

Wild Law and Rights of Nature



Michelle Maloney
National Convenor
Australian Wild Law Alliance
Public Seminar, Perth, 9 February 2013

This presentation

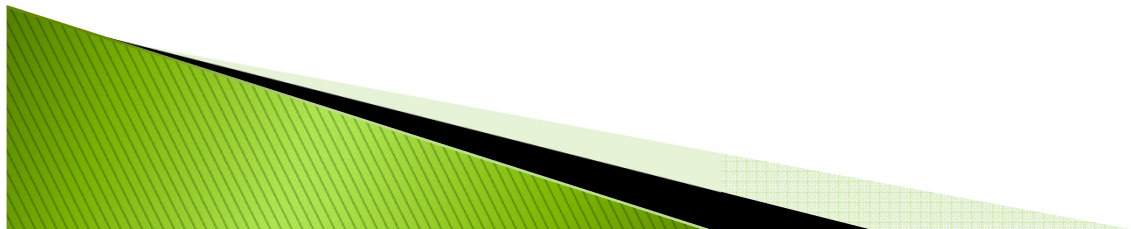
(1) An introduction to Earth jurisprudence, wild law and rights of nature

- Origins – Thomas Berry, Cormac Cullinan
- Key elements
- Rights of Nature – examples from around the world

(2) An overview of the international and national ‘movement’ which is promoting Earth jurisprudence and rights of nature

- Global Alliance for the Rights of Nature
- Australian Wild Law Alliance (AWLA)

(3) Practical ways people can get involved



Part 1

Introduction to Earth jurisprudence, wild law
and rights of nature



Ecological crisis



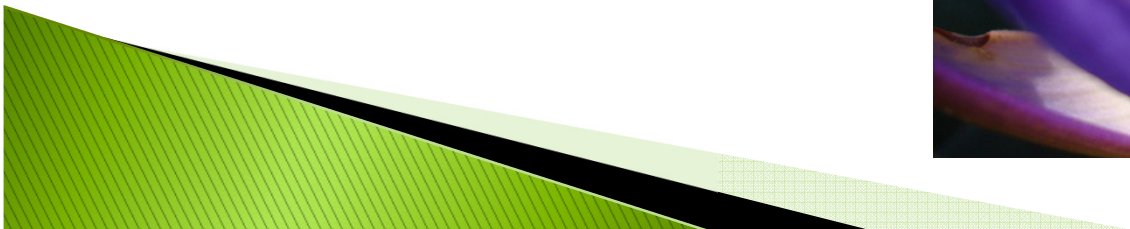
In 2005, a report compiled by over 2000 scientists from ninety-five countries concluded that:

60% of global ecosystem services were "being degraded or used unsustainably" including fresh water, fisheries, air and water purification and the regulation of natural hazards and pests.

(Millennium Ecosystem Assessment, 2005)

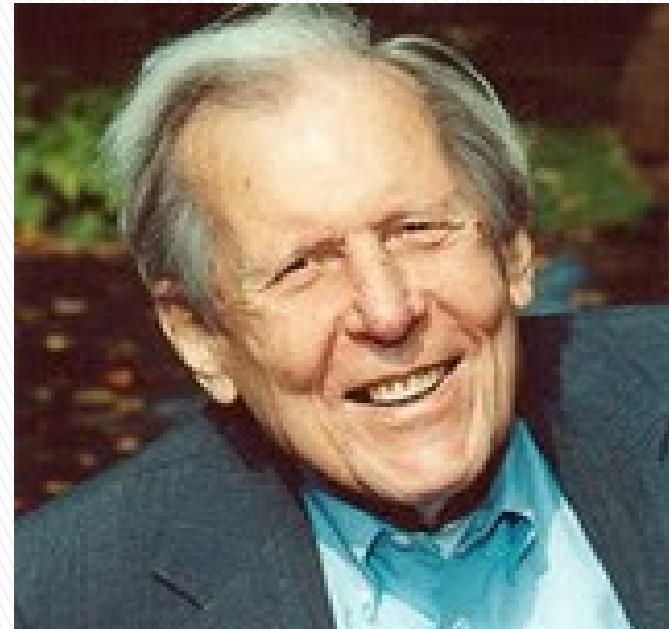
Human responses

- ▶ Current ecological crisis is pushing humanity to search for new ideas, different ways of thinking, better ways of caring for our planet
 - Science, politics, economics, philosophy, ethics, spirituality, law and governance



The work of Thomas Berry (1914–2009)

- ▶ Catholic priest, cultural historian, ecotheologian/cosmologist, *Earth scholar*
- ▶ Deep ecology, earth philosophy
- ▶ His book with Briane Swimme – ‘The Universe Story’ – proposed that a deep understanding of the history and functioning of the evolving universe is a necessary inspiration and guide for humanity

