

“Earth Law in Praxis”

PARP 6587

California Institute of Integral Studies, Spring 2015 (One Credit)

Linda Sheehan

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Location and Time: Main 216, Thursdays 3:00-6:00 (dates below)

Office Hours: 2:00-3:00 Thursdays that the class is held, or by appointment,
in the PCC Office

COURSE OVERVIEW: “Earth Law” represents a new form of law, economics and governance that recognizes the inherent rights of the natural world to exist, thrive, and evolve. The course “Earth Law in Praxis” will show how the concepts of Earth Law can be taken into existing and new environmental and human rights advocacy efforts to reverse the trend of injury to the Earth and its systems. To do so, the class will examine the limitations of current advocacy initiatives (particularly regarding their role in perpetuating the myth of separation and servitude of Nature), and address the question of how to bring the language of connection and rights of nature to current and future environmental advocates. Finally, the class will include an experiential exercise in which students participate in a mock, structured environmental advocacy initiative from the perspective of Earth Law. The class will also include a final paper that calls on students to apply the concepts of class to a real-world fact set.

COURSE MATERIALS: There is one required book (Cormac Cullinan’s *Wild Law*, provided) and links to the other required readings will be provided. Students are responsible for downloading the readings off identified sites.

CLASSROOM PRESENTATION: Students will be randomly assigned a role in examining the application of Earth Law to the development of new state water use regulations. On the last day, each student will give a short, in-class presentation incorporating rights of nature arguments in the context of a mock administrative hearing scoping out these new regulations.

SHORT PAPER: Each student will write a short (maximum 2 pages, double spaced) paper, to be turned in on the third day of class, summarizing their proposed arguments for the mock hearing on the last day of class.

FINAL PAPER: The Final Paper topic will be assigned immediately after the last day of class, and the paper will be due two weeks after the end of class.

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

Final Paper: 60% of total grade

Classroom Presentation: 20% of total grade

Short Paper: 10% of total grade

Classroom Participation: 10% of total grade. This is a new and evolving area of law and legal philosophy. Questions, comments, and analysis in class from students add significantly to the learning process and are strongly encouraged.

CLASS 1: FEBRUARY 26TH

“EARTH LAW” – AN ALTERNATIVE TO CURRENT ADVOCACY MODELS

This class will review the basic tenets of “Earth Law,” examining environmental threats worldwide, assessing the limitations inherent in current environmental laws in addressing these threats, and introducing “legal rights for nature” as a fundamental element of an alternative governance system that recognizes our inherent interconnections with the natural world.

READINGS (please read before the first day of class):

- University of Stockholm Press Release, “Planetary Boundaries: A Safe Operating Space for Humanity” (Sept. 23, 2009), at: <http://multivu.prnewswire.com/mnr/stockholmresilience/40125/>; and *New Zealand Herald*, “Earth Pushing Planetary Boundaries” (Jan. 17, 2015), at: <http://www.nzherald.co.nz/news/print.cfm?objectid=11387736>
- *Sierra Club v. Morton*, 405 U.S. 727 (1972) – <https://supreme.justia.com/cases/federal/us/405/727/case.html>; read only the dissent by Justice Douglas, provided separately
- Berry, Thomas, “The Meadow across the Creek” (2000) – <http://www.thomasberry.org/Essays/MeadowAcrossCreek.html>
- Sheehan, Linda, “Earth Day Revisited” (2011) – http://earthlawcenter.org/static/uploads/documents/Earth_Day_Revisited_LMS_Final.pdf
- *Wild Law*, pages 35-49, 62-68, 77-79, 82-84, 95-109, 128-130

CLASS 2: MARCH 5TH

EXISTING ENVIRONMENTAL ADVOCACY TOOLS AND ALTERNATIVE FORMULATIONS

GUEST SPEAKER: Michelle Maloney, PhD, Co-Founder and National Convener of the Australian Earth Laws Alliance; co-editor of *Wild Law in Practice* (2014), <http://www.earthlaws.org.au/>

This class will examine in detail a range of current environmental advocacy tools, including legislative lobbying, litigation, administrative law, grassroots outreach, “corporate responsibility” efforts, marketization of nature, etc., providing specific, actual examples of each. Our Guest Speaker will reflect on the environmental challenges activists face in Australia and the attempts to use a rights-based approach to addressing them.

