

EARTH LAW: Toward a Flourishing Earth Community

California Institute of Integral Studies, Spring 2014 (One Credit)

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Office Hours: 10-11:30 a.m. on the Fridays that class is held, or by appointment,
in the PCC Office

Time: 11:45 – 2:45, Room 311

COURSE OVERVIEW: Climate change and other global threats are increasingly illustrating the limits of our existing environmental laws to stem the Earth's degradation. This course posits that environmental declines will continue until we address a fundamental assumption underlying our governance systems: that humans are separate from the natural world and may treat it as property to be exploited, rather than as an intimately connected ecological partner. The course will critically examine the sources of this assumption and its impacts on preventing us from achieving a flourishing Earth community. It will describe legal, economic and other governance systems that do 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 well-being for both people and planet.

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 these sites.

SHORT PAPER: Each student will write a short (maximum 3 pages, double spaced) paper, to be turned in on the third day of class.

FINAL PAPER: The Final Paper will be due two weeks after the end of class. Final paper topics must be approved by the instructor in advance.

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

Final Paper: 60% of total grade

Short Paper: 20% of total grade

Classroom Participation: 20% of total grade. This is a new and evolving area of law, policy and legal philosophy. Thoughtful questioning, comments, and analysis expressed in class are welcome, important and strongly encouraged.

SYLLABUS

CLASS #1: THE LIMITS OF CURRENT LAWS IN PROTECTING NATURE

Friday, March 7th, Room 212, 11:45 – 2:45

This class will examine environmental threats worldwide, assess the limitations of current environmental laws in addressing these threats, discuss the goals we want governance systems to achieve, and identify the fundamental elements of governance systems that will ensure people and planet flourish together.

Reading (please complete before the first class):

- University of Stockholm Press Release, “Planetary Boundaries: A Safe Operating Space for Humanity” (Sept. 23, 2009) – <http://multivu.prnewswire.com/mnr/stockholmresilience/40125/>
- The World Bank, “Turn Down the Heat: Why a 4°C World Must Be Avoided” (Nov. 2012) – http://climatechange.worldbank.org/sites/default/files/Turn_Down_the_heat_Why_a_4_degree_cent_rigrade_warmer_world_must_be_avoided.pdf; *skim* Executive Summary, starting on page xiii
- Excerpts from federal environmental laws – *provided separately*
- San Joaquin Valley Emergency Water Delivery Act - <http://www.gpo.gov/fdsys/pkg/BILLS-113hr3964pcs/pdf/BILLS-113hr3964pcs.pdf>; read Sections 108, 109, 401 and 402
- *Sierra Club v. Morton*, 405 U.S. 727 (1972) – <https://supreme.justia.com/cases/federal/us/405/727/case.html>; read the dissent by Justice Douglas, *provided separately*
- Sheehan, Linda, “Earth Day Revisited” (2011) – http://earthlawcenter.org/static/uploads/documents/Earth_Day_Revisited_LMS_Final.pdf
- Declaration of Independence – http://www.archives.gov/exhibits/charters/declaration_transcript.html
- *Wild Law*, pages 35-49 and 62-68

CLASS #2: HOW DID WE GET TO “PEOPLE OVER NATURE”? AND HOW CAN WE CHANGE?

Friday, March 14th, Room 212, 11:45 – 2:45

This class will review events underlying the modern-day, foundational governance assumption of “nature in service to humans” and describe governance systems that reinforce those assumptions (such as “corporate personhood”). It will also begin the discussion of how we can evolve forward, including by “re-wilding” the law to recognize the inherent “legal rights of nature” as a fundamental element of an alternative governance system, one that leads to mutual well-being.

- U.N. Report of the Secretary-General A/66/302, “Harmony with Nature” (Aug. 15, 2011) – http://www.un.org/ga/search/view_doc.asp?symbol=A/66/302; read Section II at pages 4-11
- *Santa Clara County and Citizens United* – *excerpts of these U.S. Supreme Court cases are provided separately – dissents only*
- Sax, Joseph, “Ownership, Property and Sustainability,” 31 *Utah Envl. Law Rev.* 1 (2011) – <http://epubs.utah.edu/index.php/jlrel/article/viewFile/465/333>
- U.N. General Assembly, “Interactive Dialogue on ‘Harmony with Nature’” (April 18, 2012) – <http://www.unmultimedia.org/tv/webcast/2012/04/general-assembly-interactive-dialogue-on-commemoration-of-international-mother-earth-day.html>; watch Dr. Josh Farley’s presentation starting at 1:35:40
- Food and Water Watch, “The Financialization of Nature” (2012) – <http://documents.foodandwaterwatch.org/doc/FinancializationOfNature.pdf>

- Tribe, Laurence, “Ways Not to Think about Plastic Trees: New Foundations for Environmental Law,” 83 *Yale Law Journal* 1315, (June 1974) – *provided separately*; read pages 1315-17 (introduction), 1325-1348 (Section I.B. through to the end)
- Thoreau, Henry David, *Walden* (1854), “Conclusion,” excerpt only – *provided separately*
- *Wild Law* – review pages 44-49, 64-66

CLASS 3: HOW DO WE SHAPE A NEW LEGAL SYSTEM?

Friday, March 28th, Room 212, 11:45 – 2:45

This class will step back and examine the question – “How ought we to live?” In answering this basic question, the class will assess ethical theories for acting, evaluate the role of legal philosophy in setting our governance path, examine other approaches that lend assistance (*e.g.*, indigenous governance, the precautionary principle), consider the role of science, and begin to identify and analyze the key elements of developing and advancing an Earth-based governance system.

