

## THE COMMONS: A WHOLESOME FOUNDATION FOR A JUST SOCIETY

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*In earlier days we lived and worked in communities. However, since the Age of Enlightenment we have become increasingly separated from the land, each other and even ourselves. Our mechanistic way of looking at the world, and ignoring that the whole consists of more than its separate parts and their relationships, is increasingly proving us wrong. The collapse of our natural world and human societies is asking us to consider new ways of being & doing. Does the concept of rediscovering community perhaps provide a way of healing ourselves, our connection with others and the living earth? And, by healing the trauma of separation by restoring our relationship with all life on earth, can we overcome the collective trauma of our current "normal," the man-made economic and legal system?*

### CHAOS & HIDDEN PARADIGMS

We are living in the midst of the *trembling twenties*. Today, the mechanistic patriarchal systems developed by western society, and used for centuries to colonise other parts of the world and brainwash the minds of those colonised and those engaging in colonisation, is increasingly being questioned and criticised.

This worldview, this single story of progress and prosperity, has caused growing inequality, loss of biodiversity, climate crises and social injustice worldwide. Many of you have caught at least a glimpse of some dysfunctional system, be it a private organisation, a public institution or an entire sector.

Phenomena such as quiet quitting, bore out, burn-out, depression among youth and all types of addiction, and mental and physical illnesses growing to alarming levels globally.

As painful as the consequences of these man-made systems, the economic and legal systems that we consider as 'normal', are on many levels, the growing exposure to crises creates an increasing level of awareness of how change is long overdue. At last, the global outpouring of human and non-human pain and destruction makes a growing number of people question the long hidden growth and efficiency paradigm.

After all, as April Rinne writes in her book *'Flux, 8 superpowers for thriving in constant change'*, in Chinese culture the word 'crisis' means both danger and opportunity. And, it is on us which of these we lean into.

The story that has dominated the world far beyond the industrial age seems ready for re-writing at last. Can we imagine a more life-centric story? Perhaps by rediscovering old hidden stories?

## **WICKED PROBLEMS & SYSTEMS DESIGN**

What are the levers to start building new systems to overcome today's so-called wicked problems? Systems change starts with writing a new story. Multiple new stories in fact. Stories such as those that the cooperative Het kan wél anders — cv Re-story is writing.

Given the magnitude, complexity and interconnectedness of the global problems, and given what we know based on systems theory (i.e. that the bigger system cannot change unless its components change) we need to recognize that it starts with our individual inner change.

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How do we engage in a systems redesign, without falling into the trap of doing so from our old paradigms of separation, control and extraction? Paradigms that, consciously or unconsciously, still reside in so many of us. Do we perceive the multiple global crises as an opportunity to create something new and better or as a threat of the status quo?

How do we overcome the pain of having been born into a competitive, extractive capitalist society? And how do we overcome the perception that it is 'normal'? And, equally important, how do we overcome the pain of having been exploited and oppressed as a nation, race or other minority by such western societies and their worldviews?

## **LEARNING AS LIVING SYSTEMS**

To explore how we can move on from the old story, living systems theory provides some great insights. As Laura Storm and Giles Hutchins vividly explain in their book 'Regenerative Leadership' we can learn from nature how life and living systems are engaged in a continuous balancing act. Finding balance between separation and connection, convergence and divergence, structure and emergence, inner and outer focus. If we apply this to ourselves and our societal systems, we can consider how to dance between being and doing, old and new, male and female, black and white. How do we learn to engage in this balancing act of acting, feeling, thinking and sensing in renewed ways, without losing the healthy capacities already available within us?

Perhaps it helps if we tune into our extraordinary human capacity for transformation and learning. How do we learn as humans, as the living systems that we are? In her book 'Who Do We Choose to Be? Facing Reality, Claiming Leadership, Restoring Sanity', [Margaret Wheatley](#) refers to the following scientific findings on learning & living systems:

*"A living system has permeable boundaries and sense-making capacities. It is an open system, capable of exchanging energy with its environment rather than using up a finite amount. If it opens to its environment, it takes in information, a form of energy. It notices changes and disturbances that it then processes, free to choose its response. This is life's essential process — using cognition and self-organisation to adapt and change. A living system can reorganise itself to become more fit, in the evolutionary sense, to survive. Through its exchanges of information, it creates newness and diversity, sustaining itself through shifts, crises, and catastrophes. All of this is possible and commonplace as long as the system remains open, willing to learn and adapt. However, if a living system closes itself off, there is no possibility for change and growth. Closed systems have no potential for life's adaptive capacity.....What distinguishes living systems from machines is their ability to learn."*

