INTRODUCTION

How many times must we say, “Business as usual is not working”? From the untouchable religious dogma and dicta of neoeconomic economics in our law and policy, to the failure of environmental law to adequately protect the environment upon which all life depends. From laws and government structures that do not serve their most basic purpose in their social contact, to protect their citizenry from harm (including environmental harms), to environmental organizations being overwhelmed by the money and power of the opposition, who controls and frames the dialogue with the language of their choosing, pushing false dichotomies and myths, leaving environmental advocates—governments, NGOs, and individuals—in response-only mode. An opposition who uses their unequal bargaining power to poison and render negotiations impotent and ineffective.

The future of all life demands that we must not continue down this current “business as usual” path. We must move away from this self-inflicted harm, this madness, and courageously identify that which harms us, and that which gives us hope—that which we wish to replicate and build upon. We must highlight the principles and policies and people that are advancing the cause of life—those who are promoting and amplifying their voices for the creation of new frameworks of law and governance. For what greater cause is there than seeking truth, justice, and care for all life on Earth?

This article highlights a response to this failure of law and governance structures in protecting the foundations of life: the creation of the Ecological Law and Governance Association (ELGA). Practitioners, academics, and advocates from around the world and across disciplines have joined together in common cause to address and amplify the root failures of our existing system, to highlight the examples of promise already taking place, and to develop new frameworks for law and governance.

THE ECOLOGICAL LAW AND GOVERNANCE ASSOCIATION

The Ecological Law and Governance Association was launched on October 13, 2017, at the University of Siena in Siena, Italy. The founding document for ELGA is the Oslo Manifesto, created at a 2016 workshop of the Ethics Specialist Group of the World Commission on Environmental Law of the International Union for the Conservation of Nature (IUCN). The Oslo Manifesto acknowledges the failure of environmental law in protecting the foundations of life and offers an alternative ecological approach that recognizes ecological interdependencies and human-nature interrelationships. An addendum to the Oslo Manifesto is the Siena Statement of Solidarity. It affirms that “in the spirit of . . . the virtues of Good Governance . . . namely, Peace, Fortitude, Prudence, Magnanimity, Temperance, and Justice, the participants of the Working Group and Launch of ELGA stand together, in solidarity.”

ELGA argues that environmental law, in its current form, is largely anthropocentric, fragmented, and reductionist, rooted in modern Western jurisprudence, with origins in religious anthropocentrism, Cartesian dualism, philosophical individualism, and ethical utilitarianism. This approach, however, has not secured the physical and biological conditions upon which
all life depends. Therefore, ELGA aims to look within and beyond existing legal systems at the root causes of the ecological crisis and the transformative work that needs to happen in order to build a new, ecologically-focused governance system. The work and network is global and so looks at common thinking across the world, but it is also rooted in local communities.

ELGA was established to connect and amplify the many local, national, and international organizations and governments around the world that are seeking to transform our current human-centered, growth-focused paradigm, to an Earth-centered “ecological law and governance” paradigm. Its purpose is to (1) build a strong, global network of professionals and practitioners and provide a platform for them to advance ecological law; (2) create and disseminate diverse forms of knowledge about ecological law and governance; (3) support capacity building for organizations and governments; (4) support capacity building for lawyers and other disciplines; and (5) ultimately influence decision makers at all levels of governance.

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Currently, the organization consists of individual members who agree to the principles of the Oslo Manifesto. Eight experts from around the world provide leadership through the ELGA Steering Committee. ELGA also plans to coordinate regional hubs to invest and empower local organizations and to continue to expand membership to representatives from government, civil society, and academia.

**ETHICS, GOVERNANCE, AND THE RULE OF LAW**

*The Language of ELGA.* An important part of ELGA will be defining what is meant by ecological law and governance, substantively and procedurally; in other words, to build upon existing terminology, as well as to create new concepts for ecological action. The Oslo Manifesto centered around the notion of a transition: from environmental law to ecological law. Is “environment” enough, for theory and practice, or do we need something that more explicitly shows systems thinking, like “ecology”? Does “environment” tend toward a bracketed practice and profession, where development and implementation are seen as addendums to other, more important issues, as opposed to the foundation of all issues? Whereas “ecology” could open the door to other disciplines and sectors to inform and implement diverse laws that are needed to protect the foundations of life?

