
Issue #4: OCTOBER 2018

THE CONSCIOUS LAWYER
Serving the Transition to a More Beautiful World
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**EDITOR’S MESSAGE**

Between January and March this year I was fortunate enough to have a volunteering opportunity at SCHUMACHER COLLEGE in Devon, a centre for cutting-edge learning relating to ecology and spirituality. One of the greatest joys from being there was quite simply spending time in what you could call ‘authentic social contact’ with others. Living in London, amidst the rush and hurried exchanges, the value of this was more palpable. At Schumacher, there is a massive shift in focus from doing to being. One particular day my only task was to sit outside on a bench in the sunshine, to relax and wait for five or six new students arriving for a course. I remember drinking in the sunshine and feeling the rush and hurried exchanges, the value of this was more palpable. At Schumacher, there is a massive shift in focus from doing to being. One particular day my only task was to sit outside on a bench in the sunshine, to relax and wait for five or six new students arriving for a course. I remember drinking in the sunshine and feeling the

This fourth edition brings together more wonderful voices and ideas to give perspective and hope about this strongly emerging movement.

**Particular features include:**

**UK BARRISTER AND AUTHOR, POLLY HIGGINS** has long been a source of inspiration for those interested in the earth law and rights of nature movements. She has co-founded an incredible initiative called Mission Life Force which is setting about making Ecodice law a crime at the International Criminal Court. Details about how to sign up and get involved are worth reading.

**DUTCH LAWYER, Femke Wijdevink** is developing a new field of inquiry around advancing rights of nature through restorative justice. She describes several restorative outcomes for environmental crime cases.

After speaking on this topic at the recent UK Wild Law conference, UK LAWYER MOTHUR RAHMAN describes his involvement in developing community charters in the UK which he says is “the work of communities discovering and rooting themselves in values that emerge from discovering their “needs in common”.

**UK LAWYER JENNIFER JONES** offers her thoughts on the policy of child separation in the US and urges that, in this time of political volatility it is time to stay awake.

**THE LEGAL CHANGEMAKERS’ CAFÉS** – a few of which have taken place in London.

For those in the U.S. a three-day long conference organised by THE PROJECT FOR INTEGRATING SPIRITUALITY, LAW AND POLITICAL EDUCATION (PISLAP), is taking place in Washington D.C. PISLAP, a U.S. legal network offer a wealth of insight, expertise, connection and heart to those in this movement. They have regular conference calls during the year which anyone is welcome to join.

**Elaine Quinn,**
Editor-in-Chief

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**LEGAL CHANGEMAKERS’ CAFÉS:**

The Legal Changemakers’ Café is an initiative by a group of lawyers who call themselves, FORREST WEBB. Forrest Webb envisions a world where through the transformative power of law, all people are able to pursue their lives in an authentic way that sustainably serve a more peaceful, loving, and just world. Lawyers are society’s trusted advisors, peacekeepers, problem-solvers, and changemakers.

This evolving group met for the first time in 2017 in Almelo, The Netherlands which you may have read about in the second edition of this magazine. In September 2017, some of the original group and some others met in Mallorca and it was there that the idea for the Legal Changemakers’ Café was born. The initial inspiration was based on the need for a connecting space for conscious lawyers around the world. The first café was held in London in November 2017 and since then there have been more cafés held in London, one in Denver and an online café which was attended by people from the UK, USA, Europe and South Africa. There are plans to hold cafés in Amsterdam and Milan in the near future.

The Legal Changemakers’ Café is an open, supportive and respectful space for lawyers and others to connect, share, grow, and collaborate. Each Café lasts 90 minutes, and is facilitated to allow each voice to be properly heard. Those attending a Café can expect to take away insights and learning that they can apply in their own practice. Usually a speaker has 6 minutes to share after which there is a facilitated discussion. The intention is that those attending Cafés can as a result be more effective agents for change.

Participants have described the cafés as ‘stimulating’, ‘nourishing’, ‘deep connection’, ‘brilliant opportunity to... get energised’ and a great place to find your way and your soul as a lawyer’.

Keep an eye out on Facebook or via email for the next café. Tickets are available via Eventbrite. We’d love you to join us! For more general information about the Legal Changemakers’ Cafés and FORREST WEBB law Lab Design of Justice, Design the Courtroom of the Future

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**Legal Changemakers’ Cafés:**

Would you like to write for this section and help highlight interesting developments in the field of conscious law? Email info@theconsciouslawyer.co.uk

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**Tracking the movement**

Email info@theconsciouslawyer.co.uk

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**Editor’s Section**
Navigating the ebbs and flows may not always be easy, but it will be worthwhile.

Neap and spring tides: Therapeutic jurisprudence in the UK

The recent creation of the UK Chapter of the International Society for Therapeutic Jurisprudence (ISTJ) is an exciting step forward in raising the profile of TJ in England, Wales, Scotland and Northern Ireland. However, there are both opportunities and challenges ahead.

Neap and spring tides each occur twice in a month and represent the points at which the tide is at its lowest (neap) or highest (spring). In other words, they are the extremities of the sea hitting the shore, the times the waves are at their least and fullest. This imagery seems particularly apt when considering the present position of therapeutic jurisprudence in the UK, where both challenges and opportunities, lows and highs, abound.

In terms of high points, the creation of the UK’s ISTJ Chapter comes at a moment where there is increasing interest in, and discussion of, wellbeing issues within the professional education and the legal profession. Drawing on the excellent work done in the US, Australia and elsewhere, UK academics and practitioners are increasingly discussing mental health and wellbeing, often using an implicitly TJ lens. There have also been pilots of problem-solving courts, with the UK’s Centre for Justice Innovation reporting last year that “problem-solving has become a recognised part of the Scottish justice system”.

However, for each high point there is also a low point. The uncertainties of “Brexit” (the UK’s departure from the European Union) and fierce debates over changes to qualification routes into the legal profession’s commitment to problem-solving courts. Even those in the UK who demonstrate the hallmarks of therapeutic jurisprudence within their practice, research or other work, may not yet be conversant with the wider global movement.

At present, one of the key challenges in the UK is to encourage people within the UK whose practices and values already implicitly fit within a therapeutic jurisprudence framework to recognise and explicitly acknowledge this. A second is to raise awareness of its value amongst those in the legal world whose have not yet recognised the importance of identifying potentially anti-therapeutic consequences. To do this, it will be necessary to raise the profile of therapeutic jurisprudence at various levels – from individual practitioners to regional and national policy creation.

Of course, this could just as easily be characterised as an opportunity, a change for the new ISTJ Chapter to follow in the inspirational footsteps of others seeking to mainstream therapeutic jurisprudence worldwide. Navigating the ebbs and flows may not always be easy, but it will be worthwhile.

If you would like to become involved in the UK Chapter of the ISTJ please contact Emma on E.J.JONES@OPEN.AC.UK or, if you are already an ISTJ member, please post on the UK Chapter’s forum on the ISTJ WEBSITE.
“Transnational” Law Summit:

THE DICKSON POON SCHOOL OF LAW at Kings College London convened its inaugural “TRANSNATIONAL” LAW SUMMIT 2018 in April 2018. Legal academics and practitioners gathered over expert keynote presentations, panel debates and smaller workshops, presenting on a theme inspired by Hannah Arendt’s “THE HUMAN CONDITION”: Creating Justice for Our Future.

Applying “trans” rather than “inter” to the concept of the nation can open up interesting prospects for developing a jurisprudence that can respond to the current social, political and ecological crises. “Inter-national” law is that body of customary rules and treaties regulating the conduct as between nation states. The boundary is drawn around “the nation” as the unit of identity, with “inter” denoting the relation of “between”. “Trans” on the other hand means across or beyond, thus denoting the open ended territory that lies beyond the idea of the nation, emerging beyond such identities. “Transnational law” can thus interrogate “the State” as an institution of power and straddle over private as well as public law concepts, exploring what is emerging in the actual territory of people pushing and resisting and growing out of traditional notions of the State as purveyor of the “public interest”.

What many of the speakers seemed to be making a call for, from 2003 Nobel Peace Prize Laureate SHIRIN EBADI, to German Federal Constitutional Court judge SUSANNE BAER, was for civil society to come together beyond the State, as new “Sites of Engagement and Agency” (SEAS) for re-shaping power in a fracturing landscape of traditional institutions. This need for a new language for politics that can embrace networked civic action as a site of power is being recognized in organisations and platforms such as CIVIL SOCIETY FUTURES.

A short VIDEO SUMMARY of the Transnational Law Summit ends with this quote that feels apt for the times we are living in, a reminder that “the political realm arises directly out of acting together, the sharing of words and deeds”.

“Next stage organisations:

Years ago, when working as a junior lawyer for a large manufacturing company, I attended a meeting of senior executives, presided over by the senior vice president. I was in awe of this capable and charismatic leader, so I was taken aback when halfway through the meeting he put his head in his hands and gave an anguished howl: “It is so hard to get anything done!”.

Every generation has to find new ways of addressing this old question of how to organise a group of people to get things done. This generation faces a particularly interesting and difficult challenge as the old, top-down ways of organising, which we have relied on for so long are proving unable to keep up with a rapidly changing society.

New, more dynamic and less bureaucratic approaches, rich in promise, are emerging: Teal, Agile, Sociocracy, B Corp and more. Companies that embrace them report significantly higher levels of efficiency, customer satisfaction and staff fulfilment.

The Human Organising Co runs all day workshop, designed for pioneers who want to explore, in a creative and experimental way, these new ways of working. You can read more about us here: HTTP://HUMANORGANISING.ORG/
MISSION LIFE FORCE – ON TRACK TO MAKING ECOCIDE LAW A REALITY

Words: Elaine Quinn

Mission Life Force is a powerful and innovative movement that came into existence in 2017 with the intention of facilitating the establishment of Ecocide as a crime at the International Criminal Court (ICC) at the Hague.

Ecocide is “loss or damage to, or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished.”

In the words of one of its key founders, Earth Lawyer, Polly Higgins the movement “is going beyond a petition, beyond crowd-funding and beyond just the signing of a legal document, to enable people right across the world, wherever they are, to sign up and become legal trustees of the Earth”. Signing up to the movement involves signing up, and contributing, to an open, globally valid and legal Earth Protectors Trust Fund. Donations can start from as little as five euros and are open to all regardless of age. While there are no ongoing obligations or liabilities for trustees, the impact of each signature and donation is powerful. As a trustee, you will be:

HELPING MAKE ECOCIDE A CRIME: empowering small, climate-vulnerable states who have the incentive and ability, but not the financial means, to work towards amending international law to make ecocide an international crime at the ICC.