## **TRIPLE F & CONTINUOUS STRESS**

How painful do we need our daily realities to become before we realize that we can open up to life and learn, instead of closing off from it? What is it that we may need to overcome, to heal, and/or rediscover, both on an individual and on a collective scale? In relation to healing, which is in essence the letting go of old pain and old ways, the work around trauma by Stephen Porges, Bessel van der Kolk, Gabor Maté, Thomas Hübl and others offer a variety of interesting insights.

On an individual scale, per Gabor Maté's explanation, trauma is not what happens to you, but what happens inside of you as a result of what happened to you.

Many of us still frown though when hearing the word trauma. As something to be scared or ashamed of. So why don't we rename it and call it triple F here? Put very simply, triple F is the Fight, Flight or Freeze response by our autonomic nervous system that protects us when we are confronted with a perceived threat. These autonomic nervous system responses occur outside of our awareness. Though we may experience and perceive the result of these responses, for example heart rate increases, body temperature changes or variation in breathing, we do not control the responses that take place inside our body themselves.

When there is a continuous mismatch between the outside world and our inner stories we experience this as highly stressful and threatening. It creates tremendous unbalance. For most of us this ongoing disconnect results in continuous 3F responses.

The single story globally that underpins our western worldview has delivered great human progress and innovation. However, as we can observe today, the paradigms underpinning this worldview have also led to the development of societies where we largely ignore emotions and intuition. These paradigms of efficiency, separation and competition have shaped the life-draining mould of our existing 'normal', that prescribes that certainty is of greater value than curiosity and kindness.

Are we truly surprised that our western societal single story of control and efficiency, this one way of being and doing, no longer offers a suitable response for dealing with today's chaotic and ever-changing world? And that it creates tremendous stress for the majority of people.

This is where we must ask ourselves: how do we learn to rebalance our inner body state with the ever faster changing outer environment? So that we can open up again to our environment and learn.

## **SLOWING DOWN & HEALING**

Fortunately, we learn from neurological & trauma research that the triple F states of our nervous system are relatively flexible.

As humans we have the capacity to develop and expand our awareness. What are my wounds? What is the movie playing in the back of my mind when something or someone triggers my emotions? Instead of considering the experience of emotion as a nuisance and directing the emotion right back at what or who triggered it, we can use our emotions as an invitation to explore our inner world, our inner stories.

However, in order to be able to observe yourself and your emotions you need to slow down. Quite a counter intuitive thing to do in an ever faster changing world and so many crises, isn't it? And yet, slowing down is urgently needed. Allowing yourself to simply be, to take a step back and observe. Tuning into your senses and gaining a fresh perspective to see what's really going on.

While slowing down is one way to rebalance there are other ways also to bring our inner bodies back to a state of rest. We can get out of the perceived stuckness of the physical flight, fight or freeze states of our nervous system through social engagement. By dancing, moving, playing, singing, team sports, by being close to others, by engaging our breath and our physical bodies, we can repurpose triple F parts that are stuck within ourselves. By being in a loving connection with others - love in the sense of trust that we will not be harmed by others - we get to heal our old wounds.

And, perhaps even more amazing is the fact that our social engagement system is always active. No matter what, no matter how extreme we have been hurt in the past, each and every one of us still wants to belong as a part of a greater whole. We are hard-wired for connection. Isn't life a truly wonderful and never-ending story?

Trauma healing research teaches us that human beings have an inherent need for connection. As mammals we need to coregulate, to connect, to survive. This is how we learn to self regulate. And, given the scientific

findings available on the healing properties of nature, the interconnected caring root systems of trees, plants and fungi, I suspect this inherent need (or capacity) is not limited to mammals. Could care and co-regulation perhaps simply be an intrinsic characteristic of life in all its expressions?

In conclusion, when we are safe enough with others we enable our creativity, our problem-solving capacities, by opening up to life so that we can cooperate with others and contribute our unique talents.

### **THE FABRIC OF WESTERN SOCIETY**

Now that we know how we can heal individual trauma, let's explore trauma on a societal, systems level, collective trauma.

