

## EDITORIAL

### TOWN MOUSE AND COUNTRY MOUSE: A FABLE FOR THE TWENTY FIRST CENTURY?

Are you a town mouse or a country mouse? That is the question asked of the reader in the eponymous fable of Aesop.<sup>1</sup> If you are a successful town mouse, your life will be opulent but risky. If you are a successful country mouse, your life will be humble but the grass is green. According to Linda Gibbs' translation, the moral of the story is that 'it is better to live in self-sufficient poverty than to be tormented by the worries of wealth'. But it can also be read as a tale of geographical reciprocity.<sup>2</sup> That is to say, it is about the imperative of town and the country respecting each other's *difference*. This editorial addresses what modern environmental policy and law learn from this ancient wisdom, culminating in a discussion of Christine Metcalfe's complaint under the Aarhus Convention regarding the UK's renewable energy policy.<sup>3</sup>

Respecting the difference between town and country as per this fable was quite feasible in the classical agrarian society when Aesop was moralizing. In ancient Greece it was possible for town and country to co-exist in harmony, on a viably stable 'each to her own' basis. The difficulties arose with industrialization, beginning with Britain in the late eighteenth century. The expanding towns of the first industrial nation demand intensification of agriculture in the country which the latter, though able, was *unwilling* to supply. Captialist tenant farmers were typically happy enough to work harder to cultivate more land in return for greater profit, but patrician landlords said 'no'. Landlords perceived themselves as trustees of ancestral acres whose diverse greenery was not to be sacrificed for material wealth., refused to sacrifice 'unproductive' hedges, woodland and unimproved pasture.<sup>4</sup>

Rural landlords in turn complained about the lack of reciprocity in the changing intensity of urban industry. Ever taller chimneys and longer outfalls on the outskirts of towns carried pollutants (which had previously remained at close urban quarters) great distances beyond. The effect was to kill cherished vegetation and pollute sacred watercourses. It is easy to raise a 'modern eyebrow' at the sentimentality of elite rural attitudes to the environment but the romance of nature was taken highly seriously by the nation's rural 'haves'.

Indeed, it was the dominance of a romantic idea of the countryside which ensured that this early conflict between town and country over the environment was won by the country. As Martin Wiener explains, from the 1840s:

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<sup>1</sup> *Aesop's Fables, a new translation by Linda Gibbs* (Oxford University Press, 2002)

<sup>2</sup> Beatrix Potter, *Tale of Johnny Town Mouse* (Frederick Warne and Co, 1918)

<sup>3</sup> *Metcalfe v UK and EU* (Communication to the Aarhus Convention Compliance Committee) CCC/CC/2012/68 <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envpppubcom/european-union-and-united-kingdom-acc201268.html>. The complaint was held admissible in March 2012. A decision is expect in March 2013.

<sup>4</sup> See Vogel, *National Styles of Regulation* (Ithaca, 1986), 33 ('The British upper and upper middle classes came to regard...preserving undeveloped land...from commercial exploitation [as] a way for the nation to preserve not simply a vital part of its heritage but its moral and social character').

the idealization of material growth and technical innovation that had been emerging received a check, and was more and more pushed back by contrary ideals of stability, tranquility and closeness to the past, and “non-materialism”.<sup>5</sup>

Wiener contrasts the politics of Britain at this time with that elsewhere in Europe and indeed North America, arguing that ‘the countryside in England played a far more positive and less divisive role’.<sup>6</sup> This is reflected in foundational common laws and statutes which combined to broadly adequately protect against pollution and conserve wild species and country habitats.<sup>7</sup>

There are numerous current disputes which highlight the continuing challenge of respecting the difference between town and country. Pylons, urban link roads, gleaming (or glaring) solar infrastructure, and housing estates, are foremost among the twenty-first century equivalent of the smoking factory and leaking town drainage undertaking. But it is wind turbine development that is probably the most controversial. In a defence of Government policy in this field published in *The Guardian*, George Monbiot expresses disbelief in the ‘perverse’ reality that a thermal power station is likely to attract less opposition than a spray of large wind turbines.<sup>8</sup>

A good illustration of the variety of concerns that can help make sense of public opposition is the ‘David and Goliath’<sup>9</sup> struggle between Christine Metcalfe and the Scottish, UK and European wind industry (and its governmental underwriters).<sup>10</sup> This a dispute – one of a growing number involving the UK on an array of issues - that is currently before the Aarhus Convention Compliance Committee. Metcalfe and others objected to an application for planning permission for the Carraig Gheal wind farm, in Argyll, Scotland. The proposed development consists of twenty turbines, ranging from 65 to 80 meters in height, in a remote hillside spot where eagles nest. Having lost at the planning stage (the turbines are now under construction), Metcalfe has redefined the complaint as one of the ineffectiveness of public participation in environmental policy making, and specifically the presumption in favour of renewable energy.