“Any money paid into the trust by anyone, no matter where they are in the world, will be used to help the small island developing states that have the political will to take ecocide law forward to become an international crime in the international criminal court. These small island states do not always have the finance to take forward their concerns in the correct forum. Climate change concerns are about state and corporate responsibility to stop dangerous industrial activity. This is an international criminality issue that needs to be taken into the Assembly of State Parties. The Assembly of State Parties is the annual meeting of the signatory parties to the Rome Statute, the governing document of the International Criminal Court. That is the forum where we are seeking an amendment to make ecocide an international crime.

The trust funds then pay for travel, accommodation and top legal representation for these delegates of these small island states to attend these meetings.” — Polly Higgins

AND HELPING PROTECT EARTH PROTECTORS: contributing your voice and support to a legal document that is offering, and will continue to offer, legal protection to “conscientious protectors” that are facing legal action for standing up against the serious harm to the environment happening in their region.

“Any money paid into the trust by anyone, no matter where they are in the world, will be used to help the small island developing states that have the political will to take ecocide law forward to become an international crime in the international criminal court. These small island states do not always have the finance to take forward their concerns in the correct forum. Climate change concerns are about state and corporate responsibility to stop dangerous industrial activity. This is an international criminality issue that needs to be taken into the Assembly of State Parties. The Assembly of State Parties is the annual meeting of the signatory parties to the Rome Statute, the governing document of the International Criminal Court. That is the forum where we are seeking an amendment to make ecocide an international crime.

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A wealth of information is available at the MISSION LIFE FORCE WEBSITE HERE as well as details about how you can provide support as a trustee and otherwise.

You can also support the movement at its FACEBOOK PAGE HERE and TWITTER PAGE HERE.

A new Ecological Justice Programme has also recently been launched in the UK for signatories to the Earth Protectors Trust Fund “who are taking peaceful action as Conscientious Protectors, standing up to protect the Earth and their communities from dangerous industrial activity.” The Courses are free of charge and template documentation to assist with court actions will be provided. To read more about this exciting development you can FOLLOW THIS LINK.

A vision, a mission and a movement well worth supporting! SIGN UP IN SUPPORT HERE.
MISSION LIFEFORCE - ONE LAW TO PROTECT THE EARTH

Our mission: to protect the Earth and future generations by making ecocide a crime at the International Criminal Court.

Right now, law is upside down: ecosystems across the world are being destroyed by dangerous industrial activity which is state-sanctioned and therefore legal, while taking action to protect those ecosystems is often criminalised. Our dream is to rectify this on a global scale by establishing a law that creates a different bottom line for states and corporations: a duty to respect life and prevent harm. A law that could turn the whole planetary ship around, and fast; that could re-align human law with a higher law we all recognise in our hearts.

This is not a pipe dream - it is possible. The method is a simple if little-known legal procedural route, creating a legally enforceable duty of care for the Earth by making ecocide a crime at the International Criminal Court (ICC) in The Hague. At present, the ICC prosecutes 4 international crimes: genocide, crimes against humanity, war crimes, and crimes of aggression. What is missing is a 5th international crime: the crime of ecocide. Any ICC signatory state can call for a new crime to be adopted. Ratification by a 2/3rd majority of signatory states is possible. There is no veto, no time limit, and each member state - no matter how small - has an equal vote.

Current law is inadequate: climate litigation, declaratory judgments and international agreements (eg Paris) are all in the realm of civil law - they do not and cannot prohibit state-sanctioned ecocides. This means that ecological plundering of the Earth cannot be effectively stopped; cultural ecocide, such as forced displacement of indigenous communities for profit, has no remedy. Where justice is required, it is criminal law that must be applied.

Breaking the vicious circle: ecosystem destruction (ecocide) leads to poverty, and so to conflict over limited resources, often in turn leading to war. Without a crime of ecocide in place, this vicious circle continues unchecked. With it, the cycle of harm is disrupted and ecocide becomes the exception, not the norm.

How can this vision be realised? A number of Small Island Developing States (SIDS) are already briefed and able to take ecocide crime forward. At the frontline of pollution-driven climate change, they have the urgency to act and many already have the legal ability to do so. But until now this has not occurred. This is because they lack:

1. the funds to attend the yearly ICC conferences in New York and The Hague;
2. the legal support and advice they require; and
3. the international visibility that creates a safe platform for their voices to be heard.

The law has been drafted. But while resourced nation states pay to have their delegates and lawyers attend key meetings, all too often the seats of the SIDS remain vacant. The preparations for submitting this amendment are costly. Small UK non-profit Ecological Defence Integrity has therefore applied its limited means to launching a fundraising campaign, Mission Lifeforce, based on a globally validated Trust Fund, to cover key costs and provide expert legal support for these island nations - the “swing states” that have the power to alter the course of history.

Sign up today to help make this happen at MissionLifeForce.org
I was born to be a lawyer. I was born in a law firm. My father is a lawyer, my mother was a lawyer, my aunt was a lawyer, my grandfather was a lawyer, my great-grandfather was a lawyer, and so on back in my family tree. My lineage goes so far back that my father has an ancient edition of Napoleon’s Civil Code because one of my ancestors bought it new to use and study.

With all this heavy inheritance on my back, and in spite of my father’s recommendation, I decided to study law. At first it was not a very good experience. Becoming a lawyer was difficult for me, because my choice was based on the need to earn money, and not on my personal set of values. Arguing about law and rights did not come naturally to me.

In 2012, fortunately I discovered something different and better. I began to understand that I could be a lawyer in a different way, a way that made real sense to me, by helping people navigate conflict to find a better quality of life. Since that time I have met many lawyers looking for a similarly different approach to their work. It seems to me that our profession is reaching a breaking point.

This is the reason I would like to tell you a short story about conflict in Mediterranean culture. I have been studying Greek mythology and have discovered something very important about why we manage conflict in a certain way; why it is easy for us to continue in this way; and why it is so difficult for us to change our mind-set.

Zeus was in love with Thetis, a minor goddess of the sea. He received a prophecy however that Thetis’s (as yet unborn) son would become greater than his father (in the same way that Zeus had dethroned his own father to lead the succeeding pantheon of gods). In order to avoid such an outcome, Zeus arranged for Thetis to marry a human, Peleus.

The wedding of Thetis and Peleus was celebrated on Mount Pelion, and was attended by all the gods and goddesses. Only Eris, the goddess of discord, had not been invited. She was very upset and, as revenge, she threw a golden apple into the midst of the goddesses. On the apple was written the words “to the fairest.”

Aphrodite, Hera and Athena were talking together when they saw the apple. All three of them laid claim to it. Zeus, as the chief Olympian, should have mediated the dispute. He preferred though not to mediate because he did not wish for any one of those goddesses to be upset with him: Hera was his wife, Athena, his favourite daughter and Aphrodite was the goddess of love.

Instead Zeus had Hermes lead the three goddesses to Paris, the shepherd prince of Troy, so that he could decide the issue. The three goddesses appeared before the young prince. At first he wanted to split the apple in three parts, however Hermes explained to him that it was Zeus’s wish that Paris judge the issue.

Paris asked the goddesses to swear not to have hard feelings towards him. He asked them to take off their clothes to permit him to examine them physically. During the examination each goddess secretly offered him gifts to be chosen as winner: Hera offered him the power of all Asia and to become the richest man in the world; Athena offered him wisdom and invincibility; and Aphrodite offered him the love of the most beautiful woman in the world. He chose Aphrodite.

But who was the most beautiful woman in the world? It was Helen of Sparta, the daughter of Zeus and Leda, the wife of Tyndareus the King of Sparta. When it was time for Helen to marry, as many as forty kings and princes from around the Greek world came to seek her hand. Tyndareus was afraid to select a husband for his daughter or to send any of the suitors away. Odysseus was one of the suitors and he proposed that, before the decision was made, all the suitors should swear a solemn oath to defend the chosen husband against whoever should retaliate against any intruder and to defend the marriage. Menelaus was chosen to be Helen’s husband by winning a race.

Menelaus and Helen ruled in Sparta for several years until Paris arrived in Sparta as part of a Trojan delegation.

As was promised by Aphrodite, Paris fell in love with Helen. Helen in turn, shot by a golden arrow from Eros, fell in love and ran away with Paris to Troy. At that time, Menelaus was in Crete and when he returned home and discovered his wife was gone he was furious. He went to his brother, Agamemnon, King of Mycænae, and asked for his help. The brothers sent emissaries to several Achaean kings and princes to help retrieve Helen. They had all been suitors and had made that same pact to help the winner if anyone came between the husband and wife.

Many of these kings and princes tried to renegotiate their promise to avoid the ensuing war, but an oath is an oath and it is not possible to break it. The war against Troy became unavoidable.
This myth illustrates many of the dynamics within conflict. Let me explain:

Zeus's actions were driven by his fear of the past. Try to think of how many of the mistakes we make, and how many of our conflicts, have their roots in a choice made attempting to avoid fear that comes from our past experiences? Zeus’s mindset is focused on the past, not on the present or on the future.

Eris, the goddess of discord is unwelcomed and excluded. As the myth shows, she represents the one who, if excluded from a process, tries to undermine it. In this case, the consequence of her exclusion, and resulting revenge, was serious - ten years of pain and struggle. We can reflect on when something like this happens in a family and how the wound can be felt for many subsequent generations.

The theme of responsibility is also relevant here as in every conflict. The three goddesses don't try to find a solution on their own. Rather they ask Zeus to decide, giving him the responsibility for the decision. This is just as common in our everyday life. Often, we do not take responsibility for resolving disagreements on our own because the task of dealing with, and understanding, our conflicts is difficult and requires personal reflection and forgiveness of ourselves and others. Zeus is also afraid of the possible results provoked by his choice, and here again we find fear, but this time joined with responsibility. A terrible combination!

