SCALE 2022

Panel Proposal

**Panel Topic:** Rights of Nature

**Panelists:** Erin Ryan (Florida State), Kekek Stark (Montana), and Elizabeth Kronk Warner (Utah, virtual). We have invited Oliver Houck to be our fourth, but have not heard back by the submission deadline. If he does not accept, there are several others we could invite as this is a very hot topic. As a result, the description below includes 3 panelists but we will have a fourth.

**Panel Abstract:**

This panel will examine the origins and development of the rights of nature, exploring its application outside the United States, within the United States, and across tribes. The panel will begin with a discussion of the development of the rights of nature both outside and within the United States. The panel will then go on to specifically examine rights of nature as the principle is being developed under tribal law.

Erin Ryan (Florida State) will begin the panel by exploring the development of rights of nature principles in both domestic and international legal contexts, including the system of environmental ethics that gave rise to the rights of nature. She will explain how rights of nature is oriented toward the protection of waterways, suggesting the limitations of conventional environmental law to provide adequate protection, and the resulting resort to alternative means. She will then provide a survey of major rights of nature laws enacted throughout the world, and then reviews a series of local rights of nature bills introduced and enacted in American municipalities, as well as judicial and legislative efforts to block them. She will focus on unfolding disputes in Florida, where multiple local governments are experimenting with rights of nature ordinances, and Orange County voters adopted a Bill of Rights charter amendment to protect the local river system from extraction in the same year that the state legislature statutorily preempted local rights of nature ordinances from effect. Her presentation will build off her article co-written with Holly Curry and Hayes Rule, *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 Cardozo L. Rev. 2447 (2021)., Available at SSRN: <https://ssrn.com/abstract=3841825>

Following an introduction to the development of rights of nature arguments both inside and outside of the United States, Kekek Stark (Montana) will examine how Indigenous communities are expressing their territorial sovereignty through assertions of Tribal law acknowledging the Rights of Nature as a deeply embedded traditional law principle sustaining their relationship with their territorial lands and natural resources. The recent assertions of Tribal law by the White Earth Nation, Ho-Chunk Nation, Ponca Nation, Yurok Nation, and Ktunaxa Nation have been touted by many as majestic victories for tribal sovereignty. Responding to these assertions, Professor Stark explores the various ways that the White Earth Nation has codified as Tribal law its relationship with *manoomin* (wild rice) and offer an examination of the legal mechanics of this tribal law acknowledgement. In doing so, he critiques the practical effects of this tribal law assertion. Professor Stark argues that as a matter of federal Indian law, specifically pursuant to the *U.S. v. Montana* line of cases, that this assertion may add jurisdictional protections for the White Earth Nation. He will further advocate the need for U.S. legal reform to recognize the complete jurisdictional application of Tribal law assertions acknowledging the Rights of Nature. This presentation will build on Professor Stark’s forthcoming article, *Bezhigwan Ji-Izhi-Ganawaabandiyang: The Rights of Nature and its Territorial and Jurisdictional Application to Indigenous Territories.*

Building on Professor Stark’s “deep dive” into the work being done by the White Earth Nation specifically related to *manoomin*, Dean Elizabeth Kronk Warner (Utah, virtual)[[1]](#footnote-1) will extrapolate these principles across Indian country. She will discuss in depth efforts that other tribes are taking in relation to rights of nature. In examining what other tribes are doing, she will examine tribal environmental ethics motivating this work. She will also explain the incredible value of this work both inside of Indian country (building on the points made by Professor Stark) and outside of Indian country. On this latter point, Professor Kronk Warner will discuss the concept of tribes as valuable environmental laboratories that other jurisdictions, such as the United States, states, and municipalities can learn from. This presentation will build on a forthcoming article from Dean Kronk Warner and Jensen Lillquist.

Following completion of this panel, attendees will leave with a better understanding of the development of the rights of nature, both within and outside of the United States. Additionally, panelists will discuss how the development of the rights of nature arguments are likely to influence environmental law within the United States and tribes.

1. Dean Kronk Warner’s presentation will be virtual as May 13, 2022 is the same day as the University of Utah S.J. Quinney College of Law’s commencement. [↑](#footnote-ref-1)