

The Metamorphoses of Responsibility and the Social Contract

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Foreword

by Mireille Delmas-Marty, Professor Emeritus at the Collège de France

On the scale of the current globalization, do the concepts of responsibility and solidarity still mean anything? In other words, will we succeed in moving from our societies of ‘unlimited irresponsibility’ to a world of extended responsibility as defined in the Universal Declaration of Human Responsibilities? Pierre Calame proposes to answer these difficult questions in his latest book. With rare optimism, he boldly gambles that an ethical and legal response is possible and that the law can resist the development of competing and autonomous normativities, particularly economic or digital ones, under certain conditions.

This book is the result of a long maturation process. In late 1993, at the outcome of an international dialogue conducted in all the continents, a group of French-speaking intellectuals, the Vézelay Group, published a ‘Platform for a Responsible and United World’, which would give birth to the ‘Alliance for a Responsible and United World’ and now substantially sustains the three parts of the book we are presenting below.

I - *The first part shows that responsibility has emerged as ‘the backbone of twenty-first-century ethics’.* It is both a ‘universal principle’ ‘found in every culture’ and a response to the new nature of global interdependences. The author is wary of the notion of limited liability/responsibility companies, stating that the sum of limited responsibility actually gives rise to ‘societies with unlimited irresponsibility’. Considering that the Universal Declaration of Human Rights does not take account of the new interdependences, he mentions various attempts to draw up and adopt an Earth Charter and an initial Charter of Human Responsibilities, and situates his project within a broad range of initiatives.

Calame recalls in particular the initiative that we had launched in 2002 and then resumed in 2005, under the *International Ethical, Scientific and Political Collegium*, with Michel Rocard, Milan Kučan, Stéphane Hessel, Edgar Morin and Sacha Goldman, as well as a number of distinguished figures from the political and academic world. The initiative, a Universal Declaration of Interdependence project, was reactivated in 2018 with the participation of Jacques Toubon and Pascal Lamy.¹ By declaring their mutual interdependence, states would not be giving up their sovereignty, they would simply be recognizing that solitary sovereignty (*‘a man’s home is his castle’* was the basis of the Nazis’ opposition to the League of Nations) must become sovereignty in solidarity, extended to every country’s contribution to protecting our global common good and to building humankind’s common destiny. It is a fact that no state, however powerful, can tackle the global challenges alone, be they social crises or climate change, but also global terrorism, financial crises or migration. In short, by acknowledging their interdependence, states would only be acknowledging reality, as in truth, claiming to go it alone is tantamount to denying reality.

Also mentioning the project for a declaration of humankind’s rights led by Corinne Lepage (2015) and the proposal for a third Global Pact for the Environment presented by a group of experts from

1 . Jacques Toubon is French Defender of Rights, and Pascal Lamy is former Director-General of the World Trade Organization.

civil society supported in particular by Laurent Fabius (2017), Pierre Calame ultimately drew inspiration from the research conducted at the Collège de France to ‘take responsibility seriously’ and to move towards a ‘universally applicable *jus commune*’.² In doing so, he testifies to the fecundity of these ideas, converging on the essential theme of responsibility at the global level. No matter that good governance and the science of law are intertwined, in turn as the primary reference; whereas we consider good governance to be part of the *jus commune*, Calame, privileging governance, considers the science of law as a simple component of good governance. What is important is to show that responsibility is at the core of global ethics.

From this point of view, the approach here, based on the theses discussed at the World Citizens Assembly in 2001, is highly ambitious because the goal is to add to the UN Charter and the UDHR a third pillar, which would be, precisely, the Universal Declaration of Human Responsibilities. The proposal, part of a long-term process – the research has been going on for some thirty years – is concrete, precise and constructive. The author endeavours to make explicit six dimensions, or conditions, of responsibility, whether ethical or legal. Here we shall focus on one of these conditions, consisting in extending responsibility from several perspectives: assuming all the consequences, direct and indirect, of our actions; uniting to overcome helplessness; and recognizing that our responsibility is proportionate to the knowledge and power of each. The idea is to call into question the definition of each actor’s responsibility as circumscribed in time and space, which inevitably leads to our societies’ ‘unlimited irresponsibility’.

No matter how strong the argument, one hesitates to share a theory that leaves no room for the human finiteness evoked by Paul Ricœur when he suggested reconciling the two types of responsibility: ‘the short view of responsibility limited to foreseeable effects and the long version of an unlimited responsibility.’³ Our cognitive abilities do not, in fact, allow us to make long-term predictions on all the consequences of all our behaviour. Although scientific work is increasingly shedding light on these consequences, as for instance in the IPCC scenarios on climate change, unpredictability has not for all that disappeared and human responsibility, even to future generations, cannot be infinite. With this reservation in mind, we will gladly follow the author into the second part of his book.

II - *The second part sets out human responsibilities as an extension of eight common principles (of governance and law) at the global level.* These are sometimes technical principles – such as no statutory limitations for the responsibility of an action where the subsequent damage is irreversible – and sometimes substantial, founding and innovative principles – such as the principle that possession or enjoyment of a natural resource induces the responsibility to manage the resource in the best interests of the common good. Referring to recent developments in jurisprudence and law, both national and international, the author shows how, thanks to the activism of civil-society organizations, judges and legislators, based on these principles, are gradually extending the definition of responsibility. The author describes this metamorphosis as a true ‘Copernican

2 . A. Supiot and M. Delmas-Marty (eds.), *Prendre la responsabilité au sérieux*, Paris: PUF, 2014; M. Delmas-Marty, K. Martin-Chenut and C. Perruso (eds.), *Sur les chemins d'un Jus commune universalisable*, Paris: Mare & Marin, forthcoming.

3 . P. Ricœur, *Le Juste I*, Paris: Revue Esprit, 2001.

revolution’, shifting what was central to the margins and what had hitherto been marginal to the centre. He even compares the Universal Declaration of Human Responsibilities to a ‘World Constitution’ on which to base common law informed by different legal traditions and complying with the fundamental principles of governance.

Though the author does not explicitly mention the ‘cross-fertilization of knowledge’ method, the book nevertheless contains the idea behind this expression, which was coined by the ATD Fourth World movement in the 1980s, which is that whilst public authorities (legislative, executive and judicial) are increasingly merging at the global and sometimes even national scale, the counter-powers are coming from outside, from civil society, especially from citizen participation, as well as from a greater role of scientists. In this sense, Calame’s book is in line with what I have otherwise called ‘governance SVP’ (for *Savoir Vouloir et Pouvoir*, or Knowledge Will and Power).⁴

On the power side, to the political power of states he adds the economic power of large corporations. This is even more evident at the global scale than at the national scale. Transnational corporations are actual players on the international scene, even if traditionally they are not viewed as subjects of international law. They are becoming *de facto* players in almost every area, and even *de jure* players in some areas such as investment law. So a sort of recomposition is taking place towards a new (democratic?) balance at the scale of the world, or of a region like Europe.

We will only add that that there is also very significant cross-fertilization within the other categories, knowledge and will. There is not only the knowledge of scientists and scholars. There is also the knowledge of those who are sometimes called the ‘knowers’, i.e. those who have the experience. It is by crossing scientists and scholars with knowers that we are most likely to advance knowledge. There are striking examples of this in the environmental field. The key role in climate change is played by climatologists, but indigenous peoples have also been found to have knowledge and insights derived from their ancestral experience. The knowledge of indigenous peoples must be cross-referenced with the knowledge of scientists in order to provide new answers to current environmental problems. The same is true in other areas. With regard to poverty, particularly when it is inherited, the relevant criteria for combating it are determined by lawyers, sociologists or psychologists, whilst people’s experience of extreme poverty invalidates the knowledge of those who have not themselves lived in poverty.

Other intersections can be observed in what is being desired, further complicating decision making. The citizens’ will can be expressed at the level of an individual isolated in his or her village, city, country or region such as Europe, or at the level of a citizen of the world. These mingle with each other. Similarly, political powers are not only central powers, governments and Legislators with a capital L, but also territorial powers. In the field of climate, which is a kind of laboratory for globalization in other fields (we are thinking in particular of migration), local and regional authorities play a major role, whether they are big cities that have networked or a federal state like California that has taken a lead. As for economic power, it is already highly differentiated from one

4 . M. Delmas-Marty, *La Refondation des pouvoirs*, in *Les Forces imaginantes du droit*, Tome 3, Paris: Seuil, 2007, p. 258; M. Delmas-Marty and J. Tricot, ‘L’art de la gouvernance’, in *Sur les chemins d’un Jus commune universalisable*, *op. cit.*

society to another, from one sector to another. Such a panorama is interesting to evoke here, as it explains the difficulties of political decision making in a world completely turned upside down, where the challenges are global whilst decisions are taken at the national level or, at best, at several levels. This points to the interest of the third part of the book, which recognizes that the new governance is deployed at multiple levels and through multiple actors. Hence the importance, again, of the economic actors, presented at length, even before the political actors, in the third part.

III - *The third part is organized around the idea of a new social contract*, because ‘responsibility and belonging to a community are two sides of the same coin’. This leads the author to examine a few examples illustrating the existence of such a social contract and to outline the main lines of its renewal, which he imagines in the form of ‘Charters of Societal Responsibilities’, which he illustrates in areas such as scientific research and higher education, or the business or political worlds.

Although I have reservations about the idea of such a contract at the global scale because the contract would be both multidimensional and total, and be at risk of drifting towards generalized totalitarianism, some warning signs of which we are already perceiving, I willingly follow Calame when he addresses very concretely current debates such as that on CSR (Corporate Social Responsibility), a key element in managerial discourse.⁵ Even if we consider that the ‘neoliberal social contract’ making the enrichment of shareholders the ‘be all and end all’ of a company has largely been defeated, we must agree with the author that we are still very far from a true Charter of Societal Responsibilities, which should encompass not only companies, in the legal sense of the term, but the whole of global production and distribution channels, subsidiaries and subcontractors. This could be achieved, he says, through a combination of collective commitments and reform of the international rules governing economic life. What remains is what he calls the paradox of current finance, which is to have replaced the relationship of trust between borrower and lender – implying that savings will be transformed into long-term investment – with myriads of instantaneous transactions. Hence his criticism of the discourse on socially responsible investment, which has invaded the public arena but is still only marginally changing the reality of relations between the various players in finance and the rest of society. Such observations lead us to propose the co-responsibility of actors, logically including political actors. The responsibility of governments to their constituents seems obvious to him, even if it remains very limited in the long term and towards the planet as a whole. Calame concludes that today’s fall-back on sovereignism and nationalism, like the tyranny of the short term, are taking rulers even further away from the extended definition of their responsibility in an interdependent world faced with the need for a far-reaching transition. This is why he advocates general principles to redefine the responsibility of governments.