What are our failing systems trying to tell us about the story of alleged progress and prosperity that has underpinned our economic and legal systems for so long now? Similar to the invisible wounds inside many of us, the broken paradigms that underlie our current societal systems have long remained invisible and implicit.

However, the consequences of the Newtonian paradigms of competition and efficiency are becoming increasingly visible and palpable today. Havoc, both in the form of damage to our natural world, extinction of animal and plant species as well as depression, burn-out and physical illnesses in humans. Our physical living environment, as well as our societies and many of its institutions are now showing serious symptoms of illness.

Just a few examples are the fraud and corruption within governments and corporations surfacing at an ever faster pace, and the many unjust laws and regulations that facilitate and legalize social injustice and extractive practices.

Are these perhaps merely trauma symptoms on a collective scale? Do you ever wonder how our systems came to be the way they are? And, perhaps of greater importance, do you wonder how they may be updated and/or replaced?

Let us take a closer look at the historical and systemic development of our legal system, the system that reflects the prevailing social norms.

## **SEVERAL TYPES OF PROPERTY**

In 'The Ecology of Law' Fritjof Capra and Ugo Mattei provide a truly rich and detailed account of how we have gotten where we find ourselves today, from a historical, legal & science systems perspective. And, on top of all that, it offers a suggested change of course.

The development of our western legal system traces back to the Roman empire. With the Corpus Iuris Civilis as its main remnant and the foundation for our current property centred vision of the law, the impact of Roman law cannot easily be overestimated.

In the days of the Roman Empire, Roman law contained certain legal distinctions around things that were not strictly considered private property.

First, the Romans distinguished things that belonged to no one, things that belonged to everyone and that could be freely occupied. These cases were considered 'res nullius'. From the seventeenth century onwards, large-scale colonisation was carried out on this basis, whereby original inhabitants of colonized nations were conveniently massacred or marginalized.

They then recognized things that by their nature could not be property based on the principle of exclusion, and these were classified as 'res communis omnium'. The sky, oceans and beaches are all good examples of this.

The last category consisted of things that belonged to the city, the so-called 'res publicae'. Examples include squares, the sewerage system and city parks.

## **WESTERN MODERNITY**

Over time, the mediaeval legal order had remained a holistic legal system. Common law, religious and Roman law formed a composite whole and got adapted to the demands of the complex web of human relationships that shaped everyday life and the world at the time.

However, from the 16th century onwards, following the new scientific mechanistic thinking, legal humanists began to develop a new foundation of the legal system. The holistic view of a world created by god where everyone has access to common things such as land, air and water was

gradually replaced by an image of a collection of strictly separate parts owned by individually competing owners.

Newton's 'Great Synthesis' further reinforced the mechanistic worldview and firmly established the expression 'laws of nature'. While this expression was originally only used to systematically describe phenomena repeatedly observed in the natural world, inevitably, over time, the Newtonian mechanistic paradigms underpinning these 'natural laws' trickled down into the realm of man-made laws. The so-called 'rule of law' principle that emerged from it has since then been considered scientific and immutable.

### **PLUNDER, PRIVATE PROPERTY & SOVEREIGNTY OF THE STATE**

And though Roman power holders in their days had also engaged in a fair share of privatising land considered 'res communis omnium', the all-encompassing systemic occupation and transformation of common land into private property between the 15th and early 19th century truly has no precedent in history. The plundering of the commons, both in England and globally, encountered few serious impediments to the development of the new order that ultimately lies at the basis of the industrial revolution. Western modernity essentially finds its basis in extraction, accumulation and mobilisation of natural resources and humans globally.

Similarly, no precedent exists for the scale and impact of the overall transformation of the legal system that accompanied and enabled the systemic occupation of common land and other natural resources. Together, the large-scale privatisation of the commons and transformation of the legal system resulted in the abandonment and annihilation of most customary rights from the legal order.

### **MAN-MADE LEGAL FICTIONS**

In support of the new world order, legal scholars, many from Leiden, The Netherlands, developed various legal fictions and arguments.

Sovereign nations provided the arguments the power of law and thereby both the legal justification of the large scale privatisation and extraction, and the legal protection of private corporations engaged in those activities. The well-known Dutch East India Company is a notorious example.