Paris initially had the wisdom to want to share the apple. He instinctively knew that picking one goddess could cause trouble. He was forced to judge and, as before a modern court, the procedure was binding and he could not escape. He decides to use the instrument of a physical examination of the naked goddesses’ bodies and listen to their offers. How do we interpret those offers? At first glance, they seem to be like an attempt to corrupt however, on a deeper level, it seems to me that their behaviour is very like our own behaviour, as lawyers, in front of the court. We make part of the whole story visible to the judge, by focusing on the positive aspects of our

own client’s position using the instruments given to us by the law, and our interpretations of them.

Paris’s decision, and the events preceding it, formed the basis for a horrible conflict during which the gods used human beings as pawns.

Often a judge's decision can resolve the surface legal conflict however not the deeper relational dispute and so parties find a way of continuing their fights. This is what happens when someone else makes a decision that impacts heavily on the lives of other people without considering the underlying contest and without including the people themselves in the decision-making process. Greek mythology gives us the possibility of understanding conflict more clearly and of creating new ways and methods of dealing with it. These archetypes are a natural part of our human heritage. We still live with them and are attached to them. Our instinctive behaviour is to follow them because they are part of the air we breathe.

My vision for our culture is that we radically change our approach to conflict, dispute and disagreement. First, we need to understand why, and where, we are stuck. Then, one way forward is by working with these archetypes and ancient roots to find new guiding points.
BOOK WISDOM

Trailblazing publications

Reviewed by: Elaine Quinn

Image credits: Robert Bergman, Peter Gabel & Open Source

Reading Time: 6-7 minutes

“The Desire for Mutual Recognition; Social Movements and the Dissolution of the False Self” — Peter Gabel

Before reading any further, take a moment to sit and look at the striking portrait opposite.

This unusual and powerful invitation is one made to the reader in the first chapter of the book. It is an invitation that perhaps experientially captures the essence of what the author wants to convey – the experience of being truly recognised by a fully present human being, of deepening into our own natural presence as a result, and the subsequent implications for our collective reality were this to become a more consistent experience for all of us.

In ‘The Desire for Mutual Recognition’, Gabel attempts to unravel, in a spiritually-aware yet deeply grounded way, the knots of why this apparently most natural of states is so rare for human beings today and why its re-emergence is critical. An author interview that supplements and extends the ideas described in this book review, particularly for lawyers, can be found at PAGE 22.

The book is organised into ten chapters spanning, firstly, an exploration of the human desire for mutual recognition and how that desire gets thwarted and suppressed from the moment we are born to, secondly, a thorough examination of this social phenomenon in our collective society - how it manifests in our language, thought and ideology; our community structures from family to nations; and its deep problematic effect on our systems of economics, law and politics – to, finally, the book’s last chapters which offer insightful and practical wisdom toward understanding and rediscovering our truth, not as an individual endeavour, but with and for each other, and our world’s, future.

For the legal community, the book in its entirety is well worth reading for an understanding of the wider social vision within which law gains its meaning. Chapters 5 and 7 however deal particularly with how the book’s main thesis manifests within the field of law.

So, what is the root of our challenge in our mutual recognition of one another? We all know the beautiful sense of openness and transparency from a newborn baby willing and unafraid of connecting innocently with the world around it. The baby enters a world however that is heavily conditioned with centuries of suffering and contraction. Gabel describes this as the “cultural envelope” of our time and it immediately casts its shadow over the baby and child, initially through parents and families (the “psycho-spiritual field” we grow up in), and eventually through wider society. We learn that it is safer and indeed a “condition of social membership”, to contract, close and become absent rather than present. The extent to which this happens, in Gabel’s view, will depend on our experience of authentic social presence from those around us growing up.

Poignantly, not only does the child learn to withdraw and contract, it also learns to act as though this contracted self is who it really is, in effect cementing it into a growing sense of separation from its true self and others. A striking, almost caricature-ish, US newscaster motif illustrates this aspect of our nature well. A living human being like the rest of us but cloaked in his “newscaster” performance, Gabel says of him: “…the key point that I am making about the newscaster here is not to single him out for his

“...our original longing from birth is to be seen by the other in a way that fully recognises our humanity and our longing to simultaneously affirm our recognition of the other in the same way.” —(Chapter 3, page 58)
alienation, but to describe in a recognizably way the outer “casting” of the self, the transformation of our being into alienated performances, which occurs not just in the extreme case of the newcomer, but is suffered by all of us."

Inevitably then, this sense of individual withdrawal and separation impacts upon our collective existence in myriad ways. Instead of perceiving our “horizontal existential reality”, the “living latticework of inter-being” within which we exist, we become “frozen into falsehood” and “we float in each other’s presence rather than exist fully in the presence as the ground of our being”. Gabel takes us on a fascinating journey of how this phenomenon manifests in our culture and society through language, thought and ideology; family (often “incubators of alienation for each new generation”), communities, work and various governing system dynamics.

Difficulty in understanding and perceiving this state of affairs, he says reassuringly, is completely normal. We are so much “inside of it”, it can be difficult to imagine any alternative. In Chapter 5 however, we are asked to cast our minds back 500 years and perhaps contemplate the feudal hierarchy that existed then. We likely have no difficulty in accepting that the oppressive and limiting hierarchies and power structures that existed at that time were unnatural and unnecessarily constritive to human beings. Can we accept that our descendants may see our times in the same way?

The import of Gabel's thesis has particular significance for those of us working in law. In a courageous metaphor, Gabel says: “the entire, majestic ‘legal order’— ‘The Law’ itself – is a vast and elaborate acting out of the Emperor’s Clothes story. The parallels between that fairy-tale and the laden-down imagery and concepts in our legal systems today are compelling. Law, Gabel says, is the most legitimating ideology of the status quo because it solidifies into concrete norms, rules and laws the way human beings interact and relate. If, as has been described, we are interacting and relating predominantly through false selves, then we must acknowledge that the law itself is one of the prime agents keeping us locked in. Unfortunately, these revelations can be deeply threatening to the constructs of our legal and justice systems as they speak to the core of their very foundations. In illuminating commentary on the US justice system, Gabel describes the collective hallucination around the “Founding Fathers” and the US Constitution in the INTERVIEW PIECE ON PAGE 22.

While the book is a serious and incisive critique of the human social landscape, it is by no means pessimistic. Through understanding clearly where we stand and why we suffer, great hope is possible. Gabel believes that “social movements are the vehicle for our evolution” they are “liquefying movements” for our frozen world. Within them, however we now need a new ‘socio-spiritual activism’ to heal the fear at the heart of our own beings individually and collectively in order to breathe enough confidence into our movements toward each other and out into the world.

In the final chapter of the book, three “levels” of practice, or circles of beingness, from the individual to community to world offer grounded, practical wisdom for those committed to the task of healing and repairing our “life-world”. Gabel is careful to emphasise that these practices must be lived and not adopted as a method to fixing a world separate and “outside of us”. Our social being, Gabel says, is ontological and trans-historical. We must then become grounded together in our beings and co-create a parallel world that reflects this.

“We suddenly experience ourselves as actually existing, the world fills out like a great balloon of horizontal presence and mutuality, and the spiritual radiance that had previously been contained through collective social withdrawal suddenly becomes visible, illuminated.”

— (Introduction, page 4)

In the innermost circle, we begin to heal our separation through surrendering our detachment, using meditation and contemplative practices of our choice, enabling us to move outward toward others with courage and truth. Ways of speaking and writing that describe our being-in-the-world are emphasised, a marked feature of Gabel’s own writing in this book and other publications. This practice alone, if adopted within legal education, could represent a radical shift given how entrenched is our detached way of writing and speaking about the world.

In the second circle, we progressively begin to have steady healing encounters of authentic social presence with and through others, seeking out rich social locations where this is encouraged. Locations for religious or spiritual worship; local neighbourhoods and farmers markets; unions or even our families offer possibilities for these encounters. For lawyers, there are collective initiatives described in the magazine that can also offer this possibility.

In the third circle, we begin to weave a new narrative about the world which are drawing towards us through engaging in these practices. This is “the more beautiful world our hearts know is possible” evoked by Charles Eisenstein in his book of that title. Gabel cites Martin Luther King Jr. as “an example for what we all should aspire to as rhetoricians and prophets, as evokers of the world we seek to ring into being.”

I found “The Desire for Mutual Recognition” to be really a profoundly illuminating book for lawyers and non-lawyers alike. It is rich and dense in its insight and it is impossible to do justice in a short review. I wholeheartedly recommend it and hope that there will be a time in the near future when it will be recommended reading for new lawyers – the ones bravely envisioning, living, and slowly realising this new legal culture we are dreaming of.
THE PROJECT FOR INTEGRATING SPIRITUALITY, LAW AND POLITICS

PETER GABEL

‘We cannot proceed in the direction we are pressing unless we participate, in some way, in a parallel universe.’

Interview by: Elaine Quinn
Image Credits: Peter Gabel & OS (Unsplash, Pixabay)
Reading time: 8-9 minutes

WHEN DID THE SPIRITUAL DIMENSION BECOME IMPORTANT IN YOUR OWN LIFE?

My first experiences of inter-being and deep human connection came through the movements of my youth in “the sixties” (a period of years actually spanning 1965 to 1976), through experiencing the joy in the rising of those movements. To me, at that time, that was a political phenomenon, not a spiritual one. I recognise, in hindsight, that it was, of course, spiritual. Through my subsequent relationship to Rabbi Michael Lerner, I began to attend Jewish High Holiday Services in the Jewish Renewal Movement. We engaged in dancing, singing, movement, evocation, and prayer – intentional ways of being together. I realised that it was possible to intentionally create this elevation of consciousness through practicing together. This had a significant impact on me and, in time, led me to willingly use the word spirituality in describing my work.

YOU FIRST DEVELOPED THE CENTRAL IDEAS OF YOUR BOOK AS A GRADUATE STUDENT ALMOST FORTY YEARS AGO. CAN YOU DESCRIBE HOW THE IDEAS EMERGED FOR YOU THEN?

