

# EARTH JURISPRUDENCE SYLLABUS

Barry University School of Law

January 8 – April 23, 2007

Spring term

## **Seminar: Exploring Principles of Earth Jurisprudence (2 credits-6350)**

### **Course Description**

In this course students will explore and help create principles of an “Earth-based” jurisprudence. Cormac Cullinan in *Wild Law* proposes there is a “Great Jurisprudence” established by how Earth functions to sustain life. Catholic social teaching emphasizes moral principles that are at the base of a well-ordered society. Modern jurisprudence, in contrast, emphasizes the “positive law”— laws are simply what humans decide in advancing their personal, ideological and moral interests. This course allows students to step beyond the positive law to question how law may serve the well-being of Earth as a whole. The course includes study of the cosmological, ecological and social contexts for Earth-based jurisprudence, emerging concepts of Wild Law, principles of an ecological worldview, the 1982 UN Charter for Nature, the Earth Charter, legal concepts of indigenous people, Catholic social teaching and ecology, and emerging legal and equitable remedies for an Earth jurisprudence. Intentional time in the natural world is a course requirement. Each student will be asked to write a research paper that ties together a personal experience of nature, a theory of Earth Jurisprudence and an application of that theory.

**Class time: Class time: Mondays, 3:50 – 5:40 pm, Room: LWFC 102**

### **Course Material**

#### **Required:**

Berry, Thomas. *The Great Work: Our Way into the Future*. Bell Tower, 1999.

Cullinan, Cormac. *Wild Law: A Manifesto for Earth Justice*. Green Books, 2002.

Earth Charter. [www.earthcharter.org](http://www.earthcharter.org).

Greene, Herman. “Thomas Berry’s Great Work” at

<http://ecozoicstudies.org/ThomasBerryGreatWork.pdf>

Stone, Christopher D. *Should Trees Have Standing? And Other Essays on Law, Morals and the Environment*, Oceana Publications, 25<sup>th</sup> Anniversary Edition, 1996.

United Nations, *World Charter for Nature*, 1982,

<http://www.un.org/documents/ga/res/37/a37r007.htm>.

And all course material as included in the Syllabus.

### **Supplemental Readings as assigned.**

#### **Additional Resources: (On reserve or in posted in Patricia Siemen’s Course Reserves)**

Berry, Thomas. *Evening Thoughts*. Sierra Club Books, 2006.

Berry, Thomas. *The Dream of the Earth*. Sierra Club, 1989.

Brown, Brian E. *Religion, Law, and the Land: Native Americans and the Judicial Interpretation of Sacred Land*. Greenwood Press, 1999.

Dimento, Joseph. *The Global Environment and International Law*. University of Texas Press, 2003.

Goldsmith, Edward. *The Way: An Ecological Worldview*. University of Georgia Press, 1998.

**Greene, Herman.** Review of Remi Brague, *The Wisdom Of The World: The Human Experience of The Universe In Western Thought*. Unpublished.

Hartmann, Thom, *Unequal Protection*. Rodale, 2004.  
Leopold, Aldo. *A Sand County Almanac: And Sketches Here and There*. Oxford University Press, 1987 (1949).  
Murphy, Jeffrie G. and Coleman, Jules L. *Philosophy of Law: An Introduction to Jurisprudence*, Westview Press, 1990.  
Nash, Roderick Frazier. *The Rights of Nature*. University of Wisconsin Press, 1989.  
Ortega, Roque Roldan. *Indigenous Peoples of Columbia and the Law*.  
Reichel-Dolmatoff, Gerardo. *The Forest Within: The World-view of the Tukano Amazonian Indians*.  
Sunstein, Cass, "Standing for Animals, Public Law and Legal Theory, Working Paper No.6, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=196212](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=196212)

### **Evaluation and Grading:**

Your grade will be based primarily on your research paper and presentation. Part of your grade will also be based on your class participation and demonstration of time spent in the natural world. Additional credit will be given to those who create a weekly journal recording their reflections on time spent in nature. There will be no final exam.

Students will sign up in teams to be discussion leaders for part of each week's topic, once during the semester. Students should generally elect to be leader in the area of his or her interest and seminar paper. As discussion leaders, students are expected to inform, raise questions, thoughtfully "respond" to the issues raised by the readings, and generate discussion. There will not be discussion leaders during the guest presenter classes. I will provide a presentation for part of each class.

