**Forging a new Earth Law Paradigm from Existing Legal Doctrines: Earth Jurisprudence and the Public Trust Doctrine**

**Joëlle Hervic**

**Eco Logik International**

Abstract

We have come to regard other species and nature’s “resources” in terms of property and ownership. This world view is institutionalized in our legal and economic systems. Our anthropocentric view of the world drives our behaviors and beliefs, which in turn legitimizes a form of cultural/species apartheid. This leads us to act in ways that have little or no regard for our ecological limits.

An overhaul of our existing legal framework that incorporates an understanding that we are part of Earth’s communities is necessary. It is important to recognize that we already have at our disposal legal mechanisms that exist at national and international law which can be used to achieve that goal. It is equally important that we avail ourselves of these if we are to make any headway in moving towards a paradigm in which we recognize that the Earth’s systems are finite and the imperative of restraining our activities. These mechanisms comprise doctrines that provide us with a foundation for a new paradigm that would recognize nature to have inalienable legal rights with the correlating standing to sue. These legal tools can set guideposts and parameters for us to live within our ecological limits.

One such tool is the Public Trust Doctrine. First codified during the Roman Empire, and inherited from the English common law, the public trust doctrine is based on the principle that the monarch held title to certain natural resources for the common benefit of all.[[1]](#footnote-1) There are several cases in Australia in which the doctrine has been implicitly recognized. It holds considerable scope as a tool to protect natural resources in a way similar to the United States, where the doctrine has been embraced.

Speaker Biography

Joëlle Hervic has more than 20 years’ experience in environmental and international law, with a focus in water issues, climate change, pollution and human rights. Her experience includes assisting community organizations in Ecuador to establish a constitutional amendment recognizing a right to water and as Senior Attorney responsible for the Chesapeake Bay, the largest estuary in the United States during her employment with Waterkeeper Alliance, a respected NGO formed and led by Robert F. Kennedy, Jr.. Ms. Hervic has recently established an environmental consultancy, Eco Logik International, which promotes integrated management of nature’s resources. She is also CEO of Human Dimensions TV, LLC, a video production company specializing in environmental and human rights issues. Cf, www.ecologikinternational.com & [www.humand.tv](http://www.humand.tv)

1. See Martin v. Waddell’s Lessee, 41 U.S. (16 Pet.) 367, 411 (1842) (“The dominion and property in navigable waters, and in the lands under them, [are] held by the king as a public trust . . . for the common benefit. In such cases, whatever does not pass by the grant, still remains in the crown for the benefit and advantage of the whole community.”); “[W]hen the Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use...” at p.410. [↑](#footnote-ref-1)