What was dawning on me with increasing clarity in “the sixties” was that emerging into the world, through the multiplicity of movements occurring at that time, was a new parallel consciousness alongside the dominant reality that co-existed with it. It was possible to palpably feel two realities in the world simultaneously existing. One was the “evening news” reality – a version of the world represented as real but that was actually quite unreal. At that time, the Vietnam War was happening and millions of people were being killed. The delusional, imaginary ways people were living were perhaps more obvious against this backdrop. Many of us were beginning to experience this “evening news” reality as a delusion. A RECORDING BY ‘THE ELECTRIC FLAG’ ROCK GROUP really captures this. The record begins with the voice of President Lyndon Johnson, in his Texan accent, addressing “My Fellow Americans”. Then suddenly everyone bursts into hysterics. It captures this moment during which the order of the world was beginning to dissolve. It was as though this man was a kind of absurd jester. And yet, standing behind the podium with the presidential seal, he was treated as this elevated person. We are witnessing a similar absurdity with the man currently standing behind the presidential seal.

The second reality was “the movements” reality where we were opening our eyes to each other in a new way, with a new consciousness. It was a very fruitful moment for thinking and developing new ideas. In graduate school, the palpable existence of these two realities was enabling me to perceive more clearly. My dissertation was titled “The Social Psychology of Law and Legal Processes” and I was already starting to write about law in the way I describe in my book. I never thought down the whole theory, as it had emerged then, until now. I cannot say exactly why it has taken until now except perhaps to say that it was a vast enterprise requiring three full years of work.

CAN YOU GIVE AN OVERVIEW OF THE BOOK’S THEME AS IT RELATES TO LAW AND LEGAL CULTURE?

We have inherited this constraining “envelope” of being from the 17th and 18th centuries and it saturates legal imagery and thought. It is an analytical discourse that separates thought from feeling. Participating in it involves manipulating concepts that presuppose we are socially separated, disconnected monads floating in space. When we train as lawyers, we are immersed in this discourse and we must accept it.

We can certainly understand this discourse as an expressive part of our evolution – that is, the rising of the liberal individual out of oppressive forms of group coercion. We can even say it was a great achievement for its time. Understanding and accepting that however, we can now throw ourselves into escaping this constraining “envelope” for a new legal culture that emphasises what is most missing in our world which is the capacity to fully recognise each other’s humanity.

This new legal culture heals the legacy of fear in the other. It is a legal culture that fosters, through empathy, compassion and mutual understanding (and through practices that can make that possible) the experience of mutual recognition or of love. Love in the sense of the beauty of apprehending each other’s humanity and being present in each other’s humanity.

YOU USE A POWERFUL METAPHOR OF THE “THE EMPERORS’ NEW CLOTHES” TO DESCRIBE THE ENTIRE LEGAL ORDER IN CHAPTER 7. CAN YOU SPEAK MORE ABOUT THIS?

Well, this was very clear recently with the publicity around President Trump’s list of Supreme Court nominees. The dominant ideology that all of these ‘Trumpian’ Justices [including the chosen candidate, Brett Kavanaugh] advocate is originalism meaning the only way we can interpret the meaning of the US Constitution is based on the original intent of its founding fathers. I wrote a recent article on this in TIKKUN MAGAZINE.

It is part of an investiture of majesty into a prior generation of young men who were mostly in their twenties and thirties – the so-called ‘Founding Fathers’. If we give this any level of reflection, we will realise that it is absolutely absurd, surreal and insane for our Highest Courts to think that the only way we can collectively know what we ought to do in a given situation is to try and decipher the intent of a group of young men who lived over two hundred years ago. Nevertheless, in the US, this collective belief is internalised in childhood when the awe surrounding the founding fathers is first transmitted in civics class. It is associated with deference and awe for the American flag which everyone must stand for. One gradually comes to internalise a kind of magical world that is somehow “we” Americans. For lawyers particularly, this is complicated because we must participate in the discourse in order to realise the potential of the liberal revolutions of the 18th century. Within the ideology of those revolutions were the ideals of liberty and equality and the struggle for non-discrimination. Although our understanding has expanded greatly, we are still trying to carry out those liberal revolutions.
Nevertheless, this current discourse is extraordinarily limited. When we argue within it, we are to some extent participating in the very hallucinatory narrative about reality that we are trying to transcend. For now, however, we are stuck arguing within the liberal ideology in order to realise its possibilities because others believe in it and are participating in it. So, there is this paradoxical relationship. We cannot yet go into court and just put it out there that true legal equality ought to mean a truly loving world where we can foster and affirm our inter-being and connection. Importantly though, we can really do our best to infuse the discourse or the argument with a meaning beyond and its inherent meaning. Within the discourse that is permitted within the room we are in, the room that allows that person to be a judge and that allows the room to be called a court-room, we can fuse the transcendental within the real inheritance that we are still stuck with.

WHAT ABOUT LIVING THOSE QUALITIES OF EMPATHY, COMPASSION AND MUTUAL UNDERSTANDING IN OUR WORK ON A DAY-TO-DAY BASIS IN A LAW FIRM?

Lawyers cannot really do what they do and remain easily fully present in their bodies. They often have to establish a type of interior barrier that keeps them disconnected from their bodies and their feelings. I often call this the ‘glassy-eyed stare’. Lawyers are often reading their thoughts as they make their arguments. It is this capacity to transpose the life-world into a mental legal schema and then narrate it.

It is very important to remember that humanity always remains, even in the law firm. It is always possible to challenge the ‘glassy-eyed stare’, to thaw the false self, by assertion in the present moment. People working in the law firm are still people. They are not necessarily totally consumed by this ‘envelope’ of being and we can connect with their compassion and humanity.

We have to imagine creating a legal universe where, instead of disconnection and separation, there is a more open kind of awareness that integrates the whole person into the present. Then, a law firm simply contains people coming together seeking to transcend and heal a problem of some kind with each other.

YOU SAY WE MUST SURRENDER OUR DETACHMENT AND ENGAGE IN WAYS OF SPEAKING AND WRITING FROM OUR BEING-IN-THE-WORLD. THIS SHIFT IS A RADICAL ONE FOR LAWYERS AS IT IS COMPLETELY CONTRARY TO WHAT WE ARE TAUGHT?

Yes, it is very important. I started out as a writer with the rise of the Critical Legal Studies movement in the US. In that movement, we were people that were shaped by ‘the sixties’, we identified with social movement, the civil rights movement and the gay and lesbian movements and many of us became law professors at that time. We saw that law and legal culture were being rationalised, for example, with the Vietnam War and there was a strong left wing movement to critique this. We wanted to write about how law limited the gains of those movements whether by repressing them altogether or by co-opting them and legitimising the established reality of the “evening news”.

Many of us wrote many articles during that time. And yes, my articles and earlier books are written from the experience of what it is like to live in the world and not from the outside (social phenomenology). The point of the book, and writing this way is part of it, is not to put forward a new belief system but to illuminate a common experience that is masked, or opaque to us, in everyday life. It is to illuminate what we already experience. And to, in that illumination, create in people an experience of self-evident acknowledgement. Like, “Exactly. Yes, that’s it exactly.”

DO YOU THINK WE ARE IN A TIME NOW WHERE THE IDEAS YOU EXPRESS ARE MORE CAPABLE OF BEING HEARD AND RECEIVED?

I think there is a rising, spiritually conscious movement in the world in part born out of the failures of past social movements and the theories that have supported them like Marxism. Basic liberal thought is not producing the world that many people fighting for rights alone have aspired to. The left, more radical, movements have followed theories more heavily based on materialism and redistribution of wealth and power also have not worked. The internal dynamics within groups has often tended to undermine us and the struggle with the mainstream society. It is a difficult task to change the world. In the sixties, the thinking was often hard and angry as it was based on the unjust distribution of wealth and power rather than on the inability to fully recognise each other’s humanity in a loving and caring way. Although the latter was part of my early experience of the movements, it was not articulated at the time. We saw that liberal ideology in order to realise its possibilities and the thinking very well. This has led us, in part, to a more spiritually aware movement that is drawing many people and that is trying to introduce a healing, loving, elevating consciousness. It has been strength ened by women’s movements and by other non-male forces. It is a dawning that is different from rational thought.

WHAT FINAL ADVICE WOULD YOU GIVE TO THOSE OF US IN LAW SEEKING TO BRING IN THIS NEW LEGAL CULTURE?

We cannot proceed in the direction we are pressing unless we participate, in some way, in a parallel universe. I offer three circles of being-ness in the final chapter of the book. These must be lived. The outer shift will only follow, or happen alongside, the inner shift in each of us.

First, engage in a spiritual practice on a regular basis which enables you connect with your deepest self so that you do not get drawn off into the artificiality of being a lawyer and playing the role of lawyer.

Second, be part of some kind of group life where you can be recognised for your deep being and not for your prestige, your salary, your role.

And third, engage in some kind of activism where you can articulate a moral direction that is your highest vision for the world. Be visionary about it. For example, if you are going to advocate for universal healthcare, invoke a world in which we are caring for each other’s health, and the health of our families. If you are going to talk about the environment, don’t talk about science and the global warming that is going to kill us all. Talk about the incredible beauty of the yellow flowers outside your window (currently outside mine).

A world that people long for…

Appeal to what it is that we as a people really deeply long for and resonate with. Live from there.
Restorative justice is a fast-growing social movement and set of practices that aim to redirect society’s retributive (punishment-oriented) response to crime. It emerged in North America during the 1970s when alternative approaches to the criminal justice system, such as alternative dispute resolution, were becoming a trend. It rose alongside the victims’ rights movement, which argued for greater involvement of crime victims in the criminal justice process, as well as for the use of restitution as compensation for losses. A 1974 case in Kitchener, Ontario, Canada, is considered the beginning point of today’s restorative justice movement. This “Kitchener experiment” required two teenagers to meet with and pay restitution to every one of the twenty-two people whose property they had vandalized.

The Mennonite Church played a role of importance in rolling out the first Victim-Offender Reconciliation processes in Canada and the USA.

At the same time, many of the values, principles, and practices of restorative justice reflect those of indigenous cultures such as the Maori in New Zealand and the First Nations People of Canada and the USA. In these indigenous cultures, community-members, led by an elder, collectively participate in finding a solution for conflict.

Restorative justice views crime not as a depersonalized breaking of the law but as a wrong against other members of the community. It involves community-based processes, which offer an inclusive way of dealing with offenders and victims of crime through facilitated meetings. These meetings provide a forum in which offenders can take responsibility for their offending. Restorative processes empower victims by inviting them into the heart of the criminal justice process. Victims are given a positive, safe environment in which key questions can be answered, emotional and material needs can be expressed and healing can begin. Restorative processes focus on accountability and seek to repair the damage done by crime by applying a practical response and, where fitting, appropriate sanctions. They also create the possibility of reconciliation through the practice of compassion, healing, mercy and forgiveness.
There are four main types of restorative processes:

1) Victim-offender conferences: a process which provides victims of crime the opportunity to meet the offender in a safe and structured setting, with the goal of holding the offender directly accountable for their behavior while providing assistance and compensation to the victim.

