

Alliance for Responsible and Sustainable Societies: Responsibility, Ethics and Law

Workshop COOP6

Presentation Notes Betsan Martin

History

- Charter for Responsibility
- Universal Declaration of Human Responsibility
- Declaration for Interdependence and Responsibility – for COP21,
- Declaration of Interdependence and Responsibility

Outline – Allies are global and work contextually in social – professional fields which include:

- Solidarity economy
- Social Protection
- Media and Communications including with video production
- On-line curricula on climate responsibility
- Law and governance
- Education for Global Citizenship - Environmental Education
- Climate change
- Environmental governance

Resource Centre

Data Base

Ethics Responsibility: a reference for the 21st Century

Giving priority to responsibility is to signal the paradigm shift needed to address unsustainable development, of which climate change and the destabilization of planetary ecosystems are pre-eminent symptoms of human disregard of the nature and the integrated systems of the earth, air, water, life and people.

Social inequity is a parallel symptom of economic system that favours financial and asset wealth for a few on the premise of the exploitation of labour and of natural resources.

Responsibility is the foundation of community; it expresses the common destiny of peoples and planet and gives priority to public good and an orienting value for a world where people and the planet are woven together and interdependent.

Responsibility comes to the fore for integrating human and environmental wellbeing into economic systems. Measures and indicators need to be developed to assist with identifying the components of responsibility and the attributes associated with it, such as public good, environmental integrity as part of economic value, and equity of wellbeing.

Context: A Globalized interdependent world – working with the benefits of connectivity and trade with global systems of governance and regulation with safeguards for ecosystems, biodiversity the wellbeing of human communities. . Such governance would include provisions for superseding sovereign state self-interest in favour of the interests of global ecosystems, resources and life protections.

Moot – Student Presentations for International court of Justice, IUCN Congress, Hawaii. August 2016

- Duties to future generations
- Need for International rule of law with global environmental obligations
- New Conceptions of law
- Law to address integrated and systemic character of climate change

Rights - Responsibility as paradigm shift

- Have come to represent social and environmental justice
- need to examine rights:
 - o where will rights to a healthy environment take us?
 - o incomplete: aporia of duties to implement
 - o based in property ownership – individualization of land
- there is an established body of law from which further rights can be developed through expanded interpretation

Responsibility and Duties in Law

Gay Morgan - history of erosion of duties correspond with rising assertion of economic priorities

- East India Company – introduction of Limited Liability - erosion of responsibility.

Criticisms of globalisation include the diminution of human rights, environmental degradation, loss of cultural diversity and sovereignty. Where then does responsibility lie? On the history of public responsibility, Gay Morgan argues that the loss of responsibility, which has been a core value of societies, cultures, religions and the great thinkers, occurred not during *The Enlightenment* as one might expect.

Enlightenment thinkers firmly embedded responsibility into their work - John Locke's focus on rights was against tyranny in England in 1600's and the enclosure movement of 1700's which had the effect of depriving peasants of common fields to farm.

Rights were a tool of protection against injustices in a context of universal responsibility for wellbeing.

John Stuart Mill's assertion that whereas societies are never justified in interfering with a person's freedom for their own good, nor are people released from their civic responsibilities.

Morgan suggests that the divorce between responsibility and rights came with development of modern corporate law and the notion of limited liability.

- The original corporations were created by Parliament (or other governments) for specific public purposes.
- **The exchange of limitation of financial responsibility for harmful consequences was a quid pro quo for undertaking an expensive infrastructure project in the public interest, such as roads, harbours, bridges.**
- The separation of full responsibility for harm from the right to act was carefully circumscribed, by project, by public benefit, by limited duration of profit taking, by constraints on capital raised.

A concrete public good was exchanged for a right for investors to act with limited responsibility under the corporate form for a limited time and for a defined profit

The journey of Limitations on responsibility began with the East India Company in 1600 and the growth of corporate rights without investor responsibilities. This was the beginning of corporations for trade rather than public infrastructure, and was the foundation of the

colonial project of extraction of goods in colonies to build reserves and colonial administration.