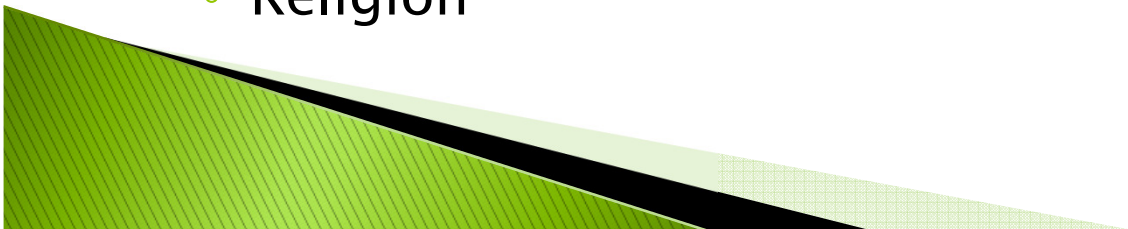


Thomas Berry

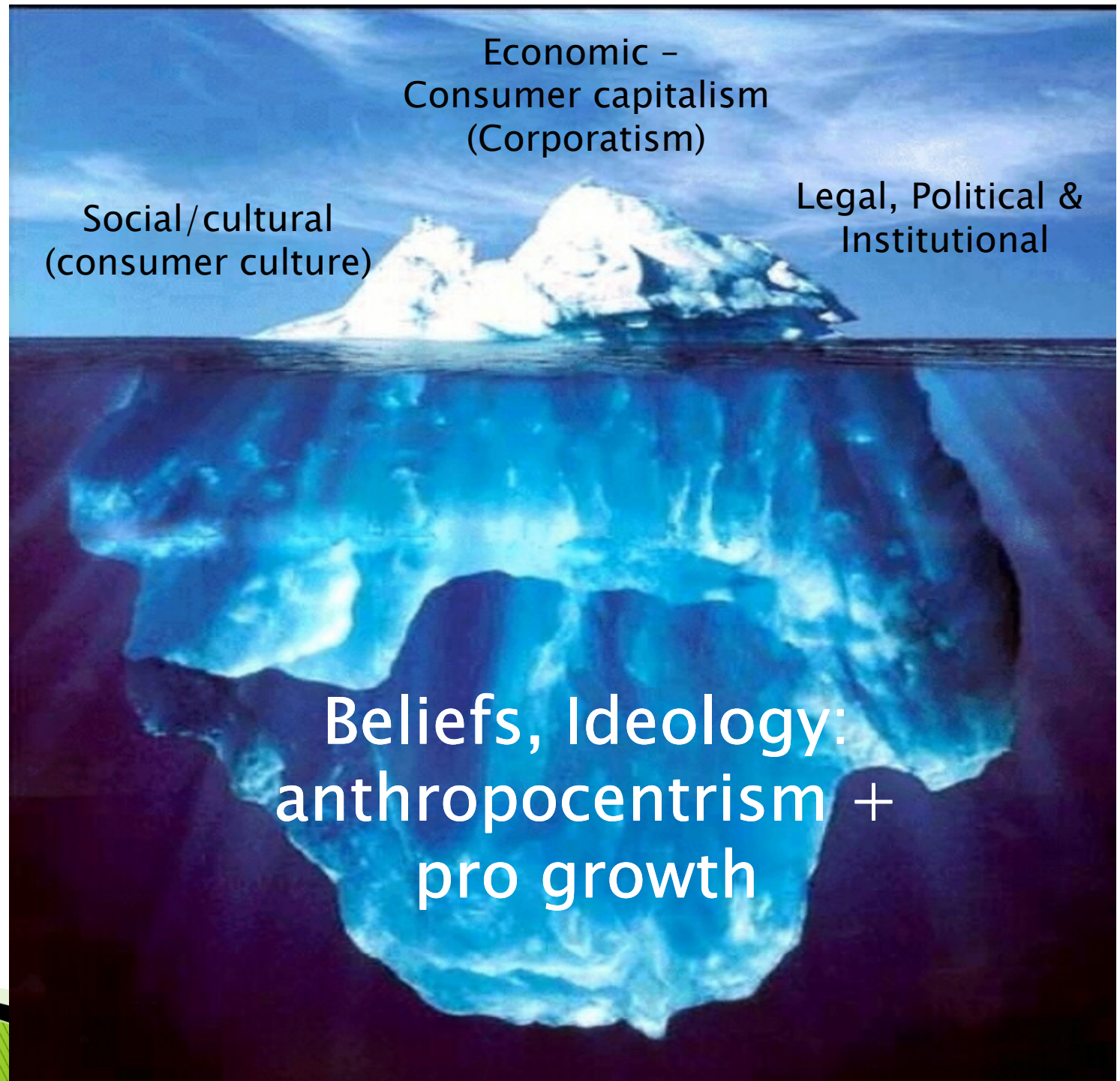
The Great Work: Our Way into the Future

(1999, Bell Tower/Random House)

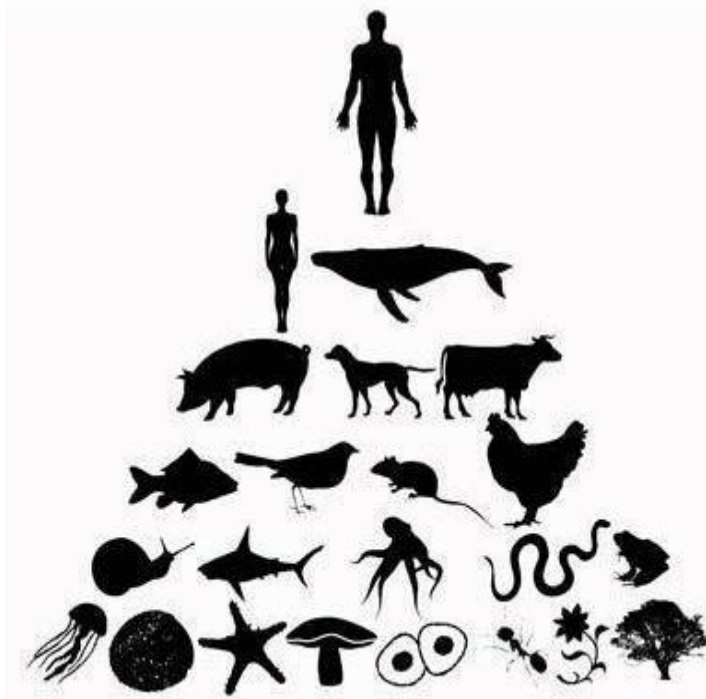
- ▶ Our great work is to transition from being a disruptive to a benign force on the earth
- ▶ Heart of the ecological crisis: our way of thinking: 'anthropocentrism' or 'human centredness'
- ▶ We treat the Earth community as a collection of objects existing for human use (and abuse)
- ▶ Berry suggested all major institutions are anthropocentric and need to be realigned to support, not degrade, the Earth community
 - Law and government
 - Economics
 - Universities
 - Religion