2) Community and family group conferences: a meeting between victims, offenders and their respective families and communities, led by a trained facilitator, in which the affected parties discuss how they have been harmed by the offence and how the offender might best repair the harm.

3) Sentencing circles: a community-directed process, conducted in partnership with the criminal justice system, to develop consensus on an appropriate sentencing plan that addresses the concerns of all interested parties. These circles, which are sometimes called peacemaking circles, use traditional (indigenous) circle ritual and structures.

4) Community reparative boards, an alternative to the criminal justice system.

Restorative processes can be applied alongside retributive sanctions (fines/imprisonment), as part of a convicts' rehabilitation process, or, if the prosecution or judge so decides, instead of retributive sanctions. Restorative justice has seen worldwide growth since the 1990s and most academic studies suggest it makes offenders less likely to reoffend. A 2007 study also found that it had the highest rate of victim satisfaction and offender accountability of any method of justice. It is applied to individual criminal cases and to system-wide offences, of which the South African Truth and Reconciliation Commission is the most famous example.

(b) ADVANCING RIGHTS OF NATURE THROUGH RESTORATIVE JUSTICE

Words: Femke Wijdekop
Photo credit: Open Source (Unsplash, Pixabay)
Reading Time: 6.5 minutes

The Scottish law firm Living Law recently published an excellent report analyzing legal developments to recognize rights of nature in the jurisdictions of New Zealand, Colombia, Ecuador, Bolivia and India. The report among others describes how rights of nature developments in one country can stimulate recognition of these rights in other jurisdictions, as was the case with New Zealand and India. It analyses rights of nature-developments against the backdrop of the Sustainable Development Goals, climate change and the Earth's Planetary Boundaries.

The growing momentum for rights of nature is hope giving, but the report also signals recurring challenges in the enforcement of rights of nature-provisions in legislation and judicial rulings. Enforcement of rights of nature is often problematic, especially when rights of nature have to be upheld against well-entrenched property rights. I think that if we strive for rights of nature-provisions and rulings to become another avenue to advance the rights of nature? In New Zealand and Australia restorative justice is applied to environmental crimes, which I will shortly discuss in the next paragraph.

Applying Restorative Justice to Environmental Crimes

Restorative justice can be applied to environmental crimes and the defendants' commitment to make amends can involve restoration of the environment. There are several possible restorative outcomes in the case of environmental crimes: apologies; restoration of environmental harm and prevention of future harm; compensatory restoration of environments elsewhere if the affected environment cannot be restored to its former condition; payment of compensation to the victims and community service work. Measures addressing future behavior, such as an environmental audit of the activities of the offending company, or environmental training and education of the company's employees, are also possible outcomes.

Restorative justice has been an important element in New Zealand sentencing since 2002. According to a 2012 report of the Ministry for the Environment, between 1 July 2001 and 30 September 2012, a restorative justice process was used in 33 prosecutions under the Resource Management Act in New Zealand. In Australia, the New South Wales Land and...
Environment Court also uses restorative processes in addressing environmental offences. The Australian Victorian Environment Protection Agency uses restorative justice conferences in communities affected with environmental damage.

**Representing Nature in Restorative Conferences**

Nature is sometimes recognized as a victim of environmental crime in its own right, and represented in the restorative process. As writes Justice Brian Preston: “Humans are not the only victims of environmental crime. The biosphere and nonhuman biota have intrinsic value independent of their utilitarian or instrumental use.” When harmed by environmental crime, the biosphere and non-human biota also are victims. The harm is able to be assessed from an ecological perspective; it need not be anthropocentric (…) If the environment is recognised as being a victim of environmental crime and is represented in the restorative justice process, it becomes empowered. The environment is given a voice, validity and respect. This itself is a transformative act as it recognizes the intrinsic value of the environment.

Restorative outcomes that involve prevention of future environmental harm and restoration and reparation of past environmental harm are also transformative. By giving the environment a voice and recognising and healing it as a victim, humanity’s relationship with the environment is also transformed.

With respect to the appropriate representative for elements of nature harmed by environmental crime, Judge Preston writes: “The choice of representative will be influenced by the crime and the harm caused. For example, for a water pollution offence which affects river quality, the community that uses and benefits from the river, and the river itself which is also a victim, could be represented by a governmental or non-governmental organisation responsible for or engaged in protection of riverine ecosystems. Similarly, for offences involving harm to harbours and bays, the community and the harbours could be represented by government or non-governmental organisations responsible for or engaged in protection of the harbours. For offences involving the cutting of trees or native vegetation without consent, the trees and the vegetation community of which the trees were part could be represented by governmental and non-governmental organisations responsible for or engaged in protection, restoration or regeneration of native vegetation (…) Where the environment and non-human biota are the victims, the surrogate victim needs to be able to bring to the restorative process an ecocentric and not anthropocentric perspective. As with future generations, the fact that the environment and non-human biota are not able to vocalise their claims and concerns is not an insuperable problem. A representative can be appointed to speak on their behalf.”

**Trees and rivers have been represented by a surrogate victim in a few New Zealand restorative justice conferences:**

In Auckland City Council v 12 Carlton Gore Road Ltd and Mary-Anne Catherine McKay Lowe (Auckland District Court (McElrea DCJ), 11 April 2005) the Council and Sam Joship Tupou (Auckland District Court (Judge JP Doogue), 28 February 2005) the environment affected by destruction and cutting of trees without resource consent was represented by the local council which was responsible for administering the laws protecting vegetation in the area. In these cases, the trees were considered a victim in their own right and represented as such at the conference.

In the Waikato Regional Council v. Huntly Quarries Ltd and Ian Harold Wedding case (Auckland District Court (McElrea DCJ), 30 July 2003 and 28 October 2003), a river was represented at a restorative justice conference as a victim in its own right. In this case, sediment laden storm water was illegally discharged from the offender’s quarry affecting the river quality of the Waikato River, a river of particular cultural significance for the local Maori Taiui people. The river was represented at the restorative justice conference by the chairperson of the Lower Waikato River Enhancement Society. The outcome of the restorative conference was that the offender had to make a donation to the Lower Waikato River Enhancement Society in lieu of a fine. The offender complied and was then discharged without conviction.

In Auckland City Council v B & C Shaw and B & C Shaw Limited, (Auckland District Court (McElrea DCJ), 1 March 2005) the restorative outcome of the conference involved restoration of the physical environment. A developer felled a protected pohutukawa tree for gain. At the conference where the defendant apologised publicly, it was agreed that the defendant would plant a new pohutukawa tree on the property, pay for an arborist to maintain it for five years under an enforcement order, make a donation of $20,000 to the community for the purchase of 200 trees for planting in the local area, and make a donation of $80,000 to the Council for its costs. At sentencing the outcome plan was accepted by the judge as a starting point and the responsible defendant avoided three months imprisonment (in part because of the restorative justice process) but was fined $80,000.

This case-overview is concise but it shows the potential of restorative justice to advance the recognition of nature as a victim and to vindicate nature’s rights. Will these early New Zealand examples of representing nature at restorative justice conferences stimulate similar practices in other countries, as was the case with the recognition of the rights of the Whanganui-river? With the growing support for rights of nature, the time seems ripe for ecocentric perspectives to become integrated in restorative responses to environmental crimes.

**Conclusion**

Could a community and connection-oriented method of addressing environmental damage such as restorative justice, with human guardians representing the natural elements that are injured by pollution, thus advancing the rights of nature and the ecocentric worldview which underpins it? Restorative justice is a more systemic way of addressing the harm caused by crime. Rights of Nature equally looks at environmental harm from a system-perspective; the system being the wider Earth community. Both restorative justice and rights of nature have indigenous roots. In decision-making processes of for example the Moluccan indigenous people, the Earth and future generations are represented.

The fact that restorative justice uses indigenous processes such as (peacemaking) circles can create a conducive environment for rights-of-nature approaches to gain strength. To repeat the words of Justice Brian Preston, “If the environment is recognised as being a victim of environmental crime and is represented in the restorative justice process, it becomes empowered. The environment is given a voice, with a character, it could be well suited to give space for rights-of-nature-approaches to what constitutes an environmental violation, who can be a victim of such a violation, and what ‘restoration’ could look like. Offender’s confrontation with the harmful effect of his/her actions on the natural world, in the ideal case, might contribute to his/her ecological awakening. This confrontation can help the offender to start to relate differently to the natural world and to begin to internalize the values inherent in rights of nature. In the words of Judge Preston, “By giving the environment a voice and recognising and healing it as a victim, humanity’s relationship with the environment can be transformed.” As such, restorative justice seems to hold great potential as an avenue to advance the rights of nature.

Restorative justice allows a wide range of values, including spiritual and emotional values, and needs to be expressed and culturally appropriate procedures to be followed. Thanks to this ‘open’ character, it could be well suited to give space for rights of nature-approaches to what constitutes an environmental violation, who can be a victim of such a violation, and what ‘restoration’ could look like. Offender’s confrontation with the harmful effect of his/her actions on the natural world, in the ideal case, might contribute to his/her ecological awakening. This confrontation can help the offender to start to relate differently to the natural world and to begin to internalize the values inherent in rights of nature. In the words of Judge Preston, “By giving the environment a voice and recognising and healing it as a victim, humanity’s relationship with the environment can be transformed.” As such, restorative justice seems to hold great potential as an avenue to advance the rights of nature.
CONSCIOUS SACRED RESISTANCE

Woke: ‘If We Will But Do It’: Reflections On the Policy of Child Separation in the US

THE FINAL WEEK OF AUGUST memorializes the fifty-fifth anniversary of Rev. Dr. Martin Luther King’s ‘I Have A Dream’ address. Prophetically, Dr. King presented a moral appeal to the nation to enact the reality of the Beloved Community in its systems, institutions, laws, policies, practices, and societal norms. Just a few years after delivering the ‘I Have A Dream’ speech, having identified the nation as being in the midst of revolution, King urged the nation in his ‘Remaining Awake Through the Great Revolution’ sermon the importance of vigilantly remaining awake during the challenges of revolutionary change.

