

BARRY UNIVERSITY
DWAYNE O. ANDREAS SCHOOL OF LAW
EXPLORING PRINCIPLES OF EARTH JURISPRUDENCE – L 6350
SYLLABUS – SPRING 2015

Monday 3:00 – 5:00 (for 13 weeks)
Room ELL 210 (Library, Second Floor)
Michelle Maloney and Jane Durocher

Exploring Principles of Earth Jurisprudence (2 credits)

Most legal systems promote the interest of the human community while giving inadequate consideration and legal protection to other species or eco-systems that sustain existence. Earth Jurisprudence is an emerging field of legal philosophy that fundamentally rethinks law from an Earth-centered perspective. It examines and advocates laws and policies that legally protect the health and long term viability of all inhabitants and ecosystems of the Earth community. This seminar invites students to explore legal theories and applications that extend legal consideration to the natural world. It examines environmental, international, constitutional, and human rights laws as well as traditions of indigenous people that incorporate respect for the interdependency of humans and nature. It includes consideration of future generations of all species.

This seminar will survey selected ecological, social, ethical and legal foundations that affect the next generation of environmental challenges facing future lawyers regardless of the area of their practice. It will consider implications of Earth Jurisprudence for tort law, property law, the doctrine of standing, and a rights-based approach to law. It will examine examples of constitutional and statutory remedies for the emerging rights of nature legal movement

Office Hours: Tuesdays from 11-1pm and by appointment. Michelle's office is on the second floor of the Library, phone is (321) 206-5779. Jane's office is in ALC 101, phone (321) 206-5788.

Course Material:

- Cullinan, Cormac. **Wild Law: A Manifesto for Earth Justice**. Chelsea Green Publishing, 2nd Edition, 2011.
- Burdon, Peter (Editor). **Exploring Wild Law: The Philosophy of Earth Jurisprudence** (Wakefield Press, South Australia, 2011) (Also available on Kindle or other e-readers.); **(EWL)**

Also required reading:

- **The Universal Declaration on the Rights of Mother Earth**, at <http://therightsofnature.org/universal-declaration/>

- **The Earth Charter**, at <http://www.earthcharterinaction.org/content/pages/The-Earth-Charter.html>
- **United Nations, World Charter for Nature, 1982**, <http://www.un.org/documents/ga/res/37/a37r007.htm>
- **United Nations, Harmony with Nature, Report of Secretary General, August 19, 2010 -** http://www.un.org/esa/dsd/resources/res_pdfs/res_ga65_unedited/SGReportHwN_English.pdf

Additional reading assignments are included in the syllabus and are available electronically and posted on the Course Reserves for this Seminar.

Recommended Resources:

- Berry, Thomas. **The Great Work: Our Way into the Future**. Bell Tower, 1999.
- Maloney, Michelle and Peter Burdon, **Wild Law in Practice**, Routledge 2014
- Freyfogle, Eric. **Boundless People, Bounded Lands**. Island Press, 1998; **The Land We Share**. Island Press, 2003.
- Leopold, Aldo. **A Sand County Almanac: And Sketches Here and There**. Oxford University Press, 1987 (1949).
- Nash, Roderick Frazier. **The Rights of Nature**. University of Wisconsin Press, 1989.

Evaluation and Grading:

Students will be assessed on the following:

- 60% of your grade will be based on a 5,000 word research paper and its presentation in class. The presentation will be 15 minutes in length followed by class discussion. Students will give these presentations in the last four classes of the semester. Powerpoint is optional for the presentation, but not required. Additional information about the research paper is listed below.
- 40% of your grade will be based on your class participation, which requires the following:
 1. Active engagement and discussion in each class;
 2. Submission of weekly nature reflection entries, which are to be emailed to Michelle Maloney by 12noon each Monday of the teaching semester, starting from Class 2. (Reflection entries are not required for Class 1). Each piece should be around 150 words long;
 3. Each student will be required to choose one of the readings identified by the professor for the semester and use that reading to lead a class discussion. This involves giving a 10-15 minute talk (Powerpoint is optional but not required), which should include a summary of the material, your own critical analysis of the piece and questions for the class to discuss. A sign-up sheet with selected readings will be available in Week 2 so that you can choose which reading you'd like to focus on for this part of the assessment.

