

BARRY UNIVERSITY

CAN WE CO EXIST?

THE DILEMMA OF THE GRAY WOLF

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INTRODUCTION

What is Earth jurisprudence? When I first began this class I thought it was just a type of environmental law. I thought we would be studying regulations, legislation, and cases just like any other class and at the end I would write my paper and move on. However, something funny happened after the first week. We spent the class discussing the universe and how every one of us shares in it with all the other natural objects that exist. Honestly, I left that class confused, but also curious. These ideas we discussed were unusual in law school and seemed theoretical in nature, but as the weeks went on I began to wonder how they could be applied. Earth jurisprudence to me is the recognition that we as people are not masters of this planet but instead merely inhabitants. Thomas Berry explains, “In ourselves the universe is revealed to itself as we are revealed in the universe. Such a statement could be made about any aspect of the universe because every being in the universe articulates some special quality of the universe in its entirety.”¹ To me, this powerful statement tells us that although we are different from the natural entities and other creatures on this planet, we are all part of the universe as a whole. Cormac Cullinan describes Earth jurisprudence as “legal philosophies developed by humans that are to a large extent derived from, and consistent with, this Great Jurisprudence.”² He is saying that this new form of law is the progeny of the laws of the universe, and the two really cannot be separated from each other.

Today, I think people have lost touch with the environment and the natural systems that surround them. We have allowed our heads to swell and let the belief that the Earth is here for our exploitation and consumption encompass almost every aspect of our lives. Earth

¹ THOMAS BERRY, *THE GREAT WORK* 32 (1999).

² CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* 84 (Green Books 2003).

jurisprudence works to solve this problem by recognizing that every natural entity has certain rights. This is an odd concept to understand at first. Today's society looks strictly towards human interests, and typically ignores the harm they caused the surrounding environment. However, the more you think about it, the more it becomes clear. The best example of this is something I will take from class. A river has a right to flow its natural course, the course that nature has chosen for it to follow. This path affects countless animals, plants, and natural systems along its banks and in its waters. Earth jurisprudence would give this river the right not to be damned or polluted. It would provide a legal forum for that entity's rights to be heard. This is an emerging field that to many people seems impossible to achieve, but now is the perfect time for such a jurisprudence to be created. People have never been more aware of the impact that they are having on the natural systems that surround them, and I think most people are ready for a change.

All around us there are issues and conflicts with nature that need a legal solution. There are larger issues that we all are aware of, such as global warming and pollution, and there are smaller issues that many people don't realize are of equal importance. One of these issues that has recently gained national attention is the current plight of the Gray Wolf in the Rocky Mountains. An animal that once used to number in the hundreds of thousands has been decimated to a fraction of its former self.³ This animal has been targeted for centuries and, just as it seems as though the wolves are finally making a resurgence, the government has enacted

³ Press Release, Defenders of Wildlife, *Open Season on Wolves in Wyoming*, Mar. 28, 2008, http://www.defenders.org/newsroom/press_releases_folder/2008/03_28_2008_open_season_on_wolves_in_wyoming.php.

legislation that could very well lead to their downfall.⁴ Earth jurisprudence, as a transcendent legal system, could be a valuable tool in this struggle between humans and nature.

BACKGROUND

Before this situation can be discussed, one must first know the history. Today, wolves are not seen as the great predator species of North America, but that was not always the case. The Gray Wolf once numbered over 200,000 and was found in almost every region of the United States.⁵ As an animal revered and respected by Native Americans, the wolf lived free of human interference.⁶ The trouble began when the first European settlers arrived on the shores of New England.⁷ The Europeans brought with them ideas and an image of the wolf that differed greatly from the Native Americans.⁸ To Native Americans the wolf was a creature that was powerful in spirit.⁹ To the Europeans it was the beast of folklore.¹⁰ Their arrival marked the beginning of the wolf's descent.¹¹ Over the next three hundred years, the wolf was hunted and exterminated as the human population grew and the need for more land increased.¹² By 1924 the federal government estimated that in the lower forty eight states the Gray Wolf population was no more

⁴*Id.*

⁵ Dale D. Goble, *Of Wolves and Welfare Ranching*, 16 HARV. ENVTL. L. REV. 101, 105 (1992).

⁶ *Id.*

⁷ *Id.* at 104.

