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ARTICLE

# Of kin and system: Rights of nature and the UN search for Earth jurisprudence

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**Abstract**

Since 2009, the United Nations programme on Harmony with Nature has sought a new philosophy of global environmental governance known as Earth jurisprudence. This paper examines how Harmony with Nature has advanced Earth jurisprudence to unite Indigenous legal traditions, rights of nature, and mounting evidence from Earth system science regarding anthropogenic forcing on the planet. It does so through a policy analysis of annual UN reports, resolutions, and dialogues with international experts. Situating Harmony with Nature in the broader intellectual heritage of Earth jurisprudence and contemporary efforts to address anthropogenic forcing on the Earth system in the Anthropocene, I argue that Harmony with Nature operates at the juncture of two powerful ways of ordering relations, knowledge, and obligation: kin and system. The critical analysis shows how a new geography of global environmental governance has been produced within the constraints of the UN precisely by scaling Indigenous kinship to the planetary diagnoses made by system-based planetary sciences. The resulting form of Earth jurisprudence in Harmony with Nature holds important, cautionary lessons both for understanding how Indigenous legal traditions are made to comport with UN sustainable development programmes and for contemporary efforts to transform governance to meet the pressing demands of global environmental change.

**KEYWORDS**

Earth jurisprudence, governance, kin, rights of nature, system

## 1 | INTRODUCTION

In April 2009, the United Nations General Assembly passed Resolution 63/278 to recognise International Mother Earth Day and, that December, launched a programme entitled Harmony with Nature. In 2011, Harmony with Nature began inviting academics, lawyers, and Indigenous peoples to interactive dialogues held on or near to International Mother Earth Day. Dialogue outcomes are reported back to the UN each August and, each December, Harmony with Nature

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has been reaffirmed by resolutions of the UN General Assembly. Through this cycle, the UN programme has advanced a philosophy of law known as Earth jurisprudence, which 'is based on the idea that humans are only one part of a wider community of beings and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole' (Cullinan, 2011, p. 13). Harmony with Nature has pursued the aim of Earth jurisprudence, to achieve 'a mutually enhancing human–Earth relationship' (Berry, 1999, p. 61), by seeking to align Indigenous legal traditions, rights of nature, and an approach to law consistent with findings of Earth system science regarding anthropogenic forcing on the planet (cf., Steffen et al., 2018). In short, Harmony with Nature is a programme of global environmental governance that attempts to align Indigenous legal traditions, rights of nature, and a philosophy of law fit for the Anthropocene.

This paper examines Earth jurisprudence as both an empirical project within the UN system and as a conceptual apparatus employed to produce new political space in global environmental governance. Doing so contributes to two areas of scholarship mutually concerned with how inequalities within global environmental institutions may be compounded through new forms of governance in the Anthropocene. The first concerns the oppression of Indigenous peoples by UN institutions, notably through programmes premised on colonial and settler colonial practices of environmental conservation that laid the groundwork for sustainable development (Escobar, 2012; Macekura, 2015; West, 2006). As I demonstrate, the positioning of Harmony with Nature within the remit of UN sustainable development programmes poses severe limits. The second concern targets the colonial legacies of western knowledge and the risk of extending inequalities into the Anthropocene through uncritical uses of Earth system sciences in environmental governance (Davis & Todd, 2017; Liboiron, 2021a; Raja et al., 2022; Whyte, 2017). As I show, Harmony with Nature addresses Earth jurisprudence to both concerns. Its strategy, however, demands critical scrutiny owing to how it positions Earth jurisprudence as broker of two powerful practices for ordering relations, knowledge, and obligations: kin and system. At the juncture of kin and system, I argue, key ethical concerns arise regarding the form of legal pluralism through which Harmony with Nature advances Earth jurisprudence as a platform to unite Indigenous legal traditions, rights of nature, and a systems view of law compatible with Earth system science. *Pace* Schmidt (2019), the moral geography of Harmony with Nature seeks to reorder human–Earth relationships through self-reflexive critiques of flawed categories of modernity, such as anthropocentrism, colonialism, and dualisms separating humans from nature, yet precisely in doing so deploys political and ontological categories that raise new ethical concerns.

Neither kin nor system are new categories; both have intellectual histories fraught by colonialism and yet each is now also mobilised to confront global environmental challenges. For instance, Henry Maine's 1861 opus, *Ancient Law*, influenced colonial policies and 19th-century social theory by arguing the shift from 'status to contract' differentiated kin-based, Indigenous societies from those (mainly) European societies based on modern law (Mantena, 2010). Anthropologists and colonial administrators transposed Maine's classification schema onto stage theories of cultural evolution to invent 'traditional societies' as those with kin-based organisation and, subsequently, to legitimise oppression of Indigenous peoples and legal orders under the guise of a civilising mission (Simpson, 2014). Ethnologists, for example, characterised savages as matrilineal, barbarians as patrilineal, and civilisation as the social formation that evolved by transferring the 'struggle for existence' from individuals to social institutions, especially private property (Schmidt, 2017; Wolfe, 1999).

Notions of system are similarly fraught. Francis Bacon argued scientific knowledge would empower the domination of nature through systemic experimentation (Merchant, 2004; Siskin, 2016). 'System'-building in philosophy (Hegel), logic (Mill), and numerous sciences were precursors to an explosion in the 20th century where system was the 'skeleton of science' (Boulding, 1956) and a register for social theory (Bateson, 2000; Luhmann, 1995). Critically for environmental governance, 'system' became a powerful framework in which to link cybernetics and ecology (see Midgley, 2003). This anticipated accounts of Earth as a self-organising system in Lovelock and Margulis' Gaia hypothesis (Clarke, 2020). After the Anthropocene was declared at the turn of the millennium, scientists increasingly treated Earth as a single, integrated system. Steffen et al. (2020), for instance, story the Earth system not only in terms of scientific and conceptual advances but in reference to the organisations and events through which 'system' became an explanatory register for quantifying human–Earth interactions. Behind critiques of universal notions of the 'human' (*anthropos*) in the Anthropocene, then, 'system' operates as an ordering practice for human–Earth relations (cf., Castree, 2017; Lövbrand et al., 2015).

