

2019 Annual Conference of the Asian Law and Society Association

President's Farewell Message: The Anthropocene, Earth Jurisprudence, and the Rights of Nature•

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Abstract

A new paradigmatic shift in confronting the climactic endgame of the Anthropocene in Asia is in order. Scientific studies warned that Asia would become the epicentre of anthropogenic catastrophes and environmental disasters in the world. As the outgoing Asian Law and Society Association (ALSA) president, I wish to contribute to critical discussions on two issues: (1) Earth Jurisprudence and (2) the Rights of Nature. These legal concepts must be critically examined, discussed, and developed by socio-legal researchers and policy-makers in order to avert the impending crises of the Anthropocene in Asia. This report examines the recent development of a robust movement toward Earth Jurisprudence in multiple countries of Asia, the Americas, and the Pacific—that is, countries that have recently enshrined the concept of the Rights of Nature into their legal system through transforming nature into rights-bearing entities in order to protect them from harmful human activities. Failing any significant remedial measures, many Asian cities, shores, and coastlines, including the archipelagos of multiple island states in the Pacific Ocean and the Indian Ocean may soon disappear due to the many decades of egregious human activities of industrialized countries and the corporate world. A robust system of Earth Jurisprudence must be established, in which the Rights of Nature must be imbedded in the centre of legislative and constitutional discussions and deliberations.

Keywords: Anthropocene, Earth Jurisprudence, the Rights of Nature, climate change, ecological disaster, Asia

1. INTRODUCTION

As we head into the third decade of the new millennium, multiple countries in Asia and across the globe are witnessing the unprecedented impact of the coronavirus pandemic, climate change, and ecological devastations. None of these anthropogenic crises recognizes the national boundaries or legal blockades set up by individual state systems or international organizations. No country can succeed in protecting itself simply by building a border wall

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or sealing its state borders—the solution can only come through efforts involving global co-operation.

The Anthropocene refers to our current geological age—a period in which human activity has become the dominant influence on the climate, environment, and human society. As an overwhelming majority of global scientists have warned, we are already facing numerous egregious impacts, such as global warming, climate change, rising sea levels, depletion of cultural and biological diversity, ecological destruction, and threats of possible nuclear war. Scientists have also issued warnings about recurring crises of animal-borne virus pandemics, as the destruction of natural habitats for animals has eradicated “borders” that had long existed between animals and humans. Anthropogenic catastrophes could even imply an impending sixth extinction of species on the planet, following the fifth extinction of species that took place 65 million years ago when a meteor struck Earth.¹ Today, humankind has become the metaphorical asteroid that threatens the future of both human and non-human species on the planet.

Not long after the Fourth Asian Law and Society (ALSA) Conference had ended in Osaka, Japan in December 2019, the Chinese government reported to the World Health Organization (WHO) that a new coronavirus had been found in Wuhan, Hubei Province, China. The virus quickly travelled beyond state borders, and its outbreak has since sickened millions of people and killed hundreds of thousands in Asia, the Americas, and across the globe. A different kind of disaster occurred on New Year’s Eve in 2019, as the torrential rainfall in the capital city of Jakarta in Indonesia led to massive flooding and landslides that instantly took the lives of 66 people and forced more than 60,000 to evacuate their homes.² The Indonesian government has already decided to move Jakarta, the metropolitan city of 30 million on the island of Java, to East Kalimantan on the world’s third largest island, Borneo, due to the fact that a quarter of the city or more is projected to be under water within the next ten years. And, just prior to that, on Christmas Day, Typhoon Phanfone, with winds of up to 118 miles (190 kilometres) per hour, slammed into the Philippines, killing 28 residents and forcing the evacuation of more than 50,000.³

Soon after the New Year, in response to catastrophic wildfires, Australia launched the largest peacetime maritime rescue operation in its national history in order to rescue thousands of residents and tourists who had been stranded on the beach after being forced to flee those uncontrollable wildfires.⁴ The unprecedented climate-fuelled wildfire season killed at least 24 people, scorched 14.5 million acres of land (an area larger than Switzerland), while also killing more than a billion animals and blanketing the country in smoke.⁵ The states of Victoria and New South Wales declared a state of emergency, with more than 4,000 people escaping to the beach to flee the approaching blazes. Australia’s Bureau of Meteorology confirmed that 2019 had been the continent’s hottest year on record. Climate activists and scientists have pointed to Australia as an example of what is to come in the decades ahead if radical steps are not taken to curb global carbon emission.⁶ The thick smoke from

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1. Carrington (2017).
 2. Berlinger (2019); John (2019).
 3. Rosane (2019).
 4. Albeck-Ripka et al. (2020).
 5. Flanagan (2020); Kahn (2020).
 6. Gander (2020).

