

‘BEYOND THOUGHT AND LANGUAGE’ – THE POTENTIAL FOR EARTH JURISPRUDENCE IN CREATIVE MODES OF COMMUNICATION

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I INTRODUCTION

One such time I left town and on my way back, at a point where the land was high and I could see the sea to my left and down the road a long ways, I suddenly felt I was in heaven. The spot was in fact no different from when I had passed it not long before, but my way of seeing it had changed... Tree took account of road, which was aware of air, which was mindful of sea, which shared things with sun. Every element lived in harmonious relation with its neighbour... I felt like the centre of a small circle coinciding with the centre of a much larger one.²

This passage comes from Yann Martel’s Booker Prizewinning *Life of Pi*. *Life of Pi* is a narrative, a literary text: but its ideas serve, in many respects, as analogies for key tenets of Earth Jurisprudence.³ One of the narrative’s central themes is the complementary nature of rationality and creativity as modes of communication. Pi is an Indian boy who survives seven months on a lifeboat in the Pacific with a Royal Bengal tiger. Very early in his voyage, he learns the importance of balancing rationality and creativity. Rationality may help him satisfy his physical needs, for food, shelter, and order; but he also to satisfy emotional and spiritual needs, construct meaning, and maintain hope, with creativity. As he makes his journey, Pi finds he needs to draw on both to survive.

In similar fashion, this paper argues that Earth Jurisprudence should explore the potential for fruitful uses of creative modes of communication as it seeks to bring about cultural and epistemic change.

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2 Yann Martel, *Life of Pi* (Harvest, 2002) 62.

3 For an introduction to Earth Jurisprudence, see, eg, Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2nd ed, 2003); Peter Burdon (ed), *An Invitation to Wild Law* (Wakefield Press, forthcoming 2011). The field draws strongly on the work of cultural historian Thomas Berry: see, eg, Thomas Berry, ‘10 Points for Jurisprudence Revision’ in *Evening Thoughts: Reflecting on Earth as a Sacred Community* (Sierra Club Books, 2006).

First, the paper characterises Earth Jurisprudence's project as the project of bringing about epistemic change (in the Foucauldian sense) from anthropocentrism to ecocentrism. It defines *episteme*, in outline, as 'a priori frame', anthropocentrism as 'human as centre', and ecocentrism as 'Earth as centre'.

Next, it suggests that one of the seeds of an ecocentric worldview is individual experiences of the Kantian sublime. This means that Earth Jurisprudence's challenge becomes one of communicating or translating such experiences to an overarching, epistemic level.

Further to this, the paper considers 'rational' and 'creative' modes of communication as a way of characterising the modes of communication available to Earth Jurisprudence. For its purposes, it adopts a very broad (and necessarily caricatured) definition of 'rational' modes as those involving 'intellectual' or 'academic' writing or speech, and 'creative' modes as those involving 'emotional' or 'visceral' narrative or performance. On this view, rational modes of communication privilege the specific, logic and detail, and ideational knowledge, while creative modes of communication privilege primary experience, emotion, and sensual or sensate knowledge.

This paper suggests that these characteristics and foci make creative modes of communication better equipped than rational ones to communicate the sublime experience of ecocentrism that Earth Jurisprudence seeks to foster in individuals and cultures. For this reason, it proposes that Earth Jurisprudence should consider the possibilities of creative modes of communication as a complement to its rational work.

II EARTH JURISPRUDENCE'S PROJECT⁴

This paper defines Earth Jurisprudence as the field, discipline or movement existing to bring about a change in *episteme*, using the law, from the current, anthropocentric *episteme* to a new, ecocentric one. The enacting of this change is part of what Thomas Berry calls the 'Great Work' of Western civilisation,⁵ a transition that might be expressed in equal terms as movement from arrogance to humility, separation to inclusivity, or objectivity to subjectivity.

4 For a detailed consideration of Earth Jurisprudence's project as one of epistemic change, and for further detail on the concepts of episteme, anthropocentrism and ecocentrism in this context, see Ben Mylius, *Towards the Unthinkable: Earth Jurisprudence and an ecocentric episteme* (LLB Honours Thesis, University of Adelaide, 2011) 11–12, 16, 24–27.