In conclusion, it is to be welcomed that civil society, through the voice of the former President of the Charles Léopold Mayer Foundation, is so resolutely committed to the steep technical and philosophical paths of global responsibility. He is not fooled by sterile oppositions such as the

5 . On the generalization of warning signs of totalitarianism, see *La Refondation des pouvoirs*, *op. cit.*, p. 258.

binary opposition between ‘soft law’ and ‘hard law’, two terms not to be confused with the strengths and weakness of legal systems. Though it can seem weaker, a simple declaration or recommendation can have a more lasting and powerful impact than a precise, mandatory and sanctioned arrangement. Similarly, he recognizes that in line with current developments, the boundaries between national and international law are becoming blurred and may even disappear. Of course we are probably moving towards more standards, but not all standards are legal. And the production of standards is not enough to make the main players accountable. The role of the law in relation to the digital or economic world should be strengthened. The institution of an impartial and independent third party – whether called a ‘judge’ or otherwise – is one of the conditions for differentiating the legal from the non-legal norm.

It follows that jurists must support such initiatives. This book reminds us that, although human societies remain largely unpredictable, our duty as human beings endowed with conscience and reason (Art. 1, UDHR) is to behave not as owners holding all rights including the right to destroy common goods, but as responsible beings whose duty is to ensure that the Earth – our common good – remains habitable.

In short, the message of this book is simple: like the Little Prince responsible for his rose, each of us, in proportion to our knowledge and power, is responsible for our common home.

INTRODUCTION

The book you are opening describes the indispensable metamorphosis of responsibility in the twenty-first century. It is the outcome of collective work that has spanned three decades, with the constant support of the Charles Léopold Mayer Foundation for the Progress of Humankind, FPH.⁶ This work has experienced four phases.

From 1986 to 1993, a handful of French-speaking intellectuals, assembled as the *Groupe de Vézelay*, worked on laying the groundwork for the major challenges of our time. This led to the publication of the Platform for a Responsible and United World, written in consultation with distinguished figures from all over the world.⁷ The Platform underscores that humankind is facing three interrelated crises. Significantly, they are three crises in relations: those of human beings among themselves; of societies among themselves; and of humankind with the biosphere.

From 1994 to 2001, the Platform gave birth to the Alliance for a Responsible and United World, a dynamics that brought together people from all the continents and all socioprofessional backgrounds to develop perspectives for the twenty-first century.⁸ Under the Alliance, an intercultural and interreligious workshop was opened on the values common to humankind. The workshop concluded that responsibility would be the backbone of the ethics of the twenty-first century. As a high point of the Alliance, the FPH organized in December 2001 a World Citizens Assembly, bringing together distinguished figures from all over the world for ten days to try to identify, beyond their numerous differences, the major challenges of the century that was beginning.⁹ Four common challenges were identified: agreeing on common values; creating a world community of destiny; launching a revolution in governance; and inventing a new model of economic development. At the end of the Assembly, a Charter of Human Responsibilities was published.¹⁰

From 2003 to 2018, the Charter of Human Responsibilities was debated by the Alliance for Responsible and Sustainable Societies, which followed on the previous movement but focusing on the ethics of responsibility and its multiple implications.¹¹ The new Alliance, convinced that states in the twenty-first century had to adopt the fundamental principles of responsibility, summarized these in a draft for a Universal Declaration of Human Responsibilities.¹²

In 2014, cooperation would begin with the Collège de France, under the direction of two successive Chairs of International Law, Mireille Delmas-Marty and Alain Supiot. This gave rise to the idea of a metamorphosis of responsibility from the legal point of view and led to two collective works: *Prendre la responsabilité au sérieux* [Taking Responsibility seriously] and *Vers un jus commune universalisable ?* [Towards a universally applicable *jus commune*?].¹³

Although my thinking has been informed by these many dialogues, the conclusions I have drawn from them, the subject of this book, are my own.

6 .FPH: www.fph.ch

7 .Platform for a Responsible and United Word: <http://www.alliance21.org/2003/rubrique239.html>

8 .Alliance for a Responsible and United World: www.alliance21.org

9 . World Citizens Assembly: <http://www.alliance21.org/lille/en/>

10 . Charter of Human Responsibilities, http://www.alliance-respons.net/bdf_fiche-document-178_en.html.

11 . Alliance for Responsible and Sustainable Societies, www.alliance-respons.net.

12 . Universal Declaration of Human Responsibilities, http://www.alliance-respons.net/bdf_fiche-document-186_en.html

13 . *Prendre la responsabilité au sérieux*, *op. cit.*; M. Delmas-Marty and K. Martin-Chenu (eds.), *Vers un jus commune universalisable ?* research project, Paris: Institut des Sciences Juridique et Philosophique de la Sorbonne, 2019.

Why talk about a metamorphosis of responsibility? Has responsibility not always been at the heart of social relations? Is it not the foundation of all legal systems? Yes, and that is precisely the point. Responsibility is at the heart of relations. A community is defined as a group of people who recognize their mutual responsibility where everyone's duty is to consider the impact of his or her actions on the other members of the community. But over the centuries there have been two contradictory movements as the contours of responsibility narrowed just when the scale and scope of interdependences among individuals, among societies, and between humankind and the biosphere were changing radically, giving the whole of humankind a community of destiny. We are seeing the consequences today: whilst the responsibility of each actor is limited, the irresponsibility of societies has become unlimited! No one is responsible for developments that, as evidenced by climate change, nevertheless threaten the very survival of humankind.

In the second half of the twentieth century, an ideology was generalized based on three foundations: the market as a means of regulating human activities; sovereign states as an unassailable level for managing communities and the common good; and human rights as the foundation of common values. None of these three foundations can respond to the three crises in relations. Some believe that human rights incorporate the idea of responsibility through the need to make the rights of others effective. But we can clearly see what is artificial in this false equivalence, hence the awareness, emanating from different horizons, of a necessary balance between rights and duties, between rights and responsibilities, which I am translating, as a result of all our collective work, as the need to supplement the Universal Declaration of Human Rights with a text of equal force, the Universal Declaration of Human Responsibilities.

This book will proceed step by step, starting from the question of the universality of values in a multi-cultural world and leading to global governance, international law, and the social contract between the different socioprofessional milieus and society as a whole.

SUMMARY PER CHAPTER

Part One: Responsibility as the Backbone of Global Ethics

Chapter 1. The emergence of a global ethics

After World War II, the international community adopted two pillars: the United Nations Charter, which deals with relations among states, and the Universal Declaration of Human Rights. They constitute the first elements of a global ethics and are the foundations of today's global governance.

As early as the first world conference on the environment in Stockholm in 1972, it was observed that these two pillars did not deal with the major issue of the relationship between humankind and the biosphere. The idea of an 'Earth Charter' was then launched as a possible third pillar. The 1992 Earth Summit gave rise to a flurry of Earth Charter projects, but the UN Assembly did not adopt any of these. Over the years, it became clear that it would not be enough to supplement global ethics with a text dealing with the environment. This was followed by numerous reflections on the nature of the global ethics of the twenty-first century that would be needed to manage the interdependence among individuals, among societies and between humankind and the biosphere.

The Alliance for a Responsible and United World, which brought together distinguished figures from all countries and all socioprofessional horizons, led an inter-cultural and inter-religious reflection that concluded that the global ethics of the twenty-first century would be built around the ideas of responsibility and co-responsibility.

Chapter 2. Responsibility: The backbone of ethics in the twenty-first century

The World Citizens Assembly, organized in 2001 by the Alliance for a Responsible and United World, was an opportunity to clarify why a new text was needed and provide its outlines. The debate held during the assembly gave rise to six theses:

- 1. Facing humankind's radically new situation, a third pillar common to all societies and all walks of life is needed to complete the two existing pillars on which international life is based, the UN Charter and the Universal Declaration of Human Rights.*
- 2. The same ethical principles can be applied to the individual and collective levels, both guiding individual conduct and providing a basis for law.*
- 3. The concept of responsibility, inseparable from all human interaction, is a universal principle.*
- 4. The impact of human activities and interdependence among societies require a broader definition of responsibility, with three dimensions: assuming the direct and indirect consequences of our*

actions; uniting to overcome helplessness; and recognizing that our responsibility is proportionate to the knowledge and power of each.

5. The Charter of Human Responsibilities (a provisional document adopted by the Assembly) does not impose precepts; it proposes priorities and choices.

6. Every social and professional milieu is called upon to draw up, on the basis of the Charter of Human Responsibilities common to all, the rules of its own responsibility. These rules form the basis of the contract that binds it to the rest of society.

By stressing that the idea of mutual responsibility among the members of a community is found in every culture, by showing the continuity between individual ethical principles and a global ethics, including in its legal forms, by showing the need for a broad definition of responsibility, by distinguishing between prescriptive morality and ethical principles to guide choices, by making the principles of responsibility the foundation of the social contract linking each social and professional milieu to the rest of society, these six theses are the basis of all subsequent efforts.

Chapter 3. The six dimensions of responsibility

Mutual responsibility is not a new idea. On the contrary, it is the foundation of any community and the basis of legal systems, which explains the universality of the principle.

What is new is the changing spatial and temporal scale of the interdependences among people, among societies, and between humankind and the biosphere. The concept of responsibility that prevails today, however, goes back to earlier states of societies and does not reflect the new realities; in fact, the limited responsibility of each actor leads to the unlimited irresponsibility of societies as a whole. The six dimensions of responsibility must therefore be revisited:

1. Objective responsibility (related to the consequences of actions) or subjective responsibility (related to the intentions behind an action)?

2. Limited or unlimited responsibility in time and space?

3. Individual or collective responsibility?

4. Responsibility for the past or the future? Predictable or unpredictable?

5. Responsibility to humans or to the entire biosphere?

6. Obligation of means or obligation of results?

Chapter 4. Unlimited corporate irresponsibility

From the impunity of those most responsible for the 2008 financial crisis, to the 30-year failure to act effectively against climate change and the failure to prosecute serious environmental and human rights abuses by multinational corporations, examples of the unlimited irresponsibility of our societies are legion. A review of the numerous examples of the impunity of all actors in society for acts that jeopardize our future, and an analysis of reasons that allow such impunity in every instance, highlight two major obstacles.

The first is the ‘dogmatic slumber’ of jurists in the context of the new realities. This analysis owes a lot to the work conducted at the Collège de France led by two of the Collège chairs, world-renowned jurists Mireille Delmas-Marty and Alain Supiot.

The second is our absolutist conception of state sovereignty and of property, which allows states to be unaccountable to the world community and to manage the natural resources in their custody without any ultimate obligation to protect their sustainability, and allows owners to have no responsibility attached to the management of their assets.

Part Two: The Metamorphosis of Responsibility

Chapter 5. The premises of an extended definition of responsibility

As is often the case in periods of transition, contradictory trends are intertwined. The election of Donald Trump as President of the United States symbolizes a movement of ebbing multilateralism and withdrawal into nationalist isolation not conducive to the emergence of an international law of responsibility applying to all actors. But there are also a number of positive developments, both at the level of the societies themselves and at the level of the law, which contribute to an extended definition of responsibility.

In the economic and financial fields, assertion of the responsibility of actors, initially limited to voluntary and vague commitments, is gradually taking shape and, combined with initiatives of states and multilateral organizations, contributing to a progressive normative densification of these commitments.