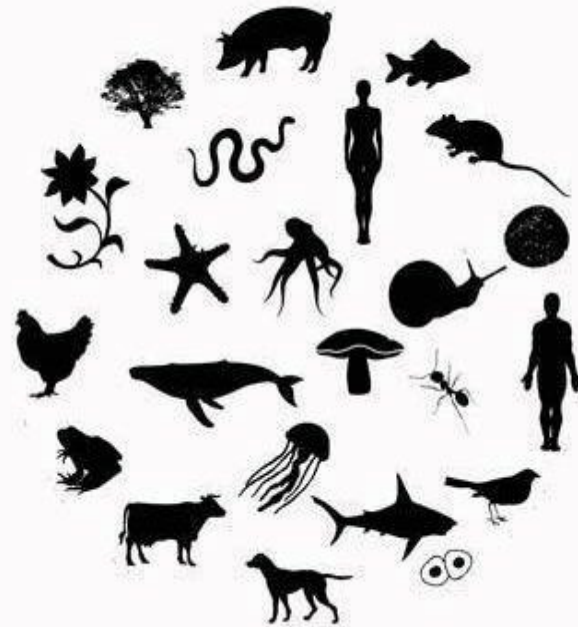
Beneath the
'symptoms' of
the ecological
crisis:
our beliefs
and way of
thinking



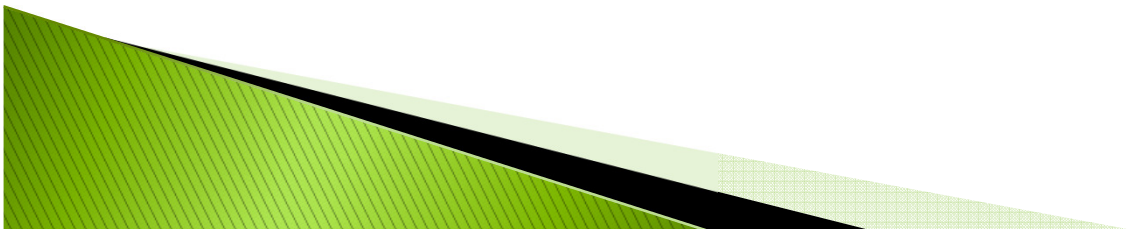
Berry called for us to shift all our **governance systems** to be ecocentric, and to nurture the Earth community



Human centred



Earth centred



Quick side step into some definitions: What is governance?

- ▶ The way rules are set and implemented
- ▶ “Governance” happens everywhere, formally and informally and on many different “scales”, all the time
 - Families, households – informal
 - Organisations – everything from the local tuckshop to the Commonwealth Bank has a ‘governance’ system
 - National governments/nation states
 - ‘Private’ international corporations and NGOs – working transnationally, or within nations
 - ‘Public’ international organisations – ie made by governments – United Nations organisations
- ▶ Difference between ‘*governance*’ and *governments*?
 - Governance is what a decision making group DOES
 - *Government* normally means the people elected to manage a political/legal jurisdiction (nation, state, province etc)



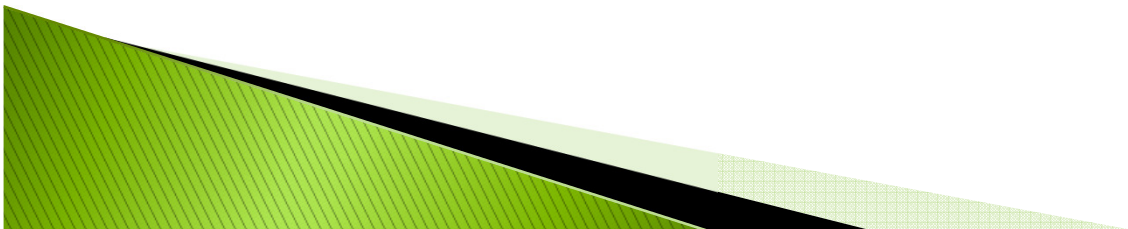
What is law?

- ▶ This is a huge question!!
- ▶ Formal rules that are made by governing bodies, for example:
 - “Domestic” law – Federal Government of Australia, Government of Western Australia, your local council
 - International law – eg UN, World Trade Organisation
- ▶ Relationship between law and governance?
 - In our societies, formal laws (legislation) create many of our governance structures – eg for NGOs (Associations Act), corporations (Corporations Act)
 - But law doesn’t create ALL our governance structures – many are created informally – the way people agree to work together



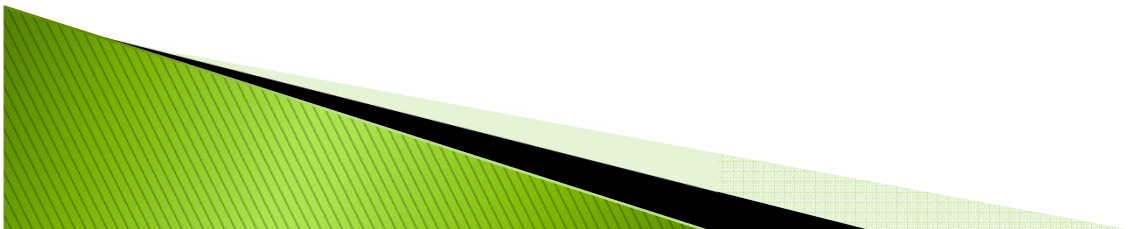
What is jurisprudence?