The Dutch legal scholar Hugo Grotius, with great 'success' we must say, advanced the argument that no public power can restrict or limit a corporation's right to roam the earth and appropriate human and natural resources. It placed private corporations and their activities above the sovereign power of nation states. And it resulted in the global extraction of natural resources, slavery and colonisation.

At the time, the limited liability company, in essence a man-made legal fiction, shielded private owners from most responsibility in their global (corporate) exploitation of common goods. And, as we can observe around us, our current legal system has remained largely unchanged to date. It still mostly protects global corporations from liability for their damaging and exploitative activities, while offloading the cost and losses on society.

And so it is that various arguments promulgated by the school of legal humanists laid the legal foundation for exploitation in service of man's search for, and control of, natural resources. Natural resources that cannot be created by humans but may only be extracted from the living earth, and to be used to spur a man-made story of progress and efficiency.

The result. Large-scale privatization of the commons and the transformation of the legal system in such a way that ownership and sovereignty of the state, rather than the commons, have become cornerstones of a new social and legal order.

And so it is that in the course of Western history, a pluralistic living holistic legal system has been replaced by a uniform, mechanistic legal system.

### **THE STORY OF SEPARATION**

And with the disappearance of the commons, a whole body of place based localised law was ripped out of the diverse legal system that had existed until then.

A tradition of place-based lawmaking gone, and replaced by a so-called single 'objective' body of law. And with the commons and the laws protecting them gone, communities got ripped apart.

Humans got separated from the land they previously inhabited, and were forced into factories during the Industrial Age to make a living. People that had once been parts of a whole around a common purpose, now remained as cut-off distinct parts. Cut-off from each other and cut-off from the part of the living earth that they used to inhabit and live off together.

## **AN INTERCONNECTED WEB OF LIFE**

During the 20th century, a paradigm of the fundamental interconnectedness of natural phenomena started to emerge within the natural sciences. Though it was still considered useful to analyse separate parts, scientists started to recognize the inadequacy of the Newtonian approach of individual analysis where it concerns the operation of the various parts in relation to each other. Patterns and structures previously labelled as absolute 'laws', were again reduced to the mere approximate descriptions of reality they constitute.

Quite a paradigm shift: 'reality' in essence being a constantly moving, emerging, diverging and interacting set of flowing relationships. A paradigm that we are only slowly starting to grasp as western societies.

Unfortunately, our western legal system has not even begun to consider these updated insights. To date, legal systems worldwide are still based on an obsolete worldview of discrete parts operating independently. Discrete parts owned by discrete individuals whose individual property rights are protected by law.

What if we started fully embracing the new paradigm of interconnectedness and interdependence instead? What if we repurpose, redesign, our legal system around the web of dynamic relationships that life truly is. Relationships and realities that are diverse, ever emerging and developing over time? Can you imagine what our legal system could look like?

## **TRUTH AND RECONCILIATION**

Perhaps as a first step, we need to develop the courage to face the collective trauma that these systems have created. Systems implemented with force globally and still operative today.

Let's face the separation it has created in many societies worldwide. Separation from each other, and separation from the earth. Are we willing to tell these stories and take responsibility for the consequences? Are we willing to admit the pain and damage caused? And dare we ask forgiveness from the people and groups that have been subjected to the exercise of western domination and violence?

## **RESTORATION & REDISCOVERING THE COMMONS**

As we can learn from the Truth and Reconciliation Commission in South Africa, we can take the responsibility to start healing the brokenness of our societies and communities by facing and reconciling the pain.

Equivalent to healing ourselves by repurposing the triple F states of our inner bodies through social engagement, does engaging in community with others around location or place and a common purpose, perhaps offer us the opportunity to repurpose the perceived stuckness of our systems?

By working in community with others, by connecting around a physical location and a common goal, can we develop new social, societal, and then legal systems?

Would reimagining the commons, and working in community with others be both a means and an end to restoring ourselves, our natural world and our dysfunctional man-made systems? Can we rediscover new order(s) by repurposing property and the way it is owned, used and cared for?

The new commons, community, as a shared purpose and as a concrete way forward. Thereby rediscovering shared ownership, participation, agency and interconnectedness.

## **FRACTALS OF HOPE AND IMPACT**

If you tune into many locations worldwide you can identify this is a growing trend. You can sense the soft vibes and sprouting of new ideas, initiatives and communities. Vibes of collaboration, reciprocity, mutual respect and contribution.