5 Thomas Berry, *The Great Work: Our Way Into the Future* (Three Rivers Press, 1999). See also Thomas Berry, above n 2.

An *episteme*, in the Foucauldian sense, is an *a priori* configuration of the mind that renders thought possible: the 'epistemological field'⁶ that enables the having of thoughts and thus constitutes a condition of possibility for discourse. In narrativistic terms, it might be considered the 'framing narrative' in which and by which a culture lives:⁷ the story, existing before its characters can act. In this sense, a change in *episteme* involves a change from first principles in the way human beings perceive their relationship to, and act with relation to, the earth.

In terms of the specifics of the change, 'from' anthropocentrism 'to' ecocentrism:⁸ 'anthropocentrism', in its etymological sense, means 'man' plus 'centre', or 'man as centre'.⁹ This worldview positions humans as independent from, and superior to, all else in the world.¹⁰ Epistemically it manifests, as Peter Burdon suggests, in 'the tendency of human beings to regard themselves as separate to nature and [to regard] nature as existing for human use and exploitation.'¹¹ Ecocentrism,¹² similarly defined etymologically, means 'Earth plus 'centre', or 'Earth as centre' ('eco' – originally, 'house' or 'Earth'¹³ – and 'centre'). This is *not* the opposite of anthropocentrism: the two cannot be understood as existing in a dichotomous relationship to one another.¹⁴ Rather, anthropocentrism is to ecocentrism as a line is to a circle. Anthropocentrism understands entities in terms of hierarchies, value judgments and binary oppositions, whereas ecocentrism gives rise to a system of ecologies, of networks and relationships in which each entity can only be comprehended by reference to those existing around it. For this reason, a change to ecocentrism does *not* mean maintaining a belief that one entity is superior to all others, and simply dethroning the human from this apex in order to replace it with 'nature' or some other entity.¹⁵ Rather, ecocentrism involves a remembering

6 Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (Routledge, 2002) xxiii.

7 Cf Daniel Quinn, *Ishmael* (Bantam/Turner, 1995).

8 The prepositions here are placed in inverted commas to deprecate any interpretation that positions such a change as part of a teleological process.

9 Oxford English Dictionary, *Oxford Dictionary of the English Language* (Oxford University Press, 2011) 'anthropocentric'.

10 Cf Berry, above n 2, Cullinan above n 2.

11 Peter Burdon, *Earth Jurisprudence: Private Property and Earth Community* (Doctor of Philosophy Thesis, University of Adelaide, 2011) 3.

12 Sometimes 'biocentrism'.

13 Via German 'oecologie', from the ancient Greek 'dwelling or house': cf Oxford English Dictionary, above n 8, 'ecology'.

14 An opposite implies a dichotomy, which is precisely the kind of relationship Earth Jurisprudence seeks to avoid. See discussion in Mylius, above n 3, 28. See also generally Klaus Bosselmann, *When Two Worlds Collide: Society and Ecology* (RSVP Publishing, 1995).

15 Cf Murray Bookchin, 'Where I Stand Now' in Steve Chase (ed), *Defending the Earth: A Dialogue between Murray Bookchin and Dave Foreman* (South End Press, 1991).

of context, bringing humans as a species back into their proper network of ecological relationships with all other entities on Earth.

III THE SEEDS OF ECOCENTRISM IN INDIVIDUAL EXPERIENCE

In the following passage, the precocious Pi reflects on his understanding of the link between individuals and their context, using the language of Hinduism.

There is Brahman, the world soul, the sustaining frame upon which is woven... the cloth of being, with all its decorative elements of space and time. There is Brahman nirguna, without qualities, which lies beyond understanding, beyond description ... with our poor words we sew a suit for it – One, Truth, Unity, Absolute, ... but Brahman nirguna always bursts the seams. We are left speechless. ...