In this context, this paper assesses how the UN search for Earth jurisprudence has sought to confront colonial legacies of environmental governance by appealing to uses of kin and system that have been reinvigorated by, respectively, Indigenous scholars and social and natural scientists. Section 2 shows how Earth jurisprudence scholarship has informed Harmony with Nature as it reviews how scholars have sought to advance the rights of nature, recognition of Indigenous legal traditions, and a systems view of law compatible with Earth system science. For instance, Cullinan's definition of Earth jurisprudence (above) appears verbatim on Harmony with Nature's website.[1] This makes Earth jurisprudence scholarship key to situating the intellectual milieu of Harmony with Nature. Engaging Indigenous scholarship on law

and relationality, I also develop a critique of Earth jurisprudence scholarship that sits at the analytical and normative crux of its proposed rapprochement between a systems view of law and Indigenous legal traditions.

Section 3 provides a policy analysis of the Harmony with Nature programme, which operates within the UN approach to sustainable development. Using process-tracing methods (Collier, 2011), it examines Earth jurisprudence as developed through the policy cycle of Harmony with Nature reports and resolutions from 2009 to 2020. In doing so, it traces moments of influence and intervention that led from an exploration of Earth jurisprudence to an assertion of its fit with UN programmes of sustainable development programmes. It explains how the remit of Harmony with Nature within sustainable development programmes excludes the ways in which Indigenous peoples have pluralised international law, notably in the 2007 UN *Declaration on the Rights of Indigenous Peoples*. Policy resolutions and reports do not tell the entire story; they are the outcomes of meetings, dialogues, and working groups that are candidates for further research. Yet they provide insight into how this programme has produced governance space through its peculiar normative conjunction of scientific accounts of human impacts on the Earth system, Indigenous legal traditions, and rights of nature. Institutional constraints prove significant; Conca (2015) described the UN as operating on an 'unfinished foundation' that prioritises international law and development within states – couched in the language of sustainable development – over the other two UN Charter's principles: dignity and human rights. Within these constraints, Harmony with Nature has sought Earth jurisprudence by telling an alternate, at times nearly revisionist, history of global environmental governance as it adjoins kin and system.

Section 4 concludes by critically discussing Harmony with Nature's search for Earth jurisprudence. Examining how environmental governance in the Anthropocene is producing new moral geographies is critical for social scientists who operate in disciplines shaped by colonialisms past and present. Non-metaphorical efforts to decolonise must grapple with how issues of climate change affect Indigenous rights and uses of rights in international forums (Hunt, 2022; Tuck & Yang, 2012; Watt-Cloutier, 2018; cf., de Leeuw & Hunt, 2018). Examining Earth jurisprudence, I argue, provides insight into how efforts to simultaneously address the colonial oppression of Indigenous peoples and environmental harms can falter institutionally and conceptually. Harmony with Nature is no panacea. It is a political project that aims to unite two powerful ordering practices regarding human–Earth relations – kin and system – to govern the Anthropocene.

## 2 | EARTH JURISPRUDENCE

Earth jurisprudence scholarship is key to understanding how Harmony with Nature connects Indigenous legal traditions, rights of nature, and Earth system science. Intellectual genealogies of Earth jurisprudence often start with Thomas Berry (1999), the 'geologian' who sought to unite environmental law with a scientific outlook consistent with Indigenous cosmologies (see Burdon, 2011). Berry is not the only historical influence on rights of nature; Stone (1974) and Nash (1989) both argued for the rights of natural entities alongside broader ethical arguments. Yet Berry's impact is distinct owing to how he repositioned the rights of nature in a philosophical outlook he termed Earth jurisprudence. For instance, Berry's view influenced Cullinan's (2011) definition of Earth jurisprudence and its emphasis on the mutual interdependence of the Earth community. Or, as Koon put it, the exchange of "human-centered law, economics, and morality" with a view of Earth at "the center of the moral community" (2009, pp. 337, 339). Further, Berry's arguments regarding Earth jurisprudence influence the legal pluralism sought by Harmony with Nature (Dancer, 2021).

There is a significant literature identifying the challenges of extending legal personhood to nature, especially given colonial power relations in prevailing notions of 'rights' (e.g., Kinkaid, 2019; O'Donnell, 2018; Youatt, 2017). Berry's work has similarly been critiqued. Rawson and Mansfield (2018) argue Berry uncritically naturalised rights of nature to universal, colonial notions of sovereignty in his account of the relations of individuals to the community. Mobilising Foucault, they claim Berry reinforces the governance of life through liberal forms of rule by positing a "necessary relation between the parts and the whole" (Rawson & Mansfield, 2018, p. 113). Foucault (2014), of course, was set against non-contingent accounts of power. Yet Berry's broader philosophy, of which 'rights of nature' are only one part, has at times been overlooked by critical geographers.[2] That broader account reveals Berry does not posit rights for nature through necessary relations. Rather, rights are plural and contingent such that: "trees have tree rights, insects have insect rights, rivers have river rights, mountains have mountain rights" (Berry, 1999, p. 5). For Berry, plural rights issue from contingent evolutionary processes (Swimme & Berry, 1992). Berry's (2006) pluralism warrants critique, but it must be set within his broader philosophy because this is what enables truck with programmes like Harmony with Nature. Indeed, Berry's critique of the anthropocentrism of western science, law, and sovereignty operate in ways adjacent to what Grear (2015) identifies as the conjunction of anthropocentrism in western law and the presumptive 'anthropos' of the Anthropocene. To see how,

it is important to see how Berry's influence on Earth jurisprudence is aligned with a view of Indigenous kinship that is then linked to a scientific cosmology of complex systems.

In 2008, Ecuador's new constitution established the rights of Mother Earth through a coalition among Indigenous and non-Indigenous constituencies opposing neoliberalism (Becker, 2011). The draft constitutional provisions on the rights of *Pachamama* (Mother Earth) were written by Cormac Cullinan (Lanferna, 2012). Cullinan (2011) is explicit about Berry's influence on his thinking. In this sense, Ecuador's new constitution did double duty: it was an exemplar of Earth jurisprudence even as it codified an Indigenous understanding of *Pachamama* that embraced "a collectivist notion of a community of all species and ecosystems" (Humphreys, 2017, p. 460). For advocates of Earth jurisprudence, Berry's view of subjectivity provides a critical bridge between modern state constitutions and Indigenous cosmologies, with trusses built through critiques of Eurocentric sciences and laws that treat the "universe as a collection of objects rather than a communion of subjects" (1999, p. 16). Rejecting anthropocentrism, Berry also rejects notions of subjectivity constrained uniquely to humans. Rather, human subjectivity is a contingent expression of a widespread evolutionary phenomena that orients jurisprudence to the "integral Earth community" and its "human and other-than-human components" (Berry, 1999, p. 74).