Australia had an international impact, travelling more than 7,000 miles across the Pacific Ocean, eventually reaching Chile, Argentina, and other South American countries.⁷

All of these anthropogenic events in Asia and neighbouring regions had already been predicted. In October 2019, *Nature Communications*, a multidisciplinary journal on natural science, warned that Asia would become the epicentre of anthropogenic catastrophes and environmental disasters in the world,⁸ specifically stating that the regions mostly affected would be “developing countries across Asia, . . . including Bangladesh, Vietnam, and many Small Island Developing States (SIDS).”⁹ Indeed, a series of significant climate changes have already been observed in multiple Asian countries and neighbouring regions. In summer 2019, for instance, Mumbai in India experienced their average monthly rainfall in just one 48-hour period.¹⁰ The flooding from a summer monsoon killed more than 600 people in Nepal, India, Bangladesh, and Pakistan, and displaced millions of people in South Asia, including Rohingya Muslim refugees in Cox’s Bazar, the largest refugee camp in the world.¹¹ Further, more than 300 million people in Asia are now at risk of being displaced due to rising sea levels, three times more than previous estimates, with the vast majority of the most vulnerable populations concentrated in Asia, including China, Bangladesh, India, Vietnam, Indonesia, and Thailand. These Asian countries will face grave threats with sea levels rising by more than six feet or two metres.¹² Much of southern Vietnam, for instance, including Ho Chi Minh City, the country’s economic centre, could all but completely disappear by 2050.¹³ All countries in Asia will be affected, but Asia’s “developing” countries will be most severely affected by these anthropogenic impacts, especially aboriginal communities, the poor, rural farmers, women, indigenous people, and ethnic-religious minorities.

2. THE ANTHROPOCENE AND THE LAW IN ASIA

The Fourth Asian Law and Society Association (ALSA) Conference was held at Osaka University in the vibrant city of Osaka, Japan from 12 to 15 December 2019. More than 300 researchers and scholars from over 25 countries and independent regions gathered together to present their research and collaborative work. These included the Philippines, Afghanistan, India, Iran, Bangladesh, Indonesia, Malaysia, Cambodia, Thailand, Vietnam, Sri Lanka, Laos, Hong Kong, and Macau, as well as the US, Japan, Canada, Australia, the Netherlands, Spain, Switzerland, the UK, Germany, South Korea, mainland China, Taiwan, Singapore, Australia, and other regions around the world. Since its inaugural meeting in 2016 in Singapore, the success of the ALSA conference has continued to grow, attracting many scholars and researchers who have come together to discuss issues related to international law, environmental protection, human rights, gender inequality, indigenous

7. *Ibid.*

8. Kulp & Strauss (2019).

9. *Ibid.*

10. Vaktania (2019).

11. Milko & Hammond (2019); Ferguson (2019).

12. Kulp & Strauss, *supra* note 8.

13. Lu & Flavelle (2019).

sovereignty, sustainability, and corporate governance, among many other relevant socio-legal themes connected to nature, biodiversity, the environment, and ecosystems in Asia.

Given the threat of anthropogenic catastrophes in multiple regions of Asia, the ALSA Presidential Session, “The Anthropocene and the Law in Asia,” was organized in order to engage in critical discussion of anthropogenic impacts and to explore how systems of law and legal measures could help to lessen, if not avert, the coming catastrophes in Asia and beyond. The Presidential Session discussions included: (1) the paradigmatic shift in transforming “nature” into a rights-bearing entity, in order to protect the environment from ecologically unsustainable state and corporate projects; (2) the integration of anthropogenic threats into the legal education curriculum; (3) the proposal of intersectional and interdisciplinary teaching frameworks to reshape environmental law education in Asia; (4) the transformation of national energy laws to achieve energy sufficiency, thereby moving away from dependency on fossil fuels and unecological human activities for energy production; (5) the creation of robust ecological jurisprudence based on indigenous knowledge and self-sustaining cultures of aboriginal communities, so as to avert the destructive impact of the Anthropocene; and (6) the enactment of the state’s national security protocol in response to the anthropogenic crisis, potentially involving future waves of climate refugees and environmental migrants, and the possible militarization of borders and enforcement of stricter migration policies. The panel discussions also touched upon other sensitive and controversial issues, including the possibility of nuclear devastation and resulting mass extinction due to technological disruptions by a predatory artificial intelligence (AI) apparatus.¹⁴ Other papers explored the innovative ways in which a set of ecological policies and pedagogical interventions could be activated to avert or delay the consequences of the Anthropocene and the possible sixth mass extinction. These innovative papers will be published in future issues of the *Asian Journal of Law and Society*.