The possible appeal of organizations and even of individuals to constitutional courts gives a new scope to the preamble of institutions, reinforcing the opportunity to include principles of extended responsibility.

New alliances are being forged among scientists, civil-society organizations and jurists to develop innovative uses of law; like at the end of the nineteenth century when social law was invented, jurists are discovering the scope of old legal principles, such as responsibility for what one has in one’s care, applied to large companies with regard to their subcontracted subsidiaries and suppliers, to banks with regard to their investments, and to states with regard to the preservation of the biosphere.

The chapter illustrates these different developments with examples: they are only stirrings, but together they constitute a breeding ground for the reformulation of the principles of responsibility.

Chapter 6. The Universal Declaration of Human Responsibilities: An expression of a world community in formation

We are certainly, as expressed by the professor of constitutional law Dominique Rousseau, at a historical moment when tinkering is no longer enough, when it has become necessary to find concepts to think about what is happening to us. This is the case with responsibility. The irreversible global interdependences that characterize globalization must be matched by general principles of responsibility that measure up to the challenges of the twenty-first century.

The international work process led by the Alliance for a Responsible and United World and then by the Alliance for Responsible Societies has led to a proposal for a Universal Declaration of Human Responsibilities presented and commented on in this chapter. It sets out eight general principles that give concrete expression to the idea of extended responsibility:

- 1. The exercise of one's responsibilities expresses our human freedom and dignity as a citizen of the world community.*
- 2. Individual human beings and everyone together have a shared responsibility to others, to close and distant communities, and to the planet, proportionately to their assets, power and knowledge.*
- 3. Such responsibility involves taking into account the immediate or deferred effects of all acts, preventing or offsetting their damages, whether or not they were perpetrated voluntarily and whether or not they affect subjects of law. It applies to all fields of human activity and to all scales of time and space.*
- 4. Such responsibility is imprescriptible from the moment damage is irreversible.*
- 5. The responsibility of institutions, public and private ones alike, whatever their governing rules, does not exonerate the responsibility of their leaders and vice versa.*
- 6. The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.*
- 7. The exercise of power, whatever the rules through which it is acquired, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.*
- 8. No one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed.*

Each of these principles is briefly commented on to show how, together, they meet the demands of our time.

Chapter 7. Universal responsibility: The metamorphosis of governance

The development of increasingly autonomous legal doctrines and the separation of powers characteristic of democracies have tended in the West to obscure the fact that legal systems are an integral part of governance, defined as the set of representations, values, institutions, rules and cultures through which societies attempt to ensure their survival and development. Facing the challenges of the twenty-first century, governance and law are called upon to embark on a Copernican revolution, placing at the core of this revolution what has hitherto been treated as marginal, in particular the global level and the necessary articulation among levels of governance.

Revolution in the law involves its re-entrenchment in a general doctrine of governance. This chapter outlines the governance principles that will guide the revolution in legal systems and give scope to the general principles of responsibility.

1. Governance in changing societies is defined by: the statement of common objectives; the recognition of shared values, at the heart of which is an extended definition of responsibility; and problem-solving processes.
2. Before setting out principles for the management of established communities, governance must generate the conditions for the institution of communities, which is particularly true today for the world community.
3. Legitimacy of the holders of power is decisive and provides the basis for the continuity between individual and collective responsibility.
4. Governance remains legitimate only if it can be shown to be effective in terms of the goals pursued. This effectiveness is based today on defining governance regimes adapted to the various goods and services, on organizing cooperation among the different types of public and private actors for the common good, and on renewing the relevance and importance of the concepts of social pact and social contract.
5. In order to achieve the best combination of unity and diversity, governance must articulate actions at all different levels, from the local to the global, which is known as multilevel governance. The guiding principles set out at the global level must then be broken down according to each context.

Chapter 8. Global governance, justice and common law in the Anthropocene era

No one doubts, in principle, that managing the irreversible interdependences among societies and between humankind and the biosphere presupposes global governance and global law based on the Universal Declaration of Human Responsibilities. But such governance and law will not fall from the sky. Fiercely attached to their sovereignty, all the more so as in reality it is shrinking away, states will undoubtedly be the last to adopt such a Declaration in the framework of the UN General Assembly. In this chapter we take a pragmatic look at the steps needed to achieve this.

The first step is to consolidate the concept of the ‘human family’ introduced by the 1948 Universal Declaration of Human Rights. This means that it is no longer nations that constitute ‘natural

communities of destiny' but the entire human family. In the global village, nations are like flatmates forced to manage common resources together.

The second step is to distinguish between 'global governance' and 'global state'. The European Union is an example of governance without a European state, but with the equivalent of a preamble to a constitution, a European law, and a Commission responsible for proposing policies for common goods.

On a global scale, it is a multi-stakeholder process of a new nature that we need if the human family is to recognize itself as a community of destiny and give itself rules for managing the common good, in particular legal rules. There is already a multi-stakeholder process drawing from different sources of inspiration: the Universal Declaration of Human Rights and the successive conventions that have given concrete expression to its principles – the International Labour Organization, European Law, the International Criminal Court and the various Constitutional Courts.

Building global common law is part of this perspective. It is multilevel law, with each actor, both private and public, depending on the level to which the scale of their impact corresponds. For this reason, the legal system consisting of international or regional bodies and national systems must be considered as a whole. This is not an absolute novelty: cross-jurisprudence among courts has spread over the last few decades.

From the perspective of this global law, states themselves have a dual status: on the one hand, they are actors like any other whose responsibility is commensurate with their impact; and on the other, they are a constituent element of governance and law conceived as a whole on a global scale.

Part Three: The Actors' Charters of Societal Responsibilities

The general principles of the Universal Declaration of Human Responsibilities are the foundation of the relationship between each social and professional milieu and society as a whole. In the third part of the book, this general principle is broken down into various forms and illustrated for a number of milieus in which reflection on the nature of the new social contract is already well advanced; it is thus not a desk-top exercise but an extension, an amplification of dynamics already at work.

Chapter 9. Charters of societal responsibilities for scientific research and for higher education

Whilst each actor's responsibility is proportionate to his or her knowledge and power, the principle is nonetheless universal. The chapter therefore opens with a prologue entitled: 'When children and the young lead the way'. It describes the dynamics resulting from the work of the Alliance for a Responsible and United World, which, at the beginning of the 2000s, encountered the initiatives of the then Brazilian President Lula Da Silva to give birth in 2010 to the Brasília World Youth Conference and then to its extensions, particularly in Europe. The response of young people, characterized by their powerlessness and facing challenges that large institutions had not thus far been able to meet, was: 'If not us, who? If not now, when?'

This is followed by an examination of the dynamics already at work to rebuild the social contract between scientific research and society, and between higher education and society. Research and higher education are linked to society by an implicit or explicit social contract that warrants the support and trust given by society based on the benefits it derives from them. In both cases, these social contracts, which date back to the aftermath of World War II, are proving outdated. A new social contract is taking shape, incorporating the general principles of responsibility of the Universal Declaration.

Today, these efforts of renewal are still being led by minorities within each community. The so-called representative institutions, themselves born in the aftermath of World War II, remain, through their corporatism, attached to the old contract but can see that societies are calling it into question, and this is manifested by an increasingly pronounced mistrust of them.

Chapter 10. Charter of Societal Responsibilities for Corporations

Taking the approach for which research and higher education have laid the foundations, the chapter begins with an analysis of the successive social contracts, implicit or explicit, that in the past have defined relations between business and society and justified the freedom to do business. One by one, these contracts have become obsolete. The assertion of social and environmental responsibility, which has been omnipresent in large companies since the beginning of the twenty-first century, is the beginning of a new social contract, even if it has remained very ambiguous.

The foundations are then laid for a new social contract. Companies, in the sense of their legal definition, form a very heterogeneous category, which implies analysing the co-responsibility of their various components, management bodies, highly qualified staff and executives, employees, directors, and shareholders. To this first form of horizontal co-responsibility is added vertical co-responsibility, which within global production chains unites the thousands of actors who are legally independent of each other but bound by complex relations of power and allegiance.

It is with this twofold co-responsibility, horizontal and vertical, in mind that the concrete application of the eight general principles of the Universal Declaration is shown in order to set out the new social contract.

Chapter 11. Charter of Societal Responsibilities for Financial Actors

Many political leaders have turned ‘finance’, an abstraction that covers ‘vulture’ funds as well as pension funds or sovereign state funds, and the ‘financialization of the world’, into a sort of scarecrow and, like Molière’s doctors, the ultimate cause of all our ills. Paradoxically, however, no one doubts that the transformation of short-term savings into long-term investments is essential to lead the transition to sustainable societies.

Avoiding demonization and idealization, this chapter adopts a pragmatic approach, considering the multiple actors in finance, whose roles are precisely characterized, as actors like the others, subject to the same need to redefine the social contract. To do so, we begin by highlighting the main characteristics of finance, which is both internationalized through the interconnection of financial markets and highly socialized with the decisive role of pension funds and enterprises for collective

investment in transferable securities. These various developments have helped to dilute the social ties between creditors and debtors, and to shift the risk management inherent to any financial transaction from long-term relationships of trust between creditors and debtors to very short-term transactions.

Once modern finance has been characterized, the current scope and limitations of responsible investment principles are examined. They reflect, still very timidly, the awareness that the responsibility of the various actors in finance must be commensurate with their power and influence. In particular, recent developments affecting major financial players are analysed, beyond the ‘niche products’ that are the still so-called ‘ethical’ financial vehicles, by looking at the scope and limits of voluntary commitments in the framework of the UN Principles for Responsible Investment and the new legislative provisions requiring financial players to assess their impact and risks.

A new social contract for the different actors in finance must work on two legs: the application of the general principles of responsibility; and a collective power to propose new forms of regulation on the part of public authorities, a proposal which, because of the technical nature of modern finance, must come from the financial world itself.

Chapter 12. Charter of Societal Responsibilities for Political Leaders

This final chapter starts from the observation that political leaders are par excellence qualified as ‘responsible’ because, in democracies, they are accountable to their constituents and their mandate is challenged with every election. As amply demonstrated in the previous chapters, however, the state and the horizon of electoral deadlines are no longer the right scales of space and time to assess the long-term impact of the decisions of political leaders, especially those of the most powerful countries whose impact is global. This means that the ‘political responsibility’ of the leaders of large democratic countries is paradoxically the very example of limited responsibility giving rise to unlimited irresponsibility. Moreover, leaders’ actions are often based on political and economic doctrines suffering from the ‘dogmatic slumber’ already noted in relation to jurists. The first responsibility of political leaders should be to develop thinking about governance and society that is commensurate with the challenges of the twenty-first century.

Seen from this angle, a Societal Charter for political leaders, whatever their options, also based on the eight general principles of the Universal Declaration, could constitute a ‘meta-political programme’ defining the major objectives of political action upstream of the preferences expressed in terms of the organization of societies.