Research Paper:

Sixty (60) percent of the final grade will be based on a research paper and presentation that addresses a selected environmental issue. Students are free to choose their own topic, in discussion with either Professor Maloney or Goddard. The research paper must provide legal analysis and application of an Earth jurisprudence critique with suggested and/or recommended solutions. It must include critical legal research, analysis, legal citations and references, as well as your own conclusions. References from Wikipedia are not allowed to be cited. **Papers must be 5,000 words long including footnotes (Blue Book style only). If using the paper to satisfy the Upper Level Writing Requirement, the paper must meet all the requirements as posted on the Barry Student webpage**

An outline of the paper is due February 23. Each section of the outline should indicate content to be discussed and identify initial legal sources (case citation, reference books, law review articles, etc.) to be relied upon in that section. Every section of the outline needs some primary legal references in addition to websites. Professor Maloney or Goddard will be happy to discuss suggested topics with students, as needed.

The final paper is due in both electronic and printed format at the beginning of Class 13 on April 20. The Center for Earth Jurisprudence is seeking to publish the top three student papers on the Student Publication section of its website at www.EarthJuris.org by mid- June, 2015.

Additional Course Notes and Administration

1. Because of the Martin Luther King holiday the make-up class will be held on Friday, April 24 unless otherwise announced.
2. The syllabus may be modified to revise reading materials and readings will be posted on Course Reserves.
3. Each student bears individual and collegial responsibility to be fully prepared for class. Prior to each class, complete the reading assignment and be prepared to discuss the issues in the reading material. Failure to be prepared for class may result in an absence.
4. Please be on time for class. You are also expected to attend classes regularly. Barry University School of Law's attendance policy is in effect.
5. You may use a laptop computer to take notes. However, you may not use the internet, social networking, or email during class. Please turn off cell phones and pagers during class.
6. You are expected to practice professional courtesy in class. Each student will look to the Honor Code and Student Conduct Code to govern conduct. Because you are preparing for admission to the legal profession, it is important that you conduct yourself in a manner consistent with the high calling of our profession.

Students with Disabilities: Students with documented disabilities may contact the Office of Disability Services to arrange for reasonable accommodations. Voice / TDD: (305) 899-3488. Email: DisabilityServices@mail.barry.edu. Fax: (305) 899-3959.

Course Readings

Class 1 – January 12

Introduction to Earth Jurisprudence: Principles & Possibilities

This class will examine core background on Earth jurisprudence and begin to identify global environmental limits, assess the assumptions underlying current environmental laws and introduce the work of the Center of Earth Jurisprudence, the Australian Earth Laws Alliance (AELA), and Global Alliance for the Rights of Nature. It will also review basic writing skills needed for Earth Jurisprudence Seminar paper.

Reading Assignment:

- Cullinan, Cormac, **Exploring Wild Law**, “A History of Wild Law”, pages 12–23;
- Cullinan, Cormac, **Wild Law**, Prefaces, Forward, Chapter 1; pages 7–21; “Banality of Biocide,” pages 35-44.
- Tribe, Laurence, “Ways Not to Think about Plastic Trees: New Foundations of Environmental Law” 83 Yale Law Journal 1315, 1315-17, 1325-1331 (June 1974) (**Course Reserves**)

Due to MLK holiday, no class on January 19. Make-up class is Monday, April 24.

