THE LAW OF THE JUNGLE AS UNIVERSAL LAW

KARLA SPERLING

Courtesy of the author, the paper is the transcript of her moving presentation at Keeping the Fire, University of Wollongong, 2010.

I WISDOM OF THE ELDERS

One day in winter 2001, with the freezing westerly wind blowing off the escarpment, I made my way down to my local beach (McCauleys), a place I now know as Kuradgi. The place where we were part of a very moving ceremony on Thursday. The humpy wasn't there then. Just a few tents. I met an old man, Uncle Guboo, who was camped there, protected from the cold by nothing but a thin sheet of plastic. He shook my hand and we exchanged a few words. But I went away profoundly moved by the experience. A Yuin elder, Guboo's philosophy was that all of us, by connecting with country could find a way to save the world. Guboo knew every beach and mountain of his country, and I became convinced that by applying his wisdom, the world could be saved. From that moment, Guboo's philosophy became the spiritual and intellectual inspiration for the rest of my life.

Another person whom I regard as a spiritual and intellectual guide in the business of planet saving is still very much alive. And we are very lucky that he is in this room today. My conviction that it is possible to save the world was crystalised by meeting Guboo, but it was started by John Seed. We first met in 1988. This was a time when rainforest logging was beginning to register in the world's consciousness. I attended the screening of a wonderful film, Blowpipes and Bulldozers, organised by John. The film showed the struggle by the Penan people of Sarawak to protect their land from logging. It convinced me that biological and cultural diversity were mutually dependant and could happily co-exist, provided people understood and respected the integrity of the rainforest. It was not just the indigenous Penan who were able to do this. Bruno Manser, the Swiss adventurer who had joined the Penan in their struggle also developed the ability to co-exist with other species. Of course the film also showed the tragedy of how logging was destroying the intimate connection between the people and the jungle. Subsequently I travelled to Borneo as part of the Sarawak Legal Observers Group. I didn't find the Tarzan like enigmatic Swiss adventurer Bruno Manser. But I did meet another lawyer Duane Alan Dorne, who enjoyed watching leeches in ecstasy

from drinking his blood. It was Duane who showed me what Deep Ecology is all about.

II Transition

Environmental destruction often seems like tragic unnecessary environmental vandalism. I want to argue that directing our anger at the perpetrators is misplaced. If we see this as just negligence or greed on their part, we are blinded to the real cause of the problem. These very deliberate acts are not the result of an arbitrary process. They are a symptom of the war against nature sustained by the evolutionary force of civilisation. Made physically possible by technology and carried out on an ever increasing scale in accordance with a globalised set of rules developed to allow and facilitate the environmental and social destruction necessary to maintain corporate economic advantage. Elsewhere I have termed this the meltdown momentum of civilisation. And we all benefit from it. Although it's tempting to blame BP for the catastrophe which is happening in the Gulf of Mexio, without BP's oil, we would not have food to eat. The open wound in the Earth spewing out oil is a human problem, not an environmental problem.

Directing our anger at corporations and demanding change is not enough. A vast body of informal and formal (legal) rules exist to keep the momentum going and increase it. Unless the rules change, the result will be the same and the momentum will continue. Perhaps not all the rules need to change. But it's nobody's job to decide which rules are OK and which ones are not OK. Cormac Cullinan has provided us with a great starting point and we need to use our time at this conference to develop the Wild Law concept further. The theme for this session is transitioning. I want to share with you some ideas about how it might be facilitated. Insights which have come to me during the transitioning which has happened in my own life, by encounters with John Seed and Guboo, as well as decades of working with other environmental and social justice activists.

III Rules

Rules are absolutely essential for life. A civilised society can be understood as a group of people who live together in accordance with agreed sets of rules. Formal rules affect every aspect of the way we live our lives. Most people have some understanding of the importance of rules. It's easy to imagine what would happen if everyone decided to stop obeying the road rules. It's the rules, written and unwritten, which guide us in our relationships with other

citizens. Whether ethical, moral or legal, without rules any civilisation would soon degenerate into chaos.

At this conference we are mainly concerned with legal rules but different sets of rules apply in different circumstances. Scientific investigation provides information about the rules of the natural world and this information is itself obtained as a result of investigations filtered by the rules of science. Economists understand the rules which govern the flow of money in the economy, such as the law of supply and demand. But how many economists understand where the law of supply and demand comes from? Engineers understand the rules of mathematics which need to observed so that bridges and buildings don't fall down. But why did humans invent the rules of mathematics? No one is trained to understand and explain how all these rules fit together.