⁸ *Id.* at 102.

⁹ *Id.* at 103.

¹⁰ *Id.* at 101.

¹¹ *Id.* at 105.

¹² Christopher T. Cook, *Reintroduction of the Gray Wolf: The Battle Over the Future of Endangered Species Policies*, 5 DRAKE J. AGRIC. L. 487, 488 (2000).

than ten to fifty animals in any one state.¹³ By 1926, there were no longer any wolves remaining in Yellowstone Park.¹⁴ The Gray Wolf was all but extinct in most of the United States.

In 1973 the Endangered Species Act was enacted in order to protect threatened wildlife throughout the United States, and in 1974 the Grey Wolf was placed on this list in every state except Minnesota.¹⁵ This action protected the wolf from further harm from people, but of special concern were the populations in Wyoming, Montana, and Idaho.¹⁶ In the 1920's and 1930's the Gray Wolf was targeted ferociously in these three states and it now was the goal of the federal government and more specifically the Department of the Interior to recover these populations.¹⁷ In 1987 the United States Fish and Wildlife Service introduced the Rocky Mountain Wolf Recovery Plan with the goal of removing the Gray Wolf from the endangered species list.¹⁸ This plan called for the reintroduction of Gray Wolves into Montana, Idaho, and Yellowstone National Park through natural processes.¹⁹ The plan established a recovery goal of ten breeding pairs of wolves for three consecutive years in each of the three states.²⁰ The hope was that wolves from southern Canada would move across the border and into Montana.²¹ Unfortunately, because of its remote location, it was unlikely that wolves naturally would be able to enter Yellowstone National Park. Therefore the plan called for the introduction of an experimental population that would be physically transplanted from Canada.²² They sought to promote genetic exchange between the three populations, and the U.S. Fish and Wildlife Service even

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 490.

¹⁶ *Glaser v. United States Fish and Wildlife Service*, No. cv-08-14-m-dvm (D. Mont. filed Jan. 28, 2008).

¹⁷ *Id.*

¹⁸ *See Cook, supra* note 12, at 491.

¹⁹ *Id.*

²⁰ *See Glaser, supra* note 16, at 12.

²¹ *Id.*

²² *See Cook, supra* note 12, at 492.

said that Gray Wolves will not be recovered in the Northern Rockies until wolves in the Greater Yellowstone, central Idaho, and northwestern Montana recovery areas are genetically linked.²³ In 1995 the United States Fish and Wildlife Service began the task of relocating the wolves, which ended with impressive results.²⁴ Today there are now approximately 1,500 wolves in Idaho, Montana, and Wyoming.²⁵ The Gray Wolf has reclaimed the role that it once held as a predator of big game, and its reintroduction has had positive effects on the ecosystem.²⁶ But now, as the Gray Wolf is appearing to have made a comeback, the government has taken a step back and given control of wolf management back to the states.²⁷ On March 28, 2008 the Gray Wolf was delisted from the Endangered Species Act, meaning that the wolves will no longer be afforded the government protection that they once enjoyed.²⁸ This is a serious threat to the Gray Wolves of the northern Rocky Mountains, as the state agencies in charge of their management have made it clear that they intend to reduce the wolves' population and range.²⁹ The problem that faces the Gray Wolf under state protection is that often state economic interests take priority, and the needs of the agricultural, cattle, and tourist industry will be placed high above the needs of the wolf.³⁰

²³ See Glaser, *supra* note 16, at 11.

²⁴ See Cook, *supra* note 12, at 492.

²⁵ Press Release, Defenders of Wildlife, *Eleven Conservation Groups Challenge Federal Wolf Delisting*, Feb. 27, 2008,

http://www.defenders.org/newsroom/press_releases_folder/2008/02_27_2008_eleven_conservation_groups_challenge_federal_wolf_delisting.php.

²⁶ See Glaser, *supra* note 16, at 13.