Class 2 – January 26

The need for an Earth Jurisprudence

This class will explore the context of the emerging Universe as the foundation for all jurisprudence and implications of nature’s “laws”. It will then review the outcomes of the Global Alliance for the Rights of Nature Summit 2014 and its application to current conditions in Ecuador, as well as the first two International Rights of Nature Tribunals held in Ecuador (January 2014) and Lima (December 2014). It will examine dominant environmental law policy assumptions that nature is primarily property for human use, the application of corporate personhood standing and introduce the need for alternative jurisprudence that protects nature’s rights to exist and flourish.

The class will view “The Journey of the Universe” film.

Reading Assignment:

- Leopold, Aldo, [A Sand County Almanac, "A Land Ethic"](#), pages 201-207
- Cullinan, **Wild Law**, Chapters 2 & 3, pages 35 -54
- Burdon, Peter, **Exploring Wild Law**, “Eco-Centric Paradigm”, pages 85-95. (**Course Reserves**)
- Berry, Thomas, **Exploring Wild Law**, “Rights of Earth: We Need a New Legal Framework Which Recognizes the Rights of All Living Beings” pages 227–229. (**Course Reserves**)

- **Rights of Nature in the Ecuadorian Constitution** at <http://therightsofnature.org/ecuador-rights/> (Course Reserves)
- Williams, Robert, [Time Is Running Out for Springs, and FDEP and the Fate of the Wekiva River](#), CEJ “Groundswell,” Summer 2013 (Course Reserves)

Recommended Reading:

- International Rights of Nature Tribunal 2014 – information can be found at <http://therightsofnature.org/lima-2014-tribunal/>
- The International Union for the Conservation of Nature and Natural Resources, The IUCN Red List of Threatened Species, Summary Statistics, at <http://www.iucnredlist.org/about/summary-statistics>. (Course Reserves)
- Millennium Ecosystem Assessment, 2005 – Synthesis report (online <http://www.millenniumassessment.org/documents/document.356.aspx.pdf>)

<p>Class 3 - February 2 Earth Jurisprudence – does it exist now?</p>

This class will look at examples where elements of Earth Jurisprudence have been adopted, including examples from the US, Ecuador, Bolivia and New Zealand, and will analyze key indicators of an Earth-based governance system.

Reading Assignment:

- Cullinan, **Wild Law**, pages 55- 73.
- Filgueira, B and Ian Mason, In Burdon, **Exploring Wild Law**, “Wild Law: Is There Any Evidence of Earth Jurisprudence in Existing Law?” pages 192-203. (Course Reserves)
- **The Universal Declaration on the Rights of Mother Earth**, at <http://therightsofnature.org/universal-declaration/> (Course Reserves)
- Margil, M, **Wild Law in Practice**. “Building an International Movement for the Rights of Nature”, pages 149-160 (Course Reserves)
- New Zealand – Whanganui River Gets Rights to Guardianship <http://newswatch.nationalgeographic.com/2012/09/04/a- river-in-new-zealand-gets-a-legal-voice/>
- Santa Monica Sustainability Bill of Rights Ordinance adopted March, 2013. (Course Reserves)

<p>Class 4 - February 9 The Great Jurisprudence: developing intimate knowledge of the natural world and understanding our ecological limits</p>
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This class will explore the structure, values, and assumptions underlying the current legal system. It will analyze alternative restructuring that is necessary for long-term viable, sustainable human and natural systems, including the responses required if our legal and governance systems begin to accept that we must live within the parameters

of the Great Jurisprudence, or “Great Law,” and Earth’s ecological limits.

Reading Assignment

- Berry, Thomas, **Evening Thoughts**, "[Legal Conditions for Earth Survival](#)," pages 107-112 (**Course Reserves**)
- Burdon, Peter, **Exploring Wild Law**, “The Great Jurisprudence”, pages 59-73 (**Course Reserves**)
- Maloney, Michelle. **Wild Law in Practice**. “Ecological Limits, Planetary Boundaries and Earth Jurisprudence’, pages 193 – 209 (**Course Reserves**)
- University of Stockholm Press Release, “Planetary Boundaries: A Safe Operating Space for Humanity” (September 23, 2009), (**Course Reserves**)
<http://www.stockholmresilience.org/21/research/research-programmes/planetary-boundaries/planetary-boundaries/about-the-research/the-nine-planetary-boundaries.html>