- ▶ Jurisprudence = study and theory of law; helps to obtain a deeper understanding of law – legal reasoning, legal systems, legal institutions
- ▶ There are different types of jurisprudence; different ‘theories’ of law
 - Eg feminist, Marxist, Earth jurisprudence

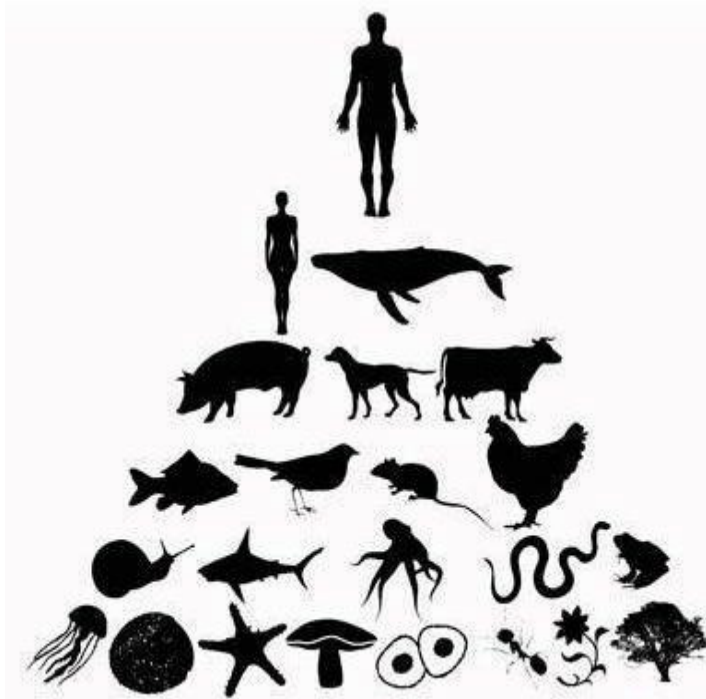


Earth jurisprudence

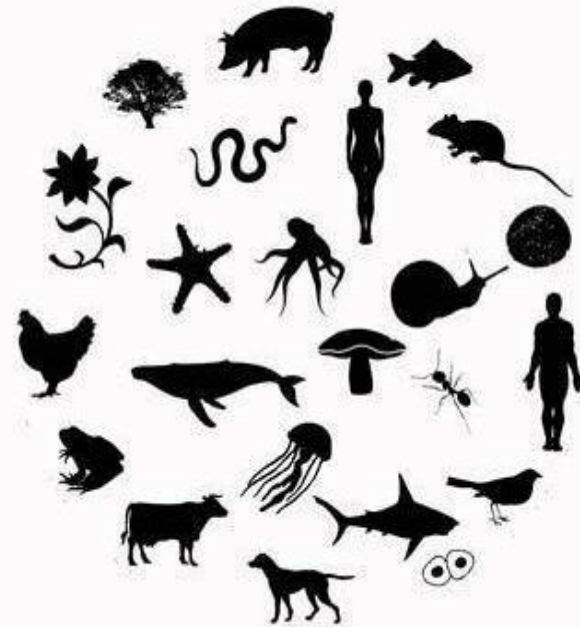
- ▶ Berry called for a new, earth centric governance system for humanity
- ▶ ‘Earth jurisprudence’ – **emerging philosophy of law and human governance** that is based on the idea that humans are only one part of a wider community (the Earth community) and the welfare of each member of this community is dependent on the welfare of the earth as a whole



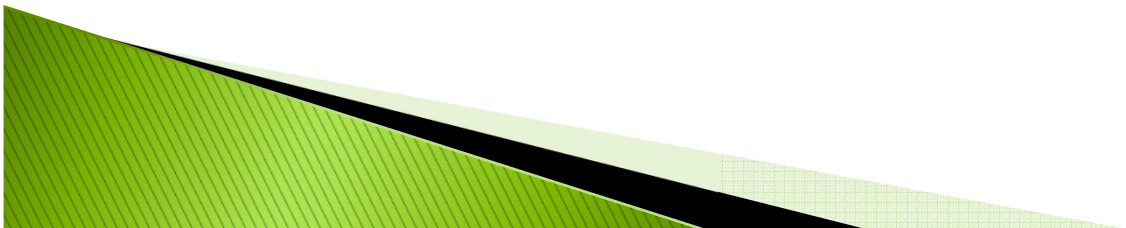
Our world view is the starting point for all our laws and governance systems – if we take a different starting point, where might we end up?



Human centred



Earth centred



Cormac Cullinan 'Wild Law'

- ▶ Wild laws regulate human activity in accordance with Earth Jurisprudence
- ▶ In his 2002 book "Wild Law: A Manifesto for Earth Justice", Cullinan suggests law needs to be creatively reinterpreted, allowed to be imaginative, wild
- ▶ Looks to systems theory, quantum physics, indigenous knowledge systems
- ▶ "flashes" of wild law exist in present laws and can be built on – but we also need to rethink and create new systems



▶ Thomas Berry and Cormac Cullinan

How does Earth jurisprudence differ from existing environmental law?

- ▶ Earth jurisprudence critiques modern legal and governance systems for being human centred, and supporting the destruction of the natural world
 - ‘Pro growth’ belief system + ‘Empty world’ economics = laws that support exploitation of ‘natural resources’ for human purposes
- ▶ Environmental law has made great gains (eg air, water) and has held off many destructive developments
- ▶ Environmental law has considered eco-centric ideas before – eg Christopher Stone “Should Trees Have Standing” (1972); Roderick Nash “The Rights of Nature: The History of Environmental Ethics” (1989)
- ▶ *But despite the proliferation of environmental laws globally during 20th Century, the natural world continues to deteriorate*



Eco-centric ideas aren't new

They're reflected in indigenous cultures worldwide. And in the west, these ideas are present in deep ecology, ecological justice, ecology, quantum physics ...

So what is new?

Ecocentrism in modern
legal systems is new

Key question for earth
» jurisprudence – how should
law shift to reflect
eco-centrism?

