

EARTH LAW

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Vermont Law School, Summer Session 2015, Term 3

July 6 – 16, 2015

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 (3 pages maximum, double-spaced, less encouraged) paper, to be turned in on July 13th, assessing a student-selected environmental law, court decision or policy against “Earth Law.” As part of this paper, students will line-edit one section (1/2 page maximum) of the relevant environmental law, decision or policy text to reflect a rights of nature paradigm.

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 6: 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. 371-79
- SM** *Sierra Club v Morton*, 405 U.S. 727 (1972) (Douglas dissent)
- SM** Univ. of Stockholm Press Release, “Planetary Boundaries: A Safe Operating Space for Humanity” (Sept. 23, 2009)
- SM** New Zealand Herald, “Earth Pushing Planetary Boundaries” (Jan. 17, 2015),
- SM** Endangered Species Act; Clean Water Act regulations; Calif. Env’l Quality Act (**Skim**)
- SM** Sheehan, Linda, “Earth Day Revisited” (2011)
- WL** Pages 35-49, 62-68

TUESDAY, JULY 7: 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); *Citizens United v. Federal Elections Commission*, 130 S.Ct. 876 (2010) – excerpts (**Skim Citizens United**)

SM Kelly, Marjorie, *The Divine Right of Capital* (Berrett-Koehler Publishers, Inc. 2003, ISBN 1-57675-237-2), pp. 22-28

WEDNESDAY, JULY 8: 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 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 Berry, Thomas, “The Meadow across the Creek” (2000)
- SM Helliwell, John *et al.*, eds., “World Happiness Report,” Ch. 5 (2013) (*possibly updated when the 2015 report comes out shortly*)
- 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

THURSDAY, JULY 9: 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 M’Gonigle, Michael and Louise Takeda, “The Liberal Limits of Environmental Law: A Green Legal Critique” 30 *Pace Envl. L. Rev.* 1005 (2013), Conclusion, pp. 1107-1115, also at: <http://digitalcommons.pace.edu/pelr/vol30/iss3/4/>
- 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 only
- SM U.N. Report of the Secretary-General A/65/314, “Harmony with Nature,” (Aug. 19, 2010), Sec. IV., pp. 5-8
- SM Food and Water Watch, “The Financialization of Nature” (2012)
- WL Pages 95-109; pp. 192-195 (“Universal Declaration of the Rights of Mother Earth”)

Assignment: Paper. Short paper (3 pages maximum, double-spaced, 1-inch margins, 12-point font; less is encouraged) that selects a single state or federal environmental statute/statutory provision, environmental regulation, or court decision impacting the environment, discusses its limitations in achieving environmental well-being, and proposes alternative formulations that better reflect ecosystems' and species' inherent rights to exist, thrive and evolve. Include a line-edit of one section (1/2 page maximum) of the relevant environmental law, decision or policy text to reflect a rights of nature paradigm. Topic should be checked with professor. **Due Monday, July 13th.**

Assignment: Presentation. Groups and tasks will be assigned for class presentations to be held **Thursday, July 16th** (reading assignment to be provided).

MONDAY, JULY 13: 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 *Constitución de la República del Ecuador*, Title II, Ch. 7 (“Rights of Nature”) (2008)
- SM *Wheeler v. Director de la Procuraduría General del Estado en Loja* (Provincial Court of Loja, March 30, 2011) (*In the Matter of the Vilcabamba R.*)
- SM City of Pittsburg, PA, Home Rule Charter, Title 6, Art. 1, Ch. 618, “Marcellus Shale Natural Gas Drilling Ordinance” (Nov. 2010)
- SM Bolivia, Law of the Rights of Mother Earth (Law 071)
- 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 “Tūtohu Whakatupua: Agreement between the Whanganui Iwi and the New Zealand Crown” (30 Aug. 2012)
- SM *Loggerhead Turtle v. Volusia County*, 307 F.3d 1318, 1319-1322 (11th Cir. 2002)
- SM *T.N. Godavarman Thirumulpad Vs. Union of India*, Supreme Court of India (2012)
- (**Skim** except bolded areas)
- WL Pages 181-191

TUESDAY, JULY 14: IMPLEMENTING “EARTH LAW”

This class will examine examples and practical aspects of implementing “rights for nature” on the ground. **Breakout groups to briefly discuss and report out on paper themes.**

Required Reading:

- SM Bolivia, Law of Mother Earth and Integral Development for Living Well (Law 300) (Oct. 15, 2012); Title I; Title II, Ch.s I-III; Title IV, Ch.s I-II (**Skim**)
- SM International Rights of Nature Tribunal, “Great Barrier Reef Verdict,” Lima, Peru (December 2014), <http://therightsofnature.org/great-barrier-reef-verdict-lima>
- SM Maloney, Michelle, “Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal” (forthcoming in *Griffith J. of Law and Human Dignity*)
- SM Earth Law Center, “California Water Rights Campaign” (to be completed by July 2015)
- SM International Union for Conservation of Nature, Resolution 100 (2012)

SM	Republic of Ecuador, <i>National Plan for Good Living 2013-2017</i> , “Objective 7: To Guarantee the Rights of Nature, and Promote Regional and Global Environmental Sustainability” (Background, Policies/Guidelines, Goals)
SM	Sheehan, Linda <i>et al.</i> , Amicus Curiae, <i>Acción de Protección contra el Proyecto Minero Mirador</i> , Case No. 17325-2013-0038 (Filed March 4, 2013, Quito, Ecuador) (Skim)
SM	Santa Monica, CA “Sustainable City Plan” (2014) – excerpts (Skim)
WL	Pages 157-166

WEDNESDAY, JULY 15: 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, “law following crisis,” evolution of common law with the mores of society (litigation), evolution of “natural rights,” scientific revolutions, U.S. municipal law, reversal of subsidies, demonstration of benefits, and other methodologies. An introduction to the case study for the in-class presentation will be provided. **Time will be set aside to prepare for Thursday exercise.**

Required Reading:

SM	Meadows, Donella, “Leverage Points: Places to Intervene in a System” (1999)
SM	Thoreau, Henry David, <i>On the Duty of Civil Disobedience</i> (1849) (excerpt) (Skim)
SM	U.N. Resolution A/RES/64/292, “Human Right to Clean Water and Sanitation” (July 28, 2010)
SM	Declaration- Blue Pavilion, People’s Summit, Rio de Janeiro, Brazil (June 21, 2012)
SM	“Mapping Co-Violations of Human and Environmental Rights, earthlaw.org (click on examples), and “Co-Violations Report” (to be completed by July 2015)
SM	U.N. Report of the Secretary-General A/66/302, “Harmony with Nature,” (Aug. 15, 2011), Section III.A., pp. 11-13; Sections IV.-V., pp. 17-18
SM	United Nations, “The Future We Want,” A/CONF.216/L.1, para.s 38-40 (June 23, 2012)
SM	Kuhn, Thomas, <i>The Structure of Scientific Revolutions</i> , (Univ. of Chicago Press 1970, 2d ed., ISBN 0-226-45804-0), pp. 23-24, 62-77
SM	Kelly, Marjorie, <i>The Divine Right of Capital</i> (Berrett-Koehler Publishers, Inc. 2003, ISBN 1-57675-237-2), pp. 147-49, 174-77
WL	Pages 128-130

THURSDAY, JULY 16: 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).

Required Reading:

TWEN	TBD (background information on science and policies surrounding selected ecosystem)
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