In Siena, other concepts were raised, such as, can the commons be re-defined to include the global whole? Seeing them as separate from everyone has effectively led them to be protected by no one. Can state sovereignty be re-defined to include both self-interest and global impact? When states are at the negotiating table, is it appropriate to only defend their economic self-interest? Although this process is ongoing, certain guiding concepts are already being unpacked.

Ethics, and ethical engagement, is foundational to an ecological approach to law and governance. Ethics is the domain of inquiry that examines claims about what is right or wrong, just or unjust, obligatory or non-obligatory. Environmental ethics expands the domain of inquiry into our obligations to the entire community of life, for the sustainability and flourishing of the entire community of life.

It is understood that ethics are the foundation for the rule of law, or the body of rules, policies, and programs that guide and govern a society in order to best protect that society. And laws guide and are governed by all sectors of society: civil society, the private sector, local-national-global government and non-governmental bodies, educational, cultural, and historical institutions, etc. Therefore, good laws will have input from all voices, and all sectors, of society.

Governance is understood as the institutions of governments, as well as the institutions of civil society, and the creation, implementation, and enforcement of the rule of law (including laws
and policies). It includes the relationship between these structures and their priorities, or manipulations, that are realized into law. All of these decisions, whether translated into law, policies, or organizational or individual action, have ethical underpinnings. For example, if a government’s choices—to act, not to act, or not to act urgently—allow for public infrastructure that provides a public service, such as clean freshwater, to poison its citizens, particularly the poor, minorities, women, and children, then those choices show the values decision makers prioritize, such as short-term economic gain over short- and long-term public health. This in turn shows disregard for the public trust of its citizens, which is an erosion of democracy and the rule of law, and/or a lack of care for the vulnerable. Ethical engagement seeks to draw out those ethical underpinnings and bring them to the forefront. Then, through applied ethics, ethical engagement is a process used to inform and guide future action.

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*The Biosphere Ethics Initiative (BEI) and Ethical Principles of Ecological Law and Governance.* The BEI is an international soft law program of the Center for Environmental Ethics and Law. “The BEI began in 2004 with an IUCN Resolution from the IUCN Comité français to develop a code of ethics for biodiversity conservation. It was led for nearly a decade by the Center for Humans and Nature and was adopted in 2012 by IUCN. It seeks to witness, highlight, and share ethical principles of biodiversity conservation. The work of the BEI is actuated through the Relato Methodology, a process of ethical engagement with local communities around the world. Conservation action within these communities is witnessed, its underlying ethical principles are identified and unpacked, and then the work is promoted in scholarly research and at local and international fora.

The global Evolving Biosphere Ethic is a living document that incorporates the work and partners of the BEI, including ELGA. It has been translated into English, Spanish, Portuguese, Arabic, French, Afrikaans, and most recently, Russian.

Foundational principles of the BEI that are being promoted within ELGA include:

- We must recognize ecological solidarity between humans and nature, with the obligation of respect and the compassion of love, as the basis for genuine care of living beings, places, and people: love for the beauty and gift of the natural world with all of its living diversity (biophilia); love for our places and our homes (locaphilia); and love for the people of today and tomorrow (sociophilia, and egophilia).
- We must always strive to attain social, economic, and ecological justice and to support these and other universal human rights—for poverty and ecological and human health are inextricably linked and cannot be solved separately.
- We must see the strength in diversity; differences in language, belief, and practice—or bio-cultural diversity—are necessary for biological evolution, support scientific knowledge, and nurture solutions to our shared social and environmental problems.
- It is dangerous for the future of all of life to commodify life, which includes placing a price on nature, appropriating life processes, and synthetically creating new life forms and introducing them into the biosphere.
- Scientific research, and the application of scientific knowledge, is not value-neutral.
- Ecological reconciliation is necessary for a sustainable future: we must confront the truth of the past, the harms to humans and nature in the name of humans and/or nature, and reconcile ourselves with those impacts; we must be able to forgive and move forward, without blame or guilt.
- Animals, plants (or other-than-humans) and humans have sacred spaces in nature, places that are vital to their well-being and healthy development.
- People from all backgrounds and ages carry wisdom that is important for our common future. We must build trust among generations, cultures, and professions.
- Play in and around nature is vital to the healthy development of children and adults.
- If we protect the vulnerable people, places, species, and societies, we protect everyone and everything.
- The media has a key ethical role in ecological education, impact, empowerment, and the truth.