Mostly people never challenge the rules. It's much safer to believe that the rules we are comfortable with are the right rules. If we challenge them, we risk challenging our own place in the world. For people with a mortgage, bills to pay and children to feed, this could be a very dangerous and foolish thing to do. It would also be a bewildering exercise. Most rules are much more complicated than road rules. They are often hidden and not easily understood, or only understood by the people such as lawyers who are familiar with them. Mostly we go through life completely unaware of the rules, how they were formulated, by whom and the effect they have on our lives and the planet. The rules of civilisation, both formal and informal, are not objective.

Cormac Cullinan's great insight was to recognise that answers will not come from existing ways of regulating ourselves. If this is accepted, then it must also be accepted that the rules which provide the framework for our apparent triumph in the war with other species, by sustaining and increasing the momentum of civilisation, must change. With rules devised for success in a war we must eventually lose, we are completely unprepared for the battle which awaits us. So, how might we go about changing the rules to confront the sustainability threats which lie ahead?

IV The Law of the Jungle

One possible solution, and the reason why the Wild Law movement promises so much, is to seek answers from nature. I want to suggest a mechanism for redesigning legal rules based on biomimicry. This is a physical design principle. But there is no reason why it couldn't be applied to legal design, just as it is has been applied to the physical design of buildings.

A chaotic or disordered place is sometimes described as being ruled by the 'law of the jungle'. But this paper argues that it is wrong to regard jungles as places which lack rules. We know from the work done by John Seed and others that jungles have extremely complex rules which regulate the inter relationship between species. We can thank the Social Darwinists for the misconception that the Law of the Jungle means a dangerous and chaotic place, where the strong prevail over the weak.

Social Darwinists justified social injustice because they believed they were winners in the struggle for existence. Their position of advantage over others who they infamously regarded as less fit to

survive, was used as a justification to further entrench their own power. It was also a fundamental mistake about evolution and biology. Advantage in the struggle for existence is very different from the triumph of one human army or individual over another. The Social Darwinists were fundamentally mistaken in their interpretation of Darwinism. The work of Darwin himself provides support for Cullinan's approach. For Darwin, the metaphorical struggle for existence did not preclude co-operation.

Human survival has always been due to organised co-operation just as much as competition. But competition cannot be ignored. So, if organised cooperation with other members of our own species, more than competition, enabled us to triumph so thoroughly, then over whom did we gain the advantage in the Darwinian struggle for room and food? If not with each other, then with whom have we been competing? The answer must be that the competition in which we have been most successful (until now), is the struggle with other species, or to use Darwin's words, 'the physical conditions of life'. Throughout the entire course of our history, the struggle for existence which has had the most significance in evolutionary terms, has been the struggle between humans, other species and the Earth as a whole.

On this view, the history of human domination of the Earth can be seen as a history of evolutionary war between us, every other species on the planet and Gaia itself. This is the struggle in which we have been propelled to apparent victory by the seemingly invincible combination of technology and organisation giving us a dangerously false sense of security. But just when it seemed that few other species were capable of resisting and success in the war with every other species could be celebrated, it is becoming apparent how temporary this success is likely to be. Humble species of microbes are continually evolving new ways to survive in our bodies in spite of sophisticated antibiotic treatment. The increasing incidence of diseases such

as tuberculosis which were believed to be completely curable only a few years ago is a reminder that technology will never provide perfect solutions to our problems.

V Co-operation and Co-existence with other Species

Jungles are places of extraordinary diversity. With millions, perhaps billions, of different species. But all forests and jungles in particular, work through the existence of co-operative relationships between species. With so much competition, in the struggle for the light necessary to photosynthesise, it is the species which co-operate with each other, which do best. Even predatory species cannot deplete the species on which they rely beyond sustainable limits. Young plants wait patiently in the shade for an older tree to grow old and fall before they can take advantage of the sunlight necessary for growth. For this to occur, jungles need to be undisturbed by human technology. Some people object to the idea of wilderness. They find it offensive because they believe the concept implies the absence of people and fails to acknowledge the role of indigenous people. But this is a misunderstanding of wilderness, where people can co-exist with other species, as one among many.

All humans rely on technology. It's not the absence of people or even technology which makes a jungle unique. The blowpipes used for hunting by the Penan are a highly effective, sophisticated form of technology. Like indigenous people everywhere, due their connection with the land and traditional knowledge built up over generations, the Penan could overcome the damage which unrestrained use of technology causes. With culture based on coexistence with other species and complex rules of traditional law to govern their use of resources, indigenous people became sustainability experts. So it is not humans or their use of technology, per se, which causes the damage. Rather, it's the disturbance caused by the technology of money.

