

Exploring Principles of Earth Jurisprudence Syllabus

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St. Thomas University School of Law

January 14 - April 29, 2010 (14 weeks)

Exploring Principles of Earth Jurisprudence (2 credits)

Most legal systems promote the interest of the human community while giving no real legal protection to other species or to the natural world that sustains existence. Earth jurisprudence is an emerging field of legal philosophy that fundamentally rethinks law so that it protects the health and viability of the comprehensive Earth community. This seminar invites students to explore legal theories and applications that provide legal consideration to the wider community of both humans and the natural world. It examines environmental, international, constitutional and human rights laws as well as traditions of indigenous peoples that incorporate respect for the interdependency of humans and nature and concern for the 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 constitutional and statutory remedies protecting the interests of future generations. Brief weekly reflection papers drawn from intentional time spent in nature and submission of 10 key concepts from the week's readings are seminar requirements. In addition, each student will prepare a substantive paper on a legal theory and application of Earth jurisprudence that is eligible to meet the Senior Writing requirement.

Class: Thursdays, 11:00 am - 12:40 pm; Location: Library Seminar Room

Office Hours: Office hours will be announced and posted. Professor Siemen's office is across from Room 2-1; phone is 305-623-2389.

Course Material:

- Cullinan, Cormac. *Wild Law: A Manifesto for Earth Justice*. Green Books, 2002. I have this book available for purchase in my office for \$15, or it can be purchased through Amazon.

- Stone, Christopher D. *Should Trees Have Standing? And Other Essays on Law, Morals and the Environment*, Oceana Publications, 25th Anniversary Edition, 1996.
- United Nations, *World Charter for Nature*, 1982, www.un.org/documents/ga/res/37/a37r007.htm
- The Earth Charter, at www.earthcharterinaction.org/content/pages/The-Earth-Charter.html
- Draft UN Resolution, A/C.2/64/L.24 (November 12, 2009), *Harmony with Mother Earth*, www.boliviaun.org/cms/?p=1353

Additional reading assignments are included in the syllabus, are recent articles and book excerpts addressing critical Earth jurisprudence issues, and are available electronically and posted on the LexisNexis Blackboard for this seminar.

Additional Resources: (On Course Reserves in Library)

Berry, Thomas. *Evening Thoughts*. Sierra Club Books, 2006; *The Great Work: Our Way into the Future*. Bell Tower, 1999.

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:

Approximately 60 percent of your grade will be based on your final research paper and its presentation. The presentation will be 20 minutes in length followed by questions and answers. The additional 40 percent of your grade will be based on your class participation, submission of weekly summary points of assigned readings and nature reflection entry. There will be no final exam. The grading criteria for the paper are listed in the next section.

Forty (40 percent) of your grade will be based on weekly submission in typed format ten (10) core concept points based on the assigned readings for class discussion each week and brief weekly reflection paper of time spent in nature. Students will also sign up to be a class discussion leader, based on the assigned readings, once during the semester. There will not be discussion leaders during guest presenter classes.

Research Paper:

Sixty (60) percent of the final grade will be based on a research paper that addresses a selected legal theory and application of an Earth jurisprudence critique. It must include critical legal research and references, legal citations and analysis, as well as your own conclusions. References from Wikipedia are not allowed to be cited. A section to be included is how the time spent in the natural world influenced the development of your research, analysis and conclusions. Required papers must be at least 20 pages but no longer than 30 pages, including footnotes. If using the paper to satisfy the Senior Writing Requirement, the paper must be at least 30 pages and no more than 35 pages, including footnotes. In all cases, it must be typed using 12-point font, doubled-spaced, with one-inch standard margins. Footnotes should be single-spaced, 10-point font, and located on the same page as the referenced text.

Drafts and final paper should be submitted on the following schedule:

Topic approved (1 sentence description)	Thursday, February 4
Outline (4-5 pages)	Thursday, February 25
Partial rough draft (20 pages)	Thursday, March 11
Complete draft	Thursday, March 25
Final draft	Thursday, April 8
Class Presentations	Thursdays, April 8, 15, 22
Final paper	Thursday, April 29

The topic for your paper shall be selected by you and approved by me no later than February 4, 2009. An outline of the paper is due February 25. Each section should explain the purpose of that section, including legal sources (cases, books, law review articles, etc.) to be relied upon in that section. An initial list of proposed (but not limited to) topics will be available for student review by the second class.

The final paper is due in both electronic and printed format at the beginning of the last class on April 29. The Center for Earth Jurisprudence is seeking to place the top three student papers on its publications section of its website at www.earthjuris.org by mid-June, 2010.

Grading Criteria for Paper

1. Originality
2. Writing style: grammar, spelling, footnotes (use, proper format, etc)

3. Whether it adheres to format: double spaced, 12-pt Times Roman font, one inch margins on bottom, top, right and left

4. Research quality: Does it reflect thorough legal research techniques or has the information been obtained from poorly documented websites? Does it include a range of sources, such as legal journals, cases, statutes, regulations, reports from respected sources such as government agencies, respected organizations and institutions, scholarly books, (as opposed to popular nonfiction), interviews with experts, etc.