- Berry, Thomas, “The Meadow across the Creek” (2000) - <http://www.thomasberry.org/Essays/MeadowAcrossCreek.html>
- Remarks of Ambassador Pablo Solón at the U.N. Dialogue on Harmony with Nature (April 20, 2011) – <http://pwccc.wordpress.com/2011/04/20/speech-by-bolivia-at-un-dialogue-on-harmony-with-nature/>
- Kropotkin, Peter, *Mutual Aid: A Factor of Evolution* (1902), read the “Conclusion” only – *provided separately*
- Eede, Joanna, “On the ‘Wild,’ Human Imagination and Tribal Peoples” (Aug. 30, 2011) – <http://www.survivalinternational.org/articles/3174-wilderness-the-human-imagination-and-tribal-peoples>
- Meadows, Donella, “Leverage Points: Places to Intervene in a System” (1999) – <http://www.donellameadows.org/archives/leverage-points-places-to-intervene-in-a-system/>
- Sheehan, Linda, “Realizing Nature’s Rule of Law through Rights of Waterways,” *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge University Press 2013), read Sections 1 through 4 only – http://earthlawcenter.org/static/uploads/documents/Rule_of_Law_for_Nature_final_sent_to_CV.pdf
- *Wild Law* – review 62-64, read pages 77-78, 82-84, 128-130

CLASS 4: WHAT DOES “EARTH LAW” LOOK LIKE?

Friday, April 4th, Room 307, 11:45 – 2:45

This class will continue the discussion of Earth-based governance, addressing economic, scientific, educational, and other systems in addition to legal systems. It will then examine and analyze existing and potential examples of rights-based laws protecting ecosystems and species at the local, state, national, and international levels.

- *Constitución de la República del Ecuador*, Title II, Ch. 7 (“Rights of Nature”) (Sept. 2008) - <http://earthlawcenter.org/static/uploads/documents/ecuador-constitution-rights-of-nature-english-and-spanish.pdf>
- Santa Monica Sustainability Bill of Rights Ordinance (April 2013), at http://earthlawcenter.org/static/uploads/documents/Final_SM_Ordinance_signed.pdf, and Staff Report for adoption of the Ordinance (March 2013): <http://www.smgov.net/departments/Council/agendas/2013/20130312/s2013031207-C.htm>.

- City of Pittsburg, PA, Home Rule Charter, Title 6, Art. 1, Ch. 618, “Marcellus Shale Natural Gas Drilling Ordinance” (Nov. 2010) – http://earthlawcenter.org/static/uploads/documents/Marcellus_Shale_Ord_Pittsburgh.pdf
- *Wheeler v. Director de la Procuraduria General del Estado en Loja v. Provincial Court of Loja* (March 30, 2011) (*In the Matter of the Vilcabamba R.*) – <http://therightsofnature.org/first-ron-case-ecuador/>
- Bolivia Law of the Rights of Mother Earth, Law 071 (Dec. 2010) – http://f.cl.ly/items/212y0r1R0W2k2F1M021G/Mother_Earth_Law.pdf
- International Union for Conservation of Nature, Resolution 100, “Incorporation of the Rights of Nature as the organizational focal point in IUCN’s decision making” (2012) - http://earthlawcenter.org/static/uploads/documents/IUCN_Res-100_Jeju_RoN.pdf
- Sheehan, Linda, “Water in the Green Economy,” World Water Forum (March 2012) – http://earthlawcenter.org/static/uploads/documents/Side_Event_handout_WWF.pdf
- Sheehan, Linda, “Testimony before the California Joint Committee on Fisheries and Aquaculture, 40th Annual Fisheries Forum” (April 25, 2013) – http://earthlawcenter.org/static/uploads/documents/Fish_Forum_Remarks_4_13.pdf
- *Wild Law*, pages 95-109, 181-195

CLASS 5: IMPLEMENTING “EARTH LAW” TOWARD A FLOURISHING EARTH COMMUNITY

Friday, April 25, Room 311, 11:45 – 2:45

This class will evaluate various opportunities for building an “Earth Law” movement, including through parallels in people’s movements, “law following crisis,” changes in common law with the mores of society, evolution of “natural rights,” scientific revolutions, U.S. municipal law, economic strategies, and other methodologies. It will also examine the practical aspects of using “Earth Law” to create lifestyles on the ground that lead to communities in which people and nature flourish together.

- Thoreau, Henry David, *On the Duty of Civil Disobedience* (1849) – attached; read pp 1-5 (up to the hash tags; skim the rest if time and interest allow)
- Eradicating Ecocide, “Restorative Justice” – <http://eradicatingecocide.com/overview/restorative-justice/> (just that page)
- Mount Shasta Community Rights Project, “Mount Shasta Water Rights – Who Decides?”, pp. 4-6 and pp. 15-19 - <http://celdf.org/downloads/CA%20-%20Shasta%20Water%20Rights%20Report.pdf>
- U.N., “Concept Note: Interactive Dialogue of the General Assembly on Harmony with Nature to Commemorate International Mother Earth Day” (April 2014) – http://www.un.org/en/ga/president/68/pdf/letters/492014ID_Harmony_and_Nature-9April2014.pdf
- Global Alliance for the Rights of Nature, “Rights of Nature Ethics Tribunal accepts 9 cases” (Feb. 1, 2014) – <http://therightsofnature.org/rights-of-nature-laws/tribunal-accepts-8-cases/>
- Sheehan, Linda, “Testimony by Earth Law Center to the California Legislature Joint Committee on Fisheries and Aquaculture” (April 2013) – http://earthlawcenter.org/static/uploads/documents/Fish_Forum_Remarks_4_13.pdf
- Declaration of the Blue Pavilion of the People’s Summit, Rio de Janeiro, Brazil (June 21, 2012) - http://earthlawcenter.org/static/uploads/documents/Final_Declaration_Blue_Pavilion_English2.pdf
- *Wild Law*, pp. 157-166