For purposes of a single article, it is difficult to provide the detail of the on-the-ground ethical action that led to the creation of these principles. Which is a good thing! There is so much good happening in so many places around the world. For a brief overview, these principles take shape in action through policies where conservation management was used as a tool for social upliftment and economic empowerment; where women
were given leadership roles in conservation, for when women succeed, communities succeed; where a philosophy of “touching the Earth lightly” was promoted with development efforts; where conservation management focused on managing change, and not reaching some stable, steady state; where conservation was linked to human and ecological integrity; where the power of particular local place and history was acknowledged, as well as that community’s place in the world; where hands-on, immersive play and education was part of an ecological literacy campaign; where religion was the basis for ethics and ecology; where ethics was used as a common ground to bring people together; where the interdependence of all things was acknowledged; where conservation is connected to culture and identity, and the loss of certain species, spaces, and resources is a loss of culture and identity; where resource scarcity provided opportunities for engagement and peace; where the entire community of life was promoted; where sharing knowledge among generations was promoted; where human dignity was understood as a central ecological value; where environmental security is seen as national security; where nature was recognized to have intrinsic rights; and where nature was given legal rights.

**PROCEDURAL AND SUBSTANTIVE CONSIDERATIONS OF ECOLOGICAL LAW**

The procedural and substantive considerations for ELGA must be broadly and narrowly defined, and they are a work in progress. As noted above, ELGA promotes the entire Earth, the ecological whole, in decision-making, and views humans as a part of ecosystems, and not separate from them. At the same time, it recognizes the level of specificity needed to ensure the health of ecosystems, and so promotes ecological literacy that unites disciplines with a common ecological understanding and a new language, with a trans-disciplinary and systematic approach, and strong ties between science and law. Yet it also recognizes the limits to human understanding, and so advances a deep precautionary principle.

**ELGA …supports legal mechanisms that give non-governmental organizations and individuals the rights to represent nature.**

ELGA’s work is based on an Earth democracy philosophy, understanding that everyone in our societies has a role to play in ecological governance as ecological citizens. Laws and policies must be drafted through diverse stakeholders within a multi-disciplinary, cross-sectoral network, and this local, national, and global methodology is constantly revolving and evolving. ELGA will work to examine the differences and similarities around the world, prioritizing local stories and experience without ever losing sight of the ecological whole.

ELGA also seeks to work within existing law and governance systems, while also pushing boundaries to advance new legal and governance structures to better protect the foundations of life. It does not seek to re-invent the wheel, unless the wheel is or needs to be broken. For example, can it be possible to expand the Environmental Impact Assessment (EIA) to include holistic, systems thinking (local, regional, and global impacts, across borders and sectors) and ethical engagement (e.g., consideration of future generations or vulnerable people, places, and species)? Can there be an obligation to assess long-term perspectives? Can the EIA be more than a procedural requirement, but a substantive prerequisite? Should it be re-named the Ecological Impact Statement, to more accurately describe what is needed to occur?

ELGA also seeks to transition away from cost-benefit analysis, as this current analysis prioritizes economic and human development over ecological integrity. ELGA requires that the burden of proof be on those causing the harm. Some states are also beginning to allow legal standing for species and ecosystems; ELGA supports these procedural movements in jurisprudence and seeks to expand them to other states. An issue that must be resolved, however, is how to properly reconcile human rights and ecological law and governance. Perhaps if the procedural step for any action is to address the question of how an action promotes or harms the foundations of life, it could be understood to include both humans and nature.