Part One: Responsibility as the Backbone of Global Ethics

Chapter 1. THE EMERGENCE OF A GLOBAL ETHICS

Twentieth century: The century of human rights

Despite the tragedies that punctuated it and the totalitarian regimes that marked it and cheapened human dignity and existence, we can speak of the twentieth century as the century of human rights.

During the previous centuries, in Western Europe and its Anglo-Saxon colonies, particularly in North America, the individual had gradually asserted himself in the face of the community and, more specifically, in the face of the arbitrariness or authoritarianism of states, leading to the US Declaration of Independence of 1776 and then to the French Declaration of the Rights of Man and of the Citizen of 1789.

Gay Morgan, a human rights historian, explored the reasons why, in Western countries, the thread of history that had always linked the rights of individuals to their duty to participate in the common good had been broken. This break is all the more disturbing as, from the US Declaration of Independence of 1776 to the Universal Declaration of Human Rights of 1948 and the French Declaration of the Rights of Man and of the Citizen of 1789, the assertion of rights had always been accompanied by the duty of all to contribute to the common good.¹⁴ According to Morgan, this break occurred in the early modern age, when colonial enterprises gave rise to the concept of the ‘limited responsibility’ of investors, promoted by the Dutch and then by the English to encourage the development of their colonies, thus stating the idea that people did not have positive obligations and responsibilities to the common good but the right and almost the duty to maximize their personal interest: ‘The nascent liberal philosophy was taken hostage by entrepreneurial capitalism to legitimize the pursuit of personal interests by corporations and their owners as a model of community living, rather than considering, as it had been until then, that the exercise of responsibility by each individual for the common good was the condition for living in community.’

In the twenty-first century, humankind faces global challenges comparable to those faced locally by pre-industrial societies, in particular the maintenance of a long-term balance between the human community and its natural environment. This justifies drawing on centuries-old traditions for new responses, at a time when the West’s monopoly on the production of ideas and the exploitation of the planet’s resources appears to be a historical parenthesis that is closing.

Another way of appreciating this parenthesis is to look at the way in which, throughout the millennia and civilizations, humankind has thought about the relationship between man and nature.

14 . G. Morgan. Public responsibility: A fundamental concept reflected throughout the ages. Where did we lose the plot? in B. Martin, L. Te Aho and M. Humphries-Kill (eds.), *ResponsAbility: Law and Governance for Living Well with the Earth*, London: Routledge, 2018.

Under the direction of the great Burkinabe historian Joseph Ki Zerbo, and with the help of UNESCO, the Editions de la Découverte published in 1992 an anthology of the major texts dealing with this subject entitled, *Compagnons du soleil*.¹⁵ An analysis of these texts, undoubtedly among the most beautiful that civilizations have produced, forbids any simplistic vision, opposing a period when man felt he was an integral part of the biosphere to a period when he claimed to be its master and owner. This simplistic view is often found in militant literature, a new avatar of the noble savage, exalting the respectful indigenous wisdom of Mother Earth, the Pachamama, in the face of the barbaric predation of Western conquerors. According to Ki Zerbo, the two attitudes have coexisted in all periods, humankind thinking of itself in turn as singular and as an integral part of nature. But it is undeniable that from the end of the Middle Ages onwards, in the West, the balance between these two extremes broke and the focus shifted towards the idea that men were masters and owners of the biosphere, free to exploit its resources.

In his book *Raconter la loi*, the Belgian jurist François Ost makes the story of Robinson Crusoe the founding myth of this vision: ‘. . . how a single man gradually manages to reconstitute an identity, to reappropriate his environment, to control the course of events . . . a refounding of the world, as it were, starting from the sovereign individual.’¹⁶ And Daniel Defoe, the author of *Robinson Crusoe*, makes Robinson say, ‘I was King and Lord of all this Country indefeasibly, and had a Right of Possession; and if I could convey it, I might have it in Inheritance.’

It is therefore not surprising that in the various Declarations of Human Rights the right to property is a constant and, as in the Declaration of the Rights of Man and of the Citizen of 1789, forms part of the ‘natural rights’ – a concept borrowed from the jurist Hugo Grotius – ‘and imprescriptible rights of man in the same way as freedom, security and resistance to oppression’. Thus ‘the exercise of the natural rights of each man has only those borders which assure other members of the society the fruition of these same rights’ (Article 4): non-human beings are absent. And, Article 17 recalls, ‘Property being an inviolable and sacred right, no one can be deprived of private usage, if it is not when the public necessity, legally noted, evidently requires it, and under the condition of a just and prior indemnity.’

Did the 1948 Universal Declaration of Human Rights significantly change this conception of the relationship between humankind and the biosphere? No. Article 17 states that everyone has the right to own property alone as well as in association with others, and this article is associated with the fundamental freedoms of opinion, thought, speech, right to a fair trial, marriage, etc.

Emergence of the environmental issue

From then on, at the beginning of the 1970s, the question of safeguarding the biosphere or, more modestly, that of environmental protection was approached only very indirectly: ‘the exercise of the natural rights of each man has only those borders which assure other members of the society the fruition of these same rights’. In other words, the equilibrium of society does not come from the *relations* among human beings and with nature, but from a *competition* of their rights.

15 . J. Ki Zerbo with the collaboration of M-J. Beaud-Gambier, *Compagnons du soleil : Anthologie de grands textes de l'humanité sur les rapports entre l'homme et la nature*. Paris la Découverte / Éditions UNESCO / FPH, 1992.

Summary at: <http://base.d-p-h.info/en/fiches/dph/fiche-dph-7462.html>.

16 . F. Ost, *Raconter la loi – aux sources de l'imaginaire juridique*, Paris: Odile Jacob, 2004.

This was the context in which the first United Nations Conference on the Human Environment opened in Stockholm in 1972. It could not but note the silence of the two pillars of the UN on the safeguarding of the biosphere. In its final declaration, the Conference set out twenty-six principles. The first five set out a requirement not for the protection of the integrity of the biosphere but for the preservation of what are still called ‘natural resources’; the environment was reduced to what could be exploited by man. The second principle states that these natural resources must be preserved for the benefit of present and future generations through careful planning or management; Principle 3 was that the Earth’s capacity to produce renewable *resources* must be preserved and that man, taken in the generic sense, had a special responsibility in safeguarding and managing the heritage of wild flora and fauna. At the time, these principles applied only to states and obviously did not have the same scope as the 1948 Universal Declaration of Human Rights. The conference coincided with the publication by the Club of Rome, the same year, of the Meadows Report, *The Limits to Growth*, translated into French under the title *Halte à la croissance* (stop growth), focusing on the depletion of natural resources and the limits to the absorption of pollution by the biosphere.¹⁷

Between 1972 and 1992, the year of the Earth Summit in Rio de Janeiro, the second global conference on the environment, the ‘hole in the ozone layer’ caused by chemical discharges into the biosphere, in particular chlorofluorocarbons, and then collective awareness of the greenhouse effect – known for a long time but only in scientific circles – and of the potential impact of the increase in atmospheric carbon dioxide concentrations on the climate contributed to a profound transformation in the way our societies viewed the consequences of the economic development model inherited from the industrial revolution.

The Earth Summit was a follow-up to the Brundtland Report, written in 1987 by the United Nations World Commission on Environment and Development, which popularized the concept of *sustainable development*, ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.

The Earth Charter project

Following on from the Brundtland report, the Commission then launched the idea of an Earth Charter. In the spirit of Maurice Strong, who was responsible for organizing the Earth Summit, it was to constitute a *third pillar of the international community*, complementing the United Nations Charter and the Universal Declaration of Human Rights.

In the two years leading up to the Earth Summit, there was a flurry of Earth Charter projects. They would influence the beginnings of the Alliance for a Responsible and United World. At the time when our Platform was disseminated in many languages at the beginning of 1994, Maurice Strong’s hope that the heads of state in Rio would adopt this third pillar of the world community was disappointed: the heads of state agreed only on a joint declaration, with no legal scope.

Acknowledging his failure, Maurice Strong decided to change tack and form an alliance with Mikhail Gorbachev, who, having been removed from power in Russia, created the International Green Cross to promote an Earth Charter supported by civil society. Associated with this approach, I supported it whilst formulating from the start three reservations, which would never really be withdrawn: the idea of a third pillar of the international community capable of having over the years

17 . DH. Meadows, DL. Meadows, J. Randers and WW. Behrens III, *The Limits to Growth*, Falls Church VA: Potomac Associates – Universe Books, 1972.

the same legal scope as the Universal Declaration of Human Rights must not be abandoned; environmental challenges cannot be isolated and the three crises in relations described in the Platform must be addressed; and the approach must be truly intercultural.

What could the Alliance for a Responsible and United World, a new civil society initiative, weigh against two heavyweights of international life, Maurice Strong and Mikhail Gorbachev? Until the end of the 1990s, the Alliance tried to remain moored to the process they were leading and continued to refer to the Earth Charter as the approach it intended to follow for formulating common principles of humankind. But year after year, we became aware of the difficulty of merging the two approaches. Designated by the Earth Council, chaired by Maurice Strong, as one of those set to draft the Earth Charter as Strong conceived it, I tried to the very end to defend our intuitions. At the same time, however, we had formed with the Alliance a resolutely intercultural approach, in line with our conviction that we needed to identify for humankind common values capable of responding to the three crises in relations: among individuals, among societies, and between humankind and the biosphere. Although universally adopted, the Universal Declaration of Human Rights was clearly derived from Western traditions. Since the time of its adoption in 1948, the world had become irreversibly multipolar. To be effectively universal, common values had to be found in all the great traditions. The Alliance made research on these traditions the foundation of the Earth Charter 'workshop'.

In search of a global ethics

The last decade of the twentieth century saw an abundance of research for universal values at the crossroads of different civilizations and religions. Whilst supporting Maurice Strong and Mikhail Gorbachev's initiative, UNESCO undertook to search for ethical values common to all humankind. Federico Mayor, its Director-General at the time, hoped, despite the reluctance of governments to adopt new declarations, to have these endorse a 'Declaration on the Responsibilities of the Present Generations Towards Future Generations', which presupposed the search for a global ethics.¹⁸ The term 'global' was preferred to 'universal' under the influence of the Swiss Catholic theologian Hans Küng, who defined it as the recognition of indispensable norms and universal values without which the future of humankind would be endangered. The 1993 Manifesto of the Parliament of the World's Religions, 'Declaration toward a Global Ethic', mostly drafted by Küng, declared that there was no survival for humanity without a global ethos, nor world peace without religious peace, and no religious peace without a dialogue among religions.¹⁹

The Alliance was associated with UNESCO's approach. André Levesque, an early 'Ally', convinced us to seek ethical principles and not moral precepts; moral principles, he stressed, are presented as mandatory duties, whilst ethics are intended to guide choices 'when tension or contradictions arise among values in which we all equally believe'.²⁰ It was he who represented the Alliance in 1997 at the symposium organized by UNESCO in Naples. He noted that the leading figures present at the symposium, famous ethicists, had expressed themselves side by side, which made a common text impossible. This failure convinced us to continue to make our own path.