Elements of Earth Jurisprudence

Earth Jurisprudence

1. 'Great Law' or 'Great Jurisprudence' – laws of the natural world are 'higher' than human laws
2. Seeing the world as an interconnected 'Earth community' – community of subjects
3. **Rights of nature** – rights inherent in existence (life and earth systems)
4. Living within ecological limits
5. Encouraging diversity in human governance – localisation, responsiveness to the reality of the physical environment – 'real' democracy

Current western legal system

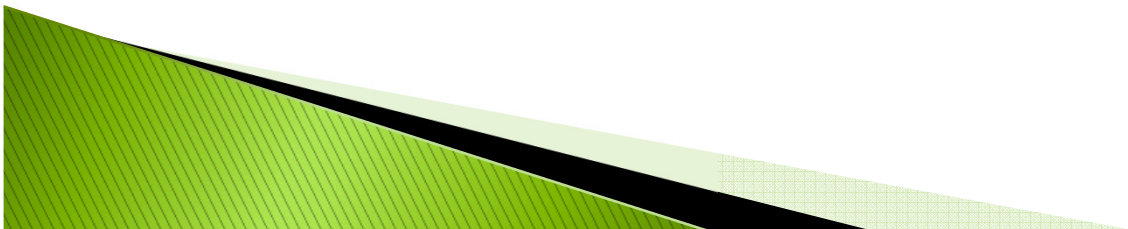
1. In the western legal system, human laws are the highest authority (disconnect of our legal and economic systems from physical realities)
2. Property and other laws reflect the view that nature is a commodity for human use
3. Rights for humans, corporations, but not nature
4. Pro-growth ideology
5. Western legal systems often reject cultural diversity (eg frequent exclusion of indigenous knowledge and lore)

That's all very lovely ...
but what's the practical use of
Earth Jurisprudence?

Rights of Nature – Examples of
legislation – Ecuador, Bolivia, USA,
New Zealand

Ecuador – 2008

- ▶ Constitution revised in 2008 to include provisions that recognise and protect rights of nature, Mother Earth
- ▶ Indigenous elders played critical part in the revision of the constitution
- ▶ *Art. 71 “Nature or Pachamama where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution”*
- ▶ *Art 72 “Nature has the right to restoration”*
- ▶ First rights of nature case heard in 2011 – Vilcabamba River



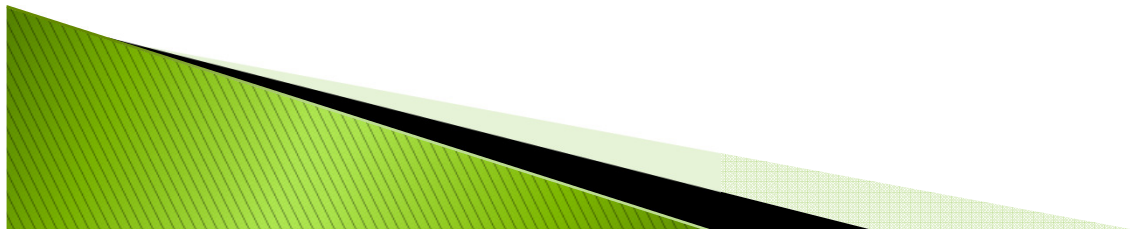
First successful Rights of Nature Case

- ▶ March 30, 2011 case put to the Provincial Court of Loja in Ecuador
- ▶ Court ruled in favour of rights for nature, and in particular, the Vilcabamba River
- ▶ River was represented by plaintiffs who argued on its behalf



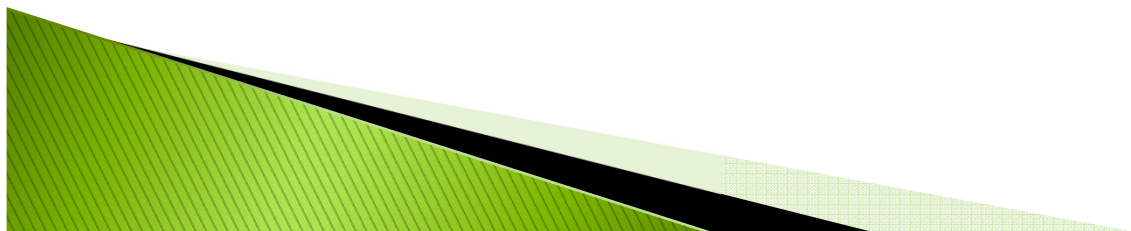
Bolivia – 2010

- ▶ In 2010 Bolivia hosted The World People's Conference on Climate Change and Rights of Mother Earth
- ▶ 30,000 people from 100 countries
- ▶ Prepared “Universal Declaration on Rights of Mother Earth” – presented to the UN
- ▶ Bolivia introduced new legislation (significant law reform after new constitution)
- ▶ “Act of the Rights of Mother Earth”
- ▶ New Ministry and Ombudsman to oversee the Act



Bolivia's "Act of the Rights of Mother Earth"

- ▶ Art 1 – rights of mother earth to be respected by all
- ▶ Art 2.3 – guarantee of the regeneration of Mother Earth
- ▶ Art 3 – Mother Earth is a dynamic living system comprising an indivisible community of all living systems and living organisms ...
- ▶ Art 5 – **For the purpose of protecting and enforcing its rights, Mother Earth takes on the character of collective public interest.** Mother Earth and all its components, including human communities, are entitled to all the rights recognised in law




Municipal governments, USA

- ▶ Community Environmental Legal Defense Fund (CELDF) assists communities to organise and draft ordinances via 'democracy schools'
- ▶ A dozen municipalities have introduced local laws (ordinances) creating rights for human and natural communities
- ▶ Ordinances are legally binding in the relevant local jurisdiction – eg if fracking is banned, municipality wouldn't zone to do it
- ▶ US municipalities can be overridden by State and Federal legal action
- ▶ BUT The 'rights of nature' ordinances are both an organising strategy and a statement of intent, about what the community wants to protect
- ▶ Local ordinances are an organising vehicle for community resistance to unwanted developments
- ▶ Even a legal challenge can be of benefit – local communities can show inequities and community goals



