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Nature can use a Lawyer

Center for Earth Jurisprudence seeks to give legal rights to forests, birds and streams

By JENNIFER SZWEDA JORDAN

Working to further the idea that old-growth forests, piping plovers, mountain streams and all of nature have rights worthy of recognition in courtrooms, the Center for Earth Jurisprudence has just wrapped up its first academic year at two Catholic law schools.

Critics of this philosophy, including some students at the law school, consider the idea of giving rights to entities other than humans too radical to become reality. Not so, says Dominican Sr. Pat Siemen. She directs the Center for Earth Jurisprudence at the law schools at St. Thomas University, Miami, and Barry University, Miami Shores, both in Florida.

“We often get into the argument of how can trees have rights, they’re a thing,” Siemen says about classroom discussions on earth jurisprudence. “Corporations are not humans, but we have given them the rights of the constitution to be as persons. So someone goes into court and argues on behalf of a corporation and they have these rights of persons. That would need to be done with other beings as well.”

The idea that nature could use a lawyer may be radical, but it’s not new. In a 1972 law review journal article, Christopher D. Stone, University of Southern California Law School professor, posed the question, “Should trees have standing” to be legally recognized in court? In short, his answer was yes. That same year Supreme Court Justice William O. Douglas agreed with Stone.

In Catholic circles, there’s some history on the importance of nature, too. Nineteenth-century priest and poet Gerard Manley Hopkins wrote, “The world is charged with the grandeur of God.” More recently, Passionist priest and cosmologist Thomas Berry argued in an essay that “every being has rights.” He states three rights in particular: the right to survive, the right to habitat, and “the right to fulfill its role in the great community of existence.”

It was Berry who influenced Siemen. The 59-year-old Dominican sister lived close to the land when she was raised on a family farm. But it took years before she thought about earth jurisprudence. Her early legal work focused on advocating for people who were poor, minorities or otherwise voiceless.

In the 1980s, Siemen heard a tape-recorded essay by Berry. He imagined what would happen if the natural world could voice an opinion in what he called an earth democracy. He said humans would be voted off the planet because we don’t take care of the natural world. Siemen was shocked.

“I had spent my whole life -- at least adult life -- ministerially trying to stand in positions of empowerment of others, and furthering the rights of others,” Siemen said. “And I had never once really thought about what it meant to be -- whether it would be rivers or endangered species -- what it would mean to have to live and exist totally by the decisions of humans.”

The Center for Earth Jurisprudence was funded by Siemen’s religious community. The



-- MCT/Roberto Gonzalez

Dominican Sisters, based in Adrian, Mich., received \$1 million from a private estate to further Catholic education in Florida. An osprey brings a fish back to its nest atop a crane advertising a car dealership in Eatonville, Fla.

Siemen said that opening the center is so important now because of predictions that climate change could create what she calls ecological refugees from severe flooding and drought. She sees earth jurisprudence as part of a commitment to Catholic social teaching that focuses on the church's responsibility to build a just society.

Siemen said that 30 years of major federal environmental laws haven't stopped global warming, so it's time for a more expansive approach.

"Earth jurisprudence, I would proffer, is larger than environmental law," Siemen said.

Besides directing the center, Siemen taught a seminar on earth jurisprudence at Barry University's Dwayne O. Andreas School of Law this past academic year. Some students, like Monica Mercer, were converts.

"I see it as being very, very doable," said Mercer. "It's just going to take time like any movement to gain momentum."

Mercer sees as a positive sign the fact that one Pennsylvania community has recently passed several ordinances affirming that ecosystems possess enforceable rights. The borough of Tamaqua used this argument as a basis in banning hazardous waste, and longwall mining, a system of massive underground coal mining.

Another student, a residential developer, Marc Jones had mixed feelings about the class. He said he took it to learn about an alternative view from his own. He said his research for the class focused on green, environmentally favorable building practices. Learning this struck him as positive because recycling building material could save clients money.

Still, he added, "I'm at odds with a lot of the concepts. It's very radical, idealistic. Some of it may not be attainable. But it's a very beneficial thing."

Yet the idea of anything other than humans -- or groups of humans -- having inviolable rights and that harm against those rights is lawsuit material hasn't gotten very far in American courtrooms.

"I love the idea," said Vermont law school professor Karen Sheldon, who once argued unsuccessfully on behalf of a grizzly bear.

Sheldon said recent decisions from the 9th Circuit Court of Appeals suggest "courts don't find this very amusing."

Neither do free-market advocates.

"It's gibberish," said Sam Kazman, general counsel for the Competitive Enterprise Institute, adding that earth jurisprudence is "an attempt to enshrine free-floating ideas in a manner that lets people sue over even more things than they can currently litigate."

Kazman said that those humans who own or utilize nature should be able to make decisions about it, because nature doesn't speak in one definitive voice to say what it wants.

"It is impossible to lay out what is in the best interest of an ecosystem unless you lay out just what you as someone who owns that ecosystem, or enjoys it, or appreciates it from a distance, what you hold important," Kazman said.

Earth jurisprudence may not be gibberish, but it does tend toward idealism, said David Driesen, a Syracuse University law professor and member of the Center for Progressive Reform. He said it would take nothing less than a constitutional amendment to give nature rights.

Even then, he said, enforcement could still be lax. He said that Brazil's constitution contains some environmental protections, but there's still "quite a bit of deforestation" underway. Driesen also wonders if American courtrooms would be up to the task of carrying out earth jurisprudence.

“If you said trees have the right to be free from destruction ... you’d have to prohibit a whole bunch of activities, you’d be expecting a lot from courts. You’d be asking them to undertake a lot of administrative work. Courts are reluctant to do that,” Driesen said. “They see that as beyond their capacity and really beyond things they should legitimately be involved in sometimes.”

Other lawyers say that a constitutional amendment isn’t needed to argue for earth’s rights. All that’s needed is a willing court, according to Tom Buchele, director of the Environmental Law Clinic at the University of Pittsburgh School of Law.

He said that the Supreme Court could, if it chose, interpret the Constitution as allowing nature to have legal standing.

“There’s certainly nothing in the Constitution that says a case or controversy has to have a person as the entity,” Buchele said. “It’s just that current case law doesn’t do that.”

Siemen admits that there are more questions than answers about how earth jurisprudence can and should play out.

“For some people, there’s a huge concern about even using the language of rights and I’m not sure that the future will show that that is the appropriate road to go down. ... There’s a concern that if we extend rights to all beings it will somehow relativize the dignity of humans,” Siemen said. “We’re really on the front end of exploring the implications of what we’re talking about.

“One thing seems clear,” Siemen added. “For the sake of planetary health, awareness of human obligations and duties to care for the earth need to increase.”

Jennifer Szweda Jordan is a freelance writer living in Pittsburgh.

On the Web

To listen to a conversation between Dominican Sr. Pat Siemen and journalist Jennifer Szweda Jordan visit the podcast on [NCRcafe.org](http://ncrcafe.org).

To learn more about the Center of Earth Jurisprudence, visit the center's web site: <http://www.earthjuris.org/>

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