Berry's pluralism – tree rights for trees – is anchored in a view that recognises "the rights of Indigenous peoples, the rights of living species, [and] the rights of natural modes of being to exist" (1999, p. 111). For Earth jurisprudence proponents, Berry's account of subjectivity is important to seeking compatibility with Indigenous legal traditions. There is substantial literature on how, in the latter, kinship operates across non-human species and other-than-human phenomena to anchor an alternate ontology of relations, law, and obligations (e.g., Angel, 2002; de la Cadena, 2015; Kimmerer, 2013; Kohn, 2013; Watts, 2013). For Earth jurisprudence advocates, ontological compatibility with Indigenous legal traditions is crucial to the move away from a cosmology configured by a 'collection of objects' and towards an appreciation of the plurality of human and non-human ways in which a 'communion of subjects' may be constituted (see Anker, 2017). Indeed, Berry grounded his own view of "ancient law" in an "ontological covenant" (1999, p. 148) of reciprocity among members of the Earth community. Yet this is also where the approach to 'kinship' in Earth jurisprudence demands critical appraisal. The critique, as the following paragraphs show, goes to the heart of modern legal classifications that, since Maine's (1861) arguments in *Ancient Law*, have oppressed Indigenous kinship and legal orders in modern state and international law.

In 2010, the pluri-national state of Bolivia joined Ecuador in recognising the rights of *Pachamama* through two legal statutes. In neither country, however, have *de jure* rights of nature translated into *de facto* securing of Indigenous aims or environmental relief. In Bolivia, the coalition against neoliberalism that ushered in rights of nature encountered state-led extractivism that wrapped itself in Indigenous language to claim it was "mining for Mother earth" (Valladares & Boelens, 2019). Similarly, continued resource extractivism in Ecuador came at the expense of Indigenous peoples, lands, and relations (Riofrancos, 2020). These outcomes have been key to critiques regarding the limits to rights of nature (Valladares & Boelens, 2017). As Villavicencio Calzadilla and Kotzé (2018) argue, however, dispossession and injustice were not prevented by previous laws either. Interpreting the failures of the rights of nature, then, requires an explanation consistent with the violence done to Indigenous peoples, which is not limited to the harms recognised in prevailing jurisprudence (see Dotson & Whyte, 2013). If one takes seriously what Viveiros de Castro (2004) terms the 'constrained equivalence' that allows Indigenous-led rights of nature to be articulated in the language of state law, then the specificity of harms issuing from the failure to discharge obligations associated with these rights cannot simply be collapsed to injustices legible to the state (cf., Blaser, 2019). A new question arises: what kind of failure is the transgression of rights of nature?

This question should figure prominently in Harmony with Nature because, as shown below, it raises critical concerns regarding Indigenous oppression. For Earth jurisprudence scholarship, however, reckoning with the transgression of the rights of nature in Ecuador, Bolivia, and elsewhere is also important for connecting critiques of legal anthropocentrism to critiques of the 'anthropos' of the Anthropocene (Grear, 2015; Kotzé & Villavicencio Calzadilla, 2017; Villavicencio Calzadilla & Kotzé, 2018). There are now numerous critiques of any universal 'human' as either subject or cause of the Anthropocene owing to how the social inequality driving planetary crises was achieved at the expense of people of colour and non-humans (Ghosh, 2016; Karera, 2019). In this context, the failure to respect rights of nature points to a convergent critique in which the extension of liberal notions of rights may reinforce prevailing political economies in ways that curtail Indigenous authority and environmental relief (Burdon, 2015; M'Gonigle & Takeda, 2013). Here, evidence for the Anthropocene is also evidence for why colonial notions of 'rights' are inadequate (Birrell & Matthews, 2020). This does not settle the question of what type of injustice is the failure to meet Indigenous-led rights of nature. Instead, it points to a deeper tension in Earth jurisprudence.

Mills argues Indigenous legal orders are constituted by lifeworlds – the "ontological, epistemological, and cosmological framework through which the world appears to a people" (2016, p. 850) – of a different kind than those of the liberal constitutionalism of modern western states. Two aspects of this difference are important. The first is that it does not rely on essentialising Indigeneity (see Mills, 2018). The second is that it turns on understandings of relationality in which forests, mountains, and interspecies relations are law, not merely the spaces to which (or in which) law is applied (Borrows, 2016). Relationality may extend temporally to fossils and ancestral kin, including oil, microplastics, and rivers in ways that emplace human and non-human persons in relations of law and obligation (Hoover, 2017; Liboiron, 2021b; Povinelli, 1995; Todd, 2017). As Bawaka Country et al. (2016) show, relationality entails a 'co-becoming' in which reciprocity and ethical obligations among humans and non-humans characterises emergent spaces and places. Tynan emphasises that "relationality is not a new metaphor to be reaped for academic gain, but a practice bound with responsibilities with kin and Country" (2021, p. 598). Coulthard (2014), describes the specificity of Dene relations among law and place in terms of 'grounded normativity'. Watts details how Indigenous relationality requires treating non-humans as societies with active members contributing to their own "ethical structures" and "inter-species treaties and agreements" (2013, p. 23). Being in, and living amid, such relations is constitutive of 'place-thought' in which: "Human thought and action are therefore derived from a literal expression of particular places in Haudenosaunee and Anishnaabe cosmologies" (Watts, 2013, p. 23).

