

EARTH LAW

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Vermont Law School, Summer Session 2015, Term 3

July 11 – 21, 2016

Course Overview: Climate change and other global threats are increasingly illustrating the limits of our existing environmental laws to stem degradation. This course posits that environmental declines will continue until we address a fundamental assumption underlying our legal system: that humans are separate from the natural world and may treat it as property to be exploited, rather than as a connected ecological partner. The course will critically examine the sources of this assumption and its impacts on preventing us from achieving a healthy, thriving planet. It will then describe legal, economic and other governance systems that recognize the inherent rights of the natural world to exist, thrive, and evolve, and it will discuss how such systems can be implemented to advance lasting sustainability. Specific applications will be highlighted, debated and practiced. **Ethics/Philosophy**

Course Materials: There is one required book, *Wild Law*, and a Supplemental Materials packet. The book will be available in the bookstore for registrants free of charge, and the packet may be purchased at the bookstore. A TWEN site will be established for this course for any remaining readings. Students are responsible for checking the TWEN site regularly for updates.

Classroom Presentation: Students will be divided into small groups, and each group will be assigned a role in examining the application of legal rights to an ecosystem facing specific threats. Groups will be given time in class to plan together. On the last day of class, each group will give a short presentation incorporating rights of nature arguments in the context of an actual administrative hearing on the health of a selected, threatened ecosystem.

Short Paper: Each student will write a short (2-3 pages but 3 maximum, double-spaced) paper, to be turned in on July 18th, assessing a student-selected environmental law, court decision or policy against “Earth Law.”

Final Exam: The Final Exam will be a take-home, open-book, limited-time exam administered through the TWEN site. You may take the exam anywhere you have internet access. Additional details regarding the exam will be provided in class and on the TWEN site.

Grading: Grading for the course will be determined as follows:

Final Exam: 60% of total grade

Classroom Presentation: 15% of total grade

Short Paper: 10% of total grade

Classroom Participation: 15% of total grade. This is a new and evolving area of the law.

Questions, comments, and analysis in class from students, including in breakout groups, add significantly to the learning process and are very strongly encouraged.

SYLLABUS

- REQUIRED:** Cullinan, Cormac, *Wild Law* (Chelsea Green Publishing 2011, ISBN 978-1-60358-377-0); will be free at bookstore (**WL**)
Supplemental Materials (**SM**) Packet, to be made available at Bookstore
Other materials available on **TWEN** (includes **Westlaw**)
Note: advance reading is required for first class
- OFFICE HOURS:** TBD and by appointment
- EXAM:** Open-book, take-home, anonymous grading
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MONDAY, JULY 11: THE LIMITS OF CURRENT ENVIRONMENTAL LAWS

This class will examine environmental threats worldwide, assess the limitations of current environmental laws in addressing them, discuss the goals we want our laws to achieve, and identify relevant foundational assumptions underlying environmental laws and overarching governance systems. **Breakout groups to briefly discuss and report out on examples of the limits of specific environmental laws.**

Required Reading:

- SM** Giagnocavo, Cynthia *et al.*, “Law Reform or World Re-form: The Problem of Environmental Rights,” 35 *McGill Law Journal* 345, 348-354 (Sec. I.) (1989-90)
- SM** Koons, Judith, “At the Tipping Point: Defining an Earth Jurisprudence for Social and Ecological Justice,” 58 *Loyola. L. Rev.* 349 (2012), Sec. III.B., pp. 367-70
- SM** *Sierra Club v Morton*, 405 U.S. 727 (1972) (Douglas dissent)
- SM** Endangered Species Act; Clean Water Act regs; Calif. Env’l Quality Act (**optional**)
- SM** Sheehan, Linda, “Implementing Rights of Nature through Sustainability Bills of Rights,” *New Zealand Journal of Public and Int’l Law*, Vol. 13, pp. 89-98 (2015)
- WL** Pages 35-49, 62-68

TUESDAY, JULY 12: HOW DID WE GET TO “PEOPLE OVER NATURE”?