Example – Town of Wales, New York Community Protection of Natural Resources

- ▶ s.4(a) Right to water
 - ▶ s.4(b) *Rights of Natural communities.*
Ecosystems and natural communities possess the right to exist and flourish within the Town. The residents of the Town of Wales have the inalienable right to enforce and defend those rights to protect all ecosystems, including but not limited to, wetlands, streams, rivers, aquifers and other water systems, within the Town of Wales”
 - ▶ s.4(c) Right to self-government
- 

New Zealand – Whanganui River

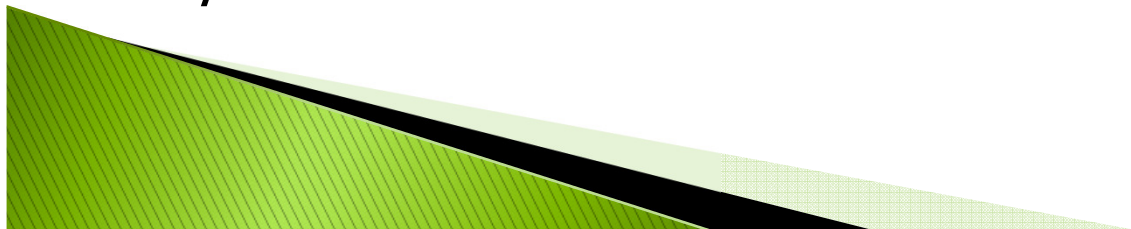
- ▶ International media coverage– August/Sept 2012 Whanganui River
- ▶ Given legal identity under preliminary agreement signed between Whanganui River iwi (Maori Trust) and the Crown
- ▶ River recognised as a person in law “in the same way a company is, which will give it rights and interests”
- ▶ Two guardians – one from the Crown and one from the Maori Trust will be given the role of protecting the river
- ▶ An agreement about what the values will be in protecting the river is still to be decided



Whanganui River, New Zealand

Background

- ▶ Whanganui River iwi have sought to protect the river and have their interests acknowledged by the Crown through legal system since 1873 (NZ's longest running court case, under Treaty of Waitangi)
- ▶ Record of understanding signed for the Whanganui River Settlement in October 2011
 - Section 3 of this ROU includes proposals about the river becoming an 'entity' with a trust to run it with joint representation from iwi and Crown
- ▶ Aim is to complete deed of settlement 2012/2013, followed by legislation to implement it – many of the details still need to be worked out
- ▶ *the rights for the river are a result of local custodians using western legal mechanisms to ensure its protection*



Does granting rights to nature
create more effective
environmental laws?

It can ... it gives natural systems equal legal status to human interests; can force a rethink of what we do to nature

But it may not ...

It depends on the interpretation and enforcement of the law; and this in turn depends on the worldview and economic and political systems that exist in the society that creates the laws

The main 'idea' behind Earth jurisprudence is that humans need to rethink their place in the world and create human governance systems (law, politics, economics, daily life) that nurture the Earth community

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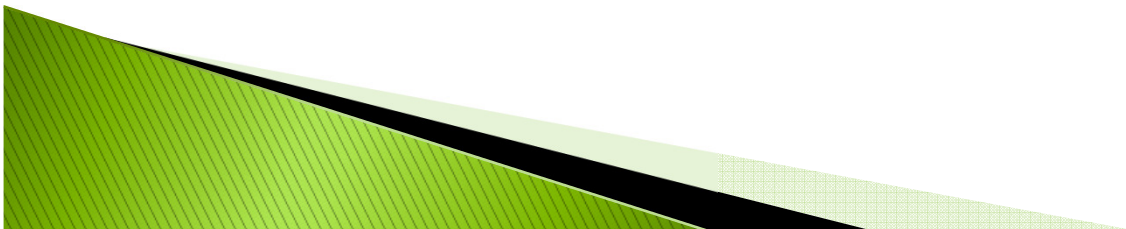
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(3) Practical ways to get involved



Part 2. Earth jurisprudence and rights of nature 'movement'



Global Alliance for the Rights of Nature (2010)

- ▶ Created after Bolivia 2010
- ▶ AWLA is a founding member of the Global Alliance for the Rights of Nature
- ▶ GA brings together more than 60 organisations around the world, who support Earth Jurisprudence and rights of nature.
- ▶ Facilitates connections between members of the network
- ▶ Working groups – rights of nature legislation, indigenous knowledge,
- ▶ Check out the Global Alliance website for more:
<http://therightsofnature.org/>





A worldwide movement
creating human communities that
respect and defend the rights of Nature.

Its time has come!

Say YES! to
Rights of Nature

Click To



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Rights of Nature is the recognition and
honoring that trees, oceans, animals,



We are individuals and organizations
committed to creating human communities



We need your support to raise an
additional \$12,000 to fund our
participation in Rio. **Donate Now!**

Members of the Global Alliance Executive Committee

- ▶ Cormac Cullinan (South Africa), Enact International
- ▶ Bill Twist, (USA), Pachamama Alliance
- ▶ Mari Margil, CELDF (Community Environmental Legal Defense Fund, USA)
- ▶ Nati Greene, (Ecuador), Fundacion Pachamama
- ▶ Liz Rivers, Wild Law UK
- ▶ Michelle Maloney, AWLA, Australia
- ▶ Robin Milam, Coordinator, US



