

Wild Law weekend workshop

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The fifth annual Wild Law workshop¹ brought together an array of lawyers and non-lawyers from academia, private and public practice, people with decades of experience of environmental law and those just setting out. What linked everyone though, is the strengthening conviction that law often fails to meet the problems we face, both in theory and in practice.

Resilience was a word that came up more than once this year. There are not, after all, many law conferences where half the delegates pitch their own tent on arrival. To my knowledge there is only one, and this year we were blessed with perfect Indian summer weather (and perfectly

¹ The first Wild Law conference organised by The United Kingdom Environmental Law Association was held in Brighton in 2005, where the speakers included Cormac Cullinan, the Rt Hon Michael Meacher MP, Professor Bob Lee (Cardiff University) and Professor Lynda Warren (Aberystwyth University).

freezing nights) in the surroundings of the Magdalen Project, an organic farm in the rolling Somerset countryside.

Resilience

At a typical Wild Law workshop you can at the very least expect to learn about the Earth, and this year we were not disappointed. Dr Stephan Harding from Schumacher College, started the Saturday sessions with a stimulating seminar on 'Gaia, Resilience and Biodiversity'. It is not often that someone talks for an hour and half and is then begged to go back over some of the slides he had to skip. This was a presentation full of wit, passion, hard science and fascinating asides and the short summary that follows cannot do it justice.

Ecosystems have an aptitude for maintaining habitable conditions for the majority of species they support. This aptitude is called 'resilience' or 'the capacity of a system to absorb disturbances whilst maintaining its original function.'² One of the hallmarks of a resilient ecosystem is a high level of biodiversity. In the marine ecosystem a coral reef can absorb the damage caused by a storm so long as there are functional groups of fish, both predator and prey, within the ecosystem. Remove some of those species by over-fishing and not only do you lose the fish, but chemical concentrations in the water change. Higher nutrient levels increase algal growth, previously kept in check by the fish. Now less shock resistant, the coral reef may not be able to regenerate after storm damage, as the system prefers to find a new equilibrium as an algal basin of seaweed and sludge.³

On land, a decrease in plant species has been shown to affect the functioning of a range of other processes such as nutrient recycling, retention of water and resistance to weed invasion. 'When there are more species, each with its own preferred resources and its own way of gathering them, the plant community has a greater overall capacity for growth.'⁴ The danger is that removing or destroying just one or two species can cause an ecosystem to cease to be as an effective habitat for the majority of species which once lived there. New ecosystems will emerge with new states of equilibrium, but they won't support life in anything like the abundance we have at present.

Dr Harding said it is clear our ecosystems are already absorbing a high level of disturbance and, at the same time, species are declining or under threat of extinction. Farming techniques have long favoured monocultures. Landscapes and seascapes are being pushed to the point where they are changed dramatically, failing to provide conditions for life locally or contribute to the balance of the global community as they once did.

'Gaia' stands for the insight that the Earth is demonstrably a self-regulating system. Gaia is the ecosystem at its highest level. The elements on earth have conspired and combined to produce life in all its forms and they continue to combine to create conditions which are remarkably optimal for life. The human body, itself a host to myriad other organisms, regulates temperature, sugar levels, fights foreign bodies and performs a small miracle of cooperation each day to keep us alive. Gaia, the body of the Earth, has been performing this function for billions of years, keeping the temperature and composition of the atmosphere, the sea and the land, within a range where diverse life is possible.

Why has this happened?

At the broadest level Dr Harding argued that over several millennia we have been infected by a world view that sees the Earth, and everything on it, including humans, as machines or mechanisms. It is not that a plant or a person's kidney cannot be usefully described as machines, it is just that if they are *only* described as machines then inevitably other ways of understanding them and appreciation of different values are suppressed. Galileo famously said 'the book of the universe is written in the language of mathematics' and this leads to an idea that mathematics is the supreme, possibly only, way of really knowing the world. This sidelines several other ways of knowing the world, including evaluation through feeling and a more instinctual, intuitive awareness. Carl Jung believed a more complete approach to knowledge and understanding would include a 'mandala' or circle of qualities including thinking, sensing, intuition and feeling.

'Oh no, I don't have to become an Animist do I?'

Dr Harding told us that he is an Animist. I hope I do not misrepresent or oversimplify this belief by saying it is the view that everything, from the Earth itself right down to a humble atom, is permeated by its own kind of intelligence and responsiveness. As Thomas Berry put it, 'the Universe is a communion of subjects, not a collection of objects'.⁵ The world, for the Animist, is characterised by sentience, exchange and fluidity. It is not just a lump of rock smeared with a layer of organic matter, where the only true subjects are those with human consciousness.