5. Class presentation. Each student will make a modified presentation of his or her research paper to the class in the three weeks of the semester. Students will sign up to do this.

IV. Notes:

1. I reserve the right to modify the syllabus to add or delete reading material.

2. Failure to be prepared for class will result in an absence (unless the student has requested and has been granted an exemption prior to class).

Class Schedule (Readings from various sources will be assigned each week.)

Class 1

January 14

Introduction to Earth Jurisprudence: Principles & Possibilities

The universe and ecology as the source of rights and law

Reading Assignment:

- Thomas Berry and Brian Swimme, *The Universe Story*, pages 7-15, 60-61, 70-79; LexisNexis Blackboard

- Cormac Cullinan, *Wild Law*, Preface and Chapter 1, pages 17 - 34

- Thomas Berry, *Evening Thoughts, Twelve Principles for Understanding the Universe*, pages 145-47; LexisNexis Blackboard

- Thomas Berry, Evening Thoughts, Legal Conditions for Earth Survival, pages 107-112. LexisNexis Blackboard.

Class 2

January 21

The Need for an Earth Jurisprudence

Why is a new jurisprudence needed?

Guest presenter: Professor Fred Light;

Review research paper topics; sign up for class presentations.

Reading Assignment:

- State of the World 2009, The Worldwatch Institute. Christopher Flavin and Robert Engelman, The Perfect Storm, Chapter 1, pages 5-12; www.worldwatch.org/files/pdf/SOW09_chap1.pdf

-State of the World 2009, The Worldwatch Institute. W.L. Ware, A Safe Landing for Climate, Chapter 2, pages 13-29. www.worldwatch.org/files/pdf/SOW09_chap2.pdf

Climate Change Falls Short, Washington Post, December 19, 2009

Posted on LexisNexis

- Andrew Kimbrell, Halting the Global Meltdown: Can Environmental Law Play a Role?, pages 1 - 4.

Recommended reading: - The International Union for the Conservation of Nature and Natural Resources, The - IUCN Red List of Threatened Species, Summary Statistics, at www.iucnredlist.org/about/summary-statistics

Class 3

January 28

Legal Rights for Nature and International Approaches to Earth Jurisprudence

Reading Assignment:

Christopher Stone, *Should Trees Have Standing: toward Legal Rights for Natural Objects*. Chapter 1, pages 1 - 33.

UKELA-GAIA Report, "Wild Law: Is There Any Evidence of Earth Jurisprudence in Existing Law and Practice?" March 2009, pp 1-7, 35-45, 49-69. Posted in Lexis-Nexis Blackboard

Class 4

February 4

Limitations of Environmental Law

Guest lecturer - Mary Munson, CEJ Legal Director

Reading Assignment:

Robert V. Percival, *Environmental Law in the Twenty-First Century*, 25 Va. Env'tl. L.J. 1 (2007) 14 pages, Posted on LexisNexis Blackboard

Christopher Schroeder, *Global Warming and the Problem of Policy Innovation: Lessons from the Early Environmental Movement*, 39 Env'tl.L. 285 (2009) 10 pages

Steven Burns, *Environmental Policy and Politics: Trends in Public Debate, Natural Resources and Environment*, Fall 2008 (American Bar Association). 7 pages, posted on LexisNexis Blackboard.

Environment Groups Find Less Support from Justices (NY Times Article, July 4, 2009, Saturday.) 2 pages; Posted on LexisNexis Blackboard.

Class 5

February 11

Cumulative Impacts and Cost-Benefit Analysis Approach in Environmental Decision-Making; New Orleans Inner Harbor Navigation Canal Surge Barrier Exception

Reading Assignment:

Guth, Joe, Law for an Ecological Age, pages 431-437, 450-459, 466-474, 488, 492-494
www.vjel.org/journal/pdf/VJEL10068.pdf

Exception to Cost-Benefit Analysis: Public Law 109-234, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (4th supplemental) See
www.mvn.usace.army.mil/pd/projectslist/home.asp?projectID=300&projectP2=93502&directoryFilePath=ProjectData

Class 6

February 18

Consideration of the Endangered Species Act; Seeds of EJ

Guest lecturer: Keith Rizzardi, Managing Attorney, SFWM

Reading Assignment: ESA summary (12 pages)

<http://wildlifelaw.unm.edu/fedbook/esa.html>

Congressional Research Service (17 pages)

www.ncseonline.org/NLE/CRSreports/07Oct/RL33779.pdf (pages 1-15, 20-22)

ESAblawg (2 pages)

www.esablawg.com/esalaw/ESBlawg.nsf/d6plinks/KRII-7EN4YX (cutthroat trout)

www.esablawg.com/esalaw/ESBlawg.nsf/d6plinks/KRII-7LG3T2 (unintended consequences. Caselaw (15 pages)

Loggerhead Turtle v. County Council of Volusia County, Fla., 148 F.3d 1231, 1234-1246 and 1255-1258 (11th Cir., 1998)