READINGS:

- Maloney, Michelle, “Finally Being Heard: The Great Barrier Reef and the International Rights of Nature Tribunal,” *Griffith Journal of Law and Human Dignity* (forthcoming 2015), at: http://earthlawcenter.org/static/uploads/documents/Maloney_Great_Barrier_Reef.pdf
- Sydes, Brendan, “The challenges of putting Wild Law into practice: reflections on the Australian Environmental Defender’s Office movement,” in *Wild Law – In Practice*, M. Maloney and P. Burdon eds. (Routledge 2014), at: http://earthlawcenter.org/static/uploads/documents/Sydes_The_Challenges_of_Putting_Wild_Law_into_Practice.pdf

- City of Santa Monica, “Sustainability Rights Ordinance” (2013); Ordinance (April 2013) at: http://www.smgov.net/departments/council/agendas/2013/20130409/s20130409_07A1.htm and Staff Report (March 2013) at: <http://www.smgov.net/departments/council/agendas/2013/20130312/s2013031207-C.htm>
- Home Rule Charter of the City Of Pittsburgh, Pennsylvania Chapter 618: - Marcellus Shale Natural Gas Drilling (Dec. 2010), at: http://earthlawcenter.org/static/uploads/documents/Marcellus_Shale_Ord_Pittsburgh_1.pdf

OPTIONAL:

- Maloney, Michelle, “Ecological limits, planetary boundaries and Earth Jurisprudence,” in *Wild Law – In Practice*, M. Maloney and P. Burdon eds. (Routledge 2014), at: http://earthlawcenter.org/static/uploads/documents/Maloney_Ecological_Limits.pdf
- Iorns, Catherine, “Moving toward global eco-integrity,” in *The Earth Charter, Ecological Integrity and Social Movements*, L. Westra and M. Vilela, eds. (Routledge 2014), at : http://earthlawcenter.org/static/uploads/documents/Iorns_Chapter_5_Earth_Charter_Ecological_Integrity_and_Social_Movements_Iorns.pdf

CLASS 3: MARCH 12TH

THE LANGUAGE OF ENVIRONMENTAL ADVOCACY

Building from Class 2, this class will delve more deeply into the language of environmental (and related human rights) advocacy today and analyze the ways in which it perpetuates existing governance systems that harm people and planet. It will then offer alternative philosophical and linguistic models, and examine how to communicate those tools, both to current and potential environmental advocates so that the models will be incorporated into advocacy practices, and to government decisionmakers. Finally, it will address the importance of, and challenges associated with, this communication effort in light of the immediate, serious threats facing the Earth. Case studies of current challenges and the arguments presented around them will be offered to distinguish rights-based advocacy from traditional environmental advocacy.

READINGS:

- *Wild Law*, pages 178-195
- Constitution de la Republica del Ecuador, Title II, Ch. 7 (“Rights of Nature”) (2008), <http://earthlawcenter.org/static/uploads/documents/ecuador-constitution-rights-of-nature-english-and-spanish.pdf>
- *In the Matter of the Vilcabamba River* (Provincial Court of Loja, Ecuador, March 30, 2011), Case Summary, <http://therightsofnature.org/first-ron-case-ecuador/>
- Rights of Nature Tribunal: Mirador Mine, Condor Mountains, Summary (<http://therightsofnature.org/mining-extraction/>) and presentation of the Case (<http://therightsofnature.org/wp-content/uploads/Condor-Mirador-Mine.pdf>)
 - **Optional additional background:** Ejolt, “Mining Conflicts around the World” (Sept. 2012), Chapter 4. “El Mirador in the Cordillera del Cóndor (Ecuador),” http://www.ejolt.org/wordpress/wp-content/uploads/2012/11/121115_Ejolt-7_High.pdf
- Sheehan, Linda, “Realizing Nature’s Rule of Law through Rights of Waterways” (2013), Section 5: “Implementing Waterway Rights in California” (*attached*)