3. EARTH JURISPRUDENCE AND THE RIGHTS OF NATURE

A new paradigmatic shift in confronting the climactic endgame of the Anthropocene is clearly in order. As the outgoing ALSA president, I wish to contribute to critical discussions on two issues: (1) Earth Jurisprudence and (2) the Rights of Nature. These two key legal concepts need to be developed and discussed by socio-legal researchers and policy-makers in order to avert the impending crises of the Anthropocene. The following section briefly examines the recent development of a robust movement towards Earth Jurisprudence in multiple countries of Asia, the Americas, and the Pacific—that is, countries that have recently enshrined the concept of the Rights of Nature into their legal system through transforming nature and ecosystems into rights-bearing entities in order to protect them from harmful human activities.

The term “Earth Jurisprudence” was coined by cultural historian Thomas Berry in his groundbreaking work on the theory of Earth-centred law and jurisprudence.¹⁵ As a strong critic of the “human-centred” view of the natural world, Berry called for the

14. See generally Harari (2019).

15. Berry (1999).

reconceptualization of humanity's place, so that humans would instead be seen as constituting one of many interconnected members of the Earth Community.¹⁶ South African legal practitioner Cormac Cullinan has also argued for innovative legal and governance systems to support the Earth Community and to reflect principles of Earth Jurisprudence based on the Rights of Nature.¹⁷

Following Thomas Berry's vision, the Center for Earth Jurisprudence (CEJ) was established in 2006 at the law schools of Barry University and St Thomas University in Florida, with the support of ecological philosophers, environmental groups, indigenous activists, progressive lawyers, and eco-scientists. In 2007, an international meeting was organized in Florida in order to solidify the organizational and philosophical foundation for the establishment of Earth Jurisprudence. Cormac Cullinan of EnAct International in South Africa, Thomas Linzey of the Community Environmental Legal Defense Fund (CELDF) in the US, Liz Hosken of the Gaia Foundation in England, and other groups of lawyers and grassroots environmental activists met in Florida at the symposium, "Earth Jurisprudence: Defining the Field and Claiming the Promise."¹⁸ Also in 2007, the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) finally recognized the significant contribution of indigenous knowledge and self-sustaining cultural practices of indigenous nations and peoples, as well as their ecological governance and protection of ancestral homeland and environment. And, in 2010, the Universal Declaration of the Rights of Mother Earth (UDRME) was adopted at the World People's Conference on Climate Change and the Rights of Mother Earth hosted by the Bolivian government.¹⁹ This event attracted 30,000 participants from more than 100 countries.²⁰

In 2008, Ecuador became the main catalyst to promote the Rights of Nature by becoming the first country to incorporate it into its Constitution. In 2010, the Global Alliance for the Rights of Nature (GARN) was formed in Patate, Ecuador, including indigenous nations and nearly 100 grassroots organizations from Asia, Africa, and Europe that asserted the universal adoption and implementation of legal systems that recognize, respect, and enforce the Rights of Nature.²¹ The GARN also sponsored the first International Rights of Nature Tribunal (IRNT) in Quito, Ecuador in January 2014 and the second IRNT in Lima, Peru in December 2014.²² The third IRNT was held concurrently with the UN Framework Convention on Climate Change (COP21) in Paris, France in 2015.²³

4. THE RIGHTS OF NATURE IN ASIA

As of today, more than a dozen countries have decided to adopt, or have substantially incorporated, environmental-rights provisions into their legal system, including their

16. *Ibid.*, p. 280 (defining the Earth Community as "the interacting complexity of all of Earth's components, entities, and processes, including the atmosphere, hydrosphere, geosphere, biosphere, and mindsphere.").

17. Cullinan (2011), pp. 19–31.

18. [Ecozoictimes.com](https://www.ecozoictimes.com) (2020).