²⁷ See Press Release, *supra* note 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

STATE WOLF MANAGEMENT

The first and most alarming of these state management plans is Wyoming's. Wyoming has had a tempestuous history with the Gray Wolf, ranging from the hiring of bounty hunters in the 1930's to exterminate the animal, to the placement of the wolf on the Endangered Species List in 1974.³¹ The most recent trend to stray away from protection of the Gray Wolf began with the case of *Wyoming Farm Bureau Federation v. Babbitt* in 1997.³² In *Babbitt* a group of farmers and environmentalist groups fought to cease the reintroduction of Gray Wolves into Yellowstone Park and have any wolves that have already been reintroduced removed.³³ The reasons for this action varied. The farm bureau members feared that the cattle that grazed near the population site would be in jeopardy, whereas the environmentalist groups feared that the introduction of Canadian Gray Wolves would destroy the opportunity for a genetically distinct Wyoming wolf to exist.³⁴ In a frightening decision, the United States District Court set aside the rules to the plan for reintroduction, and ordered the government to remove the reintroduced wolves and their offspring from the Yellowstone area.³⁵ This decision could have led to disastrous consequences, but on appeal, the United States Court of Appeals reversed the trial court's holding and held instead that the Department of Interior's plan for reintroduction was proper.³⁶ This decision allowed for reintroduction to continue.³⁷

³¹ See Cook, *supra* note 12, at 488.

³² *Wyoming Farm Bureau Fed'n v. Babbitt*, 987 F. Supp. 1349 (D. Wyo. 1997) [*hereinafter Babbitt I*], *rev'd* 199 F.3d 1224 (2000).

³³ *Id.* at 1355.

³⁴ *Id.* at 1356.

³⁵ *Id.* at 1376.

³⁶ *Wyoming Farm Bureau Fed'n v. Babbitt*, 199 F.3d 1224, 1241 (10th Cir. 2000) [*hereinafter Babbitt II*].

³⁷ *Id.*

After reintroduction was validated in *Babbitt*, the population of wolves in Wyoming began to rise.³⁸ By 2003 the wolf had made a remarkable recovery, and the United States Fish and Wildlife Service was looking to eventually delist the Gray Wolf from the Endangered Species Act.³⁹ Before this could be accomplished, each of the three states involved in the reintroduction had to create a plan that would protect a sustainable Gray Wolf population.⁴⁰ Wyoming's response to this was to create a plan that severely threatened the already fragile wolf population.⁴¹

Wyoming's original wolf management plan classified the Gray Wolf as both a predatory and trophy game animal.⁴² The listing as a predatory animal was especially concerning. This classification meant that anywhere wolves were considered a predatory animal, they could be shot on site without a license.⁴³ Wyoming's plan also had negatively defined the makeup of a wolf pack.⁴⁴ The plan called for the maintenance of fifteen wolf packs in the state, but then defined the makeup of a pack as "five or more gray wolves traveling together. If a group of gray wolves consists of more than ten animals known to be traveling together, the commission may, at its discretion, recognize the number of packs within such a group to be equal to the number of reproductively mature females bearing young found within that group of wolves."⁴⁵ This meant that if a large pack happened to have two females with young, it could be treated as two separate packs.⁴⁶

³⁸ *Id.*

³⁹ *Wyoming v. U.S. Dep't of the Interior*, 360 F. Supp. 2d 1214, 1220 (D. Wyo. 2005).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 1221.

⁴³ *Id.*

⁴⁴ *Id.* at 1223.

⁴⁵ *Id.*

⁴⁶ *Id.*

Wyoming's original wolf management ultimately did not provide enough protection and was rejected.⁴⁷ Wyoming then filed an action against the Department of the Interior and Fish and Wildlife Service alleging that they violated the Endangered Species Act and the Administrative Procedures Act, as well as the United States Constitution by rejecting Wyoming's plan to manage their own Gray Wolf population.⁴⁸ Luckily, the United States District Court found that they lacked jurisdiction to hear any of the State of Wyoming's claims and upheld the Department of Interiors rejection of the state's wolf management plan.⁴⁹

Unfortunately, the State of Wyoming was not deterred by this court ruling. With a few minor changes to its previously proposed legislation, Wyoming resubmitted the proposal, and the United States Fish and Wildlife Service decided to accept it.⁵⁰ The language of Wyoming Statute 23-1-109 is frightening, in that it provides the bare minimum of protection for an animal that was almost extinct less than twenty years ago.⁵¹ The problems that concerned the Department of the Interior in the first legislation have been doctored slightly, but nowhere to the level that they needed to be.⁵² The first problem with Wyoming's management plan is that it limits the wolves' population to only seven breeding pairs outside Yellowstone and Grand Teton National Parks and John D. Rockefeller Parkway and eight breeding pairs within the parks.⁵³ This is the bare minimum population that is necessary for the wolves' survival and even worse, the legislation calls for the shooting of any wolves that exceed this number.⁵⁴

⁴⁷ *Id.*

⁴⁸ *Id.* at 1214.