The above paragraph purposefully moved across different legal orders, from the Arctic to Australia to Anishnaabe territory, to open a critique of Earth jurisprudence scholarship regarding how "Indigenous legal traditions" are classified into a common category. Even within accounts of Earth jurisprudence that carefully avoid essentialising Indigeneity, Indigenous law is often treated as a class of relations, not as relation (cf., Vermeylen, 2013). For instance, Anker (2021) emphasises the need for Earth jurisprudence to reckon literal treatments of non-human agency in Indigenous legal traditions yet still treats the multiple forms of non-human agency across Indigenous lifeworlds as tropes through which Earth's agency is experienced. However nuanced, this type of figurative treatment – literal experiences deemed tropes – is inadequate for reckoning non-metaphorical relations. Napoleon marks this difference otherwise by contrasting Indigenous legal orders as "embedded in non-state social, political, economic, and spiritual traditions" against "state-centred legal systems in which law is managed by legal professionals in legal institutions that are separate from other social and political institutions" (2012, p. 231). Treating Indigenous legal orders as relation finds further support in Kanngieser and Todd (2020), who argue Indigenous forms of relationality do not reduce to so many cases that can be classified together. Rather, Indigenous relationality is characterised by plural kin. This is a significant challenge to classificatory logics, such as those regarding 'rights of nature' and the determination of the class of what or who is the bearer of rights. In this sense, the act of centring distinctions between 'kin-based' legal traditions from those of modern contract theories carries a political ontology akin to that critiqued by Hunt (2014) wherever scholarship smuggles in western ontologies as the default for legitimacy.

There are several reasons to be critical of recentring colonial legal distinctions even if the aim is to critique them. First, Indigenous legal traditions engage kinship on terms determined by Indigenous peoples (e.g., Borrows, 2016; Daigle, 2016; Estes, 2019; Stewart-Harawira, 2020). For instance, Simpson shows how, in Nishnaabeg thought, relations to land are not formed in opposition to colonial dispossession but "through connection – generative, affirmative, complex, overlapping, non-linear *relationship*" (2017, p. 43, original emphasis). Second, Indigenous peoples have also adapted western law, such as for property, to secure their own ends of maintaining kin relations or rights to collective territory (cf., Brooks, 2018; Hill, 2017). In these instances, the determination of what constitutes relationality is not legitimate owing to its legibility to colonial distinctions but owing to kinship relations. As Anaya (2007) argues, Indigenous peoples have also been active in expanding and augmenting international law to: recognise collective rights, challenge the synonymy of sovereignty with modern states, and articulate new terms of self-determination. Indigenous pluralisation of international law carries important weight in not rejecting 'rights' out of hand since this does not sufficiently engage with how Indigenous peoples have often led declarations regarding rights of nature, from ecosystems and rivers to *manoomin* (wild rice), and the right to be cold (LaDuke, 2019; O'Donnell et al., 2020; Watt-Cloutier, 2018).

Proponents of Earth jurisprudence often address these challenges by setting Indigenous legal traditions astride a 'systems' view of law. Calls for system-based approaches are touted as key to arresting environmental decline and social (often colonial) oppression while realigning law and governance with empirical findings of ecology and Earth system science (Garver, 2021; Kotzé, 2016, 2020; Kotzé & Kim, 2019). The repositioning of kin with respect to 'system' has become critical to Earth jurisprudence and generated a substantive body of literature oriented to Earth system governance and Earth system law (Kim & Kotzé, 2021). No consensus exists in this burgeoning literature, but key contours are clear. First, Earth jurisprudence is a deeply spatial project as Indigenous legal geographies require land,

territories, and relations sufficient for both humans and non-humans to discharge their respective obligations, such as in the cases of Whanganui River in New Zealand and forest constituencies in India (Charpleix, 2018; Loivaranta, 2020). Second, as Garver (2021) argues, Earth jurisprudence must be premised on findings of Earth system science regarding climate thresholds and other planetary boundaries (see Steffen et al., 2018). Here, calls for 'systems thinking' anchor an approach to Earth system sciences that confront their own anthropocentric heritage of domination over nature in a context where anthropogenic actions inequitably dominate planetary systems (Burdon, 2020; Garver, 2021; Mai & Boulot, 2021). Socially situating 'systems thinking' in this way is designed to acknowledge that even though 'rights' may not fully capture Indigenous relationality, they can be tools for orienting scientific and legal practices in ways that respect Indigenous ways of knowing (Tănăsescu, 2020; Tsosie, 2012). Finally, Earth jurisprudence scholars increasingly seek to establish touch points with non-western legal traditions by 'ecologising' law in a way that critiques existing environment law while opening space for plural ways of knowing in different co-evolutionary contexts of humans and non-humans (Anker et al., 2021a, 2021b; Garver, 2021).

These contours resemble debates within and beyond geography regarding governance in the Anthropocene. For instance, using scientific accounts of planetary boundaries to order environmental politics may naturalise 'systems thinking' while oppressing other ways of knowing (Biermann & Kim, 2020). As the next section shows, such concerns wind their way into Harmony with Nature as Earth jurisprudence scholarship is taken up by the UN. Again, inspiration is taken from Berry, who foresaw the end of the Cenozoic before the Anthropocene gained wide circulation. The end of the Cenozoic, for Berry, was a consequence of an anthropocentric anthropos that alters Earth processes in their "innumerable forms of geological structure and biological expression" (1999, p. 52). For Berry, the response was to search for what he termed the Ecozoic, wherein "a new jurisprudence must envisage its primary task as that of articulating the conditions for the integral functioning of Earth processes, with special reference to a mutually enhancing human–Earth relationship" (1996, p. 61). As Earth jurisprudence took shape through Harmony with Nature, Berry's 'mutually enhancing' relationships were set not only between kin and system but within the institutional constraints of the United Nations.

## 3 | HARMONY WITH NATURE

In 1960, the UN denied Indigenous self-determination under the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (United Nations, 1960a). The UN accomplished this geographically – the so-called 'salt water' thesis – by applying decolonisation only to colonies in "a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it" (United Nations, 1960b, p. 29; Anaya, 2004). This built injustice into the structure of global governance for Indigenous peoples in settler colonies and many post-colonial states, and these injustices structured subsequent agreements of global environmental governance (Bosselmann, 2017; Conca, 2015). This section examines how Harmony with Nature built a case for Earth jurisprudence and then began to assert Earth jurisprudence as a new basis for global environmental governance. Since 2011, Harmony with Nature has pursued a policy cycle of interactive dialogues with experts each April. From these dialogues, reports to the UN Secretary General are submitted in August, and the UN General Assembly has passed resolutions that expand the search for Earth jurisprudence each December (see Table 1). These resolutions and reports follow a pattern especially suitable to process-tracing methods that seek to understand multiple causal dimensions of policy development (see Collier, 2011). Tracing this process by mapping the intellectual and conceptual innovations through time in Harmony with Nature's annual policy cycle provides insight into how it has developed within the UN system and, crucially, how kin-centric and system-based orientations to law were articulated within structures of global environmental governance.