Incorporation becomes an accepted way for investors to isolate themselves from responsibility for the consequences of the activities they finance.

If the predominant player in globalisation is the multinational corporation, then it is unsurprising to see cultural and environmental destruction on a global scale. Public duty lies in the hands of the individual in the face of corporate rights.

Supiot – outsourcing of Labour and undermining of Welfare State

- out-sourcing of labour means lower wages and poorer regulation with enhanced company profits
- Reduced tax payments in 'developed countries' means erosion of tax base and public good responsibilities including welfare spending
- Philosophy of Minimal State

What are Premises of Responsibility

At philosophical level:

- Relational – foundation of community
- Other focused
- Includes:
 - public good
 - accountability
 - liability
- needs to be developed as future oriented.

Examples in Law

Asbestos Case – on the prosecution of the Italian company ETERNIT, in Turin,.

An evolution in the law shows a move from proving damage to liability for creating danger can be identified,

The court decided that the extent of damage to health and safety could not be evaluated in terms of effects on individuals but in terms of magnitude of a **disaster**.

It was judged to be a violation of public security by endangering life the health of a population. **The significance of the case included the move to a future orientation**

Public Trusteeship – case of Waiohole, Hawaii

Law of public trust in Hawaii specifically, is the means by which waterways which were diverted for the sugar industry are being returned to their natural courses with flows which support original indigenous cultivations and resource use.

Traditional agriculture was decimated by the industrial water regime. Hawaiian legal counsel, and academic Kapua Sproat gave a strong lead on this experience to set out prospects of law for public goods, including water and climate.

Indigenous Hawaiian groups are now litigating for the recovery of water rights protected in the constitution. Their cause derives from Hawaiian traditions [and the Constitutional status of water as a Public Trust](#). The fact that trusteeship is a constitutional concept allows campaigners to seek redress in law.

Traditionally, the spiritual association meant that water could not be commodified or reduced to physical ownership.

In ancient times, water was a public trust resource, which means that no-one – not even ali'i – could own water. Instead, water was a resource managed for present and future generations. (Sproat 2009:4)

Hawaii's constitution was amended in 1978. A new framework for water management was shaped. Article XI provides that all public resources be held in trust by the state for the benefit of its people. A specific provision for water is 'to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people'. The public trust imposes "a dual mandate of 1) protection and 2) maximum reasonable and beneficial use."

The Water Commission has the primary authority to protect Hawai'i's water resources

The Water Code affirms Kānaka Maoli rights and practices. In addition to the protections in Hawai'i's Constitution, the "traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter."

The Code makes clear that such rights include but are not limited to the cultivation of kalo on one's own kuleana, as well as the ability to gather various resources for subsistence, cultural, and religious purposes

The Code also protects appurtenant rights and allows the Department of Hawaiian Home Lands to reserve water for the current and foreseeable development of its lands.

Re the Waiāhole case, the public trust also prescribes a higher level of scrutiny for private commercial uses. State and county boards and commissions must, therefore, closely examine requests to use public resources for private gain to ensure that the public's interest in the resource is fully protected. Moreover, "permit applicants have the burden of justifying their proposed uses in light of protected public rights in the resource.

Innovations in legal forms

Aotearoa- NZ – Whanganui River as an ancestor – legal entity reaching from source to sea

Lot of focus on innovation of river as having its own legal entity – comes from recognition of River as an ancestor: Te Awa Tupua

- legal significance not yet tested.
- Return to themes at the beginning of this paper:
 - o Systemic nature of the environment
 - o River as an integrated system

Riverbed is re-vested in Te Awa Tupua (previously separated as an entity owned by the crown)

Recognizes Whanaganui River as an INTEGRATED living whole from mountains to sea

Provides for guardians to co-govern

Provides values to be presented in accordance with integrated whole

Provides a strategy arrangement that engages all stakeholders in collaborative management process to advance 'environmental, social, cultural, and economic health and wellbeing of Te Awa Tupua.

Thus we see transformative Law in action

With components of: Public good

Intergenerational responsibility

Collaboration and shared responsibility

Above all, a shift away from human interest to the relational and integrated attributes of the river and all associated with her.