The fourth week of August also marks the thirteenth anniversary of Hurricane Katrina. A man-made environmental disaster which broadcast long unaddressed racial and class disparities symbolic of those present in American society at large. Indeed, following domestic migration, the survivors and victims of Hurricane Katrina, American citizens, were characterized as ‘refugees.’ Under this concomitant union of race and poverty were the survivors rendered to a dominant cultural translation as refugee and criminalized accordingly. Both the Danzinger Bridge and Henry Glover cases as well as the reluctance of many states to accept the survivors, reveal the criminalization, exclusion, vigilantism, and physical violence to which many New Orleanians and Southeastern Louisianans were subject.

And today, as then, refugee and asylee status has been criminalized on the national stage. Globally no new song and dance, this extreme political polarization seeped in nationalism has rendered current immigration policies and regulations in violation of domestic and international law. These and other policies threaten the fabric of democratic institutions. Yet most concerning is the moral posture of the nation. For the United States is on a precipice of conscience for which consciousness is not only necessary but will determine the future of the nation. Globally it is time to remain awake.
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nation that consistently promulgates an agenda of separation and hate
natural and probable result of a Presidential campaign and administra-
Many have expressed shock and outrage. Yet a pattern of abuse begets
States recently held in the Jennings decision, that under relevant
with no legal representation. Yet the Supreme Court of the United
party defendants to serious deliberations before immigration judges
institutions tasked with their care and protection. A ruling in favor
their parents have been subject to sexual abuse in the juvenile
already separated. To date, the Department of Justice has reported
a halt to the separation of families and the reunification of families
Bishops and other faith communities have called the policy immoral.
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in which parents can be heard pleading for reunification with their
The policy of child separation stoked national outrage, protest, litigation, public confrontation of government leaders, and international condemnation. Psychologists have categorized the separation practice as a form of child abuse which may cause irreversible trauma. International organizations characterize the policy with regard to asylees as in violation of international laws. U.S. Catholic Bishops and other faith communities have called the policy immoral.
In Spring of 2018 U.S. Attorney General Jeff Sessions announced a Zero Tolerance immigration policy. The Sessions Zero Tolerance immigration policy enacted broad prosecution of migrants charged with illegal entry - regardless of status, claim, or the apparent need for family unity, a concept so fundamental to U.S. immigration law. The Sessions approach further erodes the prosecutorial discretion guidelines set forth by the Obama Era Johnson memo. However, most concerning, as a deterrence component, the Sessions policy mandated the separation of children from families during the immigration detention process. Not commonly utilized by previous U.S. executive administrations, the policy of child separation during the detention process then became standard practice.
Following the enactment of the policy, attorneys, legal workers, and news reports confirmed that children, some nursing infants and tender age minors, were in fact separated from their families. Reports also confirmed that the practice is utilized against all migrants in apparent violation of immigration law, including asylum seekers with a facially legal valid credible fear which is protected under international law. As a result, hundreds of children have been separated from their families. Disturbingly, mass prosecution hearings have been held in which parents can be heard pleading for reunification with their children. The policy of child separation stoked national outrage, protest, litigation, public confrontation of government leaders, and international condemnation. Psychologists have categorized the separation practice as a form of child abuse which may cause irreversible trauma. International organizations characterize the policy with regard to asylees as in violation of international law. U.S. Catholic Bishops and other faith communities have called the policy immoral.
In Summer of 2018, U.S. District Court Judge Dana Sabraw granted a preliminary injunction filed against the administration and ordered a halt to the separation of families and the reunification of families already separated. To date, the Department of Justice has reported that scores of children are still separated from their parents. Further aggravating, it is reported that some children while separated from their parents have been subject to sexual abuse in the juvenile institutions tasked with their care and protection. A ruling in favor of individual immigrant due process rights could not have been more timely at this juncture of mass criminal hearings and children made party defendants to serious deliberations before immigration judges with no legal representation. Yet the Supreme Court of the United States recently held in the Jennings decision, that under relevant provisions that even mandatory detainees, including asylum seekers, are not entitled to a bond hearing when detention is prolonged.
Many have expressed shock and outrage. Yet a pattern of abuse begets abuse. The Zero Tolerance policy and child separation mandate are the natural and probable result of a Presidential campaign and administration that consistently promulgates an agenda of separation and hate against women, minorities, religious minorities, indigenous peoples, immigrants, the environment, persons with disabilities, the LGBT community, and the poor. That the Commander in Chief at one point bragged about sexual assault of women is a precursor to violence and violent policies. Essentially, the result can only be but violence. This dynamic reflects what studies have increasingly revealed: that violence against women has a direct link to societal violence. Indeed, coupled with the policy of child separation, the current campaign against deporting illegal entry holders is aligned against wayward passivity in the form of waiting for the passage of time to resolve urgent and entrenched humanitarian issues. 'We must honestly and consistently ask tragic questions about lives that have constantly been disseminated all over our nation. One is the myth of time... There is an answer to that myth. It is that time is neutral. It can be used either constructively or destructively. Indeed as Dr. King advanced, in his 'Letter From A Birmingham jail,' we must be thermostats changing the national tone and not thermometers simply absorbing and reflecting the dynamics of our time.
Surely, it can be said that a conscious conscientiousness not cowardice is needed at this time. Under a nationalistic government, theologian Dietrich Bonhoeffer was executed by the Nazi regime for active resistance against the then fascist nationalist German government. Bonhoeffer infamously postulated what he termed 'cheap grace' versus 'costly grace.' Bonhoeffer posited that cheap grace is simply an inactive intellectual principle which requires no change on the part of the individual nor society. In contrast, Bonhoeffer states costly grace represents an inward place of transformation which "calls" one to change outward conditions in proclamation of Truth. Repeatedly characterizing this type of grace as a call, Bonhoeffer explains that the depth of this call insists that the individual exchange his small separated consciousness in surrender and in use to 'true life.' Bonhoeffer argues that it is costly grace which is the catalyst for true discipleship. Dietrich Bonhoeffer, not an outsider subject to the direct persecution under the Nazi regime had many opportunities to passively sit out a moral and spiritual crisis of his time both domestically in Germany and while in the U.S. However, Bonhoeffer turned directly to his inner conviction, returned to Germany, was imprisoned for his resistance, and executed shortly thereafter- just weeks before the liberation of the concentration camp in which he was held.
Though this is a dark hour nationally, there is a certain Universal promise patterned on a the source of light. The indestructible light of the Soul will not only keep us awake during this dark time but outshine the darkness such that it never existed. In this certain Truth, there we find our true indivisible union. And a resistance shored up in the Soul, the very heart and essence of humanity will transform the world. This presence of body and Soul will reveal an inexhaustible light which refuses to allow a false narrative to prevail. Knowing the truth, we will replace systems with that which reflects the Truth of all Beings.
Dr. King stated that the implementation of Soul Force is the moral mandate to people of benevolent will. And I submit that nothing will be done until people of goodwill put their bodies and their souls in motion. And it will be the kind of soul force brought into being as a result of this confrontation that I believe will make the difference. One day we will have to stand before the God of history and we will talk in terms of things we’ve done. Placed upon a path of sacred resistance, Gandhi, the progenitor of the satyagraha or the soul force concept taught that satyagraha is the force of truth which binds the individual within the ultimate source of true strength and power. Let us do the work that we are called by name to do individually and collectively. Let us make our living and actions be a prayer and affirmation. If we will but do it; if we will but answer the call, we will know joy, glory, and the world lasting peace.

JENIPHER JONES is a Civil Rights Associate Attorney at Nexus Derechos Humanos Attorneys. Jenipher graduated from Bennett College for Women with a B.A. in Political Science. She then attended law school at Loyola University New Orleans College of Law with membership to Maritime Journal, Honor Society, fellowship, and clinical study. Jenipher has worked on the municipal and federal levels addressing law enforcement accountability to the community and employment discrimination matters. She has also worked at a private law firm handling immigration removal defense cases and public policy advocacy. Areas of concentration include civil rights: law enforcement misconduct, employment discrimination, immigration removal defense, and public policy. Committed to the advancement of human rights and ethic of service, Jenipher is a member of the National Lawyers Guild (NLG) National Police Accountability Project (NPAP), Fellowship of Reconciliation (FOR), Southerners On New Ground (SONG), and Colorado People’s Alliance (CPA). Having rescued two dogs while residing in Post-Katrina New Orleans, Jenipher is also an active supporter of animal rescue, rights, and rehabilitation.

“How beautiful can life be?
We hardly dare imagine it.”
— Charles Eisenstein, Sacred Economics
COMMUNITY CHARTERS

Words: Mothiur Rahman
Reading Time: 6 minutes
Image Credit: Flickr CC

Feature: COMMUNITY CHARTERS

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We came to realise that behind nearly every resident’s remark was an unspoken desire to have a sense of ownership and control over their “lived experience”. This insight became the ground for a legally argued objection to Dart Energy’s planning application: that its Environmental Impact Assessment (EIA) was inadequate since it did not assess the impact of the UOG project on the community’s lived experience - an element we said of their “cultural heritage”. Falkirk’s Community Charter sets out the intangible and tangible assets that shape such experience.

WALKING THE TALK: A PUBLIC INQUIRY & MORATORIUM

By the time of a public inquiry in April 2014, the Community Charter had been “adopted” by eight Community Councils and CCoF was given a main seat at the Inquiry, along with Falkirk Council and Friends of the Earth Scotland. Together with the determination and hard work from CCoF residents, CCoF’s legal team presented a strong case about the risks of UOG development and also a case for the inadequacy of the EIA. Just as we were expecting Scottish Ministers to make their decision (they had “recalled” the decision due to public interest), they announced a moratorium on all Scottish planning applications for UOG development, until further evidence had been gathered on its risks.

During a four month government “public engagement” between February and May 2017, the Community Chartering Network worked with Connecting Scotland to support 16 Community Councils to host “Fracking Conversations” for their constituents. Despite an overwhelming majority against UOG development, there were many who felt the moratorium and public consultation would, ultimately, lead to no change in a major story of our times; “government in bed with big business”.