- “California Water” PowerPoint (*attached*)
- California State Water Resources Control Board, “The Water Rights Process,” http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml
- “Tunnels Toxic to San Joaquin County,” *Manteca Bulletin* (July 9, 2014), <http://www.mantecabulletin.com/m/section/1/article/110060/>

CLASS 4: MARCH 26TH

ENVISIONING “EARTH LAW IN PRAXIS” – TO WHAT RESULT?

Expanding upon the discussion of Earth-based advocacy and communication, this class will envision the specific ways in which the practice and results of environmental advocacy would change if grounded in an inherent acceptance of our integration with the Earth and its own rights to exist, thrive and evolve. What does a world look like under a nature’s rights-based philosophical, legal and economic system? How do we articulate that to others effectively, so as to focus our advocacy? These are all critical questions in developing and expanding the nature’s rights movement. Time will be provided in this class for students to compare notes in preparation for the mock hearing the following week, as coordinated testimony.

READINGS:

- *Wild Law*, pages 88-94, 110-117, 124-130 (128-130 is review), 148-156
- Anne Salmond, “Tears of Rangī: Water, Power and People in New Zealand” (Dec. 2012) (*attached*; read all if possible for context, but focus on bottom of page 6 through the end)
- Whanganui River Agreement, between the Whanganui Iwi and the Crown Government of New Zealand (Aug. 2012) (*attached, skim*)
- Program pages of San Francisco: <http://www.sfenvironment.org/buildings-environments/natural-san-francisco/the-biodiversity-program> (*skim*)
 - <http://www.sfenvironment.org/article/the-biodiversity-program/biodiversity-program-summary>
 - <http://www.sfenvironment.org/article/the-biodiversity-program/background-need>
 - <http://www.sfenvironment.org/article/the-biodiversity-program/current-priorities>
 - <http://www.sfenvironment.org/article/the-biodiversity-program/city-government-and-biodiversity>
 - Also quickly glance at: <http://sfenvironment.org/buildings-environments/natural-san-francisco/our-ecology/ecosystems> and <http://sfenvironment.org/buildings-environments/natural-san-francisco/our-ecology/animals> and <http://sfenvironment.org/buildings-environments/natural-san-francisco/our-ecology/plants>

CLASS 5: APRIL 2ND

IN-CLASS EXERCISE – EXPERIENTIAL EARTH LAW

The class will be devoted to in-class presentations incorporating Earth Law advocacy in the context of a mock administrative hearing before the State Water Resources Control Board (represented by Board Chair Sheehan). The topic of the mock hearing will be the development of new surface water management regulations for the State of California. This mock hearing will provide students

experience with presenting focused, effective messages on a complex topic before a critical public audience in a timed environment. Roles will be selected randomly on the first day of class.

READINGS:

- Review San Francisco web links from last week
- Donella Meadows, “Leverage Points: Places to Intervene in a System” (1999), at: http://www.donellameadows.org/wp-content/userfiles/Leverage_Points.pdf
 - This is the classic analysis from a process perspective (using systems theory) of why our environmental strategies are not working; please read the whole piece.
- Lawrence Tribe, “Ways Not to Think about Plastic Trees,” *Yale Law Journal* (June 1974), at: <http://bit.ly/1BQeu4w>. Please read pp 1315-1317 (intro and first paragraph of Section I.), and pp. 1325 through the top of page 1336 (Section I.B. through Section II.B.).
 - Note the date; the modern environmental system as we know it today was still in its infancy; that makes Tribe’s remarks all the more prescient.
- Watch: Josh Farley, Univ. of Vermont, “Interactive dialogue on “Harmony with Nature” in commemoration of International Mother Earth Day- General Assembly” (start at 1:35:40 and don’t worry, he gets the slide show working), at: <http://bit.ly/1BzXcdg> (about 15 min)