19. Schipani (2010).

20. *Ibid.*

21. See generally Boyd (2017).

22. *Ibid.*

23. *Ibid.*

Constitution. In Asia, these countries include: Sri Lanka and Maldives in the Indian Ocean of South Asia; Armenia and Turkmenistan in Central Asia; Nepal, India, and Myanmar in South and Southeast Asia; and Fiji and Guinea in the Pacific Ocean.²⁴ According to a UN report, other countries that have substantially adopted the Rights of Nature include: Egypt, Kenya, Madagascar, Morocco, Rwanda, Sudan, South Sudan, and Tunisia in Africa; France, Hungary, Montenegro, and Serbia in Europe; and Jamaica and Dominican Republic in the Caribbean.²⁵

In Asia, a strong movement to build the robust system of Earth Jurisprudence has been taking place for the last ten years. Nepal, for example, has been trying to incorporate the Rights of Nature in its Constitution since the early 2010s, with the concept of nature extended to include healthy weather and climate. Nepal has suffered serious environmental and ecological catastrophes resulting from the 2015 earthquake that killed nearly 9,000 people, injured more than 20,000, and destroyed more than 600,000 structures in the capital of Kathmandu and nearby towns.²⁶ Nepal has also experienced numerous flood disasters due to record-breaking rainfalls as well as rapidly melting glaciers at the Himalayan Plateau, both caused by global warming and climate change. In 2019 alone, a series of flash floods affected widespread areas of Nepal, causing significant damage to infrastructure, including nine major highways that had been blocked or destroyed by floods and mudslides.²⁷

The prominent US environmental-preservation organization known as the CELDF has been working closely with the Nepalese government and environmental organizations to draft a constitutional amendment to incorporate the Rights of Nature, including the right to a healthy climate, in order to protect the climate from man-made pollution, contamination, and global warming.²⁸ The first major victory of the environmental grassroots activism in Nepal was actualized in 2016, when the Nepalese Supreme Court declared that ecologically destructive extraction of precious pink and brown marbles by Godavari Marble Industries Ltd had to be stopped because of water pollution, groundwater contamination, and other environmental concerns that threatened the Rights of Nature and ecosystems. For the first time, Nepal's highest court enshrined the concept of the Rights of Nature, namely nature's need to exist for its own sake, through its ruling that the Godavari marble quarry had to be closed immediately and that future mineral-extractive operation in the Godavari area was to be prohibited.²⁹ The Supreme Court thus brought the concept of the Rights of Nature and ecological governance to the forefront of legal discourse and judicial decision-making in Nepal.

In India, the movements to incorporate the Rights of Nature began in 2012 and, in 2017, the high court of Uttarakhand in India issued rulings that recognized the Ganga and Yamuna Rivers, glaciers, and other ecosystems as "legal persons" with rights to protect themselves from human exploitation.³⁰ For example, a million litres a day of sewage was generated by

24. May & Daly (2019), p. 104.

25. *Ibid.*

26. Rafferty (2015).

27. Sharma & Ives (2019).

28. [Radicalecologicaldemocracy.org](https://www.radicalecologicaldemocracy.org) (2016).

29. La Follette & Maser (2020), pp. 304–6.

30. Safi (2017).

50 cities located along Ganga River and duly discharged into it. The Indian Council of Medical Research once reported that “those living on the banks of the Ganga . . . are more prone to cancer than anywhere else in India.”³¹ Because of concerns over India’s rapidly degrading ecosystems, the court went further in ascribing the concept of legal personhood, not only to rivers, but also to “[all] streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls.”³² The court’s adoption of the Rights of Nature in its ruling stemmed from many decades of failure by the Indian government to deal with water pollution and clean up its domestic rivers. In 2018, the high court of Uttarakhand also accorded the status of “legal person” to animals, in order to stop cruelty against them. The court specifically declared that all animals should enjoy the same rights as human beings because “they have distinct personas with corresponding rights, duties and liabilities of a living person.”³³

In India’s neighbouring country of Bangladesh, the high court recognized the Turag River as a rights-bearing entity, with the right to exist, flourish, and run its own natural course without human interventions.³⁴ The 2019 court ruling addressed concerns about significant pollution and illegal development along the Turag River, an upper tributary of the Buriganga River, which is one of Bangladesh’s major rivers. Similar to India’s recent court pronouncement, the high court went further in applying the concept of “the Rights of Nature” to all rivers and streams in Bangladesh.³⁵ The high court also ordered the National River Protection Commission to serve as the guardian for all rivers in Bangladesh and directed further innovative orders at the governmental level, including the establishment of school and university curriculum to teach students about the ecological importance of rivers and preservation of ecosystems in Bangladesh.³⁶ This case was filed by the Human Rights and Peace for Bangladesh (HRPB), an environmental nonprofit organization (NGO) that has been active in promoting human rights and the Rights of Nature in Bangladesh and neighbouring regions. This judicial activism by indigenous activists and environmental organizations has led to a series of court rulings in Nepal, India, Bangladesh, and other parts of the world that established the Rights of Nature so as to offer protection from destructive human activities.