However, in a welcome surprise, Scottish Ministers went against the grain of this story. On 3 October 2017, the Energy Minister for Scotland, Paul Wheelhouse MSP, shared the Scottish Government’s decision to ban UOG development. The public engagement, he said, had demonstrated there was “no social license” for fracking in Scotland.

A LEGAL LINEAGE: MARGINALISATION TO RESISTANCE TO POWER

During the workshops for the Falkirk Charter, residents were asking themselves “why isn’t the law serving to protect us?” The Chartering process began to recognise a commons which needed protecting which, for the purposes of a legal argument, we termed “Cultural Heritage” and was said to constitute “an inseparable ecological and socio-cultural fabric that sustains life, and which provides us with the solid foundations for building and celebrating our homes, families, community and legacy within a healthy, diverse, beautiful and safe natural environment.”

The lived experience that arises out of this “Commons” has roots in a set of values that can be called “intrinsic values.” Tom Crompton, founder of the Common Cause Foundation, spoke as an expert witness at the Inquiry on the Subject of values, stating that “human values are quantifiable; communities flourish when importance is placed on particular values; and changes in the social surround [...] will have effects on these values.”

In other words, the Falkirk Community Charter was asserting a need to experience life from a fundamentally different set of values to those of Dart Energy: co-operation rather than control and mastery; measures of well-being, rather than measures of profit. There is an English lineage to asserting the importance of intrinsic values for living a valuable life, the Rochdale Pioneers of the 1840s and the Levellers and Diggers of the 1600s. Further back we can look to the circumstances leading to the Charter of the Forest.

THE CHARTER OF THE FOREST

The early 1200s in England were a time of civil war and social unrest. The conquest of England by the Normans in 1066 led to a “land grab” of wooded and pastured lands, which had previously served to support the basic subsistence needs of the Anglo Saxons. In 1217, to help with appeasement and end a civil war, the Magna Carta was re-executed (it had originally been executed in 1215 but soon after annulled), this time with a sister charter called the Charter of the Forest that gave back certain subsistence.

FALKIRK - COMMUNITIES GATHER TO RESIST UOG DEVELOPMENT

In 2012 a planning application was made near Falkirk in Scotland by Dart Energy (now owned by INEOS) to develop the UK’s first commercial UOG facilities. To put this application in context, there are typically four stages to UOG commercial development: exploratory, appraisal, production, and decommissioning. Nearly all the UOG development in England is currently at the exploratory and appraisal stages, but by 2012 Dart Energy had already reached the production stage.

Words: Mothiur Rahman
Reading Time: 6 minutes
Image Credit: Flickr CC

Following the recent ban on fracking and other types of Unconventional Oil & Gas development (UOG) by the Scottish Government, this article explores how the Community Chartering Network (CCN) helped Scottish communities resist the UOG industry, makes the case for a legal lineage between Community Charters and the Charter of the Forest, and asks what can be learnt from Scotland to help marginalised communities find a way to speak for, and across, multiple-interest groups in times of rapid change?

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rights to the landless majority. If the world of 1217 seems too distant, Professor Linebaugh makes an analogy that brings it closer to home: the forests he says were the "hydrocarbon energy reserves" of their times, reliant on "energy economy of wood" comparable to today's dependency on oil and gas.

Then as now, who has access and rights to primary economic commodities greatly influences the social, legal and political currents for how everyday life is experienced. Considered like this, one can see how radical it was for a King to grant legal rights to commoners to take from his primary economic commodity - wood for fuel or fencing, clay or marl for building and fertiliser, foraging rights for food and medicinal purposes. However, this legal mechanism of commoning to meet "needs in common" has been extinguished for all practical purposes, replaced by regulating the State as the main legal mechanism for meeting such needs.

Championing the Charter of the Forest, Professor Guy Standing, claims it was a far more radical legal instrument than the Magna Carta, in that it was more than just a redistribution of power between a King and his barons and landed gentry; it gave power and rights to the landless to meet their basic subsistence needs. In attempting to draw a lineage between the Charter of the Forest and Community Charters, I believe it is also arguable that the land was not only a primary "resource" by which commoners could meet their basic subsistence needs, but it was also a primary "place" through which they derived their experience of daily life and made meaning for themselves. The "cultural heritage" basis of the Community Charter refers back to this meaning of place.

COMMUNITY CHARTERS - OUR COMMON VALUES
There is an equivalent contemporary unmet need to that of "unmet subsistence needs" in pre-Charter of the Forest times - the need for a sense of agency in one's own life and over those one has a sense of responsibility towards. The ancient commons were a "place" where rights and responsibilities were contained a whole, through the acts of commoning. The Falkirk Charter, and more recently the St Ives Charter in Cornwall, are helping revitalise these ancient memories of place. Individuals separated by contemporary ways of living can come together for the purpose of modern day "commoning" that can also be thought of as "place-making" - to find meaning through belonging to a community rather than individual and separate "self-interest", growing the sense of responsibility towards shaping a community's collective lived experience. The Community Chartering process enacts a worldview where individual and separate "self-interest", growing the sense of responsibility towards shaping a community's collective lived experience. The Community Chartering process attempts to bridge across abstracted politics of division ("are you for or against Brexit?"), by rooting itself in a "Politics of Local Experience" and asking, "what do you need here as a community to thrive?" (rather than asking "what do you believe?").

It is important to recognise that the values residents began discovering in themselves and in their communities are not relative to each culture, but are common between each and every culture. This is what Tom Crompton's expert evidence on values demonstrated during the Falkirk Inquiry. It does not matter whether one has hundreds of millions or just one hundred pounds - an experience of honesty remains available to both. To express this sentiment in the language of the commoners of old, the values by which a king may unfold his life are the very same values available to a commoner to unfold his life. Or in the words of Colonel Thomas Rainsborough, one of the leaders of the Leveller movement in 1647: "I think the poorest he that is in England hath a life to live as the greatest he." Thus, it is arguable that our greatest commons is the availability across cultures of common values by which to measure worth - not the words representing such values (e.g. the words truth, love or integrity) but the actual lived experience that is attainable by each and every person when a life is led from this common place.

What the Community Chartering process has achieved by focusing on "cultural heritage" is make intangible cultural assets important where they are often denied value. It privileges and gives credence to our felt experience as a source of knowledge. The Community Chartering process enacts a worldview where individual people have the power to change things, because it validates a principle of complex systems that goes beyond the "predict and control" principle that shapes our laws, to a more participative world-view sourced from the inner values from which a person acts. If anything useful can be shared from my experience of the Falkirk Chartering process, it is that the work of communities discovering and rooting themselves in values that emerge from discovering their "needs in common" is invaluable as a source of strength, determination and resilience to invite in a better future for ourselves. (This article was originally published in the January 2018 issue of STIR magazine.)

MOTHIUR RAHMAN is a co-founder of the Community Chartering Network and is bringing that experience to bear in setting up a legal practice called New Economy Law (WWW.NEWECONOMYLAW.ORG). He supports clients who are passionate about bringing in a more ecological and beautiful world, developing legal strategies with them to unlock new possibilities for a rapidly changing world.
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"Floating Triangles Paper on Wood" ISABEL AÑINO GRANADOS

"The piece demonstrates the different layers and nets of confusion which trap our senses in current society" Isabel is a lawyer, artist, teacher and social sculpture practitioner.

You can find more about her and her work at WWW.WARMLAW.COM.

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I Want to Know You

I want to ask you about your experiences.
I see your woven hair and dark, ageless skin.
I wonder if your confident smile was ever-present
And what you’ve overcome to keep it.
I want to understand how the world looks to you.
I hear the angry rap playing in your expensive headphones.
I wonder if your baggy pants and hoodie
Are your modern day armor.
I am curious about your head cover.
It brushed my arm when we entered the subway.
I wonder if it’s hot and confining
Or if you’re happy to not worry about your hair.
But I don’t ask
In fear I will be the subject
Of the next “What to Never Say…” video.
So we remain separate
And fearful
Of each other.

It Begins with the Listening

Listen for the hurt,
the broken dreams,
and the opportunities to heal them.
Listen for the fears,
the shame,
and the cue to hug them.
Listen not for the hate
that developed in a world
that rejected them,
embarrassed them,
cheated them,
and battered them.
Listen for the vulnerable one
they try desperately to hide.
Give them a reason to trust
and a safe place
to surrender their weapons.

How to Find Peace

I am becoming nothing more than
who I am.
No more pretending.
No more proving
(or disproving).
No more “love” with conditions.
No more clutter
in my mind
or in my heart.
I clean them daily.
I am free.
I am loved.
I am me.
I have all I need.
I am all that I need to be.
Yet the world gives me bonuses
like you
sunshine
flowers
snow
and showers
dogs
and cats
and
silly hats.
Life is good.

THE ART OF JUDGING

Poetics in Legal Decision-Making

I write to suggest that poetics,
as opposed to rhetoric, is a better theory
with which to evaluate judges’s decisions
because judges, unlike their counterparts
at the bar, occupy positions
of such social weight that they primarily wield cultural power.
Their function is not to argue, which is a rhetorical preoccupation;
judges declare realities in a way much closer
than Aristotle, one of poetics’ foremost ambassadors, defines as poetics:
“is it not the poet’s function to relate actual events, but the kinds of things
that might occur and are possible in terms of probability or necessity”.

The poet, like a judge, frames what might be in terms
that convey us that such a reality is desirable, or that it exists.
Evaluating judges through a poetic lens
looks at once for great style and storytellings.
I have only the space to develop
a brief analogy: judges are storytellers
that bring social rules into contact with disruptive sets of facts.

NANCE L. SCHICK is an attorney and mediator
who also serves as the Main Representative to the UN for the International Center for Ethno-Religious Mediation (ICERM).
Her holistic, integrative approach to conflict resolution draws from her experience as a crime victim, human resources supervisor, and minor league sports agent, as well as her legal, Alternative Dispute Resolution (ADR), Equal Employment Opportunity Commission (EEOC), Financial Industry Regulatory Authority (FINRA), and ICERM training.

YOU CAN READ MORE ABOUT NANCE, AS WELL AS MORE OF HER POETRY, AT HER WEBSITE HERE

Words: Adam Strömbergsson-DeNora

Reading time: 4-5 minutes
That central word, catharsis, runs through a story’s verisimilitude. The human facts of a legal case are pitted against the cold abstraction of laws. We feel pity and fear for the side we find most appealing; the judge works that pity and fear through themselves and (if skilled) through the zeitgeist to come to a catharsis. Where the ‘right’ party wins, and is seen to win.