The truth ... is that Brahman is no different from atman, the spiritual force within us, what you might call the soul. The individual soul touches upon the world soul like a well reaches for the water table. That which sustains the universe beyond thought and language, and that which is at the core of us and struggles for expression, is the same thing.¹⁶

The dangers of slipping into such superlative, quasi-theological language are significant. Such expression is scorned, often rightly, within rational discourse, because of its association with – its co-optedness by – interest groups, corporations, and religious or ‘new age’ movements with no credibility. Nonetheless, as Pi struggles to articulate in language that is meaningful to him, the existence of acutely sensuous individual experiences remains. Such moments are experiences of the Kantian sublime: of standing humbled, in awe of, silenced by, something much grander and more venerable than oneself.¹⁷

In the thesis of this paper, such experiences constitute the seeds of an ecocentric worldview, existent in individuals. They provide a direct lived experience of personal engagement with the natural world, and with this, a sense of humility and perspective. They are meditative and energising, and the calm they engender often allows for particularly profound insight.¹⁸ Perhaps most simply, they are emotionally powerful experiences, and, insofar as epistemic

16 Martel, above n 1, 48–49.

17 For discussion on related themes, see David Abram, *The Spell of the Sensuous* (Vintage, 1997); Konrad Ott, ‘A Modest Proposal about How to Proceed in Order to Solve the Problem of Inherent Moral Value in Nature’ in Laura Westra, Klaus Bosselmann and Richard Westra (eds), *Reconciling Human Existence with Ecological Integrity* (Earthscan, 2008).

18 For an interesting perspective on such insight, see the comments of James Thornton, founder and CEO of Client Earth, a law firm operating in a manner reminiscent of Earth Jurisprudence principles: Sherre DeLys, Interview with James Thornton (ABC Radio National ‘Stillpoint’ Summer Features Program, 7 January 2010) <<http://www.abc.net.au/rn/summer/0910/features/stillpoint.htm>> at 19 July 2011.

change must proceed from some foundational level of the mind, will prove useful in catalysing such change.

If such experiences do, indeed, provide the seeds of an ecocentric *episteme* in individual consciousnesses, Earth Jurisprudence's challenge becomes one of communicating or translating such experiences to an overarching, epistemic level. What follows provides a brief, necessarily caricatured survey of rational and creative modes of communication and the ways in which each might contribute to this goal of translation.

IV RATIONAL AND CREATIVE MODES OF COMMUNICATION

For its purposes, this paper characterises the two broad modes of communication available to Earth Jurisprudence 'rational' and 'creative': 'rational' being those involving 'intellectual' or 'academic' writing or speech, and 'creative' being those involving 'emotional' or 'visceral' narrative or performance. Part of the difference between the two modes lies in their alternative approaches to creating or representing meaning.

Rational modes of communication (speaking in very general terms) privilege the specific, logic and detail, and ideational knowledge. As part of this, they strive for the clearest possible definitions, the narrowest possible interpretations, and the smallest possible fragments of being. Ironically, in doing so, they produce ever-expanding discourses – on the definition of the Liberal subject in jurisprudence; of 'intention' in criminal law; of 'possession' in property; and so on.¹⁹ These modes of communication also strive to be emotionless, 'cold', and cerebral – to deny subjective feeling, perhaps, in the service of objectivity. Examples of this approach in a legal context include the formality of court proceedings, the detached language of judgments, and the regimented system of taught legal thinking.

The quest for such specificity is Sisyphean, perhaps constituting a Kantian regulative ideal for this reason. If language is a system of communication, then a language in which infinite specificity is achieved, in which there exists an infinite number of words for things, surely ceases to function as a language. Moreover, at a quantum level, the universe seems incapable of infinite division; or, rather, a point is reached after which language falls apart, and it is only possible to speak meaningfully of individual 'things' in terms

19 Compare Anthony Kronman's discussion of the research ideal Anthony T Kronman, *Education's End: Why Our Colleges and Universities Have Given up on the Meaning of Life* (Yale University Press, 2007) 91–136.

of their interconnectedness in a larger scheme.²⁰ Nonetheless, the specificity and logic of rational modes of communication makes them very valuable to Earth Jurisprudence.

Creative modes of communication, in contrast (and again, speaking in very general terms) privilege primary experience, emotion, and sensual or sensate knowledge. Those working in such modes – call them artists – choose specific things (characters, symbols, actions) and present them so as to evoke some sense of the universal, to ‘[show] the world in a grain of sand’.²¹ It is a mark of success, albeit a nebulous one, for an artist to be told that a work they have created ‘means’ something; that it ‘says’ something a recipient feels is true but have been unable to articulate.