This class will review historical events leading to the modern-day, foundational governance assumption of “nature in service to humans,” assess the development of overarching systems that reinforce those assumptions further (including the development of corporate personhood), and introduce rights for nature as an element of alternative governance systems. **Breakout groups to briefly discuss and report out on examples of perceived obstacles to the concept of nature’s rights.**

Required Reading:

- SM** Tribe, Laurence, “Ways Not to Think about Plastic Trees: New Foundations for Environmental Law,” 83 *Yale Law Journal* 1315, 1315-17, 1325-1336 (June 1974)
- SM** Stone, Christopher, “Should Trees Have Standing? Towards Legal Rights for Natural Objects,” 45 *So. Cal. L. Rev.* 450, pp. 450-457 (1972)
- SM** Koons, Judith, “At the Tipping Point: Defining an Earth Jurisprudence for Social and Ecological Justice,” 58 *Loyola. L. Rev.* 349 (2012), Sec. II.B., pp. 357-62
- SM** U.N. Report of the Secretary-General A/66/302, “Harmony with Nature,” (Aug. 15, 2011), Section II., pp. 4-11, http://www.un.org/ga/search/view_doc.asp?symbol=A/66/302
- SM** *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394, 394 [headnote only] (1886)
- SM** Kelly, Marjorie, *The Divine Right of Capital* (Berrett-Koehler Publishers, Inc. 2003, ISBN 1-57675-237-2), pp. 22-28 (**skim**)

WEDNESDAY, JULY 13: HOW DO WE SHAPE A NEW LEGAL SYSTEM?

The class will begin with a showing the one-hour film, *Journey of the Universe*. This class will step back and examine the question – “How ought we to live?” In answering this fundamental question, the class will assess ethical theories for acting, review legal jurisprudence and its role in shaping law, evaluate the support of natural law for governance systems that promote environmental rights, examine other approaches that lend decision-making and analytical assistance (indigenous governance, precautionary principle, ethical theory), consider the role of science, and assess the impacts of various approaches on overall human well-being. Discussion is expected to continue into the following class.

Required Reading:

- SM Tribe, Laurence, “Ways Not to Think about Plastic Trees: New Foundations for Environmental Law” 83 *Yale Law Journal* 1315, 1336-48 (June 1974)
- SM Emond, D. Paul, “Co-operation in nature: A new foundation for environmental law,” 22 *Osgoode Hall Law Journal* 323, 343-48 (Sec. IV.) (1984)
- SM Benzoni, Francisco, “Environmental Standing: Who Determines the Value of Other Life?” 18 *Duke Envl. Law and Policy Forum* 347, 347-351 (Spring 2008)
- SM Berry, Thomas, “The Meadow across the Creek” (2000)
- SM Eede, Joanna, “On the ‘Wild,’ Human Imagination and Tribal Peoples” (Aug. 30, 2011)
- SM Kelly, Marjorie, *The Divine Right of Capital* (Berrett-Koehler Publishers, Inc. 2003, ISBN 1-57675-237-2), pp. 100-101, 186-87
- WL Pages 77-78, 82-84, 128-130
- TWEN TBD (background information for last day presentation)

THURSDAY, JULY 14: WHAT ARE THE ELEMENTS OF “EARTH LAW”?

This class will conclude the discussion from the prior class, and then will identify and analyze the key elements of an Earth-based governance system. Legal systems as well as economic, scientific, educational, and other systems will be considered. Upcoming assignments will be introduced.

Required Reading:

- SM Stone, Christopher, “Should Trees Have Standing? Towards Legal Rights for Natural Objects,” 45 *So. Cal. L. Rev.* 450, pp. 457-459, 487-489 (1972)
- SM Sheehan, Linda, “Realizing Nature’s Rule of Law through Rights of Waterways,” in *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*, Christina Voigt, ed., (Cambridge Univ. Press 2013), Sections 1 through 4.2
- SM Food and Water Watch, “The Financialization of Nature” (2012)
- SM Earth Law Center, “California Initiative to Define ‘Ocean Health’,” pp. 1-5 (Jan. 31, 2016)
- WL Pages 95-109; pp. 192-195 (“Universal Declaration of the Rights of Mother Earth”)

Assignment: Paper. Short paper (2-3 pages but no more than 3 (2 is fine) double-spaced, 1-inch margins, 12-point font) that selects a single state or federal environmental statute/statutory provision, environmental regulation, or court decision impacting the environment, identifies its limitation(s) in achieving environmental well-being, and proposes alternative formulation(s) that better reflect ecosystems’ and species’ inherent rights to exist, thrive and evolve. You are encouraged to check your topic with the professor. **Due Monday, July 18th.**

Assignment: Presentation. Groups and tasks will be assigned for class presentations to be held **Thursday, July 20th.**

MONDAY, JULY 18: EXAMPLES OF THE DEVELOPMENT, ADOPTION AND IMPLEMENTATION OF ECOSYSTEM RIGHTS

This class will examine and analyze existing and potential examples of rights-based laws protecting ecosystems and species, at the local, state, national, and international levels. It will also discuss the divergence between certain environmental law systems (*e.g.*, the public trust doctrine and Endangered Species Act protections) and rights-based systems. **Short paper due today.**

