

ENVIRONMENTAL JUSTICE AND THE ECOFEMINIST PERSPECTIVE

Bridging the Gap between Law and Justice

Irene L Wex LLB/BA (Hons I), PhD, Dip Ed

A thesis submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy in Law

Centre for Environmental Law,
Macquarie Law School
Macquarie University, Sydney, Australia

2012

Statement of Candidate

I certify that the work in this thesis entitled ‘Environmental Justice and the Ecofeminist Perspective: Bridging the Gap between Law and Justice’ has not previously been submitted for a degree, nor has it been submitted as part of requirements for a degree, to any other university or institution other than Macquarie University.

I also certify that the thesis is an original piece of research, and it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged.

In addition, I certify that all information sources and literature used are indicated in the thesis.

.....

Irene Lieselotte Wex

Human beings and the natural world are on a collision course. Human activities inflict harsh and often irreversible damage on the environment and on critical resources. If not checked, many of our current practices put at serious risk the future that we wish for human society and the plant and animal kingdoms, and may so alter the living world that it will be unable to sustain life in the manner that we know. Fundamental changes are urgent if we are to avoid the collision our present course will bring about.

World Scientists' Warning to Humanity,
Union of Concerned Scientists, 1992

CONTENTS

Abstract.....	vii
Acknowledgements.....	ix
List of Abbreviations	x
Chapter One: Introduction	1
1.1. The Aim and Purpose of this Study	1
1.2. Methodological Approach	2
1.3. Justification for the Study	4
1.4. Literature Review	9
1.5. Synopsis of the Study	12
Chapter Two: The Theoretical Framework	15
2.1. Introduction.....	15
2.2. The Development of Environmentalism as a Social and Political Movement ..	15
2.2.1 The relationship between Ecofeminism and other Environmental Theories.....	27
2.3. Ecofeminism	35
2.3.1. Why Ecofeminism?	36
2.3.2. Theoretical Perspective: Ecofeminism as a Transformative Eco-philosophy	37
2.3.3. The Political Agenda of Ecofeminism.....	47
2.3.4. Ecofeminism as a Social and Political Movement	55
2.3.5. The Employment of Derrida’s Deconstructive Technique in the Ecofeminist Critique of Patriarchy	58
2.4. Conclusion	61
Chapter Three: Jacques Derrida and the Ecofeminist Vision of Law and Justice	63
3.1. Introduction.....	63
3.2. The Theoretical Foundation of Derrida’s Deconstruction of the Law	67
3.3. Deconstruction, Ecofeminism and the Law	71
3.4. Deconstructing Exclusion through <i>Différance</i>	78
3.5. Conclusion	86
Chapter Four: Climate Law in Australia	88
4.1. Introduction.....	88
4.2. Climate Change: A Global Overview	93
4.3. Australia Within a Global Context	98
4.4. Case Study 1: The Clean Energy Package: Australia’s Response to Climate Change	104
4.5. Case study II—The <i>Anvil Hill</i> Case.....	117
4.6. Conclusion	127
Chapter Five: Animal Law in Australia	129
5.1. Introduction.....	129
5.2. An Overview of the Situation of Intensively Farmed and Unwanted Animals.....	130
5.3. Philosophical Approaches to Human/Nonhuman Relationships.....	134
5.4. The Legal Status of Animals	140
5.5. An Overview of Animal Law in Australia	151
5.5.1. Intensive Farming in Australia	159
5.5.2. Unwanted, Feral or Pest Animals	167

5.6. Conclusion	173
Chapter Six: Conclusion.....	181
6.1. Introduction.....	181
6.2. Progress in Environmental and Animal Law	182
6.2.1. Progress in Environmental Law	182
6.2.2 Progress in Animal Law.....	185
6.3. The Ecofeminist Vision	187
6.3.1 Embracing the Other	187
6.3.1 Enabling <i>différance</i> through Inclusion.....	191
5.6. Conclusion	193
Bibliography	196
Appendix I: Irene Wex, ‘Ecofeminism and Environmental Justice’: paper presented at the 9 th <i>Global Conference for Environmental Justice and Global Citizenship</i> in Oxford (July 2010) and published under Irene Hoetzer in <i>Engaging with Environmental Justice: Governance, Education and Citizenship</i> (Interdisciplinary Press 2011), Matthew Cotton and Bernardo Heisler Motta (eds), < https://www.interdisciplinarypress.net/online-store/ebooks/ethos-and-modern-life/engaging-with-environmental-justice >	

ABSTRACT

This thesis addresses the conflicting relationship between law and justice from an ecological feminist – or an ecofeminist perspective - and bridges the gap through the incorporation of Derrida's methodological approach of deconstruction. Derrida's approach is not only compatible with the ecofeminist perspective, but also enhances the analytical approach that is characteristically employed by ecofeminists. Derrida's deconstructive methodology further creates the necessary space to bring about change for the victims of oppression that have so far been excluded from the dominant discourse through the incorporation of '*différance*'.