18 . Declaration on the Responsibilities of the Present Generations Towards Future Generations, http://portal.unesco.org/en/ev.php-URL_ID=13178&URL_DO=DO_TOPIC&URL_SECTION=201.html

19 . H. Küng, Declaration toward a Global Ethic, Chicago: Parliament of the World's Religions, September 1993.

20 . André Levesque, priest, philosopher and sociologist, author in particular of *Partenaires multiples et projet commun : Comment réussir l'impossible*. Paris: L'Harmattan, 1993; and *La Relation ou la dynamique des contraires*, Narbonne: Editions du CERS, 2001.

We shared with Hans Küng the conviction that adopting a global ethics required a dialogue among religions. But we also noted that the many inter-religious dialogues initiated at that time were all initiated by Christian movements.²¹ Within the Alliance, Jean Fischer, former General Secretary of the Conference of European Churches (CEC), then initiated an inter-religious dialogue geared less towards searching for a common ethics than towards the recognition by religious leaders of their responsibility in building a viable world. The relative failure of UNESCO convinced us that the ethical question was too important to be left to ethicists, theologians or jurists. As intuited by André Levesque, we had to start from real life, from the ethical dilemmas faced by different socioprofessional circles. What we still called the Earth Charter was to form the basis of a ‘new social contract’ linking the different actors to the rest of society, the same idea that the ethical principles to be discovered and developed were fundamentally about relations.

Responsibility is gradually established as the backbone of twentieth-century ethics

In 1983, former German Chancellor Helmut Schmidt established the InterAction Council (IC), bringing together former heads of state on a regular basis to ‘jointly develop recommendations and practical solutions for the political, economic and social problems confronting humanity’.²² In April 1997, the InterAction Council published a first version of the Universal Declaration of Human Responsibilities. The InterAction Council stressed in the explanatory memorandum that the time had come to promote a declaration equivalent to the Universal Declaration of Human Rights adopted by the United Nations in 1948, that would recognize the duties and obligations of human beings. The first sentence of its Preamble states, ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world implies obligations or responsibilities’. For us, the Declaration was an important source of inspiration. Unfortunately, although the InterAction Council has continued to meet since the death of Helmut Schmidt, the network he formed has the strength but also the limitations of a circle of former heads of state; one can rightly ask why they did not promote the Declaration when they were in a position to do so.

A decade later, in 2002, Michel Rocard, former Prime Minister of France, and Milan Kučan, then President of the Republic of Slovenia, together with leading intellectuals such as the sociologist and philosopher Edgar Morin and the jurist Mireille Delmas-Marty, founded Collegium International. In 2005, it adopted a Universal Declaration of Interdependence and in 2014 it published, ‘Global Solidarity, Global Responsibility: An Appeal for World Governance’. Our closeness to the main Collegium coordinators and the way in which the current challenges and perspectives were enunciated, in particular their call to build a ‘community of interdependence that chooses its own destiny’ was a direct reflection, including with the two qualifiers ‘responsible’ and ‘united’ in solidarity, of the approach initiated by the Alliance twenty years earlier.²³ In its founding text of 2002, the Collegium asserted that ‘[t]he worldwide nature of these problems require[d] the implementation of a sense of responsibility that [was] itself globalized’. Similarly, in its 2002 statement on interdependence, the Collegium noted the need to build a universalism of values by stating that between the affirmation of absolute relativism and the temptation to define universal

21 . Another example is the United religions initiative, URI, launched at the turn of the millennium by the Episcopalian Bishop of California, William E. Swing, based on local inter-religious dialogue groups.

22 . InterAction Council, <https://www.interactioncouncil.org/>

23 . Plaidoyer pour une Charte d’Interdépendance; Geneva: Collegium International, December 2018, <http://www.collegium-international.org/en/presentation/textes-fondateurs/plaidoyer-pour-une-charte-d-interd%C3%A9pendance.html>

ethics on the basis of Western foundations alone, a universalism of values was to be conducted on the basis of inter-civilizational dialogue.

The intercultural approach of the Alliance for a Responsible and United World

Defining universal ethics on the basis of an inter-civilizational dialogue was literally what we had set out to do in 1995 within the Alliance under the leadership of another early ally, Edith Sizoo, a linguist specializing in intercultural dialogue who had lived in India for a long time.²⁴ Edith Sizoo was one of the facilitators of the Charles Léopold Mayer Foundation's programme, 'Living in Peace in a World of Diversity'. Together with Thierry Verhelst, she was one of the editors of the book *Cultures entre elles : dynamique ou dynamite ?* published in 1994.²⁵ At the Alliance, she was the soul of intercultural dialogue.

The Alliance offered an unparalleled opportunity for the intercultural search for the universal. By 1994, the Platform for a Responsible and United World had been translated into 20 languages. How could a text whose principal authors, Michel Beaud and myself, were French, overcome the obstacle of intercultural transmission? This became the subject of a project that Edith led within Alliance, aptly named 'Tower of Babel'.

In October 1998, on the Greek island of Naxos, a meeting of the Platform's translators and resource persons was organized. As the book based on the meeting, *What words do not say*, reminds us, the work seems at first corrosive.²⁶ Not one of the concepts of the Platform and the Alliance emerged unscathed from this exercise in deconstruction; 'World'? 'Future'? 'Time conceived as linear'? 'Citizens'? 'Rights'? 'Solidarity'? 'We'? None of these concepts, as it turned out, made sense in every language. What, then, could we do to understand each other and act jointly?

Edith Sizoo concluded in the book that to act jointly we had to recognize ourselves in others, recognize that we were living with comparable problems, and share common interests, the common dream of living in peace in a world of diversity. The main lesson was that building a global commonality, of which common values are an integral part, could not be the result of a document approved by all but had to come from a learning process developed over time, going back and forth between common problems and common dreams. As we shall see below, principles of responsibility can exist only through their being tested in concrete settings and when facing the ethical dilemmas reflected in concrete problems.

Several Earth Charter drafts had been prepared in the Alliance framework between 1995 and 1998. We decided to adopt for its further development the same intercultural approach that had been taken for the critical analysis of the Platform. Based on the experience of the Naxos meeting, we decided not to start from a single text but from the diversity of historical, political, socio-economic and cultural contexts, leaving the question open as to whether it was possible to reach something common. This was the methodological basis on which in the fall of 2000, 23 people, together

24 . Edith Sizoo, Dutch, socio-linguist, Master's degree from the Free University of Amsterdam, has worked in the framework of development cooperation in Hong Kong and India, at the Ministry of Foreign Affairs of The Netherlands, as Director of the Dutch Federation of NGOs, then in Brussels with the network Cultures and Development as international coordinator in charge of the programmes 'Languages and Intercultural Communication' and 'Femininity and Social Transformation'.

25 .E. Sizoo and T. Verhelst (eds.), *Cultures entre elles : dynamique ou dynamite ?* Paris: ECLM, 1994.

26 .E. Sizoo, *What words do not say: perspectives for reducing intercultural misunderstandings*, Paris, ECLM, 2000.

having a command of 27 languages, met on another island of Greece, Syros, to confront what, in their own community, constituted guiding principles for personal action and collective transformation. They then attempted to compare these principles, group them together and combine them, and came up with a preliminary draft charter based on six principles of action and the means of implementing them: unity, solidarity, diversity, equality, peace and responsibility. They then compared their own findings with existing Alliance Earth Charter projects. It was through this exercise that the concept of responsibility ultimately imposed itself on us as the backbone of twenty-first century ethics. The common preamble adopted at Syros for the charter is revealing in this respect: 'In the face of the urgent problems of our times, individuals, communities and authorities must assume responsibility for the survival of humankind and planet Earth. The Charter of the Alliance is an invitation to adopt a set of guiding principles for personal action and collective transformation.'

At the same time, the Earth Council, in which I continued to participate, had completed its work and the Earth Charter in line with its vision was adopted in March 2000 at UNESCO. The goals of the Earth Council and the Alliance were still the same, as illustrated by the Wikipedia text on the Earth Charter: '[It] seeks to inspire in all peoples a sense of global interdependence and shared responsibility for the wellbeing of the human family, the greater community of life, and future generations.' On the other hand, the purpose of the two charters, their scope, the ways in which they were developed and therefore their content differed deeply. It was no longer tenable for the Alliance to maintain confusion by keeping the same name. We then opted for a *Charter of Human Responsibilities*. The goal was to have a text adopted for the Charter at the World Citizens Assembly organized by the Alliance in December 2001 in Lille. Following the Syros meeting, a drafting committee and a committee of wise men were set up to draw up the proposal submitted to the World Citizens Assembly.

Chapter 2. RESPONSIBILITY: THE BACKBONE OF ETHICS IN THE TWENTY-FIRST CENTURY

Six theses were submitted to the participants of the World Assembly. They constitute, even more than the text itself, the essence of the Charter by setting out the reasons for which responsibility is the backbone of the global ethics of the twenty-first century.

Thesis 1: Facing the radically new situation of humankind, a third ethical pillar is necessary, common to all societies and all social and professional spheres, as a complement to the two existing pillars on which international life is based, the UN Charter and the Universal Declaration of Human Rights.

Thesis 2: The same ethical principles can apply at the personal level and at the collective level, both to guide individual behaviour and to serve as the foundation for the law.

Thesis 3: The notion of responsibility exists in every culture. It is inseparable from that of freedom and dignity. It can constitute the core of the common ethical Charter.

Thesis 4: Given the impact of human activities and the interdependence among all societies, a broader definition of responsibility is necessary. It comprises three dimensions: assuming the direct and indirect consequences of our acts; uniting to overcome helplessness; acknowledging that our responsibility is proportional each person's knowledge and power.

Thesis 5: The Charter does not impose any precepts; it proposes priorities and prompts choices.

Thesis 6: Every social and professional sphere is called to draw up, on the basis of the common Charter, the rules of its responsibility. These rules are the foundation of the contract that links it to the rest of society.

These theses were discussed and adopted during the Assembly. They are the essence of the charter.

They have played such an important role in our collective thinking that it is useful to dwell on each of them for a moment.

First thesis: A third ethical pillar is necessary as a complement to the Universal Declaration of Human Rights

The first thesis put forward for debate, ‘*facing the radically new situation of humankind, a third ethical pillar is necessary, common to all societies and all social and professional spheres, as a complement to the two existing pillars on which international life is based*’, means that the Universal Declaration of Human Rights alone is not enough to build and think about the twenty-first century and, in particular, will not enable drawing up the global law we need.

Of course, it is possible to use competition among rights to draw from them the corresponding responsibilities. Thus, noting that human rights did not deal with the preservation of the biosphere except in terms of maintaining the resources available to humankind, some jurists and legislators imagined conferring on certain elements of nature the status of ‘subject of law’; or, following the work of Hans Jonas, the ‘*rights of future generations*’ – generations that do not yet exist cannot strictly speaking be subjects of law – the idea of the ‘*responsibility of present generations towards future generations*’ was introduced.

But this is always by virtue of the general principle that the rights of some are limited by respect for the rights of others, without forgetting Simone Weil’s formulation: ‘*a man considered in himself has only duties . . . others considered from his point of view have only rights*’. Whatever extension one may give to the confrontation of competing rights, the statement of rights is not a relational concept.