### **Research Paper:**

Seventy (70) percent of the final grade will be based on a research paper that addresses a selected legal theory and application of Earth jurisprudence that intrigues you and furthers the development of the legal field of Earth jurisprudence. It must include critical analysis and your own conclusions. A required section is inclusion of how the time you spent in the natural world influenced the development of your research, analysis and conclusions.

The topic for your paper shall be selected by you and approved by me. The paper should be **20-25 pages in length, including footnotes**, and must be typed using *12-point* font, *doubled-spaced*, with one-inch margins on standard letter-sized paper. Footnotes should be *single-spaced*, *10-point* font, and located on the same page as the referenced text. **If using the paper to satisfy the Upper Level Writing Requirement, the paper must be 30 pages in length, including footnotes.** An initial list of proposed (but not limited to) topics will be available for student review by the second class.

**Paper topics must be chosen and approved by me no later than February 20, 2006.**

**An outline of the paper is due March 19.** The outline must be in paragraph form, containing at least one paragraph for each section of the paper, i.e., Introduction, Part I, Part II, etc., Conclusion. The paragraph(s) for each section should explain the purpose of each section, including what that section of the paper will cover and list all legal sources (cases, books, law review articles, etc.) to be relied upon in that section. The outline must demonstrate that you are ready to begin writing the final paper. In essence, this is a rough draft of your paper in outline/paragraph form with all sources to be relied upon notated.

**The final paper is due at the beginning of the last class on April 23. The Center for Earth Jurisprudence is seeking to place the top three papers on its website at [www.earthjuris.org](http://www.earthjuris.org) by mid-May, 2007.**

Each student will make a modified presentation of his or her research paper to the class towards the end of the semester. The presentation should be approximately 15 minutes in length, *which includes set-up time*. If you choose to use power point or another “high-tech” presentational approach, you must anticipate possible equipment problems and be prepared to give the presentation in an alternative manner. Due to the time limitation, do not attempt to cover your entire paper. Rather, choose the most interesting aspect(s) to present to your colleagues. Approximately 15 % of the final grade will be based on the quality of your class presentation.

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

Each class will provide a brief opportunity to intentionally connect oneself to the natural world and remind ourselves that we are all members of the single Earth community. Either I, or the student discussion leaders, will provide this reflective, experiential learning moment. The discussion leaders will lead the discussion on the week’s readings.

**Professor’s Office Hours:** I will be available for student appointments every Monday from 1-3:30 pm and from 6 - 7:30. Other meeting times will be made by appointment. Location to be determined.

<b>Class No.</b>	<b>Date</b>	<b>Topics</b>	<b>Readings</b>	<b>Comments</b>
1	<b>Jan 8</b>  <b>Introduction to Seminar topics and requirements</b>	- Review class requirements - Principles of EJ - View “Awakening Universe”	<b>T. Berry</b> , <i>Evening Thoughts</i> , “Legal Conditions for Earth Survival”, p107-12; “Twelve Principles for Understanding the Universe” p145-47; and “Ten Principles for Jurisprudence Revision” p149-50. Posted on Course Reserves.	Earth Jurisprudence concerns learning the law of the “land” and applying that to human affairs. Humans need to be responsible participants in the larger community of life. This class lays the foundation for a new way of understanding law and governance.
No Class	<b>Jan. 15</b>  <b>Read background material that will not be discussed</b>	<b>Martin Luther King Day</b>	<b>Willott and Schmidz</b> , “Why Environmental Ethics?” available at <a href="http://research.biology.arizona.edu/mosquito/willott/323/intro.html">http://research.biology.arizona.edu/mosquito/willott/323/intro.html</a> ; A. <b>Leopold</b> , <i>A Sand County Almanac</i> , “Thinking Like a Mountain” p 129-32 at <a href="http://www.eco-action.org/dt/thinking.html">http://www.eco-action.org/dt/thinking.html</a>	The Willott article provides a good summary of concepts used in environmental ethics such as intrinsic rights. Aldo Leopold’s <i>A Sand County Almanac</i> is a classic and provides a good starting point for considering Earth Jurisprudence.