Recommended Reading:

- Koons, Judith E., [At the Tipping Point: Defining an Earth Jurisprudence for Social and Ecological Justice](#), 58 Loy. L. Rev. 349 – 383 (Summer 2012) (**Course Reserves**)

Class 5 - February 16

The roots of Earth Jurisprudence: Indigenous wisdom and culture

This class will examine the call by Thomas Berry and Cormac Cullinan to learn from indigenous world views and find contemporary methods for integrating ecocentrism into our legal and governance systems. It also examines the Doctrine of Discovery and how it continues to deny indigenous people title to communal land. It also examines the United Nations Declaration on the Rights of Indigenous Peoples.

Reading Assignment

- Akewesasne Notes. **Basic Call to Consciousness**. Introduction and Preamble, pages 9-25; (**Course Reserves**)
- Reclaiming the Honorable Harvest: Robin Kimmerer at TEDxSitka – <http://www.youtube.com/watch?v=Lz1vgfZ3etE>
- Little, Tom (Nyoongar Aboriginal leader, Australia) “Indigenous Peoples and Connections to the Land”, pages 1-3 (**Course Reserves**)
- Iorns, Catherine, **The Earth Charter, Ecological Integrity and Social Movements**. “Moving toward global eco-integrity: Implementing indigenous conceptions of nature in a Western legal system”, pages 181-190 (**Course Reserves**)
- UN Report on Doctrine of Discovery (**Course Reserves**)

- UN Declaration on Rights of Indigenous Peoples (DRIP) 2007
<http://www.un.org/esa/socdev/unpfii/en/drip.html>. (Course Reserves)

Recommended Reading

Paul Hawken, **Blessed Unrest: How the Largest Movement in the World Came into Being and Why No One Saw It Coming** (2007) pages 11-16; 24-26 (Course Reserves)

Class 6 – February 23

Valuing the Earth – Intrinsic values, ecosystem services, offsets and the commodification of nature

This class will analyze the “foundation” of the current legal system - that of a property law orientation - and the consumer-based economic systems that emerged in the 20th Century to support growth economics and modern capitalism. It will also examine different concepts of ‘valuing nature’ from the use of cost-benefit analysis, to the emergence of the concept of ‘ecosystem services’ and ‘offsets’. It will compare these systems to indigenous world views and the Earth jurisprudence perspective that all of nature has a moral and legal right to exist, regardless of its ‘value’ to humans.

Reading Assignment:

- Guth, Joe, “Law for an Ecological Age”, pages 431-437, 450-459, 466-474, 488, 492-494; (Course Reserves)
- Alexander, Sam (2010) “Earth Jurisprudence and the Ecological Case for Degrowth” The Journal Jurisprudence 6, p.131-148 (Course Reserves)
- Ruhl & Salzman, “The Law and Policy Beginnings of Ecosystem Services”
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1028759 (Course Reserves)

Recommended readings:

- Alexander, Sam “Imagining a Post-Growth Jurisprudence of Property” –
<http://www.barcelona.degrowth.org/fileadmin/content/documents/Proceedings/Alexander.pdf> (Course Reserves)
- Maloney, M “Earth Jurisprudence and Sustainable Consumption”, Southern Cross University Law Review 14 (Course Reserves) Weblink can be found here -
http://www.griffith.edu.au/_data/assets/pdf_file/0006/464253/Maloney_Jurisprudence-and-Sustainable-Consumption_SCULR_2011-1.pdf

March 2-6

Spring Break

Class 7 - March 9

Owning the Earth – flawed thinking or essential governance? Private property, corporations and the nation state

This class will critically examine some of the broader philosophical frameworks which our current legal, economic and governance systems operate within. It will examine the western legal system's "bedrock" of private property law and its impact on environmental governance, and will examine the growth of corporate power and influence over nation states during the past century and its impacts on the natural world.