In the book *Mission possible*, which I wrote in 1993, I had already made these reflections in regard to the fight against exclusion.²⁷ When observing the evolution of working-class neighbourhoods in French cities, and in particular the evolution of young people in these neighbourhoods, I had noted that the law isolates and what unites is the sense of duty. This is the force of both neighbourhood gangs and religious fundamentalism.

A second obstacle is that whilst individuals have rights, it is up to others, particularly states, to make those rights effective. As long as political rights in the broadest sense are concerned, respect for freedom of opinion, conscience or assembly, the right to property, security, or the right to not be arbitrarily accused, arrested or detained, this asymmetry is natural. But the further one moves away from the traditional field of human rights, that of political rights, the less obvious this asymmetry.

This leads to a distinction between those who are deemed to be powerless, the citizens, who only have rights to assert, and the holders of power, public authorities and companies, who alone have responsibilities. In the early years of the Charter of Human Responsibilities, we met with hostility from some human rights organizations for whom the idea of universal responsibility was a threat. This sometimes led to ‘reversal’ games. I am thinking of the leaders in Latin American working-class neighbourhoods who reacted against the ‘victimizing’ discourse that human rights organizations held on their behalf and instead claimed their own responsibility because that made them active subjects of their lives.

This logic of rights on the one hand and responsibilities on the other is so deeply rooted in consciousness that a part, albeit a minority, of anti-globalization activists thought that facing globalized neoliberal order one could build global governance on the basis of human rights and the sovereignty of states. Which is paradoxical, to say the least.

Canada, which has taken the logic of human rights very far, provides interesting illustrations of the resulting contradictions. I’ll take two examples. The first is regarding divorced or separated fathers. They do not claim responsibility for the care of their children but... the right to enjoy them, regardless of the development of the children themselves. A second example is that Hasidic Jews, who are fundamentalists, were given the right to educate their children as they wished; but some children, having reached adulthood and wishing to leave their community, sued the state for not having assumed its responsibility to transmit to all children the codes and knowledge necessary for integrating into society.

27 . P. Calame, *Mission possible*, Paris: Lieu Commun, 1993.

Assertion of the rights of religious or sexual minorities is perfectly respectable, but by making societies where everyone becomes essentially a bearer of rights, we end up losing sight of the need to build a society together.

On the occasion of the European Conference on Social Exclusion held in Copenhagen in 1993 at the initiative of Jacques Delors, President of the European Commission, I was asked to coordinate reflection on the extension of social rights in Europe. I was struck by the reaction of German jurists to the French propensity to believe they were all the more progressive as they proclaimed new rights. For them, a right only had value if it was effective, and therefore effectively enforceable against actors, particularly public actors, who are responsible for meeting the objective conditions for such rights to be effective. This is why, actively involved in the 1990s in the European Charter on the right to live somewhere, I conceived a certain scepticism towards the 'enforceable right to housing'; assertion of this right to housing, far from contributing to the development of a supply of housing accessible to all, has rather the opposite effect by dissuading rental investment.

It is in fact when in the 1948 Universal Declaration of Human Rights we move beyond political rights to address economic, social and cultural rights, starting with Article 22, that the difficulties begin. Articles 22 to 27 set out the right to social security, to the satisfaction of economic, social and cultural rights indispensable for dignity... taking into account the organization and resources of each country, the right to rest and leisure, a standard of living sufficient for the health and wellbeing of oneself and one's family, the right to free education. This is summarized in Article 28: *Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*. Magnificent, but enforceable against whom, specifically?

Being the responsibility of all, this international order is the responsibility of no one. Jeane Kirkpatrick, US representative to the United Nations during President Reagan's term, compared these articles of the Declaration to a letter to Santa Claus. She made an observation about the Carter administration that, whilst controversial, is not irrelevant. For her, this policy, which denounced human rights violations among US allies rather than among its opponents in the communist bloc, was socially aimed at making US citizens feel good about themselves. And in a 1981 conference she stressed that it was easy to proclaim rights, but extremely difficult to translate them into reality. And further, that our inability to distinguish between the realm of rhetoric and politics led us to believe that everything that can be conceived can be realized; for every goal that human beings work to reach there was a corresponding right. All this, she said, would be fine if it had no impact, but according to her, treating goals as rights introduces great illusions about how goals can be achieved in real life. Rights are indeed attached to individuals, whereas goals can only be achieved through the collective effort of individuals. The subtle consequence of the language of rights, she deemed, was to place the burden of responsibility on someone else; for example, the right to development necessarily leads in one way or another to accusing someone else of opposing it. Utopia thus became what was due to everyone. Is this aporia of human rights not at the heart of the gap that has grown over the decades between the universally accepted need for systemic transition and the failure to actually undertake it?

Are we to conclude with Jeane Kirkpatrick that the assertion of economic, social and cultural rights has made no progress and that all this is pure hypocrisy? No, of course not. Françoise Tulkens, who was a judge at the European Court of Human Rights from 1998 to 2012, stressed in a conference on the occasion of the 2018 *Nuit du Droit* that the Court's power was limited because even when it passed judgments, national states had to agree to implement them. Nonetheless, she said, the Universal Declaration of Human Rights and the conventions it inspired had created a '*common international culture of law*'. It was in the interest of private individuals to refer specific cases to the

Court, because this made it possible to censor, in the name of jointly adopted conventions, the decisions of national courts.

This international culture of law, reinforced by the so-called ‘dialogue among judges’, and the mutual influence of European Court and the Inter-American Court of Human Rights case law, for example, is becoming a reality, so much so, that sovereignists are denouncing a ‘government of judges’ because regional human rights courts, whose experts, in their eyes, have no democratic legitimacy, are censoring the decisions of states. Even if these judgments are not executed, notes Tulkens, they help to create a context, a ‘soft law’ that often has more impact than ‘hard law’ because for states, as for corporations, the reputational risk can be a greater deterrent than a civil or criminal sanction.

We will also show in Chapter 5 that today, an imaginative use of the various international conventions derived from human rights by civil society and jurists is a privileged means of giving an ever more extended sense to the responsibility attached to economic, financial or political power and those who exercise it. But these advances do not get to the heart of responsibility required for the challenges of the twenty-first century, and this is why a third pillar of the international community based on responsibility is more necessary than ever.

Second thesis: The same ethical principles can apply at the personal level and at the collective level, both to guide individual behaviour and to serve as the foundation for the law

In all societies, it is the common values accepted by all that underpin behaviour in families, as well as in governance and legal systems. This is why a global ethic must be deployed at three levels: the level of individual behaviour; that of the collective norms of the different milieus; and that of the legal system itself.

Third thesis: The notion of responsibility, inseparable from all human action, is a universal principle

Following the intercultural dialogues conducted within the framework of the Alliance for a Responsible and United World, we had acquired a twofold conviction: the term ‘human right’ has no equivalent, other than modern neologisms, in most non-Western languages; on the other hand, the idea of responsibility is found in all societies. This universality must not, however, be a source of misunderstandings. There is no definition of responsibility that has a constant value and exactly the same content in each society and from one culture to another.

This is why, as an extension of the Alliance and convinced that building the universal from the diversity of cultures was a never ending process, Edith Sizoo, who had coordinated the network developed around the Charter of Human Responsibilities and the translations of the charter adopted in 2002, described the adopted text as a ‘pre-text’, in the twofold meaning of a text to be deepened and corrected and that of the opportunity offered by the text to deepen the dialogue among cultures. This is why, in the years following the adoption of the Charter, she instigated a new process of intercultural dialogue based on what Raimon Panikkar calls a ‘*diatopic*’ process, in other words, one

intended to understand how, from the point of view of one culture, the cultural and worldview of another culture is built and then how to make them all resonate together.²⁸

This patient effort at dialogue gave rise in 2008 to a book coordinated by Edith Sizoo entitled *Responsibility and Cultures of the World*.²⁹ The book has eleven chapters, each written by one or more authors from a different cultural era. Without going into the details, the takeaway is that, from one culture to another, depending on the individual's and the community's respective place, depending on one's idea of the freedom of each human being, depending on whether the human community is distinct or not from a larger community including nature and the dead, depending on one's conception of power, the idea of responsibility varies profoundly. Nevertheless, confirming the intuition that led in 2000 to singularize responsibility among the other values found in most cultures, Edith Sizoo concludes this long survey by identifying three major elements that constitute the universal character of responsibility: everywhere, responsibility is understood as a *relational concept*; everywhere, it is defined as *a burden to be assumed vis-à-vis others*, the implications of which are themselves relational; and it always includes the idea of being *accountable to others* for one's conduct or exercise of power.

Being part of a community and having to consider and take responsibility for the impact of one's actions on other members of the community are two sides of the same coin. The relationship with others implies taking them into consideration, more or less, and whatever religious form this takes, as an '*other self*'. A community can be defined as all those who recognize these mutual responsibilities. So much so, that in Western law the impact of our actions on what is *outside* the community does not matter. Not assuming responsibility, not being accountable, not being worthy of one's office, therefore refers less to the idea of punishment than to the idea of exclusion from the community. Laurent Neyret, reviewing the history of the emergence of ecological responsibility, points out that 'for a long time, the two concepts of responsibility and the environment did not intersect much . . . the harmful effects of human activities have long been confined to genes in neighbourhood relations'.³⁰ This was consistent with the idea that the community was the community of humans.

He Xinxin, a Chinese jurist interested in the evolution of legal systems, refers to the work of the German historian Reinhart Koselleck and his 1965 book, *Futures Past*.³¹ Koselleck points out that a concept has both a *retrospective* dimension – the reflection of an accumulation of experience – and a *prospective* dimension – the ability to give the future meaning and shape.³² This applies perfectly to the concept of responsibility. The retrospective dimension is reflected in the universality of the concept of responsibility in the intercultural work directed by Edith Sizoo. The prospective dimension gives the Anthropocene era, relations among human beings, among societies, and between humankind and the biosphere a new force and a new nature, on the one hand because the community has necessarily become global, and on the other because the magnitude of the impact of

28 . Raimon Panikkar, 1918–2010, whose Catholic mother was Catalan and Hindu Indian father was a writer, doctor of philosophy, chemistry and theology, and a specialist in Buddhism. A Catholic priest, he was an ardent promoter of Hindu-Christian inter-religious dialogue and made it the subject of his research and teaching (Wikipedia).

29 . E. Sizoo, *Responsibility and Cultures of the World: Dialogue around a Collective Challenge*, Brussels: Peter Lang AG, 2008.

30 . L. Neyret, Construire la responsabilité écologique, in *Prendre la responsabilité au sérieux*, *op. cit.*

31 . R. Koselleck, *Futures Past: On the Semantics of Historical Time*, translated by K. Tribe, New York: Columbia University Press, 2004; Original in German: *Vergangene Zukunft: Zur Semantik geschichtlicher Zeiten*, Frankfurt am Main: Suhrkamp, 1965 and 1979.