The chief complaint is that the authorities have not gathered or disseminated information in support of the government’s claim that wind energy results in substantial carbon savings, and that the public have been misled into believing this matter is settled. Under Article 5.1, the UK must ensure that ‘[planning] authorities possess up to date information which is relevant to their functions’. It is alleged that there is no information on the effect on carbon emissions of the *intermittent* nature of

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<sup>5</sup> M Wiener, *English Culture and the Decline of the Industrial Spirit* (Cambridge University Press, 1981), 6

<sup>6</sup> Wiener, n 2, 49. He comments that the countryside elsewhere was ‘tainted by barbarism or idiocy’, which is a reference in particular to nineteenth century Germany and France.

<sup>7</sup> B Pontin, ‘Nuisance Law and the Industrial Revolution: A Reinterpretation of Doctrine and Institutional Competence’ (2012) 75 *Modern Law Review* 1010

<sup>8</sup> *The Guardian*, 5 February 2013 (see <http://www.monbiot.com/2013/02/04/out-of-steam/>).

<sup>9</sup> <http://forargyll.com/2012/12/argyll-community-council-takes-windfarm-complaint-to-un-in-geneva/>

<sup>10</sup> n 1.

wind energy. Wind energy requires a thermal back up, and the ‘stop-start’ of doing so, it is contended, generates greater volumes of carbon emissions than a ‘smooth running’ thermal infrastructure.

DEFRA’s defence is that the relevant authorities *do* have the requisite information. In particular, it is claimed that ‘modelling and studies have shown *definitively* that the generation of energy from renewable sources does not generate greenhouse gas emissions to the extent that generating energy from traditional thermal sources does.’<sup>11</sup> The authority that is cited as supporting the government position is the UK Energy Research Centre’s on-going review of over two hundred studies of this issue.<sup>12</sup>

The Centre, which consists of leading science academics associated with low carbon energy research, acknowledges that, as more energy is supplied from renewable sources, the output in fossil fuel power stations would indeed need to be adjusted more regularly (to deal with fluctuations in output). The evidence thus comes some way to meeting Metcalfe’s concern. But it is concluded that ‘any losses this results in will be small compared to savings in emissions’.<sup>13</sup>

It is unlikely that the Compliance Committee will investigate the merits of this technical conclusion. It will surely be satisfied that the renewables policy of authorities has, as DEFRA asserts, a prima facie evidential basis such as to discharge the relevant obligations under the ‘information pillar’ of the Convention. It can tentatively be speculated that the defence is sound and Metcalfe’s complaint will be difficult to uphold.

But that leaves unresolved Metcalfe’s fundamental planning objections. Although this Aarhus complaint is formulated as an attempt to tackle the aggregate level of greenhouse gas emissions across neighbourhood boundaries (by ensuring that the true scale of carbon emissions from renewables is not hidden), her deeper concern is with the *distribution* of the impact of energy policies. It is the town which is energy hungry, yet the country which is expected to pay the environmental price.

Applying Aesop’s notion of distributive justice, there is no reason why it is legitimate for urban populations - which consume energy in greater quantity than rural ones - to impose an excessive burden on rural populations through an industrialization of the countryside that is almost all take and little give. A detailed analysis in terms of relevant discrimination law is beyond the scope of this editorial. However, to the (uncertain) extent that there exists a broadly timeless rural populace whose identity is fundamentally bound up with green and pleasant surroundings, as in the past, then that is a starting point. Freedom from discrimination in the enjoyment of the right to a home within the parameters of article 14 and 8 of the European Convention on Human Rights could, in principle, be engaged.

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<sup>11</sup> DEFRA letter to the Compliance Committee, 8 October 2012 [emphasis added] ([http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-68/Communication\\_with\\_Party/frUKC68\\_Response\\_08102012/frUKC68\\_Response\\_08102012.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2012-68/Communication_with_Party/frUKC68_Response_08102012/frUKC68_Response_08102012.pdf)).

<sup>12</sup>The UKERC is a multi-university collaboration, the on-going review of which is at <http://www.ukerc.ac.uk/support/tikiindex.php?page=0604INtermittencyrelease>

<sup>13</sup> Ibid.

Looked at from that perspective, public opposition is not so perverse. On the contrary, it is illuminating to reflect on the analysis of Earl of Morley, in a debate about the siting of the first wave of fossil fuel power stations late in the nineteenth century. These power stations were intended to supply the town with electricity. Townsfolk did not wish to be exposed to acid gas emissions. In response, the industry's suggested siting power stations remotely, in less populous rural areas. Morely disagreed, asking: 'is it quite fair on the outside district to have all of the annoyance of what one may called an electrical factory, without all of the advantages of the supply.'<sup>14</sup>

Ben Pontin and Marie-Claire Smith.

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<sup>14</sup> Report from the Joint Select Committee of the House of Lords and the House of Commons, on electrical energy (generating stations and supply (1898) (PP IX), Q 203.