Reading Assignment

- **Thorson, Robert M**, "Private Property Rights Trumped by Nature", Courant.com (Newspaper article, March 5, 2014) **(Course Reserves)**
- Cullinan, **Wild Law**, Chapter 12, "The Law of the Land" pages 138-145
- T. Linzey, "Of Corporations, Law & Democracy: Claiming the Rights of Communities and Nature", pages 1-15 **(Course Reserves)**
- Freyfogle in **EWL**, "Private Rights in Nature: Two Paradigms", pages 270-278 **(Course Reserves)**
- **Climate Legacy Initiative**, "Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice, Vermont College of Law", pages 13-27. **(Course Reserves)**

Class 8 – March 16

"Managing" the Earth – are we regulating the Earth community or ourselves?

This class will build on the discussion in Class 7 and examine aspects of current environmental law and environmental management methodologies. Legal and regulatory approaches such as Environmental Impact Assessment will be critically analyzed. It will also compare western style environmental management approaches with traditional indigenous land management practices.

READINGS TO BE DETERMINED

Class 9 – March 23

An antidote to owning the Earth? Fostering a land ethic, the law of the commons and the burgeoning field of "sharing law"

This class will examine ethical and legal alternatives to the dominant legal structures that support private property ownership. It will look at the concept and laws relating to 'the commons' and examine the role of law and governance in supporting a land ethic.

It will conclude with an analysis of the emerging field of 'sharing law' and examine how this field of law is fostering a shift away from 'ownership' to 'access' of land and material resources such as housing and equipment.

Reading Assignment

- Leopold, Aldo, [A Sand County Almanac, "A Land Ethic"](#), pages 201-207
- Burns Weston and David Bollier. **Green Governance: Ecological survival, human rights and the law of the commons.** "The Commons as a Model for Ecological Governance", pages 123-146 **(Course Reserves)**
- Orsi, Janelle - The Birth of Sharing Law - <http://www.shareable.net/blog/birth-of-sharing-law> **(Course Reserves)**
- Orsi, Janelle – 'A Beatles Economy' - a 2 minute animated cartoon that discusses sharing law and refers to the Rights of Nature – http://www.theselc.org/the_beatles_economy **(Course Reserves)**

Class 10 – March 30

Class 11 – April 6

Stewardship of the Earth – legal and governance tools for protecting ecological health

Classes 10 and 11 look at established and emerging legal tools for correcting and protecting ecological health. These include the law of the commons, the public trust doctrine, the precautionary principle, principle of intergenerational equity and emerging legal mechanisms which see innovative collaboration between indigenous cultural heritage and rights of nature. The class will also look at the emerging cases and jurisprudence from legal actions that are built on the rights of nature.

Reading Assignment – Class 10 – Stewardship of the Earth

- Nancy J. Myers and Carolyn Raffensperger, **Precautionary Tools for Reshaping Environmental Policy**, Introduction, pages 1-16; A Proposal for Tort Reform, pages 299-316. **(Course Reserves)**
- San Francisco Precautionary Principle Ordinance three Year Report, http://www.precaution.org/lib/07/prn_sf_3-yr_pp_report.061126.htm **(Course Reserves)**
- Santa Monica Sustainability Bill of Rights Ordinance adopted March, 2013. **(Course Reserves)**

Reading Assignment – Class 11 - Stewardship of the Earth continued

- James Speth, **The Bridge at the Edge of the World**, pages 19-30. **(Course Reserves)**
- Mary Christina Wood, **Nature's Trust**, "Introduction: You Can't Negotiate with a Beetle", pages 3-18. **(Course Reserves)**
- Christopher Stone, **Should Trees Have Standing**, "Should We Establish a Guardian for Future Generations?" Chapter 5, pages 103 – 112. **(Course Reserves)**