⁴⁹ *Id.* at 1245.

⁵⁰ Letter from H Dale Hall, Director of the U.S. Fish and Wildlife Service, to Terry Cleveland, Director of the Wyoming Game and Fish Department (Dec. 12, 2007), <http://gf.state.wy.us/downloads/pdf/USFWS2007FinalGrayWolfMgmt.pdf>.

⁵¹ Wyo. Stat. Ann. § 23-1-109 (2007).

⁵² *Id.*

⁵³ Wyo. Stat. Ann. § 23-1-304 (2007).

⁵⁴ *Id.*

The management plan classifies the Gray Wolf into only two categories.⁵⁵ In a small portion of the state, the wolf is classified as a trophy game animal.⁵⁶ Essentially, this means that in 12% of the state, the government can issue hunting tags to private individuals so that they can supposedly manage the wolves' population.⁵⁷ There is going to be a wolf hunting season, and the state game and fish commission can increase or decrease the number of tags that they issue so that the population of wolves stays at the fifteen breeding pairs required.⁵⁸

The second category, which encompasses most of the state, is more troubling. In 88% percent of Wyoming and most of the wolves' natural range, they are classified as a predatory animal.⁵⁹ This classification means that wolves suspected of being a "menace to livestock" can be shot at any time and in any manner.⁶⁰ This legislation gives ranchers and other private citizens the ability to shoot wolves that they feel are threatening their livestock or property at any time and also allows the State to use so-called "aggressive management techniques," which include the use of aerial hunting.⁶¹

Wyoming's plan looks at the Gray Wolf as being more of a pest than as an important member of its environment.⁶² Section 23-1-304(m) says, "The commission shall promulgate rules and regulations requiring lethal control of wolves harassing, injuring, maiming or killing livestock or other domesticated animals and for wolves occupying geographic areas where chronic wolf predation occurs. The rules and regulations shall provide that non-lethal actions will be used if lethal control could cause relisting of wolves under the endangered species act or

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See Press Release, *supra* note 3.

⁵⁸ Wyo. Stat. Ann. § 23-1-304 (2007).

⁵⁹ Wyo. Stat. Ann. § 11-6-302 (2007).

⁶⁰ *Id.*

⁶¹ Wyo. Stat. Ann. § 23-1-304 (2007).

⁶² *Id.*

if requested by the livestock or domesticated animal owner or agent.”⁶³ This section of the statute basically takes the stance of shoot first and ask questions later. The statute only talks of using non-lethal controls when the population is in jeopardy of dropping below the fifteen breeding pairs required or it has been requested by the land owner; at all other times lethal means will be used.⁶⁴

Another major problem with Wyoming’s legislation is that it addresses human concerns without looking at what is really best for the Gray Wolf and the surrounding ecosystem. The management plan, within its language, addresses the issue of wolf predation on elk herds by saying in section 23-1-304(j), “At any time that there exists the number of breeding pairs of gray wolves specified in subsection (a) of this section, the department is authorized to take any action necessary to protect big and trophy game populations in this state from predation by gray wolves. The department shall give priority to areas where the wild ungulate herd is experiencing unacceptable impacts from wolf predation.”⁶⁵ At first glance it appears that the state is trying to protect its ungulate herd population, but what exactly is an unacceptable impact?⁶⁶ Evidence has shown that Gray Wolves actually have a positive impact on the elk herds in the area.⁶⁷ The wolves prey on sick and weak elk, but usually don’t harm the animals that are at their reproductive prime.⁶⁸ Ultimately, wolves are only responsible for about 12% of the calves killed by predators.⁶⁹ My opinion is that the state wants to keep its deer and elk herds numerous so that they can issue the same number of tags and maintain the same type of hunting season that they have in years past. The hunting season in Wyoming provides a great deal of revenue to the

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Defenders of Wildlife, *Wyoming Wolves Are Back*, <http://www.wyomingwolves.org/>.

