

Can we bridge gulf in understanding?

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IN RECENT weeks, columnists in this newspaper have written about the dangers of pending legislation directed at the way the legal profession regulates itself; the Shirley McKie case continues to make headlines and lawyers have threatened to withdraw services because of inadequate proposed increases in Legal Aid payments.

It is tempting to ask why, in our small country, have those engaged in both the legal and political process failed to get their message across about what they do and how they do it. Why does there seem to be a gulf in understanding between lawyers and politicians?

Building genuine under-standing takes time. Relation-ships need to be nurtured, lines of communication established. Perhaps we are experiencing the result of a past absence of these. Maybe people in positions of influence will now grasp the opportunity to engage in dialogue. This would be very beneficial to both the law in Scotland and the Parliament.

That said, I'd like to look further afield. Whatever afflicts us in Scotland, there are other issues on which to reflect that may profoundly affect us all. Many of us watched David Attenborough's documentary on the future of our planet last week. While there are those who dispute the proposition, there seems to be a growing consensus that we face fairly dramatic climate change, the pace and amount of which can be attributed to human activity. What significance does this have for lawyers?

At a conference in Atlanta a few weeks ago, I heard senior American lawyers wrestling with how to engage with climate change. If patterns of consumption and the use of resources will need to change significantly in the next 100 years, what can lawyers do? I was struck, as always, by how much more actively involved in policy matters US lawyers seem to be (a tip here for Scots?) What intrigued me was that the discussion concentrated on finding new ways to address the problem, including new language, new thinking and new processes.

Some lawyers have begun to think deeply about what this means. I read an article this week, *How to Become a Wild Lawyer* by Elizabeth Rivers, formerly a solicitor in London. The rather disconcerting title is a play on the title of *Wild Law* by environmental lawyer, Cormac Cullinan. He argues traditional legal and governance systems are failing us and need to be completely rethought. Environmental laws, policies and treaties have failed to protect the planet. He argues that because of their mechanistic nature they facilitate and legitimise ongoing degradation of the planet.

Rivers translates these ideas to enable lawyers to adapt to play a fuller role in addressing environmental challenges. This involves recognising that lawyers are generally risk-averse, cautious and concerned to maintain the status quo. But lawyers, she argues, need to take leadership in redesigning our governance systems and creating (and advocating) new ideas.

She claims that legal reasoning has its roots in Newtonian concepts of linear cause and effect, whereas quantum physics moved on a long time ago to recognise much greater complexity. Traditional legal training and practice is rather one-dimensional, whereas cross-disciplinary, integrative engagement with natural scientists, ecologists and systems theorists is now essential. We will need to work collaboratively. Lawyers may need to reassess their values.

What we need, says Rivers, is investment in creativity training, to help us come up with innovative solutions. Lawyers are constantly vigilant about (and generally more comfortable with) minutiae and detail, but they will need to relate these to big picture objectives and realities.

Rivers recognises that this kind of paradigm shift can be scary but, she argues, we need to rise to the challenge. Perhaps, if lawyers did so in Scotland, some of our current problems would look different?