Some of ELGA’s founders also had more specific concerns. For example, a review of negotiation methodologies must take place for any substantive change to occur. Treaties and policies may be created by diverse stakeholders at a single table, but too often the power at this table is unequal, or there are no foundational, even non-negotiable, terms agreed upon at the outset. Does nature have a voice at the table? Do future generations have a voice at the table? Are human rights, such as the right to develop, absolute? And as mentioned above, is conventional cost-benefit analysis ethically appropriate? Is it enough for states to argue only in terms of self-interest, even when their actions affect others? Can we derive firm bottom lines that respect ecological integrity?

Another procedural consideration of ELGA could be to heighten the role of the state as the protector of the general public.
If the first duty of the state is to protect its people, and most constitutions provide an individual right to life and liberty, this duty should be raised whenever ecological harms occur. States create the laws that allow or don’t allow harms to occur. Therefore, ELGA seeks to promote state responsibility and accountability for the protection of, or harm to, the foundations of life. National security interests are just beginning to include climate change as a factor in human safety; this should be expanded to include all ecological harms. When the foundations of life are under attack, who is most responsible? Who is at their defense, legally and ethically?

Not only should states have responsibility for the effects of their actions within their borders, they should also have responsibilities beyond their borders. This requires a new understanding of state sovereignty. All decision-making should come from an ecologically whole perspective. Sovereign states should be seen as global trustees whose whole shapes its parts, rather than the parts shaping the whole. This would require states to understand that as all life is interconnected, all state decisions impact other nations. On this Earth, any individual, community, region, or state is one among many, and together they make up the whole. This line of thinking is seen in planetary boundary discussions: how can law and governance properly recognize and limit human action within our planetary boundaries? At the basis of this is science and truth: we only have one home. ELGA also understands that common property and state sovereignty can co-exist, and as addressed earlier, there is a need to re-define the commons as the entire Earth system, not simply the leftovers of state sovereignty.

ELGA also supports legal mechanisms that give non-governmental organizations and individuals the rights to represent nature and hopes to further develop the scale, scope, and practice of the rights of nature. States around the world have also been creating constitutionally protected rights to a healthy environment. ELGA advocates for stronger implementation and broader interpretation of those rights.

Lastly, at least for purposes of this article, ecological law and governance seek not to be a separate practice or profession, but an integral part to all law and policy making, just as our ecological systems are an integral part to all life. ELGA hopes that one day all decision-makers, on all decisions, ask and address: how does this decision affect the foundations of life?

CONCLUSION

Ecological law and governance is global and local, holistic and particular, and based in strong science while also accepting the limits of human understanding. It is probably most fitting to end with the conclusion of the most recent statement from ELGA, the Siena Statement of Solidarity. It acknowledges what we face, but also what we can be, if we stand together:

A revolution in thinking, a re-imagination of the mind, with a new language is needed. We will work together to define, develop, and implement ecological law and governance, and promote a real, workable vision for the future. And we will share and amplify the many stories of success that can already be seen around the world, for they are indicators of change occurring. But we do not face our challenges blindly. We know that there are powerful forces directly and indirectly harming the foundations of all life on Earth. However, together, we face them with truth, justice, care, and courage. An ecological approach is a life approach—and we cannot fail.

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NOTES

1. In the Sala dei Nove in the Palazzo Pubblico in Siena is The Allegory of Good and Bad Government, painted in the early fourteenth century by Ambrogio Lorenzetti. The frescos consist of scenes depicting good and bad government, including the listed Virtues of Good Government, and its effects in the city and the country.


3. On the precautionary approach in regulatory policy, see D.A. Kysar, Regulating from Nowhere: Environmental Law and the Search for Objectivity (New Haven, CT: Yale University Press, 2010).


5. This concept has been explored more thoroughly in K. Gwiazdon, “The State v. The Environment: The Ethical and Legal Implications for State Non-action in Protecting the Foundations of Life,” in L. Westra, K. Bosselmann, J. Gray, and K. Gwiazdon, eds., Ecological Integrity, Law and Governance (New York: Routledge, 2018).