Once the technology of money becomes dominant, people start to lose the ability to coexist with other species. The pinnacles of civilisation such as shopping malls and airports could be seen as places where our technology has triumphed to the exclusion of all else (except perhaps cockroaches and rats.). The damage is produced by actions legitimised by rules to allow corporate and technological dominance.

By substituting new rules, the 'law of the jungle' could become a guiding principle in creating a universal law of sustainability. This would mean recognising the role of every component of society to maintain the capacity

of the whole to sustain itself. But how do we get there? How can the existing framework of rules be replaced by a new set of rules?

VI Regeneration

Ecological disturbance is usually detrimental to other species. But some species benefit from disturbance. In twenty years of environmental restoration work, I have repeatedly observed invasion by weeds which are successful in their new environment because it lacks the predators to control the weed population. When bushland is invaded by weeds it causes an effect similar to invasion by humans. One species of weed moves in and creates habitat for itself. Other species of weeds and feral animals follow. This disrupts the functioning of the whole system, causing serious damage to the integrity of the whole.

Is it a coincidence that the species which invade following disturbance behave in the same way that invading humans behave? Why are the other most advantaged species those which behave most like us by creating space for their own habitat, at the expense of the diversity of other species? The first to go are other species which behave least like us. Species which can least adapt by creating space for themselves are most disadvantaged.

Observation has convinced me that this is not a coincidence. The advantaged weed species are the most successful but this comes at a terrible price, which eventually causes major damage to the ecosystem as a whole. The reversal of this process can also be observed. Bush regeneration means the gradual replacement of weeds by species which naturally occur in the area. No planting is necessary – it works by simply removing the weeds, thereby reversing the process which caused weed invasion. Weeds are not simply removed. The regenerator is careful to ensure that an area, once weeded, is capable of regenerating itself through the regrowth of native species.

Bush regeneration is a slow and careful process. It depends on co-operation. Immediate results are not apparent. It's not an environmental management type solution. Managing my own impact (for example avoiding weed seeds on the soles of my shoes) is more important than managing the environment. But the effect of co-operating with nature is soon apparent as the forest begins to return to health. Once the weeds are removed, native species have room to grow and will colonise the regenerated area without any further intervention from the regenerator. Beauty in nature comes from species co-operating with other species. Monocultures such as fields of identical (genetically altered) crops do not exist in nature.

Cicero suggested

> There is in fact a true law namely right reason, which is in accordance with nature, applies to all men and is unchangeable and eternal…It will not lay down one rule at Rome and another at Athens, nor will it be one rule today and another tomorrow. But there will be one law eternal and unchangeable binding at all times and upon all peoples[1]

Cicero De Officiis, Vol 1, c vii, quoted by Julius Stone, The Province of Law, 1946.

To remake civilisation and create regeneration, the eternal law which applies throughout nature, based on co-operation needs to be recognised. A law which indigenous peoples discovered thousands of years ago but non – indigenous people have only recently begun trying to understand. A law which applies to us now just as it has applied to every species which has ever existed.

The law of the jungle, based on co-existence and regeneration, is both a universal principle and a law. It could provide the basis for the formulation of detailed new Sustainability Rules. The first step is to 'weed out' the rules causing the damage, thereby creating space or allowing new rules to be substituted in their place. This could be regarded as an application of Cormac Cullinan's Earth Jurisprudence. Cullinan argued that this jurisprudence insists upon diversity so that anything which 'contributes to the integrity, beauty and ongoing "unfolding" of the whole ought to be preferred over something that detracts from it.'[2]

So where to start? The obvious place to commence weeding is property rights. A relationship with land based on a legal right to use it, cannot produce diversity. Property rights by their nature are inherently uniform. The law of the jungle means that landholders need to have a different relationship with the land. This, as Aldo Leopold recognised (Sand County Almanac) requires a land stewardship ethic. Indigenous people have always known this and I was reminded at the ceremony on Thursday, of the strength of indigenous knowledge. Uncle Max explained that it is necessary to *see* the land as well as to listen to it. Regeneration means establishing connection with the land through observation, where human decisions are determined by natural boundaries rather than boundary fences. Wild law recognises the importance of observation in understanding diversity. This is the starting point for applying the law of the jungle as universal law.

1 Cicero, *De Officiis*, vol 1, c vii, quoted by Julius Stone, *The Province of Law* (Cohen, 1946).
2 Cormac Cullinan, *Wild Law* (Green Books, 2002) 135.