⁶⁸ *Id.*

⁶⁹ *Id.*

state's economy and also serves the purpose of controlling the ungulate population.⁷⁰ Now that wolves are once again a predator in the area, they have reassumed their role as the controller of the deer and elk population and have threatened Wyoming's hunting season.

Although not as frightening as Wyoming's wolf management plan, Idaho's and Montana's still have their problems. Idaho's management plan outlines its goal as to ensure that the Gray Wolf population is maintained at 2005-2007 levels over a five-year period of time.⁷¹ This means that they want to maintain a population of between 500 and 700 wolves.⁷² The problem with Idaho's plan is that it doesn't really allow for the population to grow beyond that number.⁷³ The state still reserves the right to issue hunting tags and even includes trapping if the population grows too much.⁷⁴ The good news is that the Idaho plan in its language looks at the wolf as more of a valuable member of the environment rather than a pest. The management plan recognizes that the Gray Wolf serves a role in the ecosystem and even calls for educational opportunities regarding the biology and management.⁷⁵ However, one serious problem affecting this plan is that it has been issued by the Idaho Department of Fish and Game and not the state legislature.⁷⁶ This means that the plan does not have the force of law behind it and now that delisting has occurred, the legislature will have to choose whether or not they are going to follow this approved method or instead choose a different type of management.⁷⁷ Unfortunately, Idaho's governor has publicly announced that he intends to decrease the population of wolves by

⁷⁰ *Id.*

⁷¹ IDAHO FISH AND GAME DEPARTMENT, IDAHO WOLF POPULATION MANAGEMENT PLAN: 2008-2012 (2008).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 28.

⁷⁵ *Id.* at 20

⁷⁶ Defenders of Wildlife,

http://www.defenders.org/programs_and_policy/wildlife_conservation/imperiled_species/wolves/wolf_recovery_efforts/northern_rockies_wolves/management_and_policy/index.php.

⁷⁷ *Id.*

80%, which means that little over a hundred animals would remain in the state, a number far below what is enough to sustain a population.⁷⁸

Montana has taken the most conservationist approach in their management.⁷⁹ In their plan, the state has chosen to classify the Gray Wolf only as “a species in need of management.”⁸⁰ They have set their minimum number of breeding pairs to ten, which is the federal requirement, but the state has also made it known through their plan that they encourage an increase in the Gray Wolf population and even have an alternative option, which set the minimum breeding pairs at twenty.⁸¹ Another advantage to Montana’s management plan is that, unlike Wyoming, there is no classification as a predatory species, which means that the animal cannot simply be shot on sight.⁸² This means that wolves in Montana can only be killed during an official hunting season, when they threaten livestock and pets, or when human life is in danger.⁸³ The question concerning this is the ambiguity whether a wolf is threatening livestock or simply present in the area⁸⁴ Unfortunately in Montana’s plan, a private citizen may kill a wolf that he fears is endangering his property, even if that fear is unfounded.⁸⁵ This may lead to the taking of more wolves than Montana originally expected.

When I look at these three state management plans, I see laws written for people, by people. I am not advocating that we let the wolf population swell to the point where they are destroying the ecosystem around them, but I do think that they deserve a chance to flourish.

There have been significant benefits to the surrounding environment in the areas where the

⁷⁸ *Id.*

⁷⁹ MONTANA FISH, WILDLIFE, AND PARKS, MONTANA WOLF CONSERVATION AND MANAGEMENT PLAN (2004) (<http://fwp.mt.gov/fwppaperapps/wildthings/wolf/execsummary1.pdf>).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

wolves have been thriving.⁸⁶ In Yellowstone National Park, the presence of wolves has changed the behavior and patterns of the elk, driving them away from the stream banks where they once used to browse.⁸⁷ This in turn has allowed vegetation around the stream to revive, resulting in less erosion and benefiting the animals that live around that riparian system.⁸⁸ Another benefit of the wolves is that they often prey on coyotes.⁸⁹ The resulting reduction in the number of coyotes has allowed small rodents to flourish, which in turn provides more food for birds of prey.⁹⁰ These are just a few of the examples of the importance of this integral species of wolf in the ecosystem.