To contextualise the approach taken in this thesis, an overview of the historical rise of environmentalism as a social and political movement and of environmental ethics as a philosophical discipline, are explored. In addition, the views of prominent environmental philosophers and legal theorists of both feminist and non-feminist persuasions are examined to capture an overall account of the shortcomings in current legal theory and practice and to provide a path for the law to tread.

The four case studies that form the focus of this thesis are: the Australian Federal Government's recently introduced clean energy package, the New South Wales *Anvil Hill* case, the treatment and slaughtering of intensively farmed animals, and the culling practices of unwanted and feral animals. These case studies have been specifically selected because they epitomise the conflicting relationship between law and justice, and expose that both decision-making and law-making processes take place in an anthropocentric and gender-biased society that fails to incorporate other perspectives.

The first two case studies address two highly topical and current issues in Australian environmental law and politics: the ongoing community opposition to the coal seam gas (CSG) industry and the ongoing debates concerning the effectiveness of an emissions trading scheme as the best solution to reduce Australia's carbon footprint. The next two case studies address the position of animals that are least afforded protection under the law, namely intensively farmed animals and unwanted or feral animals. These case

studies serve to expose that animals are only viewed in terms of their usefulness to humans, and that even recognition of their sentience in law has little effect on their well-being while they are alive or on their suffering in the slaughtering process, either as captive animals or as animals in the wild.

ACKNOWLEDGEMENTS

I wish to thank my principal supervisor, Professor Erika Techera, for encouraging me to undertake this thesis and for her guidance and support throughout this project, and Dr Natalie Klein for her assistance in the final stages of the completion and submission of this thesis.

I also wish to thank my children, Caroline and Alexander, for their much-valued input, patience and support.

LIST OF ABBREVIATIONS

A21	Agenda 21
AAWS	Australian Animal Welfare Strategy
ACF	Australian Conservation Fund
AFFA	Department of Agriculture, Fisheries and Forestry Australia
AIDS	Acquired immune deficiency syndrome
AMIC	Australian Meat Industry Council
AQIS	Australian Quarantine Inspection Service
ARMCAZ	Agriculture and Resource Management Council of Australia and New Zealand
AS	Australian Standard
AusAID	Australian Agency for International Development
BC	Before Christ
BGH	Bovine Growth Hormone
CBD	United Nations Convention on Biological Diversity
CFC	Chlorofluorocarbon
CoAG	Council of Australian Governments
CPRS	Carbon Pollution Reduction Scheme
CSD	Commission on Sustainable Development
CSG	Coal Seam Gas
CSIRO	Commonwealth Scientific and Industrial Research Organisation
CSR	Corporate Social Responsibility
DAFFA	Department of Agriculture Fisheries and Forestry
DDT	Dichlorodiphenyltrichloroethane
EAR	Environmental Assessment Report
EIA	Environmental Impact Assessment
EEC	Endangered Ecological Community
EPA	Environmental Planning and Assessment
EPBC	Environment Protection and Biodiversity Conservation
EPLAB	Environmental Planning Legislation Amendment Bill
ESD	Ecologically Sustainable Development
EU	European Union
FAO	Food and Agriculture Organisation

GAD	Gender and Development
GEF	Global Environmental Facility
GDP	Gross Domestic Product
GHG	Greenhouse Gas
HIV	Human immunodeficiency virus
ICJ	International Court of Justice
ICLEI	International Council for Local Environmental Initiatives
ILA	International Law Association
IMF	International Monetary Fund
IUCN	International Union for the Conservation of Nature and Natural Resources
JD	Johannesburg Declaration
JPOI	Johannesburg Plan of Implementation
LEAP	Livestock Export Accreditation Programme
MDG	Millennium Development Goals
MIT	Massachusetts Institute of Technology
MOU	Memorandum of Understanding
NASA	National Aeronautics and Space Administration
NBSAP	National Biodiversity Strategy and Action Plan Strategies
NEMS	National Environmental Management
NGO	Non-governmental Organisation
NSW	New South Wales
NT	Northern Territory
OECD	Organisation for Economic Corporation and Development
OIE	World Organisation for Animal Health
PETA	People for the Ethical Treatment of Animals
PIMC	Primary Industries Ministerial Council
PISC	Primary Industries Standing Committee
QLD	Queensland
RDEP	Rio Declaration on Environment and Development
RMC	Resource Management and Conservation
RSPCA	Royal Society for the Protection and Care of Animals
SA	South Australia
TAS	Tasmania

UK	United Kingdom
UN	United Nations
UNCBD	United Nations Convention on Biological Diversity
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Conference on the Human Environment
UNCSD	United Nations Commission on Sustainable Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Education, Scientific and Communications Organisation
UNFCCC	United Nations Framework Convention on Climate Change
USA	United States of America
VCAT	Victorian Civil and Administrative Tribunal
VIC	Victoria
WA	Western Australia
WAD	Women and Development
WB	World Bank
WBCSD	World Business Council for Sustainable Development
WBSD	World Business Council for Sustainable Development
WCED	World Commission on Environment and Development
WEDO	Women's Environmental and Development Organisation
WHO	World Health Organisation
WSSD	World Summit on Sustainable Development
WWF	Worldwide Fund for Nature