" (1999, p. 7).

The analysis of environmental ethics and jurisprudence presented in this paper represents a modest contribution to this task. Indeed, by collapsing the rigid dichotomy between human beings and the environment, the concept of Earth community seeks to provide the foundations for a paradigm shift in law. As noted in the introduction, our concept of law is not fixed and static. It is fluid and bends to ontological and cultural evolutions. Thus, the Greeks understood law with reference to a universal logos; the Christians viewed the eternal law of God as the highest source of law and secular liberalism championed human beings as the highest source of authority. What Earth Jurisprudence requires is for the concept of law to shift once more to reflect the interconnectedness and mutual dependence of the entire Earth community – that the protection of this community is a prerequisite for human existence and should inform the law in much the same way as liberty, equality and justice. Indeed, if these principles are considered to be the three pillars of civilisation, the concept of Earth community provides their foundation and supports the conditions under which they thrive.

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basis that it trivialises the natural law thesis. As Murphy observes, interpreting natural law as being a claim about the justifiability of disobeying unjust laws, "is excruciatingly uninteresting, a claim that almost everyone in the history of moral and political philosophy has accepted, and thus is not much worth discussing" (Murphy 2006, p. 10).

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