One member of the workshop said she found it hard to believe in Animism, which led Dr Harding to make a very important point when trying to understand Gaia theory: it is not necessary to be an Animist and believe the earth has a soul to accept the tenets of Gaia theory. Interdependence and the self-regulation of the whole are observable traits of life on earth, and whether you are a Christian, an atheist, an artist, a mechanist, or a follower of William Blake, you can consent to this.

2 B H Walker, D Salt *Resilience Thinking* (Island Press Washington DC 2006).

3 Example adapted by Dr Harding from C Folke et al 'Regime shifts, resilience, and biodiversity in ecosystem management' 2004.

4 The Biodepth Project, NERC Centre for Population Ecology Biology, Imperial College London.

5 Thomas Berry *The Great Work, Our Way Into The Future* (Bell Tower New York 1999).

We can afford to be radically plural when it comes to our beliefs, Dr Harding said. He showed us the symbol of the Ecosophical Tree. The roots of the tree are our deep experience of connection with the Earth. So many roots, so many ways of connecting with the Earth. We are open to the fact that there is a plurality of ways of knowing (so it is not necessary for everyone to see things the same way as you do). The trunk is the hard and beautiful science of Gaia to think about and reflect on, while the branches and leaves represent our willingness to take concrete actions and make appropriate lifestyle choices. This is best summarised in the works of the Norwegian philosopher Arne Naess, who first stated the deep ecological premise that all life has value irrespective of its value to human beings.

Wild Law and emergence

A favourite word I learnt from the presentation was 'biota' and its correlate 'abiota', meaning the living organisms and non-living factors respectively in a given ecosystem. It is a striking fact that without biota, all the water on earth would have dried up 3000 million years ago. This is because it is microbes in the mud that hold down the hydrogen atoms before they can disappear into space, allowing them time to recombine with oxygen atoms. And if there was no water there would be no plate tectonics, no granite, and no continents either. Organic and inorganic forms of life have emerged together. For an amazing account of all this and the perilous journeys of carbon atoms through land, sea and air, see Dr Harding's book 'Animate Earth'.⁶

So what does this mean for law and what part does the law have to play? The answer for many lawyers might be 'nothing' and 'none'. If human made law is seen as a totally separate concern from the laws of nature, then that conclusion reasonably follows. Earth Jurisprudence however, states that human made laws can and should be evaluated by how well they embody and reflect the wider laws of nature. Unless there is a sympathetic relationship in this respect human laws will ultimately fail. Human needs will be found not to be separate from the wider needs of life on earth. Human laws cannot hope to protect human needs without reference to the needs, ultimately, of the whole Earth community.

Dr Harding, although not a lawyer, suggested that as a minimum an effective legal system must preserve the conditions for biota and abiota to come together and create 'emergent properties'. Emergent properties are hard to predict (ie that sodium and chloride combine to produce the properties we call salt would never have been predictable in advance), but they are a vital part of how the Earth self-regulates. Emergent properties increase diversity and this diversity helps keep systems resilient and stable. The more diverse the elements in any system, the more opportunities for combination and emergence. This positive feedback, or emergent self-regulation, keeps the ecosystem healthy, responsive and alive.

Lawyers and law makers have got a huge task on their hands if they ever choose to take seriously the science of Gaia. As well as emergent self-regulation, biodiversity and resilience, there are many more ways of understanding how the Earth functions. Laws framed around these concepts would take some working out in practice. They would impact every aspect of law and governance. Environmental law in this sense would not be an adjunct to the legal system, it would be at the very centre of it.

It might seem that to speak of a Law of Nature or a Higher Law may, for some, hark back to a time when religious authority was the ultimate arbiter of human law. Today, I believe, we have a credible holistic science in the form of Gaia theory, which does not rest on belief in God or the Anima Mundi, but which nonetheless recognises our place within a wider universe of which we are but a part.

Intellectual conviction in Wild Law or Earth Jurisprudence is perhaps the easy first step. It is not hard to agree that a legal system which confirms man as being in opposition to nature, or dominant over nature, or which views nature as a mere resource for humans, serves only to prolong a battle which 'man wins to find himself on the losing side' as E F Schumacher put it.⁷ In the five years since I have been going to Wild Law conferences I have begun to see intellectual conviction ripen into a confidence that these ideas are practically important, communicable to others and not so 'far out' as they seem to be at first glance. It may be that our current law is 'far out', and in the (very) long run will be seen as such. In the rest of the workshop we went on to look at Wild Law in a range of different contexts.

Spreading Wild Law

There were several breakout sessions which were lead by people on the weekend using Open Space Technology. Rather than be presented with a programme, we built an agenda ourselves and delegates offered workshops on topics that interested them. It is hard to explain how this works, but the impression was that it did work very well. Briefly we had the following sessions.