### 3.1 | Making the case for Earth jurisprudence

Preambles to UN documents are performative exercises in building international norms. They reflect previous commitments and compromises, such as those of sustainable development that pursue environmental relief through the same economic structures critiqued for producing ecological harm – what Bernstein (2001) termed the "compromise of liberal environmentalism". Preambles to Harmony with Nature's respective resolutions also reaffirm previous commitments. These are not, however, oriented to the Indigenous peoples who have often driven recognition of rights of nature. Indigenous peoples, in fact, are nowhere mentioned in the 2009 declaration on International Mother Earth Day. Instead, impetus is derived from the "interdependence that exists among human beings, other living species and the planet we

**TABLE 1** United Nations reports and resolutions on Harmony with Nature

| Harmony with Nature: UN reports and resolutions | | |
|---|---|---|
| **Year**[a] | **Harmony with Nature reports** | **UN General Assembly resolutions** |
| 2009 | | A/RES/63/278, *International Mother Earth Day* |
| | | A/RES/64/196, *Harmony with Nature* |
| 2010 | A/65/314, *Harmony with Nature*, Report of the Secretary General | A/RES/65/164, *Harmony with Nature* |
| 2011 | A/66/302, *Harmony with Nature*, Report of the Secretary General | A/RES/66/204, *Harmony with Nature* |
| 2012 | A/67/317, *Harmony with Nature*, Report of the Secretary General | A/RES/67/214, *Harmony with Nature* |
| 2013 | A/68/325, *Harmony with Nature*, Report of the Secretary General | A/RES/68/216, *Harmony with Nature* |
| 2014 | A/69/322, *Harmony with Nature*, Report of the Secretary General | A/RES/69/224, *Harmony with Nature* |
| 2015 | A/70/268, *Harmony with Nature*, Report of the Secretary General | A/RES/70/208, *Harmony with Nature* |
| 2016 | A/71/266, *Harmony with Nature*, Report of the Secretary General | A/RES/71/232, *Harmony with Nature* |
| 2017 | A/72/175, *Harmony with Nature*, Report of the Secretary General | A/RES/72/223, *Harmony with Nature* |
| 2018 | A/73/221, *Harmony with Nature*, Report of the Secretary General | A/RES/73/235, *Harmony with Nature* |
| 2019 | A/74/236, *Harmony with Nature*, Report of the Secretary General | A/RES/74/224, *Harmony with Nature* |
| | A/74/161, *Human rights obligations relating to the enjoyment of a safe, clean, health and sustainable environment* [Note by the Secretary General] | |
| | A/HRC/40/55, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* [Report by the Special Rapporteur] | |
| 2020 | A/75/266, Harmony with Nature, Report of the Secretary General [w/ Supplement] | A/RES/75/220, *Harmony with Nature* |

[a]*Harmony with Nature* reports published August each year; UN Resolutions adopted in December of each year.

all inhabit" (A/RES/63/278, p. 3). Further, the declaration is positioned within sustainable development agreements and affirms Agenda 21 from the 1992 Rio Conference that launched modern sustainable development, the 10-year follow-up in Johannesburg (2002), and the 2005 World Summit. In December 2009, the UN cited International Mother Earth Day to launch of Harmony with Nature as a sustainable development programme (A/RES/64/196). Tellingly, Indigenous peoples are not mentioned in Harmony with Nature documents until a 2010 UN resolution. Further, the UN *Declaration on the Rights of Indigenous Peoples* is nowhere mentioned between 2009 and 2020, despite preambles and resolutions themselves becoming more elaborate over Harmony with Nature's first decade.

The first Harmony with Nature report in 2010 established its agenda in two steps. The first anchored the programme in sustainable development, described as a form of holism widely practised by states. A "philosophy of holism", the report argues, is "embodied in the concept of sustainable development" (A/65/314, p. 19). Holism also has a political ecology as the report recounted previous UN efforts: the first Earth Day in 1970; the acknowledgement of human rights to a healthy environment at the 1972 UN Conference on the Human Environment in Stockholm; the World Charter for Nature in 1982; and the post-Rio era of sustainable development. In fact, Harmony with Nature sets out two substantive understandings of holism. The first is the "ancient wisdom" carried among numerous cultural traditions, including Vedic texts, Taoism, and Indigenous respect for *Pachamama*. These carry a core lesson of human experience "to honour creation by nurturing a kinship with nature" (A/65/314, p. 6). Here, kinship contrasts (but does not conflict) with modern environmentalism as told by Harmony with Nature in a familiar western narrative: Rachel Carson's *Silent Spring*, images of Earth from space, and dawning awareness of human impacts on the planet. The latter culminates in programmes of international scientific collaboration upon which Harmony with Nature explicitly builds, such as the International Human Dimensions Programme on Global Environmental Change (IHDP) and the World Climate Research Programme. It also includes work by the International Geosphere-Biosphere Programme (IGBP), which published the newsletter in which Crutzen and Stoermer (2000) christened the Anthropocene during its work from 1987 to 2015 (see Uhrqvist & Lövbrand, 2014). Since the 1970s, these scientific programmes have published numerous global assessments, which Castree et al. (2021) argue need refurbishment if they are to match the scale of the problems they themselves identify.

The 2010 Harmony with Nature report shares a similar disquiet. After listing Indigenous and other international initiatives as promising prototypes for rights of nature, it concludes by citing Rockström et al. (2009) that transgressing

"planetary boundaries" undermines the integrity of the ecosystems upon which life depends. Accordingly, a clearer strategy is needed to respect planetary limits and declarations on the 'rights of nature' often led by Indigenous peoples. That December's UN resolution vastly expanded the range of norms that were reaffirmed and situated Harmony with Nature amid agreements on ozone, water, biodiversity, and forests, while noting the Peoples' World Conference on Climate Change and the Rights of Mother Earth hosted in Cochabamba, Bolivia that year. It also requests funding to convene interactive dialogues alongside another request regarding the collation of interdisciplinary scientific work on uses of traditional knowledge. Table 2 shows the expert panellists invited to each year's interactive dialogue.