2	<p><b>Jan. 22</b></p> <p><b>The Situation: Human Law &amp; the Law of Nature come together</b></p>	<p><b>New Orleans &amp; Katrina</b></p>	<p><b>Houck</b>, <i>Can We Save New Orleans</i>, 19 Tulane Env't L. J. 2-68 (2006), <a href="http://www.law.tulane.edu/Houck_CanWeSaveNewOrleans.pdf#search=%22tulane%20environmental%20law%20journal%20houck%20new%20orleans%22;">http://www.law.tulane.edu/Houck_CanWeSaveNewOrleans.pdf#search=%22tulane%20environmental%20law%20journal%20houck%20new%20orleans%22;</a></p> <p><b>Kolbert</b>, <i>Can Southern Louisiana Be Saved</i>, New Yorker, Feb. 27, 2006, <a href="http://www.newyorker.com/fact/content/articles/060227fa_fact2">http://www.newyorker.com/fact/content/articles/060227fa_fact2</a></p>	<p>These two articles show the shortcomings of environmental regulation and engineering intended to “fix” or control natural processes. New Orleans is a good place to look at how environment and human issues interrelate. We may look back and see Katrina and New Orleans as the event that changed American thinking on human ecology.</p>
3	<p><b>Jan. 29</b></p> <p>The universe and ecology as the source of rights and law</p>	<p><b>The dynamic order of the universe and our Earth</b></p>	<p><b>Swimme And Berry</b>, <i>The Universe Story</i>, “The Story” pp 7-15, and “Cosmogogenesis” pp 51-78; <b>E. Goldsmith</b>, <i>The Way: An Ecological Worldview</i>, “Ecology” pp 3-38, and “The Ecosphere is One” pp 115-120; Posted in Course Reserves.</p> <p><b>T Berry</b>, <i>The Dream of the Earth</i>, “Bioregions: The Context for Reinhabiting the Earth” p163 -170</p>	<p>Story of the Emerging Universe, Cosmological grounding of law.</p> <p>Ecology is a functional Cosmology</p>
4	<p><b>Feb 5</b></p>	<p><b>Humans within the Earth Community</b> <i>Miriam MacGillis, OP</i> guest presenter</p>	<p><b>T. Berry</b>, <i>The Great Work</i>, “The University,” pp 72-85 and at <a href="http://www.ecoethics.net/ops/univers.htm">http://www.ecoethics.net/ops/univers.htm</a></p> <p>“Reinventing the Human,” pp 159 – 165; “The Sacred and the Wild,” pp 45 – 55; and the “Fourfold Wisdoms,” pp 76-195.</p>	<p>Knowing our human place within the single comprehensive community of life invites us to take responsibility to live coherently with the Earth community.</p>
5	<p><b>Feb. 12</b></p>	<p><b>Creating Safe spaces for Indigenous &amp; Non-Western Peoples and Their Laws</b></p> <p><i>Dr. iur. Siegfried Wiessner, Esquire,</i> Guest presenter</p>	<p>Siegfried Wiessner, <i>Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis</i>, at <a href="http://www.law.harvard.edu/students/orgs/hrj/iss12/wiessner.shtml">www.law.harvard.edu/students/orgs/hrj/iss12/wiessner.shtml</a></p> <p>Erica-Irene Daes, <i>Report of the Seminar on the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People</i>, 13 ST. THOMAS L. REV. 391 (2000)</p>	<p>Professor Wiessner will highlight how the law of the conqueror, i.e. Western law, can be, and has been, molded to provide safe spaces for these alternative world views to persist and flourish. He will focus on customary law rights to land, culture and autonomy, and present the concept of <i>sui generis</i> protection of the heritage of indigenous people.</p>