Use of private law to create wilder land law. Could current or new forms of private ownership create new land management systems based on Wild Law, where human uses are conditional upon a beneficial relationship to the environment? What duties would the landowner need to carry out? Who could enforce them? Could we create multiple user rights that together were self sustaining? The group also discussed private local arbitration and possible forms of community ownership.

How to talk about values and ethics in a legal setting (without sounding crazy or getting laughed out of court). Linda Sheehan, Director of the California Coastkeeper Alliance,⁸ posed this question out of personal experience of being trapped in a 'linguistic box' that keeps lawyers from expressing their values. Could we use the 'duty of care' language and extend it to animals, plants and the environment? We must embrace our own shortcomings and have the courage

6 Stephan Harding *Animate Earth* (Green Books 2009).

7 E F Schumacher *Small is Beautiful* (Vintage 1993).
8 <http://www.cacoastkeeper.org>.

to talk about values in a legal context, despite fear of ridicule.

Planning and EIA, avenues for promoting Earth Jurisprudence. The EIA, Habitat and Water Framework Directives contain a considerable potential because the decision maker is not allowed to ignore environmental consequences and has to find reasons to justify a project. But the way the law is applied depends too much on the values of the developers or officials. This workshop explored ways of promoting pro-environment values within these laws and directives and considered the possible effectiveness of assigning monetary values to the environment and introducing values-based language.

An update of the work of the Gaia Foundation.

Projects include research into the origins of eco-cultural governance in the Colombian Amazon, and legal advocacy in Venda, South Africa, for a community-based campaign to regain community authority over their sacred lands. The process is in its infancy but there are hopes to bring in principles of Earth Jurisprudence in a future successful outcome. In the UK this year two communities – crofters in Scotland and fishermen in Ireland – approached the Gaia Foundation to assist them in securing protection for their traditional livelihoods and rights as indigenous peoples under international law, and for support in applying the methodologies of Community Ecological Governance to strengthen their community and ecosystem resilience to climate change and other external pressures.

How to be a wild lawyer. For many practicing lawyers there is a tension between dealing with values which preserve the status quo and the desire to be an agent of change. This session produced reflections on different ways to escape the ‘lawyers’ mindset’, to nurture creativity, maintain inspiration and become a Wild Lawyer, rather than just thinking about it. Are you a hired gun or a healer?

Improving environmental law ‘wildly’. UKELA’s ‘Aim 5’ is to improve the quality of environmental law. The Wild Law Group could use and support this aim by bringing Wild Law into the wider debates within UKELA, particularly by supporting the UKELA working parties. The benefits establishing an Environmental Ombudsman in the UK and how to achieve this were also discussed.⁹

Wild Law update

The Gaia Foundation, with support of the EJ Network, continues to contribute to the evolution and practice of Earth Jurisprudence in memory of its founder – Thomas Berry, whose memorial service was being held in New York at the same time as the workshop.¹⁰

The publication of the Wild Law International Research Paper in March 2009 by UKELA and the Gaia Foundation was a notable achievement of 2009. Ian Mason, co-author, gave a brief presentation to delegates about the methodology and the findings of this extensive, though he admitted by no means exhaustive, survey looking for evidence of Earth Jurisprudence in existing laws around the world (see the article by Ian Mason in this issue, pages 260–69). The conclusion of the Paper, which set out some indicators of what a wild law or system of governance would look like and ranked laws and judicial decisions accordingly, made it clear that there is very little evidence of any consistent intent by legislators to adopt Wild Law principles. By and large nature is seen as a resource to be used or even exploited by humans and protected only when the situation is really dire. Elements of wildness in law and administration do occur in various countries, but most stop at the model of sustainable development, which conflicts with Wild Law insofar as it does not seriously consider that humans may, indeed ultimately must, exist with nature in a mutually enhancing way. Nor does existing law consider that nature may have rights which need to be spoken for and represented in human legal systems.

The 2010 Wild Law Workshop¹¹ will be held from 24–26 September at the YHA in the Lee Valley, one of the last semi-natural habitats in Greater London.

9 See A Antypas ‘Hungary’s Ombudsman for future generations’ [2009] 4 Env. Liability CS72–4; and the Hungarian Environmental Ombudsman is talking in England early in 2010 at the invitation of UKELA see www.ukela.org.

10 At a recent EJ Retreat with international partners practising EJ at community level, EJ principles were collated, distilled and revised. Monthly EJ study groups at the Gaia Foundation have also provided opportunities for further discussion of the philosophy and practice of EJ. The EJ Resource Centre run by the Gaia Foundation hopes to launch a website in 2010 as a source of educational materials including EJ principles, examples of EJ precedents around the world.

11 Confirmed speakers include David Hart QC, Colin Tudge, author of *The Secret Life of Trees* and Dr Mayer Hillman, author of *How We Can Save the Planet*. See www.ukela.org.