Connected to many, many others and their work

Indigenous networks in the USA

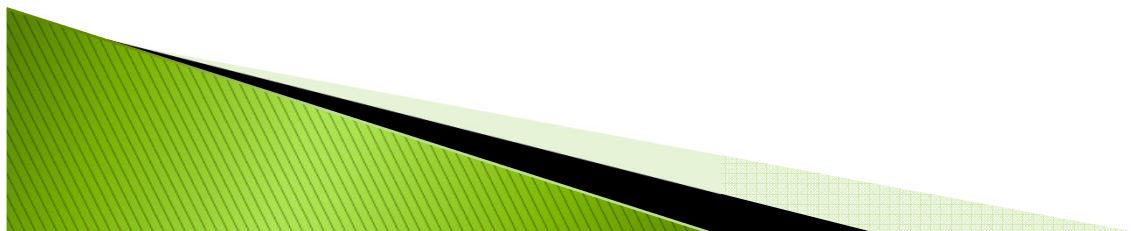
Vandana Shiva and her work in India

New Rights of Nature group in Italy



Earth Lawyers Alliance (Dec 2012)

- ▶ Created by Polly Higgins and her team
 - Author of 'Eradicating ecocide: law and governance to prevent the destruction of our planet'
- ▶ Aims to link all lawyers focussing on earth laws
 - Earth jurisprudence, wild law, ecocide, environmental crime
 - <http://www.earthlawyers.org>



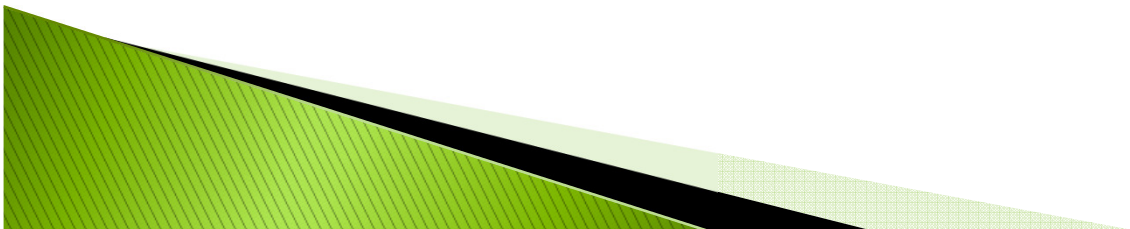
Wild law in Australia



Australia's first Wild Law Conference – Adelaide 2009

Developments in Australia

- ▶ Conferences – 2009, 2010, 2011
- ▶ 2011 – Australian Wild Law Alliance created by people interested in the broader movement toward ecocentrism in law and governance
- ▶ Run entirely by volunteers who are passionate about the work

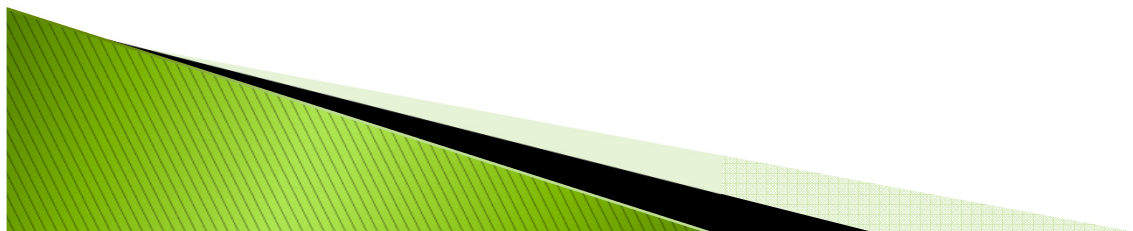


Australian Wild Law Alliance

www.wildlaw.org.au

Long term vision: transforming governance systems to support, rather than degrade, the Earth community

AWLA's Mission: promote the understanding and practical implementation of Earth Jurisprudence



Our activities: (1) Promoting understanding of Earth Jurisprudence

- ▶ Promotion of Earth Jurisprudence and earth centredness
 - Website, facebook
 - 'Road show series' – see 'Events' on our website
- ▶ Development of theory and practice
 - Conferences (2009, 2010, 2011, 2013)
 - Research – as independent scholars, as university academics, also through AWLA working groups
- ▶ Work with others to promote Earth Jurisprudence
 - Eg Partners with QUT – Environmental Justice Symposium, Brisbane, November 23rd 2012; another forthcoming December 2013





Australian Wild Law Alliance

[Home](#) [What Is Wild Law?](#) [What We Do](#) [Resources](#) [News](#) [Events](#) [Photo Gallery](#) [About Us](#)

HOME

Welcome to the Australian Wild Law Alliance (AWLA) website.

AWLA's mission is to promote the understanding and practical implementation of Earth Jurisprudence and Wild Law in Australia.

Wild Law is a new legal theory and growing social movement. It proposes that we rethink our legal, political, economic and governance systems so that they support, rather than undermine, the integrity and health of the Earth.

AWLA's activities include research, education, promotion and advocacy. All our work is driven by our members' interests and commitment – so become a member and get involved!

AWLA is a founding member of the Global Alliance for the Rights of Nature, which brings together more than 60 organisations around the world, who support Earth Jurisprudence and rights of nature. Check out the Global Alliance website for more: <http://therightsofnature.org/>

NEWS & EVENTS

Search...

Recent Posts

- Breaking News on Qld Coal Mines
- Climate Change Law and Justice C 2013
- AWLA's Roadshow Series: 1 day W Workshop in Melbourne 17 August
- Wild Law and Animal Rights Symp October 2012
- Rights of nature, a bridge between cultures and political ideals. Hopef

Follow Us!

Our activities: (2) Practical implementation of Earth Jurisprudence

▶ 2012

- ▶ Working groups – people working together across Australia – just beginning
- ▶ Local/State AWLA groups (events, collaborative work) – Melbourne, Adelaide, Brisbane, Perth

▶ 2013

- Advocacy/law reform
- Exploring use of Rights of Nature ordinances in community campaigns against CSG mining

- ▶ 2014 – grow advocacy work + develop relationships with indigenous communities – explore NZ!