This is not to say that law is populist. Though Aristotle did not, of course, extend poetics to judges’ decisions, their products are, in the most un-Aristotelian idealism, imitative (rather than explanatory) works. They draw on strains of thought known to each individual judge to create stories that we might accept as true. In pure judicial logic, judges’ decisions allow a requested action to move forward with the community’s tacit blessing. They wield that force as individuals guided by laws that express community’s will. The decision weds the two. It does not always have to be correct, nor can it inspire the entire population. It must only tell the story in a seamless blend of rules influencing characters’ decisions and of characters using rules.

The existence of a theory of speech devoted to rational argument may undermine any focus on the judge as a cultural figure. Rhetoric -- a way of arguing that self-consciously appeals to emotion through ‘the existing means of persuasion’ -- uses observation of the audience to generate a sympathetic response. On this view, the primary goal of courtroom speech, whether written tracts or spoken argument, is underlaid with a need to identify the audience’s predisposition. Identifying that predisposition, however, takes attention away from the action and focuses it on a narrative. The subject of speech becomes the rules through which speech flows, not the substance itself. That misplaced focus weakens the force of judges’ decisions. Though the community’s energies through a single pen. Her reason for exercising this social power is catharsis: the community affected by the dog’s killing receives closure from the judge’s creation of a drama that carries the weight of her office. This case evokes the legal value of catharsis. The community’s wounds must heal through their exposure to public scrutiny. Poetics is the vehicle for such catharsis, for faith is the instrument, the strings whereof are tuned and handled all by one hand, following as laws the rules and canons of Musical science.

If law is to be a King, it must resonate with its subjects. Resonance is a musical term; we turn to poetics for a similar concept in literary, or spoken, terms: faith, inspiration. The listener’s soul must be touched in some way by the stories that judges tell, for they play the ‘melodious instrument’ that is a Western commonwealth. Hence their poetic role over and above the rational one we too often envision for them.

Justice Nicole Adams sentenced a man who pled guilty to shooting his neighbour’s dog dead. She ended her reasons by acknowledging the need for closure on the facts of the shooting, which had caused controversy in the small town.

“I have issued these reasons so that the residents of Savary Island will be advised of the set of facts put before the Court at sentencing, in the hope that this knowledge will benefit all of its members and strengthen the whole of the community.”

R. v. Ferreira, 2018 BCPC 142 (CanLII).

The judge uses her position to channel the community’s energies through a single pen. Her reason for exercising this social power is catharsis: the community affected by the dog’s killing receives closure from the judge’s creation of a drama that carries the weight of her office. This case evokes the legal value of catharsis. The community’s wounds must heal through their exposure to public scrutiny. Poetics is the vehicle for such catharsis, for faith is the instrument, the strings whereof are tuned and handled all by one hand, following as laws the rules and canons of Musical science.

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We see some of this division in the Elizabethan Anglican legal scholar, Richard Hooker’s exalted statement of the rule of law:

Happier that people, whose law is their King in the greatest things than that whose King is himself their law. Where the King does guide the state and the law the King, that commonwealth is like an harp or melodious instrument, the strings whereof are tuned and handled all by one hand, following as laws the rules and canons of Musical science.

— Richard Hooker, Of the Laws of Ecclesiastical Polity, Vol. 3, Books VI to VIII

Image Credit: Gerard Langbaine, Dionysius Longinus rhetoros peri hypsous, EEBO, STC / 1209:20, Oxford: 1636
ANIMAL LAW

Expanding the Conversation about Conflicts over Animals

Words: Debra Vey Voda-Hamilton
Image Credit: Open Source (Unsplash)
Reading time: 6–7 minutes

When I attended law school, the practice of animal law was in its infancy. At that time, the application of general law to issues involving animals was the norm. It did not work very well for animals. They were considered property and property, by definition, is a physical asset.

Today animals are considered companions and family members and are treated as such. Billions of dollars annually are spent on the health, maintenance and happiness of the family pet. Pet food companies spend millions on food research and marketing. People buy health insurance and life insurance on their animals. More importantly, unlike property, animals are emotionally bonded with people, like children.

Animal law is now a viable area of practice. Smart lawyers, affiliated with animal advocate organizations such as ALDF, HSUS, PETA and Global Animal Law Project, are trailblazing new ways to think about animals and the law. Now entire legal practices focus solely on animal law.

It has been 50 years since the United States passed the Federal Animal Welfare Act. Since its passage, animals, their treatment and the issues surrounding their quality of life have become the basis of much litigation. These causes of action are being brought in an attempt to integrate the care of animals, on a broader scale, into the law. Companion animals are now treated in a way that 50 years ago would have been seen as absurd.

The presence of animals in our human lives has also been found to be an integral part of better human health. Studies show that human/animal bonds benefit overall human health and psyche. This connection also often fuels the conflict involving an animal. As a by-product of our increased awareness and request for optimal care for the animals in our lives, conversations about conflicts over animals have become more adversarial. Most conflicts arise out of strictly law-based advocacy and head directly to court. Often missing is a mutually developed transition to a better outcome. Passions run high and parties’ head often to court where conversations are usually brief in duration.

People having the conversations about animal welfare need to consider becoming more collaborative. Most people want the best for animals, they just define it differently. Education and peaceful non-judgmental conversations can foster a new and better means of caring for animals.

In the 21st-century, Alternative Dispute Resolution (ADR) has gained application. Now it is the go-to method of resolving problems that otherwise would be mired in litigation. Employment, Labor, Matrimonial and Commercial Law are just a few of the current legal fields steeped in the value of Alternative Dispute Resolution.

Since these areas of law have found ADR helpful, why not apply it to conflicts over animals? Some reasons given by animal law practitioners for not initially applying ADR in animal litigation include, it doesn’t set precedent and its not been done before. Shifting the current paradigm from being purely litigation and rights-based to being a more collaborative and discussion-based is not easy. It can, however, mean the difference between years of litigation and continued suffering or a continuous shift for better welfare of the animal.

In the United Kingdom the law firm of NOCKOLDS started the first VETERINARY MEDIATION SERVICE that has shown ADR as the better way to solve conflicts between people over animals. The last review of the process showed that client satisfaction was AN UNANTICIPATED TRIUMPH.

These scenario show people can apply ADR to animal law. Practices might try a small-scale pilot program, which can be evaluated on its progress toward a mutual goal. The discussions and outcomes from this pilot program will serve the animals and prove that a shift to ADR will make change a reality.

Having a discussion in an ADR venue facilitates the consideration of a more educational perspective. If people who love animals work together it may shift the way in which conflicts over animals are perceived.
However, experiments in this type of conflict solving need funding. ADR processes by their nature are not splashty. There is little if any funding earmarked for research into how a collaborative process would work in animal law. However, finding funding for this process would allow a platform on which common ground, working collaboratively and implementing immediate and long-term solutions could flourish.

Another benefit of using ADR when addressing issues involving animals is that it creates a venue in which acceptance of change is immediate. When a law is passed you then need to find a way to implement that law. This can be problematic and often perpetuates the conflict. While creating the law you often alienate those people needed to implement, enforce or follow it.

Why not be part of a conversation exploring what might be best for all from the start? It may take a little longer to facilitate this conversation with a neutral mediator or collaborative professional, yet it will be worth it. Once created, implementation of the process will be shorter and more peaceful.

Animal conflicts are very emotional. They are not easily resolved to anyone’s full satisfaction in a law-based model. Law is supposed to be applied free from emotion. Therein lies the difficulty in finding and implementing solutions in conflicts about animals using the law.

The steps I use to facilitate conversations over the care of animals are as follows:

**Address the problem:** Letting a conflict fester without addressing it early or surrounding yourself only with people who agree with you, will not help find a long-term workable solution.

**Keep necessary individuals in the discussion:** It is not easy to get everyone to agree. Being able to keep people of differing opinions together in a discussion is key. It helps expedite the finding of a long lasting solution and paradigm shift.

**Acknowledge and appreciate another’s point of view:** It does not mean you agree. It simply means you acknowledge an alternate opinion; their actions have value and are respected.

**Stop talking and listen for understanding:** Listening for understanding is highly underrated and when animals are concerned is much more effective than listening for response. If you stop talking and listen you’ll find you have certain commonalities and areas of agreement that will facilitate a more peaceful conversation.

**Drop the need to be right:** This is the hardest piece of the program. We all feel our way is the best way. Dropping the need to be right, because you believe you are, is one of the most powerful things a person can do. In a facilitated discussion, you don’t need to be right, right now. You can find a way to be, as I put it, right-er later because you will have more information. From this increase in information you can gain perspective on commonalities that you both hold. These commonalities will support your position while not detracting from their position.

**Let what others say roll off your back:** Being defensive and reactive only exacerbates the gap between the problem and the solution. You cannot identify a solution if you dwell on the problem. Solutions are derived from being steeped in a collaborative discussion. Letting what someone says roll off your back is also one of the best ways to allow for apology.

These steps, which support ADR, will give the parties the ability to be heard, respected and understood for their side of the story. New, more powerful paradigm shifts can be found and implemented. People will feel their voices were heard. They are then more likely to adhere to the resolutions. Decisions handed down after litigious interactions are less likely to be peacefully implemented.

ADR may be the best next step in the legal evolution and status of animals. Discussing strategies and solutions amongst all interested parties will benefit the most important parties of all in the discussion, the animals we are trying to save.

Debra Hamilton spent 30 years as a practicing litigator, but she is now a full-time mediator and conflict coach for people in disputes over animals. She works both nationwide and internationally. She has far-reaching experience in resolving interpersonal conflicts involving animals, and she is also well-known in the world of purebred dogs as a top breeder and exhibitor of Irish setters and long-haired dachshunds. Debra speaks widely on the topic of how mediation techniques can help people address conflicts without litigation. She has presented at veterinary schools, the American Kennel Club, the American Veterinary Medical Law Association, the Society of Animal Welfare Administrators, the Living With Animals conference, state bar association Animal Law Committee meetings, and animal interest group meetings. Her book, published in 2015, is *Nipped in the Bud Not in the Butt: How to Use Mediation to Resolve Conflicts over Animals*. READ MORE AT HAMILTON LAW AND MEDIATION HERE.
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