Required Reading:

SM	<i>Constitución de la República del Ecuador</i> , Title II, Ch. 7 (“Rights of Nature”) (2008)
SM	<i>Wheeler v. Director de la Procuraduría General del Estado en Loja</i> (Provincial Court of Loja, March 30, 2011) (<i>In the Matter of the Vilcabamba R.</i>)
SM	City of Pittsburg, PA, Home Rule Charter, Title 6, Art. 1, Ch. 618, “Marcellus Shale Natural Gas Drilling Ordinance” (Nov. 2010)
SM	Santa Monica Sustainability Rights Ordinance (April 2013)
SM	Petition for Town Meeting Article Warning for Rights of Nature (Vermont, 2013); Vermont Constitution, Section 72
SM	Bolivia, Law of the Rights of Mother Earth (Law 071)
SM	“Tūtohu Whakatupua: Agreement between the Whanganui Iwi and the New Zealand Crown” (30 Aug. 2012) (skim)
SM	<i>Loggerhead Turtle v. Volusia County</i> , 307 F.3d 1318, 1319-1322 (11 th Cir. 2002)
SM	<i>T.N. Godavarman Thirumulpad Vs. Union of India</i> , Supreme Court of India (2012) (skim except bolded areas)
WL	Pages 181-191

TUESDAY, JULY 19: IMPLEMENTING “EARTH LAW”

This class will examine examples and practical aspects of implementing “rights for nature” on the ground. **Time will be set aside to meet with groups for Thursday presentation.**

Required Reading:

SM	Kauffman, C. and Martin, P., “Testing Ecuador’s Rights of Nature: Why Some Lawsuits Succeed and Others Fail” (Int’l Studies Asso. Annual Conv., March 2016) (skim)
SM	International Union for Conservation of Nature, Resolution 100 (2012)
SM	United Nations, “The Future We Want,” A/CONF.216/L.1, para.s 38-40 (June 23, 2012)
SM	U.N. Resolution A/RES/70/208, “Harmony with Nature,” (Dec. 22, 2015) (skim except bolded area)
SM	Cullinan, Cormac, “A Tribunal for the Earth: Why It Matters” (2015)
SM	Maloney, M., “Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal,” <i>Griffith J. of Law and Human Dignity</i> , Vol. 3(1), 1, 6-15 (2015)
SM	Sheehan, Linda, “Closing Remarks of Co-Prosecutor at the International Rights of Nature Tribunal, Paris” (December 4, 2015)
SM	Memorandum from L. Sheehan, ELC to D. Kubani, City of Santa Monica, “Regulation of Groundwater Wells in Santa Monica” (May 2015) (skim)
SM	Santa Monica, CA “Sustainable City Plan” (2014) (excerpts) (skim)
WL	Pages 160-166

WEDNESDAY, JULY 20: STRATEGIES FOR MOVING “EARTH LAW” FORWARD

This class will evaluate various opportunities for building an “Earth Law” movement, including through parallels in people’s movements, evolution of common law and human rights with the mores of society, scientific revolutions, politics, reversal of subsidies, demonstration of benefits, and other methodologies.

Time will be set aside to prepare for Thursday exercise.

Required Reading:

- SM** Meadows, Donella, “Leverage Points: Places to Intervene in a System” (excerpts) (1999)
- SM** Mariqueo-Russell, Atus and Rupert Read, “The Rights of Nature must be recognised in Law,” *The Ecologist* (Feb. 25, 2016)
- SM** Global Witness, “New data on the murder rate of environmental and land activists in Honduras, the highest in the world” (March 4, 2016)
- SM** Earth Law Center, *Fighting for Our Shared Future: Protecting Both Human Rights and Nature’s Rights*, pp. 1-7, 11-12, 38-54 (Dec. 2015)
- SM** Kuhn, Thomas, *The Structure of Scientific Revolutions*, (Univ. of Chicago Press 1970, 2d ed., ISBN 0-226-45804-0), pp. 23-24, 62-77 (**skim**)
- SM** Kelly, Marjorie, *The Divine Right of Capital* (Berrett-Koehler Publishers, Inc. 2003, ISBN 1-57675-237-2), pp. 147-49, 174-77
- WL** Pages 128-130

THURSDAY, JULY 21: ADVANCEMENT OF LEGAL RIGHTS FOR A SELECT ECOSYSTEM (TBD)

This lesson will be devoted to in-class presentations incorporating rights of nature arguments in the context of an actual administrative hearing on the health of a selected, threatened ecosystem (TBD).