CURRENT LEGAL ACTIONS

The aggressive nature of the Idaho, Montana, and Wyoming wolf management plans has brought national attention to the Gray Wolves' situation. On January 28 of this year, a group called Earth Justice filed a complaint for declaratory and injunctive relief challenging the United States Fish and Wildlife Service's environmental assessment, finding of no significant impact for the revision of the regulation that governs management of the reintroduced wolf populations of the northern Rocky Mountains.⁹¹ The complaint names eight different plaintiffs which includes groups such as Defenders of Wildlife, the Natural Resource Defense Council, the Sierra Club, the Humane Society of the United States, the Jackson Hole Conservation Alliance, the

⁸⁶ See Glaser, *supra* note 16, at 13.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

Friends of the Clearwater, and one private citizen.⁹² The complaint first looks at the National Environmental Policy Act which was created to ensure that federal agencies consider significant aspects of the environmental impacts of their proposed actions, and ensures that agencies inform the public that environmental concerns have been considered in agency decision making.⁹³ It then moves to the Endangered Species Act, which was enacted to provide a program for the conservation of endangered species and threatened species, and to provide a means whereby the ecosystems upon which endangered species depend may be conserved.⁹⁴ The plaintiffs in this action are alleging that under the National Environmental Policy Act, the U.S. Fish and Wildlife Service's Environmental Assessment failed to disclose all the reasonably foreseeable impacts that delisting could have on the Gray Wolves population, as well as the economic, environmental, and recreational impacts.⁹⁵ Bringing this action to court was the last resort for many of these groups. It was the hope that the U.S. Fish and Wildlife Service would delay the delisting and instead devise a national management plan to protect the species as a whole.⁹⁶

The Natural Resource Defense Council and Defenders of Wildlife have also brought a petition to the United States Fish and Wildlife Service urging them to create this independent recovery and management plan under the Endangered Species Act, instead of giving control back to the states.⁹⁷ They argued that under the Endangered Species Act, the Fish and Wildlife service

⁹² *Id.* at 2.

⁹³ *Id.* at 7

⁹⁴ *Id.*

⁹⁵ *Id.* at 16.

⁹⁶ *Id.*

⁹⁷ NATURAL RESOURCE DEFENSE COUNCIL AND DEFENDERS OF WILDLIFE, A PETITION TO PREPARE A RECOVERY PLAN UNDER THE ENDANGERED SPECIES ACT FOR THE GRAY WOLF (Feb. 20, 2008).

has a duty to prepare a national recovery plan for the Gray Wolf species as a whole, not just for different subspecies in different regions.⁹⁸

EARTH JURISPRUDENCE AS A SOLUTION

These environmental groups have done a great deal to try to protect the Gray Wolf. Defenders of Wildlife set up a fund called The Bailey Wildlife Foundation Wolf Compensation Trust to reimburse ranchers whose cattle were taken by wolf predations.⁹⁹ The Sierra Club and The Humane Society of the United States have worked to bring national attention to the wolves' situation.¹⁰⁰ All these groups and more have tried to sway both the public's and the government's opinion regarding wolves, but unfortunately it is not enough. The Gray Wolf is once again in serious jeopardy, and our current legal system is not the solution. It is exactly for this reason that we need a separate system of Earth Jurisprudence in place.

I propose that, instead of using the current judicial and legislative system, which often can be influenced by political and social externalities, we create a separate system in which we address the rights of the natural entities and creatures that we are affecting. In his book *Should Trees Have Standing*, Christopher Stone proposes the use of guardians to represent different natural objects.¹⁰¹ It is his proposition that these guardians should be placed in the United Nations because it will serve as an international forum and it will provide credibility for the new system.¹⁰² What I propose is similar.

⁹⁸ *Id.*

⁹⁹ See Glaser, *supra* note 16, at 3.

¹⁰⁰ *Id.* at 4.

¹⁰¹ CHRISTOPHER STONE, *SHOULD TREES HAVE STANDING?* 66 (Oceana Publications, Inc. 1996).

¹⁰² *Id.* at 70.

I believe that we should create a separate legal system to address the different conflicts that nature has with human kind. At first, I felt as though the simplest and best course of action would be to build Earth jurisprudence into the laws and judicial system that we currently have, but then I quickly realized that this would not be possible, because our current system is actually part of the problem. Our laws are written in a way that benefit business and expansion, while our courts are structured around an adversarial system.