- Daly, E - “Ecuadorian Court Recognizes Constitutional Rights to Nature”, Widener Environmental Law Center,
<http://blogs.law.widener.edu/envirolawblog/2011/07/12/ecuadorian-court-recognizes-constitutional-right-to-nature> **(Course Reserves)**
- Troutman, Melissa. “Pennsylvania Ecosystem Fights Corporation For Rights in Landmark Fracking Lawsuit”, December 10, 2014,
http://www.publicherald.org/archives/19582/invisible_hand/ **(Course Reserves)**
- Gilmer, Ellen. “Speaking for the Trees: Lawyer pushes unconventional Doctrine”, January 7, 2015. **EnergyWire**.
<http://www.eenews.net/energywire/stories/1060011209> **(Course Reserves)**

Recommended readings

- Christopher Stone, **Should Trees Have Standing**, “How to Heal the Planet”, pages 125-139. **(Course Reserves)**
- Florida’s Public Trust, “Public Trust’s Brief Submitted to the Florida Supreme Court Opposing Georgia Pacific’s Pipeline, Case No. SC12-1325”,
<http://www.publictrustlaw.org/latest-news/pending-cases/georgia-pacific> **(Course Reserves)**
- **Raffensperger** “Ten Tenets: The Law of the Commons of the Natural World,” available at
http://www.precaution.org/lib/06/prn_commons_law_tenets.060323.htm **(Course Reserves)**

Classes 10 and 11 include presentation of student papers.

Class 12 – April 13

Implementing Earth Jurisprudence – social movements, activism and law reform

This class will examine the practical challenges of implementing Earth jurisprudence. It will include a discussion about the work of social movements advocating for Earth centered law and governance, including the Global Alliance for the Rights of Nature, the International Tribunal for the Rights of Nature, the work of the Australian Earth Laws Alliance, the Earth Laws Center and the work of other groups and movements in the USA and around the world. It will also look briefly at the formal processes for law reform in the USA and Australia. This class includes presentations of student papers.

Reading assignment

- Brown, Brian ‘Foundations for an Earth Jurisprudence: Law’s Revolution from Order to Justice’, pages 1-5, **(Course Reserves)**
- Burdon, Peter. **The Earth Charter, Ecological Integrity and Social Movements**. “Realising Earth Democracy: Governance from Below”, pages 24-36 **(Course Reserves)**

- Alexander, Sam. **Wild Law in Practice**. Wild Law From Below, pages xx (**Course Reserves**)

Class 12 includes presentation of student papers.

<p>Class 13 – April 20 Establishing Earth-based Governance Models</p>
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This class looks to the future and explores how the Earth laws and Rights of Nature movements might continue to build innovative strategies to transform our legal and governance systems. It will review the material already covered on existing Earth jurisprudence, social movements and the power of building alternatives to the current legal system. It will include an examination of projects such as the International Rights of Nature Tribunal and the Australian Wild Law Judgments Project .

Reading Assignment

- Linda Sheehan, Future Perfect, “Establishing Earth-based Governance for the Rights of the Environment”, pages. 18 – 22; <http://digital.tudor-rose.co.uk/future-perfect/#18> (**Course Reserves**)
- Rogers Nicole and Michelle Maloney,(2014) “The Australian Wild Law Judgments Project”, Alternative Law Journal, 39(3)
- Unanimous Declaration of Interdependence, <http://www.wholeearth.com/issue/1060/article/219/the.unanimous.declaration.of.interdependence> (**Course Reserves**)
- Earth Charter, <http://www.earthcharterinaction.org/content/pages/Read-the-Charter.html> (**Course Reserves**)
- UN World Charter on Nature, <http://www.un.org/documents/ga/res/37/a37r007.htm> (**Course Reserves**)

Class 13 includes student presentations and discussions.

<p>April 24</p>

<p>Make-up class - Remaining class presentations. Summary of Earth Jurisprudence principles and future possibilities for Rights of Nature.</p>
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