Optional supplemental reading material:

www.fws.gov/endangered/pdfs/ESAall.pdf (Actual text of the ESA)

Additional resources:

www.esablawg.com/ (the law blog discussing the Endangered Species Act)

www.fws.gov/endangered/ (USFWS resources)

www.earthjustice.org/library/reports/Citizens_Guide_ESA.pdf

(Earth justice report)

Class 7

February 25

Earth Jurisprudence and Constitutional Law: Standing, Rights, and Responsibilities

Guest Faculty, Mary Munson

Reading Assignment

Cormac Cullinan, "If Nature had Rights," Orion Magazine (Jan-Feb. 2008) (Posted Lexis-Nexis Blackboard)

C. Cullinan, Wild Law, Chapter 8, The Question of Rights. Pages 106- 124.

Christopher Stone, Should Trees Have Standing? (25th Anniversary Edition) Introduction, Chapter 1, pages 1-12, 20-33, 42-43)

Sierra Club v Morton, 405 U.S. 727 (1972).

No Class

March 4

Class 8

March 11

Expanding Human Responsibility for Legal Protection of Nature;

Why a Precautionary and Guardianship Approach?

Reading Assignment:

Christopher Stone, Should Trees Have Standing, Chapter 3, pages 65-77.

Nancy J. Myers and Carolyn Raffensperger, Precautionary Tools for Reshaping Environmental Policy, Introduction, pages 1-22 (In Lexis-Nexis course documents)

Linzey, Thomas, "Of Corporations, Law and Democracy, Schumacher Lecture, pp. 1-4 at

www.smallisbeautiful.org/publications/linzey_06.html

Cullinan, Wild Law, Chapter 14, Transforming Law and Governance, pages 185-197.

Recommended Reading:

San Francisco ordinances on Precautionary Principle

www.sfenvironment.org/our_policies/overview.html?ssi=14

Class 9

March 18

Earth Jurisprudence and Sustainable Business Law

Guest Lecturer Michael Wallander, Attorney

Readings to be assigned.

Class 10

March 25

Earth Jurisprudence and Property Law: Private Property, Public Commons, Nature's Trust

Outline for Research Paper due

Reading Assignment

Mary C Wood, "Nature's Trust"; at www.earthjuris.org/viewpointdocuments/naturestrust2.pdf;

C. Stone, Should Trees Have Standing, p 65 - 80;

C Raffensperger, Law of Sharing: Setting a Policy and Legal Agenda for the Commons
www.sehn.org/web2printer4.php?img=0&lnk=0&page=Volume_12-5.html#top

No Class

April 1

Class 11

April 8

Earth Jurisprudence and Indigenous Peoples: Ecological Community Governance

Reading Assignment

-Kimmerer, Robin. The Rights of the Land; Orion Magazine, Nov 2008. On reserve.
www.orionmagazine.org/index.php/articles/article/3647/

-Eric Dannenmaier, "Beyond Indigenous Property Rights: Exploring the Emergence of a Distinctive Connection Doctrine," 86 Wash. U. L. Rev. 53, pp. 55-69, 84-88 (2008). Posted on LexisNexis Blackboard

-UN Declaration on Rights of Indigenous Peoples,
www.indianlaw.org/sites/indianlaw.org/files/UN%20Declaration%20on%20the%20Rights%20of%20Indigenous%20Peoples.pdf

Cullinan, Wild Law, Remembering Who We Are, Chapter 7, pages 93-106.

Recommended Reading:

-Community Ecological Governance Newsletter;
www.gaiafoundation.org/documents/CEG_News/CEGnewsletter9.pdf

Class 12

April 15

Rights and Responsibilities

Earth Charter

Guest Lecturer: Professor Elisabeth Ferrero, ST

Reading Assignment

-The Earth Charter Initiative www.earthcharter.org/

-Holland & Ferrero, "The Earth Charter" Study Book of Reflection for Action (2005) pp. 13-18. 33-45. 77-99. Lexis-Nexis Blackboard

Klaus Bosselmann, "The Significance of the Earth Charter in International Law",
www.earthcharterinaction.org/invent/images/uploads/ENG-Bosselmann.pdf

Class 13

April 22

Earth Jurisprudence: Nature's Rights

Student presentations

Reading Assignment

-United Nations World Charter For Nature, available at www.un.org/documents/ga/res/37/a37r007.htm;

-Proposed UN resolution on Harmony of Mother Earth, November 2009 at www.boliviaun.org/cms/?p=1350; www.treeshaverightstoo.com/news/2009/11/19/12-11-09-un-resolution-harmony-with-mother-earth/

Class 14

April 29

Earth Jurisprudence/Wild Law: Does It Exist?

Student presentations

Reading Assignment

Thomas Linzey, "Tamaqua Law Is First In Nation to Recognize Rights of Nature," at www.celdf.org/PressReleases/TamaquaLawRecognizesRightsofNature/tabid/367/Default.aspx

Vandana Shiva, "Principles of Earth Democracy." Posted on LexisNexis Blackboard.