In this new judiciary, whenever there is a conflict between nature and people, a guardian *ad litem* will be appointed to speak for the natural objects that are going to be affected.¹⁰³ This system will be not be biased towards what is best for the human population as our current system often is. Instead, it will be a system of compromise, looking to find a common ground between what is necessary for people and best for nature. When I imagine this new system, what comes to mind is a round table: there is no head. Instead, everyone sits across from each other, has the same rights, and is given the same opportunity to speak. Like Stone, I believe that this system should be an international one and as such, the United Nations is the perfect forum.¹⁰⁴ The challenge is convincing our governments that nature's rights are equal to our own. For a system such as this to work, it must not only be accepted by the people, but by our leaders as well.

How would this work in the current situation that now faces the Gray Wolf? I propose that a guardian should be given a chance to present the wolves' rights before an unbiased court. This person should be someone who is educated in the behavior and biology of wolves and is familiar with their habitat. This would put them in the best position possible to be an accurate representative. Guardians should then be appointed to represent the various animals and natural

¹⁰³ *Id.* at 66.

¹⁰⁴ *Id.* at 70.

entities that are affected both positively and negatively by the wolf population: deer, elk, cattle, coyotes, etc. Finally, a representative for humans should be appointed to address our concerns.

This system would begin by first giving the guardian for the wolf the opportunity to present the wolves' rights as natural, living members of this environment. For example, the wolves' guardian may argue that as an apex predator, wolves have the right to control ungulate populations or that as a natural member of the ecosystem they have a right to populate the northern Rocky Mountain region free of human interference. I then propose that the other guardians would have the opportunity to each address their concerns and desires regarding the wolves' population. I think it is important that the representative for humans also address the court at the same time as the other guardians, as a way of showing that we all are equal members of this environment. After each party has had an opportunity to address the court, the parties in conflict, in this case humans and wolves, will begin negotiations with each other in order to come to a solution that is fair to both parties.

The question then becomes, what would this solution look like? I think that humans and the Gray Wolf can live together in the northern Rocky Mountains without many of the conflicts that are so feared by the states. I, however, think that it is greatly important that the wolves remain on the Endangered Species List until their numbers increase to a point where we are certain that the population is strong enough to maintain itself and there is genetic exchange between the wolves in Wyoming, Montana, and Idaho.¹⁰⁵ I also think it is very important that the states be required, after the eventual delisting occurs, to take a more conservationist approach to wolf management. This means no classification of wolves as a predatory species and no

¹⁰⁵ See Glaser, *supra* note 16, at 11.

hunting seasons unless necessary to protect natural ungulate populations.¹⁰⁶ As far as the cattle and agricultural industries are concerned, I would urge them to use non-lethal techniques to frighten wolves away from their livestock, and I would encourage groups such as Defenders of Wildlife to continue the use of trust programs to reimburse farmers at fair market value for their losses due to wolf predations.¹⁰⁷ I think with these regulations in place it is very possible for humans and wolves to live in harmony in the northern Rocky Mountains.

CONCLUSION

The idea of Earth jurisprudence works in theory, but it relies on the notion that people can cooperate to reach a common solution. This is perhaps the most important aspect of Earth jurisprudence that has not been discussed. In order for this new system to work, people both representing human interests and those acting as guardians must figure out how to work with each other to reach a common good. This is what worried me as I wrote this paper. I thought to myself, would it really be possible for people to simply sit down with each other and instead of talking about what is best for them personally, discuss what is best for the universe and planet as a whole?

I do, however, think that people are ready for a change. I think that as more attention is brought to issues that are affecting our environment and more species that we take for granted reach the endangered threshold, then more people will look for a solution. I think that Earth jurisprudence is this solution. I have learned over the past four months that we as future young lawyers are the people who will lead this way of thinking. We are the ones whose duty it will be

¹⁰⁶ Wyo. Stat. Ann. § 11-6-302 (2007).

¹⁰⁷ See Glaser, *supra* note 16, at 3

to shoulder issues such as over-fishing and wolf management. It will be up to us educate those around us as to the value and need for this new jurisprudence. I have confidence that this emerging field will take root not only in the American legal system, but in global communities as a whole. I believe that we as members of this community will come to realize the value that creatures such as the Gray Wolf have, and I look forward to the time when a system of Earth jurisprudence is not simply an idea, but a reality.