Creative modes of communication also strive to be ‘hot’, emotional, intuitive – even to deny objectivity, in some manifestations, in the service of subjectivity. This is evident in both the subject matter of creative modes of communication, the ‘grand themes’ of love, life, death and meaning, and in their form – poetic, metaphorical, allusive writing. This creative striving for the universal is also Sisyphean. Just as a language with an infinite number of words ceases to function, so too does a language with only one. The focus on universal concerns also means that creative modes of communication are often vague, subjective, non-prescriptive, capable of multiple interpretations. Nonetheless, in this paper’s thesis, creative modes of communication also have great value to Earth Jurisprudence: a value that has been overlooked or silenced by some other subfields of law.

V COMMUNICATING ECOCENTRIC EXPERIENCE

To summarise discussion to this point: experiences of the Kantian sublime may constitute the seeds of an ecocentric worldview in individuals, and so Earth Jurisprudence should seek, as part of its project, to communicate these experiences to a broader epistemic level, in order to achieve epistemic change from anthropocentrism to ecocentrism. This paper argues that creative modes of communication are better equipped than rational ones to communicate such experiences.

If the ecocentric experiences of individuals are, indeed, experiences of the Kantian sublime, then arguably they cannot be told, but only shown. Just as recounting an experience – a story – in outline cannot properly evoke the

20 Cf Fritjof Capra, *The Web of Life: A New Scientific Understanding of Living Systems* (Anchor Books, 1997); Werner Heisenberg, *Physics and Philosophy: The Revolution in Modern Science* (Harper Perennial, 2007).

21 William Blake, ‘Auguries of Innocence’, *The Pickering Manuscript* (Pierpont Morgan, 1972).

fulsomeness, the all-encompassing nature of that experience in the mind of a listener, so too there comes a point at which the utility of discussing ecocentrism begins to waver. Herein lies the utility of creative modes of expression. These are better suited than rational modes of expression to do this 'showing': their utility lies ultimately in their privileging of sensate and sensual knowledge, and in the metaphorical, allusive way by which they seek to communicate this knowledge.

In part, the most effective pieces of creative communication succeed precisely because they do not attempt to capture the fullness of an experience – which, as generations of postmodern literary critics have decided, would be folly in any case – but merely to gesture towards it, to represent it. In so doing, though their success is by no means guaranteed, a small number of pieces of creative communication might manage to plant a seed in their recipients' minds, to evoke a sense of something sublime that may form the foundation for future communication, both rational and creative, on the part of that recipient themselves.

VI PROPOSALS AND CONCLUSIONS

With this in mind, this paper proposes that Earth Jurisprudence should explore the possibilities of creative modes of expression as it works towards bringing about epistemic change. In particular, it should: explore the possibility of incorporating metaphor and imagery drawn from the natural world into its rational work; should seek to draw upon narrative, literary and other creative texts in that same work; and should explore the potential of creating complementary creative texts – framed as narratives or performances – to express its ideas and further its project of epistemic change.

These explorations, and uses of creative modes of communication, should not and will not *replace* rational modes of communication: both should be used, in balance. Nonetheless, given the epistemological priority Western culture has granted to rational modes of communication, it is these – first, in the form of Earth Jurisprudence – that need to take the lead in seeking ways to re-establish the balance.

Clearly there is a certain irony in exploring some of these themes through the rational tool of a written paper. This is one of the reasons for the (much-abbreviated) discussion to *Life of Pi*. In some senses – though the point, as it is with all pieces of creative expression, is open to debate – this novel presents many of the same ideas, via a creative mode of communication, as this paper has considered in a rational mode.

In that spirit, it is well to conclude with a final passage from the novel, this time Pi's description of an experience he has on his lifeboat:

I enjoyed my meal as I watched the sun's descent in a cloudless sky. It was a relaxing moment. The vault of the world was magnificently tinted. The stars were eager to participate; hardly had the blanket of colour been pulled a little then they started to shine through the deep blue. The wind blew with a faint, warm breeze and the sea moved about kindly, the water peaking and troughing like people dancing in a circle who come together and raise their hands and move apart and come together again, over and over.²²

There is much potential for Earth Jurisprudence in creative modes of expression towards epistemic change.

22 Martel, above n 1, 175–6.