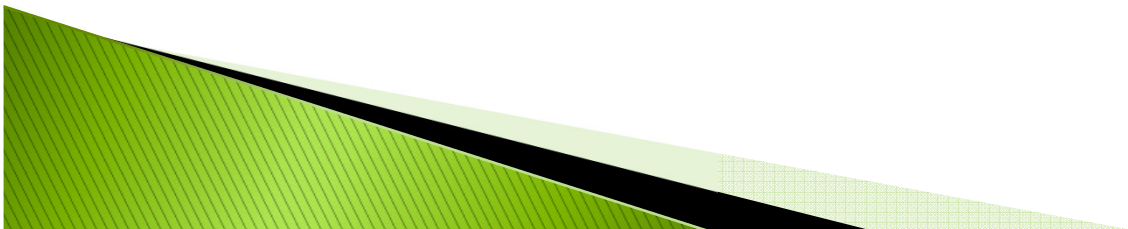


AWLA Vollies



Role of AWLA in Australia?

- ▶ To make space for people to create an earth centric vision of law and governance
 - Strong need for civil society responses while many governments focus on resource exploitation
- ▶ Create alternatives to current practice
- ▶ Support each other in the daily task of staying optimistic in the face of deteriorating environmental conditions – collegial support and sanity pills



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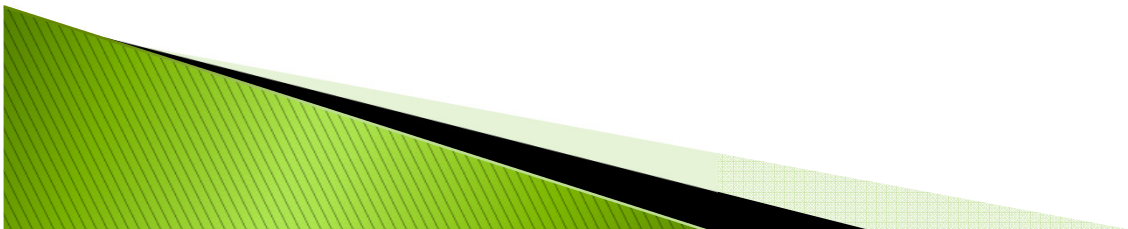
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Part 3. Practical ways to get involved



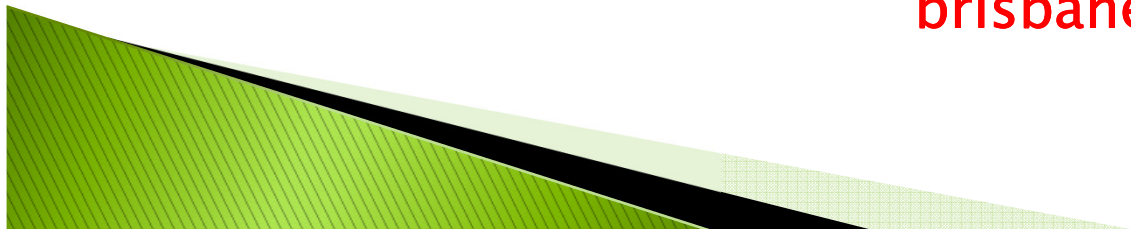
How can you get involved?

- ▶ Learn more
 - Read Thomas Berry, Cormac Cullinan, Peter Burdon, Linda Sheehan, CEDLF/Mari Margil and Thomas Linzey
 - visit the AWLA website for our Resource list, visit the Global Alliance website, check out the websites for all GA member organisations
- ▶ Work with others
 - Explore what eco-centrism means for you and your work
 - Reading groups, discussion groups, formal 'chapter' of AWLA
- ▶ Incorporate eco-centrism into your “words and tasks” – constitutions, protest banners, other ideas?
- ▶ Join AWLA –
 - membership supports our work;
 - create a working group to join with others on your own research and activist projects;
 - get involved in advocacy work (general promotion, submissions to government etc)
- ▶ Come to our conference and find like minded folks



Wild Law 2013 – Conference

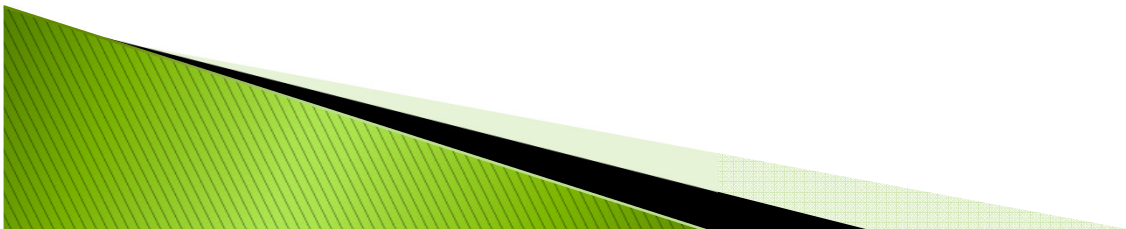
- ▶ 27–29 September, Brisbane
 - ▶ Theme: “Living within our ecological limits: governance to support the Earth community”
 - ▶ Multi-disciplinary – science, politics, economics, ethics, spirituality, law, governance
 - Speakers so far include: Professor Will Steffan, ANU; Brendan Mackey Griffith, Noel Preston; many more to be confirmed
 - ▶ Groovy side events
 - Wild Law Art Exhibition, in partnership with Griffith University Art School
 - Rights of Nature “mock trial”
- www.wildlaw.org.au/wild-law-conference-2013-brisbane



More information



- ▶ Australian Wild Law Alliance website
 - www.wildlaw.org.au
 - 'What is Wild Law' page + reading list
- ▶ AWLA facebook page – link on website
- ▶ Global Alliance for the Rights of Nature
- ▶ Google Cormac Cullinan and Peter Burdon
- ▶ First rights for nature case – Vilcabamba River
 - <http://TheRightsofNature.us2.list-manage.com/track/click?u=87ed6b2ba86c4cd4f1c93a720&id=dda9bc8af4&e=600b807e7c>.



Thank you for sharing
your time today ☺