After the first dialogue in 2011, Harmony with Nature's report (A/66/302) swerved to a Eurocentric narrative to explain 'humankind and nature'. The rollcall of thinkers – good or ill – included René Descartes, Jeremy Bentham, John Ray, Albert Schweitzer, Aldo Leopold, and others. These were situated in a philosophy of jurisprudence beginning with Justinian that carried through to common law's minor traditions of animal welfare and environmental stewardship. The challenge, the 2011 report noted, was that these legal resources were inadequate to confronting global overconsumption. To effect change at a planetary scale, the 'systems thinking' of Donella Meadows (1999) was cited as a way of levering systemic change away from consumption and towards habits in which it would "become 'natural' to find value and meaning in life through how much a person helps to restore the planet" (A/66/302, p. 14). This orientation to western environmentalism also led to claims that nature has intrinsic value and, in that December's report, to critiques of economic growth, such as gross domestic product (A/RES/66/204).

The 2012 report marked the first explicit discussion of the Anthropocene by Harmony with Nature. The 'great acceleration' of human impacts on the Earth system was explained in terms familiar to conceptual narratives of the Anthropocene that led from 19th-century figures like George Perkins Marsh through to Jesuit philosopher Teilhard de Chardin, whose notion of the noösphere directly influenced Vernadsky's (1945) conceptualisation of the biosphere. The report argued the combined evidence of the Anthropocene displaced the 300-year presumption of human exceptionalism coincident with modern colonialism. "There is no basis in science", the report stated, "for the assumption that our species is separate from and inherently superior to other life forms or that we have a privileged place and function in the cosmos" (A/67/317, p. 8). Critically, the introduction of the Anthropocene coincided with the first references to Berry to pursue "a global governance system built on the rule of ecological law" and a "transformed sense of democracy" in which "individuals and communities embrace their ecological citizenship in the world and act on their responsibility to respect the complex workings of the Earth system" (A/67/317, p. 11). Repeating Berry's call for a "mutually enhancing human–Earth relationship", the report staked a clear position on the novelty of the Anthropocene for global environmental governance: "The protection of planetary life support systems is clearly a new category of scientifically defined goods and services that demand a new kind of governance response" (A/67/317, p. 13).

Likening the Anthropocene to a Copernican revolution in global environmental governance, the 2012 report was the first Harmony with Nature document to make recommendations back to the UN when it emphasised sustainable policy must be informed by "scientific findings on the impacts of humanity on the Earth system" (A/67/317, p. 13). The December 2012 UN resolution was also the first to note the importance of human impacts on the Earth system (A/RES/67/214). Throughout 2013–2014, Harmony with Nature continued its critique of overconsumption as it tackled the challenges arising from the "social construction of nature" (A/68/325, p. 4). The entrenched, socio-political construction of the 'environment' that passed off society/nature dualisms as 'natural' required transformation, which was reaffirmed that December as requiring a "more ethical basis" for human–Earth relationships (A/RES/68/216, p. 2). To this end, in 2014, Harmony with Nature began juxtaposing biocentric and Indigenous praxis with governance commitments consistent with Earth system science: *Buen Vivir* (living well) from Uruguay, *sumac kawsay* from Ecuador, and *suma qamaña* from Bolivia were all cited alongside post-development theories by Arturo Escobar (2012).

As Harmony with Nature aligned kin-centric forms of life with a version of holism ascribed to Earth system science, it also produced a geography in which Indigenous cosmologies were deemed a "scalable paradigm from the developing world" (A/69/322, p. 5). For instance, the 2014 report scales Indigenous cosmologies to Earth system governance as the latter emerged through the IGBP, the IHDP, and the World Climate Research Programme. That December's UN resolution (A/RES/69/224) again drew these concepts together and oriented them towards the post-2015 development agenda associated with the Sustainable Development Goals. The groundwork laid in the 2009–2014 reports and resolutions that scaled Indigenous cosmologies to 'systems thinking' in sustainable development and international programmes of Earth system science were brought together in 2015. Moreover, it is precisely at the intersection of kin and system that "Earth jurisprudence" makes its first appearance in Harmony with Nature reports in 2015. That year, Earth jurisprudence appears in reference to Berry's orientation to Earth's inherent rights and those of Indigenous peoples (A/70/268). Explicitly set amid Indigenous praxis, pursuing a convergence of science and "Indigenous environmental philosophy"

**TABLE 2** Invited experts to Harmony with Nature's interactive dialogues (data from: http://www.harmonywithnatureun.org/dialogues/)

| Harmony with Nature: UN dialogue experts | |
|---|---|
| **Year**[a] | **Participants** |
| 2011 | Vandana Shiva; Peter Brown; Cormac Cullinan; Riane Eisler; Mathis Wackernagel; Paul Barets; Gilberto Gallopin; Ivo Havinga |
| 2012 | Owen Gingerich; Mark Lawrence; Pat Mooney; Joshua Farley; Brian Czech |
| 2013 | Ian Mason; Fander Falconi; Jon Rosales; Linda Sheehan |
| 2014 | Frank Biermann; Barbara Baudot; Jim Gerritsen; Fander Farconi |
| 2015 | Mark Lawrence; Robin Kimmerer; Maude Barlow |
| 2016 | No panelists in lieu of working group reports from 127 experts working on Earth jurisprudence |
| 2017 | Jorge Islas; Klause Bosselmann; Peter Brown; Pallav Das; Lis Hosken; Jean-Paul Mertinez; Germana de Oliveira Moraes; Linda Sheehan |
| 2018 | Pablo Angulo-Troconis; Benedek Jávor; Sirpa Pietikäinen; Doris Ragettli; Craig Kauffman; Juliana Braz; Karen Brown; Roberto Caldas; Jorge Calderón; Method Gundidza; Kathryn Gwiazdon; Kirsti Luke; Marsha Moutrie; Laura Movilla; Jorge Palacio; Leah Temper |
| 2019 | Alessandro Pelizzon; Slivia Bagni; Delphine Batho; Antonio Benjamin; Frank Bibeau; David Boyd; Valérie Cabanes; Freddy Delgado; Thomas Egli; Gabriela Eslava; Cillian Lohan; Liz Macpherson; Markie Miller; Liam Paquemar; Luis Tolosa Villabona; Mgozi Unuigbe; Ivan Zambrana-Flores |
| 2020 | No dialogue owing to COVID−19 |

[a]Interactive Dialogues held April each year.

was forwarded as critical to shifting sustainability (A/70/268, p. 4). In this regard, the aim was not only one of "repairing damaged ecosystems and returning them to healthy, productive ones" but also, following Robin Kimmerer (2013), "restoring broken relationships with the land" (A/70/268, p. 6). This shift to a political spectrum shaped by 'mutually enhancing' relationships was also referenced to previous dialogues in 2014 and dispositions to kin in which "Mother Earth is a relative, not a resource" (A/70/268, p. 7). That December's resolution approved an interactive dialogue focused on Earth jurisprudence (A/RES/70/208).