32 . On the role of concepts and revolution in history, see Reinhart Koselleck in Wikipedia, https://en.wikipedia.org/wiki/Reinhart_Koselleck; contribution by He Xinxin to the international seminar 'Vers un jus commune universalisable ?' directed by Mireille Delmas-Marty, December 3–4, 2018, not published.

human societies on the biosphere no longer allows the biosphere to be considered as external to the community. This is why, in every attempt to define a global ethic – the Earth Charter, the InterAction Council’s Universal Declaration of Human Responsibilities, Collegium International’s Declaration of Interdependence – responsibility has proved to be a central concept and the corollary of global interdependence.

The seminar organized under the direction of Alain Supiot and Mireille Delmas-Marty from 2013 to 2015, which gave rise to the book *Prendre la responsabilité au sérieux*, enabled jurists to analyse the historical evolution of the concept and its transpositions from one language to another from their own specific angle – responsibility being a central concept of law.³³

Without claiming to exhaust the wealth of these contributions, I will retain some of the ideas here. First of all, as recalled by Olivier Descamp, professor of history of law, and in particular of Roman and medieval law, the word responsibility has the same root as the word spouse, with a common meaning, that of solemn promise.³⁴ Responsibility is originally the act of answering for the debt of others. From the outset, this obligation gives it a threefold dimension: moral, legal and social. In French, the term ‘*responsable*’ was attested in 1284 and therefore precedes the noun ‘*responsabilité*’. Its interest lies in the fact that the suffix *able* refers to capacity: the ability to be a guarantor and the ability to answer for one’s actions.

Without going to the ends of the earth, the transition from French to English is problematic. Indeed, in English the French term *responsabilité* is translated either by ‘responsibility’, which refers to the capacity to answer for one’s actions, ‘accountability’, which describes the duty to account for the office one holds, and ‘liability’ which is the duty to repair damages that one has generated. It is the latter term, ‘limited liability’, which is used to describe what in French is called a company with limited responsibility, SARL or *société anonyme à responsabilité limitée*. Here, we will mostly be using the term ‘responsibility’ in the place of ‘liability’ so as to maintain our focus on responsibility

This is why the book coordinated by Betsan Martin, Linda Te Ho and Maria Humphries-Kil, is entitled *responsAbility*, not *responsibility*, to stress the initial meaning attributed to the word, namely the ability and willingness to assume power and to answer for one’s actions. This was the spelling that was used in English in the Middle Ages.

The term responsibility, like the term solidarity, navigates between its legal and its moral meaning.³⁵ It is often thought that a legal meaning derives from the need to translate a moral meaning into law. Historical analysis suggests rather the opposite. We have just seen this with responsibility; and for solidarity, the idea *caution solidaire*, which in English is ‘collateral security’ or ‘joint and several guarantor’, whereby each may have to assume the totality of the commitments of a group, has also preceded the moral meaning. But what is essential is to see the correspondence between society’s values and legal principles.

Finally, and this is a very important point, it can be noted that both in the Western Middle Ages (Alain Wijffels) and in China (He Xinxin), respect for common values is the condition of legitimacy in the exercise of power.³⁶ Speaking of a common global law, He Xinxin points out that in Chinese

33 . *Prendre la responsabilité au sérieux*, *op. cit.*

34 . O. Descamp, Histoire du droit et de la responsabilité dans le monde occidental, in *Prendre la responsabilité au sérieux*, *op. cit.*

35 . A. Supiot, *La solidarité. Enquête sur un principe juridique*, Paris: Odile Jacob, 2015.

36 . A. Wijffels, professor of law, Chair of European Law at the Collège de France 2016–2017; He Xinxin, doctor of law, at the international seminar ‘Vers un jus commune universalisable ?’ *op. cit.*

the most appropriate translation would be *‘that which would be respected throughout the world to ensure its harmony’*, in line with the Chinese idea that law is a way of putting the world in order. This right *‘under the sky’* is expressed at different levels, from relations among individuals to the world, as illustrated by the words of Lao Tzu, according to whom virtue, when applied to one’s body, is uprightness, when cultivated in the family it is ease, when cultivated in a canton it is growth, when in a country, abundance, when in an empire, completeness.

For his part, Jean-Noël Robert had the idea to explore translations of the French word *‘responsable’* in different languages of the Far East, China, Korea, Japan and Vietnam, using one of the most translated books in the world, Saint-Exupéry’s *The Little Prince*, and in particular the sentence that closes Chapter 21: *‘I am responsible for my rose’*.³⁷ He shows that over the decades and through translations, the Western sense of responsibility was gradually transposed into these languages, whilst in the oldest translations, the idea that prevailed was that of a *‘charge to be accounted for to a higher-up’*. In this area, as in others, cultures influence each other, contributing to a gradual merging of the different facets of responsibility.

Fourth thesis: The impact of human activities and the interdependence among societies require a broader definition of responsibility.

In the text submitted to the World Citizens Assembly we mentioned three dimensions of this enlargement: assuming the direct and indirect consequences of our actions; uniting to escape helplessness; recognizing that our responsibility is proportionate to the knowledge and power of each.

Reflections since 2002 have reinforced the idea that the magnitude of the impact of human activities and the interdependences among human beings, among societies, and between humankind and the biosphere require a broader definition of responsibility. They have made it possible, in particular through the comparison and evolution of legal systems, to identify not three but six dimensions of responsibility. Understanding their nature and situating the current conception of responsibility for each of them is essential to measuring the extent of the changes to be led. This will be discussed in next chapter.

Fifth thesis: The Charter of Human Responsibilities does not impose precepts; it proposes priorities and choices.

This statement is the fruit of our reflection on the difference between morality and duties on the one hand, and ethics and responsibility on the other. Morality and duties are, to repeat the above distinction, on the side of obligation of means. Compliance with a number of rules is sufficient. Ethics and responsibility are above all on the side of dilemmas and freedom; as both Edith Sizoo and André Levesque pointed out, at the time when our doctrine was being forged in the 1990s, we were confronting, in concrete situations, choices *among* values in which we believe equally, but which, in reality, directed us towards contradictory behaviour.

37 .Jean-Noël Alexandre Robert is a French orientalist specializing in the history of Buddhism in Japan, professor at the Collège de France and Chair of Philology of Japanese Civilization; J-N Robert, Traduire la responsabilité, in *Prendre la responsabilité au sérieux*, op. cit.

André Levesque spoke of five founding crossroads: being and having; the one and the multiple; freedom and constraint; me and others; the mobile and the immobile. Although ultimately we did not choose these five crossroads to structure the Charter and then the Universal Declaration of Human Responsibilities, the idea of crossroads remained. In the societal charters of the various professional milieus, described below, this difference between ethics and morality is particularly visible: the ordinary logic of institutions and professional milieus consists in reducing the responsibility of its members to respecting a professional *deontology*, therefore to precepts and obligations of means.

Sixth thesis: Every social and professional sphere is called to draw up, on the basis of the Charter of Human Responsibilities common to all, the rules of its own responsibility. These rules form the basis of their contract with the rest of society.

This idea, detailed in the following, is essential for two reasons.

First, because responsibility is not rhetorical, or what Anglo-Saxons call ‘lip service’, virtuous declarations with no practical effect, but must be experienced through concrete situations. We see this in education. The increasing number of morality lessons or courses on sustainable development has a guilt-inducing and demoralizing effect on children and young people. On the other hand, if responsibility becomes the means of being the subject of one’s own life, of concretely grasping a number of issues within one’s reach, it becomes joy, an opportunity for energy-giving collective adventures.

Then, and this closes the circle, the idea that each socioprofessional sphere must think of its activity as a *contract* with the rest of society is the corollary of the relational nature of responsibility.

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The debate on these six theses took place at the World Citizens Assembly in 2001. Nearly 20 years later, the debate has certainly deepened, particularly with regard to the various dimensions of responsibility, but these theses remain perfectly up-to-date. They help us understand why the twenty-first century will be the century of responsibilities:

- because *responsibility is about relationships* and the great crises we face are crises of relationships;
- because it helps to *meet the challenge of interdependences* among societies and between humankind and the planet;
- because *it is at the heart of the construction of communities* and therefore at the heart of each society, which warrants that we rely on it to build a global ethics;
- because it *applies to every human being and every professional milieu*;
- because it is universal, in the sense that everyone has a share of responsibility but *proportionate to knowledge and power* and is the corollary of our freedom;

- because its definition extended in time and space corresponds to the *new reality of the Anthropocene*;
- lastly, because it constitutes the *hidden face of human rights*, no longer with those who have rights on one side and those who have responsibilities on the other, but as the two inseparable faces of humankind.

Chapter 3. THE SIX DIMENSIONS OF RESPONSIBILITY

Objective or subjective responsibility

Objective responsibility focuses on the *materiality* of the impact of acts, regardless of the motivations that guided them; this is the difference between responsibility and guilt and the famous statement of Georgina Dufoix, French Minister of Social Affairs in 1985 at the time of the contaminated blood scandal, exclaiming on television in the autumn of 1991: ‘I feel deeply responsible, but I do not feel guilty’.

Subjective responsibility is attached to the *intention* behind the act or inaction, which causes harm to the rest of the community. In many civilizations, we oscillate between the two definitions. For example, Chinese law favoured subjective responsibility.³⁸ *The Book of Documents*, a classical Chinese book that preserves administrative documents, vividly expresses the Chinese philosophy of justice: ‘forgive any fault, even serious, if it is not intentional; punish any act, even venial, if the intention is bad’. By emphasizing subjective responsibility, punishment becomes an instrument for educating society and not an automatic distribution of punishment.

A purely subjective definition of responsibility in Europe at the end of the nineteenth century, however, proved incapable of meeting employers’ demands of vigilance with regard to machines owned by them and operated by workers. As Alain Supiot shows in his brilliant introduction to *Prendre la responsabilité au sérieux*, these new realities led judges to extend the responsibility of employers to the idea of ‘*responsibility for what one has in one’s care*’. This idea is certainly old; historically, an owner or parent could be held responsible for damages to others by a bull, a dog or a child, but new industrial realities led to an extension of the idea to ‘*liability (or responsibility) for the actions of things*’. This was already the outline of an objective responsibility extended to the power one holds, which determines the extent of potential impacts on the rest of society. It is clear today that subjective responsibility contributes to the definition of limited responsibility since intention is localized in time and space. Objective responsibility, linked to impacts that are deferred in time or global, gives it another dimension; for example, no one ‘*intends*’ to destroy the climate or biodiversity, and yet that is what is happening.

Limited or unlimited responsibility

38 . J. Bourgon, Aux fondements dogmatiques de la responsabilité en droit chinois. L’empereur ‘aimant la vie’ et ‘gestionnaire du monde’, in *Prendre la responsabilité au sérieux*, *op. cit.* pp. 83–100.

At the dawn of colonization and then of the industrial revolution, the idea of limited liability, or responsibility, was conceived to promote the development of colonies or to encourage entrepreneurship; financial responsibility was to be limited to the capital invested, protecting the entrepreneur against the risks that he or she once incurred of losing not only the capital invested but all his or her assets in a venture.