6	<b>Feb. 19</b>	<b>Principles of Catholic Social Teaching and Ecology</b>  <i>Margaret Galiardi, OP</i> <i>guest presenter</i>	Clifford N. Matthew, Mary Evelyn Tucker, Philip Hefner, eds., <i>When Worlds Converge</i> , “Beyond the Enlightenment Mentality,” pp 231-242; David Toolan, <i>At Home In the Cosmos</i> , “Citizens of Earth,” pp 220-240; <i>Compendium on the Social Doctrine of the Church</i> , “Safeguarding the Environment,” pp 198-211; Posted in Course Reserves	Core principles of Catholic Social Thought (CST) support the good of the commons as well as the common good. Explore the core principles of CST and highlight their capacity to move from an anthropocentric to a more inclusive bio-centric or ecological awareness and expression of creation.
7	<b>Feb 26</b>	<b>Wild Law</b>	C. Cullinan, <i>Wild Law</i> , “ Why Law and Jurisprudence Matter,” pp. 57-66; “The Conceit of Law,” pp 66-82; “Earth Governance, pp 83-125; C Cullinan, “ <i>Spreading Earth Jurisprudence</i> ,” pp 1-20 UKELA & ELF address, November 2006. Posted in Course Reserves.	The transition to thinking about Earth Jurisprudence
8	<b>Mar. 5</b> The Present Situation	<b>Uncertain Commitment to the Environment</b>	Buccino, Dowling, Kendall and Weiss, <i>Hostile Environment: How Activist Judges, Threaten Our Air, Water, and Land</i> ; available from <a href="http://www.nrdc.org/legislation/hostile/hostile.pdf#search=%22buccino%20hostile%20environment%22">http://www.nrdc.org/legislation/hostile/hostile.pdf#search=%22buccino%20hostile%20environment%22</a> ; J. Dimento, <i>The Global Environment and International Law</i> (2003), “Worldwide Environmental Quality and the Role of Law” at <a href="http://www.utexas.edu/utpress/excerpts/exdimglo.html#ex1">http://www.utexas.edu/utpress/excerpts/exdimglo.html#ex1</a> ; pp1-12; “Law Trying to Save the Earth Strategies, Institutions, Organizations” pp 13-56. Posted in Course Reserves.	Now switch to actual law. Begin with where we are
No Class	<b>March 12</b>	<b>Finalize outline for Research paper</b>	Spring break	
9	<b>Mar. 19</b> <b>Problems in Earth Jurisprudence</b>  <b>Research paper outline</b>	<b>Standing</b>  <i>Herman Greene, J.D.</i> <i>guest presenter</i>	C. Stone, <i>Should Trees Have Standing? Legal Rights for Natural Objects, Nonperson in Law, Epilogue: Trees at 25</i> , “Should Trees have Standing? Revisited: How far will Law and Morals Reach? A Pluralist Perspective”	First of several legal problems  Can legal termed “non-persons” have standing? What about corporations, trusts, municipalities, minors, persons who are “incompetent”?

	<b>due</b>		November 1985 59 S. Cal. L. Rev. 1; <u>Sierra Club v. Morton</u> , 405 U.S. 727 (1972); <u>The Cetacean Community</u> (whales, porpoises, etc.), Plaintiff-Appellant. v. <u>George W. Bush and Donald Rumsfeld</u> , Defendants-Appellees (9th Cir., 2004), <a href="http://www.fas.org/irp/program/collect/cetacean.pdf#search=%22should%20trees%20have%20standing%22">http://www.fas.org/irp/program/collect/cetacean.pdf#search=%22should%20trees%20have%20standing%22</a> ;	
10	<b>Mar. 26</b>  <b>Begin student presentations: 4 presentations at 15 minutes each</b>	<b>Rights and Responsibilities</b>	<b>Berry</b> , “Every Being Has Rights” (2003, E.F. Schumacher Society); available at <a href="http://www.schumachersociety.org/publications/berry_03.html">http://www.schumachersociety.org/publications/berry_03.html</a> <b>Langmia</b> , “Protection of the Environment: A Human Rights Approach,” available at <a href="http://www.schumacher-foundation.org/articles/article.cfm?id=38">http://www.schumacher-foundation.org/articles/article.cfm?id=38</a> ; <b>Bosselmann</b> , “Human Rights and the Environment: Redefining Fundamental Principles?” Posted in Course Reserves	Berry and the articulation of “rights” and nature principle discussed by other authors.
11	<b>Apr. 2</b>  <b>Begin student presentations: 4 presentations at 15 minutes each.</b>	<b>The Commons</b>	<b>Hardin</b> , “The Tragedy of the Commons “ (1968), available at <a href="http://dieoff.org/page95.htm">http://dieoff.org/page95.htm</a> ; <b>Elliott &amp; Lamm</b> , “A Moral Code for a Finite World,” available at <a href="http://www.precaution.org/lib/06/prn_moral_code_for_finite_world.021115.htm">http://www.precaution.org/lib/06/prn_moral_code_for_finite_world.021115.htm</a> ; and <b>Raffsperger</b> “Ten Tenets: The Law of the Commons of the Natural World,” available at <a href="http://www.precaution.org/lib/06/prn_commons_law_tenets.060323.htm">http://www.precaution.org/lib/06/prn_commons_law_tenets.060323.htm</a> <b>Clark</b> , “Why Common Property Regimes Best Suit ‘Human Nature: A Philosophical Melding of Numerous Disciplines. Posted in Course Reserves	Addressing issue of “commons”

