

Rights of Nature



Michelle Maloney
National Convenor, Australian Wild Law Alliance
Sydney Wild Law Workshop, 2nd May 2013

Elements of Earth Jurisprudence

Earth Jurisprudence

1. 'Great Law' or 'Great Jurisprudence' – laws of the natural world are 'higher' than human laws
2. Living within ecological limits
3. Seeing the world as an interconnected 'Earth community' – community of subjects
4. **Rights of nature – rights inherent in existence (life and earth systems)**
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. Pro-growth ideology
3. Property and other laws reflect the view that nature is a commodity for human use
4. Rights for humans, corporations, but not nature
5. Western legal systems often reject cultural diversity (eg frequent exclusion of indigenous knowledge and lore)

Rights of Nature – Thomas Berry

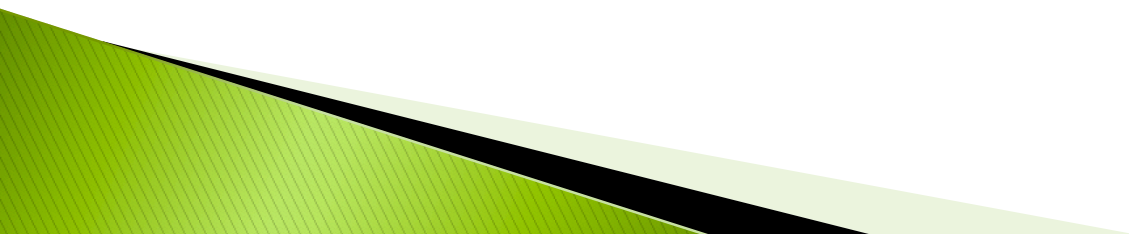
- ▶ Rights exist where life exists – ‘bee rights’, ‘river rights’
- ▶ Any future governance system must recognise the rights of the non-human world to exist, thrive, evolve
- ▶ Community of subjects, not a collection of objects
- ▶ Earth community – relationships



Should Trees Have Standing?

Christopher Stone, 1972

‘So, what would a radically different law-driven consciousness look like? ... One in which Nature had rights ... Yes, rivers, lakes ... trees ... animals ... How would such a posture in law affect a community's view of itself?’

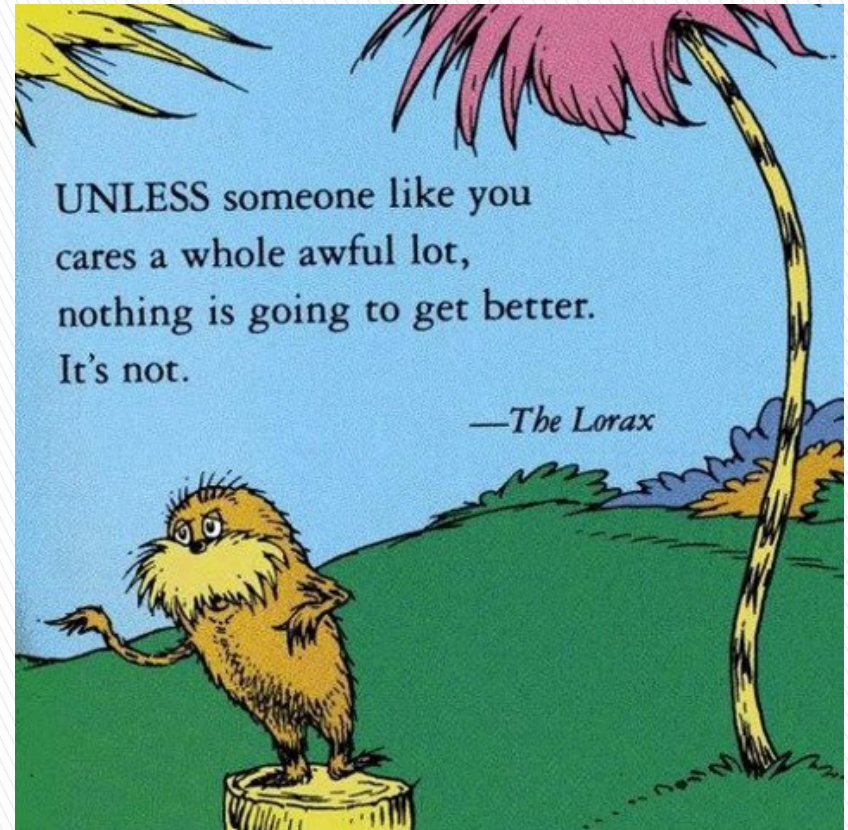


‘Balancing’ rights of nature

- ▶ “Recognizing Rights of Nature does not put an end to human activities, rather it places them in the context of a healthy relationship where our actions do not threaten the balance of the system upon which we depend. Further, these laws do not stop all development, they halt only those uses of land that interfere with the very existence and vitality of the ecosystems which depend upon them.”
 - Mari Margil, Community Environmental Legal Defense Fund

How do you speak for nature?


- ‘Standing’
- Concept of Guardian at law
- Compensation
- Relationships – rights, obligations, duties
- ‘Constellations’



Expansion of 'rights'

- ▶ Every time we expand 'rights' there is resistance
- ▶ Ending slavery – shifting view from slaves as property to slaves as human
- ▶ Votes for women

Problems with rights

- ▶ Contentious – how do you implement it? How do you ‘weigh up’ nature’s rights?
 - ▶ Criticisms – using legal positivism to fight legal positivism
 - ▶ Rights vs duties/obligations/ethics
- 

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

CELDF's work in the US

“What our experience showed us was that our system of environmental laws and regulations don't actually protect the environment. At best, they merely slow the rate of its destruction. After several years, we stopped doing that work. We weren't helping anyone protect anything.”
Mari Margil, CELDF


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

City of Santa Monica, California

- ▶ Last month – ‘Sustainability Rights Ordinance’ passed after three years work by EJ/RoN civil society activists
 - ▶ Recognises *the right of the environment to be healthy* and the human right to a healthy environment
 - ▶ In response to concerns that corporate developments would override their Sustainability Plan
- 

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
- 

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 being 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

Thank you for sharing
your time today 😊