People are building community and new ways of being and doing around a variety of purposes such as: living (Naturbyen (effekt.dk)); healthy soil; healthy food ([Welcome to Earth's own cuisine - The Farm Kitchen](#)); sustainable energy; regenerative water systems, future-fit education (œ

Operation Education — If not now, then when? If not us, then who?, green cities and reliable, affordable, healthcare solutions ([Home | Buurtzorg \(buurtzorgnederland.com\)](#)) and new financial systems.

Systems designed around the principle of care for the whole, love for all life. Innumerable amazing projects that slowly yet certainly form fractals of hope, impact and concrete system prototypes that work. And in the process, existing degenerative systems are becoming increasingly unattractive and lifeless.

### **BREAKING DOWN AND BUILDING UP**

While more and more people are rediscovering community as a means of developing place-based life affirming alternatives outside our existing systems, our legal system(s) seem to be stuck in the past.

And yet.... given the fact that any legal system is a reflection of the norms and values of a society, it is now time to start considering how to repurpose our legal system(s) and toolkits.

However, ever since I wrote *The Law of the Future* in early 2021 (<https://medium.com/@madeleen.mulder/the-law-of-the-future-d5b091ff7b71>) the legal landscape law has been changing at an ever-increasing pace. A considerable number of concrete cases suggest that the time is ripe for change: an increasing number of lawsuits worldwide, including the failure to reduce CO2 emissions.

<https://milieudedefensie.nl/actie/klimaatzaakshell/help-ons-winnen>

Een groeiende aantal class action lawsuits as a result of willingly producing and selling toxic substances:

<https://civileats.com/2023/03/22/paraquat-the-deadliest-chemical-in-us-agriculture-goes-on-trial/>. Personal liability litigation against

directors of large corporations such as Shell:

<https://www.theguardian.com/environment/2023/feb/09/shell-directors-personally-sued-over-flawed-climate-strategy>. And the European

Parliament that recently proposed to include the crime of ecocide in European legislation.

<https://www.stopecocide.earth/breaking-news-2023/european-parliament-proposes-including-ecocide-in-eu-law>.

Can we envision a redesign of the legal system(s) around the growing reality of the commons and the growing rights of nature movement that among others Jessica den Outer — Rechten voor de Natuur and Jan van de Venis <https://labtoekomstigegeneraties.nl/ombudspersoon/> are advancing?

## **DESIGN PRINCIPLES**

What are the main characteristics of a new principle based order?

Let's consider the commons practices as they existed until early the 19th century, as well as Elinor Ostrom's commons teachings and indigenous wisdom as guidance for our redesign. Let's honour and apply the wisdom and value of ancient and less ancient practices by combining the best of these different worlds like Jeremy Lent advocates in his book *The Web of Meaning*.

Can we identify some common principles that can offer a certain stability and order in pursuit of the life centred collective will of a group? Offering guidance without unnecessary fixation or mechanisation. Principles such as care, reciprocity, duty and participation.

Can these core principles serve us in redesigning our private laws as well as developing a grand revision of administrative law and institutional governance on that basis? So that the renewed system(s) can offer guidance and boundaries in balancing the dynamic interests of multiple rightsholders. Rightsholders such as citizens, the private sector and public institutions.

So that the system(s) as a whole enables just and peaceful communities and societies as its main outcome. Which in turn leads to a reduced need for justice solutions.

Instead of a broken centralised system consisting of laws and regulations primarily based on a foundation of efficiency, distrust and private property, let's redesign our legal system(s) around a life-centric vision, around love and connection for and between all life.

## **CARE AND A LIVING LEGAL SYSTEM**

A.D. 2023, now that universal values of life are resurfacing in communities of practice around the world, shall we weave them back into our legal systems as well?

Principles and values that can serve as a wholesome foundation, and that can offer healthy boundaries as well. So that citizens, local governments and the private sector can create balanced partnerships, and renew their roles within society.

And, let's also mindfully weave out the current degenerative elements, the efficiency and control paradigms, and the lack of responsibility for the whole that our legal system now facilitates.

So as to restate and restore trust and care within our institutions and societies. Trust as the core foundation for our personal, business and public spheres. Trust and care as the glue of the interconnected web of relationships that life is.

Shall we collectively bring life back to ourselves, the living earth and the law?