12	<p><b>Apr. 9</b></p> <p><b>Envisioning an Earth Jurisprudence</b></p> <p><b>4 Student presentations at 15 minutes each</b></p>	<p><b>The Precautionary Principle</b></p>	<p><b>Montague</b>, “The Precautionary Principle in a Nutshell,” available at <a href="http://www.precaution.org/lib/pp_def.htm">http://www.precaution.org/lib/pp_def.htm</a>; Myers, “The Precautionary Principle Puts Values First”; and <b>Schettler, Barrett, and Raffensperger</b>, “The Precautionary Principle: Protecting Public Health and the Environment.” Posted in Course Reserves.</p>	<p>An example of a new concept. Could also address public trust doctrine (Suth article, Class 13), guardians or advocates for nature, restorative justice, and revival of medieval concepts like usury and sumptuary laws</p>
13	<p><b>Apr. 16</b></p> <p><b>Envisioning an Earth Jurisprudence</b></p> <p><b>4 Student presentations at 15 minutes each</b></p>	<p><b>Nature/Earth Charters</b></p> <p><b>Re-envisioning law and governance</b></p>	<p><b>United Nations World Charter For Nature</b>, available at <a href="http://www.un.org/documents/ga/res/37/a37r007.htm">http://www.un.org/documents/ga/res/37/a37r007.htm</a>; and <b>The Earth Charter</b>, available at <a href="http://www.earthcharter.org/files/chartar/charter.pdf">http://www.earthcharter.org/files/chartar/charter.pdf</a>, <b>Bosselmann</b>, “In Search of Sustainability Law: The Importance of the Earth Charter,” available at <a href="http://www.earthcharter.org.nz/default.asp?pg=Importancedoc">http://www.earthcharter.org.nz/default.asp?pg=Importancedoc</a> <b>T Linzey</b>, “Tamaqua Law Is First In Nation to Recognize Rights of Nature,” at <a href="http://www.celdf.org/PressReleases/TamaquaLawRecognizesRightsofNature/tabid/367/Default.aspx">http://www.celdf.org/PressReleases/TamaquaLawRecognizesRightsofNature/tabid/367/Default.aspx</a> <b>Vandana Shiva</b>, “Principles of Earth Democracy.” <b>Posted in Course Reserves.</b></p>	<p>International and native peoples expressions of providing recognition, rights and responsibilities for the natural world; consideration of human coherence with the interdependence of all niches within nested eco-systems. These resources may provide a template for further constitutional, statutory and positive law.</p>
14	<p><b>Apr. 23</b></p> <p><b>4 Student presentations at 15 minutes each</b></p>	<p><b>Reforming American Law</b></p>	<p><b>Orr</b>, “Law of the Land,” <i>Orion</i> (January/February 2004); abridged version available at <a href="http://www.orionsociety.org/pages/om/04-1om/Orr.html">http://www.orionsociety.org/pages/om/04-1om/Orr.html</a>; <b>Guth</b>, “Transforming American Law to Promote Preservation of the Earth,” <i>The Networker</i> (March 13, 2006); available at <a href="http://www.sehn.org/Volume11-2.html">http://www.sehn.org/Volume11-2.html</a>; <b>Schlickiesen</b>, “Protecting Biodiversity for Future Generations: A Proposed Constitutional Amendment;” available at <a href="http://www.defenders.org/bio-co05.html">http://www.defenders.org/bio-co05.html</a>.</p>	<p>This is a way of bringing it home. The students know changing the constitution is serious business and so this will allow them to focus on the implications of Earth Jurisprudence.</p> <p>Celebrate our being part of this exciting process of defining a new area of law.</p>