A similar environmental movement has been observed in small island states in the Pacific Ocean and the Indian Ocean. For instance, former Maldives President Mohamed Nasheed, speaking at the UN climate summit in Poland in 2018, declared that “we are not prepared to die. . . . We are not going to become the first victims of the climate crisis.”³⁷ As the first democratically elected leader of the Maldives, an island state in the Indian Ocean, in 2008, he held a cabinet meeting underwater in order to highlight the threat to the Maldives posed by climate change. The urgency of dealing with the anthropogenic disaster was also declared by Fiji Prime Minister Frank Bainimarama, who served as COP23 president in Paris in 2017.

31. Das (2017).

32. *Ibid.*

33. Ray (2018).

34. Samuel (2019).

35. *Ibid.*

36. Bechtel (2019).

37. Chestney (2018).

President Bainimarama announced that “the need for urgency is obvious. Our world is in distress from the extreme weather events caused by climate change—destructive hurricanes, fires, floods, droughts, melting ice, and changes to agriculture that threaten our food security.”³⁸ Fiji has been facing a significant ecological threat of its own due to rising sea levels and recent powerful and more violent El Niño patterns. Fiji’s neighbouring country of Tuvalu, due to the ongoing disappearance of its coasts and island shores, has recently bought 5,500 acres of land in Fiji.³⁹ As of today, rising sea levels are on the verge of swallowing two of Tuvalu’s nine islands. Scientists have predicted that most of the islands will eventually be “sinking” into waves of the Pacific Ocean in coming decades.⁴⁰ Tuvalu Prime Minister Saufatu Sopoanga proclaimed at the 2002 World Summit on Sustainable Development that “We want the islands of Tuvalu, our nation, to exist permanently forever and not to be submerged underwater merely due to the selfishness and greed of the industrialized world.”⁴¹ Tuvalu, Fiji, Bangladesh, India, and multiple countries in Asia became the sponsors of the Bolivian Initiative to the United Nations for the establishment of the Universal Declaration of the Rights of Nature in 2008, which was a precursor to the later UDRME adopted at the World People’s Conference in 2010.

The Rights of Nature movement and the urge to establish robust Earth Jurisprudence originated in the US and were later developed extensively in Latin America. At the same time, many Asian countries began to adopt the Rights of Nature into their legal systems, through their own judicial activism and legislative processes, thanks to the efforts of indigenous communities, grassroots environmental organizations, and their progressive supporters in multiple regions of Asia. Socio-legal scholars specialized in Asia should be encouraged to participate in the construction of a robust Earth Jurisprudence, whose goal is to deter, if not eliminate, the impending threat of the Anthropocene in Asia, which is known to constitute the epicentre of adverse consequences arising from climate change and other anthropogenic disasters in the world.

5. CONCLUSIONS

At the 2019 ALSA meeting in Osaka, Japan, the Presidential Session on “The Anthropocene and the Law in Asia” was organized to ignite rigorous discussions on significant anthropogenic threats and to formulate effective strategies for eliminating or reducing the effects of climate change and other ecological disasters that currently threaten the survival of human and non-human species in Asia and neighbouring regions. The establishment of robust Earth Jurisprudence in Asia is crucial, as it is the largest of the world’s continents, covering nearly 30% of the Earth’s land surface and containing more than 60% of all people in the world. Further, as Asia is the predicted epicentre of anthropogenic disasters, the causes and effects of the Anthropocene must be critically interrogated and addressed by socio-legal scholars who specialize in studies of that region.

38. Biggs (2017).

39. Ellsmoor & Rosen (2016).

40. Roy (2019).

41. Hough (2014), p. 28.

The city of Bangkok, the site of the next ALSA conference, is Thailand's most populous city, with 10 million inhabitants. Bangkok may also become one of the "sinking cities" of Asia in coming decades.⁴² Failing any significant remedial measures, the newest estimate of the anthropogenic impact in Thailand has placed Bangkok entirely underwater by 2050.⁴³ The discussion of the Anthropocene and the establishment of robust Earth Jurisprudence are of great significance, for we know that other Asian cities, shores, and coastlines, including the archipelagos of multiple island states in the Pacific Ocean and the Indian Ocean, may soon disappear due to the many decades of egregious human activities of industrialized countries and the corporate world. In order to avert devastating impacts of the anthropogenic crisis in Thailand and in other regions of Asia, a robust system of Earth Jurisprudence must be urgently called for, in which the Rights of Nature are firmly imbedded in the centre of constitutional and legislative discussions and deliberations.

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42. Gluckman (2019).

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