The 2016 Harmony with Nature dialogue included 127 experts from 33 nationalities, organised into working groups that submitted papers on Earth jurisprudence under categories of: theology/spirituality; arts, design, and architecture; philosophy/ethics; humanities; holistic science; education; ecological economics; and Earth-centred law (A/71/266). Summarising working group contributions, the 2016 report hits nearly every note of Earth jurisprudence scholarship from rejecting anthropocentrism to the need to mobilise Earth system science in governance systems that respect the mutual interdependence of life in the Anthropocene. As a synoptic statement, the report also incorporates adjacent declarations, such as the papal encyclical *Laudato Si'* and statements by the International Union for Conservation of Nature (IUCN, 2016, p. 3), which in 2016 adopted an Environmental Rule of Law wherein "nature has the inherent right to exist, thrive, and evolve". At that time, Harmony with Nature also explicitly oriented the pluralism of Earth jurisprudence to "Earth as the source of natural laws that govern life" alongside the claim that "Indigenous peoples' philosophies, spiritualities and traditional forms of knowledge express the understanding that human governance systems must be derived from the laws of the Earth and be in compliance with them" (A71/266, p. 4). Again, the work of Berry features prominently in calls for Earth jurisprudence that provide for "legal rights of geological and biological as well as human components of the Earth community" (A/71/266, p. 7).

## 3.2 | Asserting Earth jurisprudence

What is remarkable about the UN resolutions each December, of which 2016 is an exemplar, is Harmony with Nature's reinterpretation of UN sustainable development programmes as consistent with Earth jurisprudence. Given significant critiques of sustainable development and its effects on Indigenous peoples and peoples of the Global South – including thinkers Harmony with Nature cites (e.g., Escobar, 2012) – the continued reaffirmation of Rio in 1992, Johannesburg in 2002, Rio+20 in 2012, and the 2015 Sustainable Development Goals is a stark contrast. The 2016 preamble (A/

RES/71/232) adds to this trend by aligning Harmony with Nature to the SDGs and to UN commitments on international financing agreed to in Addis Ababa in 2015, the latter of which has been criticised for privatising aid and perpetuating inequality (Telleria & Garcia-Arias, 2021). Another stark contrast for Harmony with Nature is that every December's resolution after 2015 references the "people-centred set of universal and transformative Sustainable Development Goals" without reference to the non-anthropocentric, Earth-centred impulse of Earth jurisprudence. Together, these interpretations of past declarations and contemporary policies border on revisionism. After 2016, for instance, rights of nature are reinterpreted not as rationale for pursuing Earth jurisprudence but as evidence of a new geography that is already taking shape in ways that align with the 'holism' Harmony with Nature claims has long characterised sustainable development.

The 2017 dialogue and report focused on affiliating multiple movements towards 'rights of nature' as so many expressions of Earth jurisprudence. The rapid proliferation of the rights of nature and adjacent ideas of human rights to a healthy environment were systematically presented by David Boyd (2012, 2017), who in August 2018 became the UN Special Rapporteur on Human Rights and the Environment. During 2017, however, Harmony with Nature focused on establishing a connection between diverse instances of legal recognition for natural entities and trends toward "Earth-centred law" (A/72/175). It listed as evidence cases that ranged from cities in the United States to a decision from Colombian courts regarding the Atrato River, Mexico City's new constitution, New Zealand's recognition of the Whanganui River as a legal person, and the Uttarakhand High Court decision in India regarding the Ganga and Yamuna Rivers as legal persons. Such lists are often overlooked in environmental scholarship, yet they are important devices that order knowledge and obligations (Ballestero, 2019). These lists reveal how Harmony with Nature classified together multiple different Indigenous and non-Indigenous legal orders within Earth jurisprudence to assert the existence of a new legal geography and, critically, one also aligned with sustainable development.

By 2018, Harmony with Nature turned from developing a framework for Earth jurisprudence to tallying its momentum (A73/221). The turn is indicative of a normative shift in UN discourse around Earth jurisprudence, but the list organised around national laws and policy trends is also a way of spatialising an asserted alignment of kin and system. Amid these two ordering practices, Harmony with Nature cast a wide net to identify new legal geographies. The cases were not listed to compare things like draft laws for granting River Ethiope in Nigeria legal rights or calls by the Sami Parliament in Sweden for a paradigm shift recognising that the Sami people "believe that we belong to the land, not the other way around" (A/73/221, p. 8). Rather, what began as an effort of making kin and system coordinate to 'rights of nature' now used geography as confirmatory evidence regarding Earth jurisprudence. Harmony with Nature's own reporting also exchanged references to Berry – not mentioned in the 2018 report (A/73/221) – with its list of Earth jurisprudence cases. Exchanging the intellectual impetus of Harmony with Nature for case examples marked a shift in practice from an exercise in justifying a new governance philosophy to codifying and classifying multiple different practices and legal traditions under a category that fit with UN programmes on sustainable development.

The 2018 UN resolution marked the alignment of Harmony with Nature and the 2015 Paris Agreement on climate change (A/RES/73/235). This was an external interjection; there was no mention of the Paris Agreement in the 2018 Harmony with Nature report, nor mention of "climate justice" that the UN resolution also emphasised. The following year, the 2019 interactive dialogue and report brought Earth jurisprudence to bear on climate change, with an emphasis on investing both "Nature" and humans with dignity (A/74/236). From there, the report worked to situate climate change "in a plural world with various ontologies" that, despite their differences, rejected utilitarian views of natural systems and views of nature and humans as separate (A/74/236, p. 3). Dignity was also referenced to a 2019 legal case in Brazil, which recognised non-human animals as subjects of rights based on an "ecological perspective" (A/74/236, p. 4). After once more listing varied geographic cases, the 2019 report concluded that "Earth jurisprudence can be seen as the fastest growing legal movement of the twenty-first century" (A/74/236, p. 16). It described this Earth-centred paradigm as "guided by the oldest jurisprudential traditions of humankind" and "inherently pluralistic", yet anchored in a rejection of anthropocentrism and the damage of anthropogenic forcing on the Earth system (A/74/236, pp. 16–17).

Emphasis on non-anthropocentrism in Harmony with Nature reports contrasts with its continued affirmation of 'people-centred' SDGs each December, including in its 2019 UN resolution (A/RES/74/224). The emphasis on 'humanity' also received special attention in the 2019 report of the Special Rapporteur on Human Rights to a Healthy Environment by David Boyd, which covers issues of health and ecology extensively but does not mention Earth jurisprudence (A/74/161; A/HRC/40/55). The 2020 dialogue was cancelled owing to the coronavirus pandemic, but that year's report underscored the need for a healthier relationship of humans and ecosystems, describing COVID-19 as an "unprecedented wake-up call" (A/75/266, p. 3). The report dedicated a section to the "Chronicle of a Pandemic Foretold", which connected zoonotic diseases to "challenges of the Anthropocene epoch [that] depend on the values and norms" of societies (A/75/266, p. 4). As it narrated the precarity of planetary health, the 2020 report drove home the fit of Earth jurisprudence with

kin-centric modes of Indigenous forms of life. The lists that had populated previous reports were amplified into a full supplement to the 2020 report that catalogued 170 cases of Earth jurisprudence (A/75/266 Supplement).

## 4 | CONCLUSION

For over a decade, Harmony with Nature has sought Earth jurisprudence as a new norm for global environmental governance and set it explicitly between kin and system. Like many programmes of global governance, there is a fuzzy line between argument and assertion in the establishment of international norms – what requires justification one day is codified as practice the next. In Harmony with Nature, what began as respect for kin and system as different ordering practices, respectively, turned to assertion of scalability of kin to system that classified Indigenous legal traditions as one among many forms of 'ancient wisdom' that align with a universal holism claimed for sustainable development. Critically, this shift was achieved spatially, through lists of international cases in which 'rights of nature' moved from rationale for pursuing Earth jurisprudence to evidence of a fast-growing legal phenomenon. The moral geography at work in this shift is never specified but turns on two unsound premises. The first is a metaphorical, figurative approach to Indigenous legal traditions that classifies them as a type of legal relation and not as relation. The second is a revisionist approach to sustainable development, which is retold as 'holism' rather than as a compromise that positions economic mechanisms as the primary means of seeking environmental relief in international agreements.

The reinvention of sustainable development as Earth jurisprudence fits explanations of the new moral geographies of the Earth system described by Schmidt (2019), where self-reflexive critiques of anthropocentrism, society/nature dualisms, and colonialism are enrolled to maintain the status quo in Anthropocene governance. Harmony with Nature, however, does more than this. Earth jurisprudence operates across forms of praxis with different ontological and epistemological dispositions. Kin and system, respectively, present powerful yet distinct ways to confront the 'anthropos' at the core of human exceptionalism in the Anthropocene. By trafficking Earth jurisprudence through the UN system under the banner of 'sustainable development', however, Harmony with Nature ignores the actual ways in which multiple Indigenous peoples have pluralised international law – notably in its exclusion of the 2007 *Declaration on the Rights of Indigenous Peoples* (UNDRIP). Further, it precludes how rights of nature, often led by Indigenous peoples, may yet further pluralise international law through literal relations with non-humans. Rather, Indigenous legal traditions are noted but then quickly reclassified such that they can be categorised alongside other efforts towards aligning with rights of nature and a view of law compatible with Earth system science.

A charitable interpretation might be that it is politically astute to pursue Earth jurisprudence through the UN's sustainable development infrastructure rather than through recognition of UNDRIP, which may lead to influential states quashing the programme. This, however, does not justify Harmony with Nature's treatment of Indigenous legal traditions as a scalable resource for global environmental governance. When forests, mountains, other species, and reciprocal relations with humans and non-humans are law – not 'spaces' of or for law (Borrows, 2016; Watts, 2013) – the geographies aligning Indigenous notions of kinship to system-based explanations of Earth jurisprudence demand ethical attention. The decolonial critique that identifies the exchange of metaphor for ethical relations is salient here. Harmony with Nature, which claims a kind of self-reflexive critique yet appropriates other modes of governance to existing institutional structures, detaches Indigenous legal traditions from their embedded relations through the non-innocuous practice of listing them as so many (diverse) cases available to be categorised in terms of Earth jurisprudence.

Earth jurisprudence claims an intellectual pluralism attentive to the specificity of Indigenous relationality, yet both conceptually and in the empirical case of Harmony with Nature the reclassification of Indigenous legal traditions as one type of legal relation, and not as relation, is inadequate. Yet Harmony with Nature cannot be dismissed as just another case of 'sustainable development' failing to get to grips with the depth of its colonial inheritance. Rather, it must be empirically appraised owing to how explanations of planetary conditions provide the means through which kin is oriented to system; it is *through* environmental claims that global governance institutions seek legitimacy by appropriating Indigenous-led rights of nature. For geographers, a critical approach to how diagnoses of Anthropocene conditions operate as both impetus and catalyst for integrating a systems-view of law, Indigenous legal traditions, and rights of nature must be attentive to the new moral geographies through which concepts like Earth jurisprudence gain institutional purchase in global environmental governance.

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## DATA AVAILABILITY STATEMENT

The data that support the findings of this study are openly available at the United Nations' Harmony with Nature website: http://www.harmonywithnatureun.org/unDocs/

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## ENDNOTES

[1] See http://www.harmonywithnatureun.org/ejInputs/ accessed 26 January 2022.

[2] Without wishing to emphasise differences, it is telling that Rowley and Mansfield (2018) do not cite Berry's (1999) key book, *The Great Work: Our Way into the Future*.

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