Today, at least in legal terms, responsibility is limited in time and space, and in the scope of reparations. Is this reasonable? Let us look at these three limitations in turn.

Responsibility, limited or unlimited in time? Today, time-limited responsibility is the rule, with the exception of crimes against humanity. In the second decade of the twenty-first century, the statute of limitations for sexual crimes and paedophilia has provoked a societal debate, as the trauma or shame felt by the victims has sometimes led to long years of amnesia or silence before a suit is filed. This has led to the idea that the limitation period ran not from the date of the crime but from the date on which it was revealed. Nevertheless, the right to forget and the statute of limitations remain the rule today, giving a time limit to responsibility. The question will increasingly arise, however, because of the delayed and sometimes indirect consequences of the development of technologies or even financial innovations. The global financial crisis of 2008 revealed the catastrophic impact of the new, so-called '*structured*', financial products, the symbol of which were the famous subprime mortgages. Supiot suggests, for example, that the case law on responsibility for placing defective products on the market, i.e. products that do not offer the security that can legitimately be expected, could be applied here. On another level, the impact of agriculture, food or transport on climate change, biodiversity, health or the progressive sterilization of soils will force us to reconsider the idea of limited responsibility, especially since no one can plead ignorance as these delayed effects are well documented.

Limited or unlimited responsibility in space? Responsibility, as reflected in national legal systems today, places an almost exclusive emphasis on national communities, leading to limited responsibility in space. It took many years, for example, during the 1970s and 1980s, for the United States to recognize, vis-à-vis Canada and in particular the province of Quebec, the responsibility of the United States for sulphur dioxide emissions on US soil in Quebec's acid rain and the resulting degradation of aquatic ecosystems; the principle of limiting responsibility in space is so firmly established that it took an international treaty to take into account transboundary pollution. It was also on this occasion, a point to which we shall return at length, that the role of scientists became unavoidable; *the more the effects of human activities are postponed in time and space, the more the question of causality requires scientific expertise.*

Limited or unlimited responsibility in the magnitude of the sanction? For LLCs, as previously mentioned, financial responsibility is limited to the capital contribution. This principle is opposed to the idea that the extent of the damage is what justifies the extent of reparations, irrespective of the actual ability of the person who caused the damage to repair it. The most famous example is the trial of Jérôme Kerviel, the adventurous trader who in 2008 caused the French bank Société Générale to lose nearly 5 billion euros. In the first trial, he was ordered to pay the Société Générale the full amount of the damages, or 4.9 billion euros in damages. The Court of Appeal, in 2016, wisely reduced this amount to... 1 million euros, taking into account the actual capacity of the culprit to pay reparations. The question of the relationship between reparations and damage nevertheless remains. The whole strategy of fraudsters is to build up their own insolvency, for example by transferring ownership of their property to a spouse or children; since slavery for debt

has disappeared, the only remaining possible penalty is a prison sentence, which is purely moral compensation for the victims.

At the company level, construction of insolvency can be replaced by the outright disappearance of the company or its takeover. The most famous case, because it highlights the three limits of responsibility – in time, in space and in the extent of the reparations – is the still unresolved dispute between the State of Ecuador and the US oil company Chevron. It contains all the ingredients for drama. The US company Texaco extracted oil between 1964 and 1990 in the Ecuadorian jungle and was accused by nearly 30,000 indigenous people of having polluted an entire region by dumping toxic water and hydrocarbons, thus poisoning the soil and the inhabitants. But in 2001, Texaco was bought out by another US company, Chevron. This already is the transfer of responsibility from one legal structure to another.

The US Government, so quick to sanction non-US companies operating outside the United States, for example in Iran, that have not respected the law or the decisions of the US Government, and not hesitating to make full use of '*market power*' conferred by the possibility of prohibiting such companies' access to the US market, considered that it did not have to take legal action against a US company, as the damages had not been caused on US territory.

Ecuador, in these circumstances, hoped to obtain compensation by acting before Canadian, Brazilian and Argentine courts to have Chevron's assets seized. The action was unsuccessful. The Ecuadorian courts ordered Chevron to pay compensation of 19 billion dollars to the indigenous peoples who had suffered the ecological and human damage, but they had no means of enforcing the sentence, as Chevron had in the interim withdrawn all its assets from Ecuador. The United States was Machiavelliously able to show that an Ecuadorian judge was corrupt, another way of deterring any other state from joining in the enforcement of the court's sentence against Chevron. In 2013, the Supreme Court of Ecuador halved Chevron's fine to 9.5 billion dollars without being able to enforce the sentence. The final twist in 2018, the Permanent Court of Arbitration in The Hague, in view of a bilateral investment agreement signed between the United States and Ecuador in 1997, which is very much after the fact, concluded that under international law Chevron was not obliged to comply with the Ecuadorian ruling and even sanctioned Ecuador on the basis of the clauses of the bilateral agreement. It is understandable that this case, which is famous throughout the world, has led Ecuador to propose to the United Nations a reform of international law on serious human rights violations.

The takeover in 2016 of Monsanto, a US company, by Bayer, a German company, promises similar developments, with the multiplication of lawsuits related to the impact of Roundup, Monsanto's flagship pesticide, on health and the environment.

Individual or collective responsibility

In ancient societies, where the group mattered more than individuals, responsibility was usually collective – the family, village or clan was collectively accountable for the actions of each of its members placed '*under the collective's care*'. And the punishment of a particular member of the community was the doing of the whole community, as evidenced by stoning, practiced outside the village, which was a double symbol of exclusion from the community. Moreover, the faults of a father fell on his children '*up to seven generations*' in the Old Testament, seven being taken in a symbolic sense.

This almost unlimited responsibility was nevertheless qualified, as we can see in the Bible, by the periodic necessity, symbolically fifty years, that is, after seven times seven years, to reset the metre to zero, by returning their land to the families who had had to part with it over the years to pay their debts – this is the rule of jubilee, though it can unfortunately be doubted that it has been implemented on a large scale.

As attested by the prophets' texts, things began to change in the Jewish context around the fourth century B.C. in favour of a greater individualization of responsibilities; the fathers' faults ceased to fall on their children.

Collective responsibility is frequently practiced in totalitarian regimes. It is a very powerful means of blackmail, where a person's disrespect for power has an impact on his or her family and community. Hostage-taking follows the same logic.

Over the centuries, humanizing responsibility has therefore consisted in individualizing it by attaching it to people. But societies' evolution towards more interdependence, whether through the organization of production in the form of global chains, the members of which are linked by multiple forms of allegiance, or the combined impact of human activities on the biosphere, shows the limits of an individual approach to responsibility, which comes up against insolvency strategies to escape obligation of reparations, against the fruitless search for individual responsibility where only *co-responsibility* can now be designated; the individual conception of responsibility leads to collective irresponsibility.

Responsibility to the past or to the future, predictable or unpredictable?

Laurent Neyret quotes the title of an article by the jurist Catherine Thibierge published in 2004 at the time of the debates on the French Environmental Charter, '*Avenir de la responsabilité – Responsabilité de l'avenir*' [The future of responsibility – Responsibility to the future].³⁹ The title puts an essential question in a nutshell. The traditional legal approach to responsibility is concerned with compensation for damages suffered, hence with past actions. This contradicts the usual meaning, outside of the field of law, of the term 'responsible', which designates those who can be held accountable for their past actions but also and above all those who assume responsibility for present and future actions. Moreover, the work of Hans Jonas has opened an important breach in this traditional legal approach by raising the question of the responsibility of present generations to future generations. This is also what has led Paul Ricœur to distinguish 'imputation responsibility', which concerns past acts, from 'mission responsibility' – the rules governing action – which defines responsibility to the future.⁴⁰

As illustrated by the still tentative emergence of the precautionary principle in the field of law, individuals and institutions are forced to factor in the risks that their action or inaction poses to societies and the biosphere in the future. The more the impact of human activities will be sustainably felt in the future – and here again the cases of climate, biodiversity, soil sterilization or ocean acidification are emblematic – the more the question of responsibility to the future will become apparent.

39 . L. Neyret, Construire la responsabilité écologique, in *Prendre la responsabilité au sérieux*, *op. cit.*, citing C.

Thibierge, '*Avenir de la responsabilité – Responsabilité de l'avenir*', *Recueil Dalloz*, Vol. 180, No. 9, pp. 577–582.

40 . P. Ricœur, *Le Juste I*, *op. cit.*

To this past-future binomial another is added, namely predictable-unpredictable. When responsibility is focused on the past, its assessment involves measuring the actual impact of acts already committed, even when the impact was revealed over time, as in the case of cases of cancer linked to exposure to asbestos.⁴¹ Measuring impact, which requires expert intervention, is already controversial when it comes to measuring the impact of past actions, and is even more complex when it comes to assessing a future impact, harm that has not yet occurred. This requires accepting a probabilistic approach, which is what the international panel of climate experts, the IPCC, is doing when it speaks of global warming and how it relates to the increasing concentration of carbon dioxide in the atmosphere, and the probability that the average rise in global temperatures will be of x number of degrees. In addition to scientific uncertainties, impact is also unpredictable because societies will perhaps be able to invent countermeasures to predicted disasters.

This twofold unpredictability opens a twofold breach: that of the *'doubt mongers'*, who find or bribe experts to challenge the scientific consensus on impacts, as has been done with all the major societal issues, namely the effects of tobacco or alcohol, acid rain, pesticides and of course the climate; and that of the technologists, whose position was perfectly summarized in 1992 by the Heidelberg Appeal, according to which the negative effects of science and technology will be corrected by the progress of science and technology itself.⁴² There is for example the idea of a technological fight against future global warming by new means such as cloud seeding or burying carbon dioxide.

Responsibility to humans or to the entire biosphere?

The very concept of community oscillates, as seen above, between two extremes, one that isolates the community of humans, and one that makes them part of ecosystems and the biosphere. This directly affects how responsibility is conceived. In the Western world, the tendency since the sixteenth century has been to isolate the human community, focusing only on harm done to humans themselves. This trend continues; when we speak of ecocide, for example, in relation to the dumping of toxic waste, serious soil pollution or the destruction of biodiversity, what is essentially being considered is the consequences of these attacks on the ecosystem for human societies.

There has however been a very noticeable trend in the past few decades towards an enlargement of the community. Pope Francis entitled his encyclical on our present models of development and their necessary evolution *'Laudato si'*, or 'praised be You, my Lord', taken from 'The Canticle of the Sun' of Francis of Assisi, who within the Christian community was who most enlarged the idea of a community to include non-humans.

A parallel development is emerging with regard to the suffering of animals in industrial farms or in slaughterhouses and when trying to demarcate animal species capable of feeling and suffering, with which it is easier to identify, thereby including them in a community of sensitive living beings. This is this perspective from which we must consider the judgment of an Argentine court, which in 2014 recognized the status of 'non-human person' for a female orangutan held in a zoo, considering that

41 . N. Oreskes and E.M. Conway, *Merchants of Doubt*, London: Bloomsbury Press, 2010.

42 .The Heidelberg Appeal, launched to denounce 'the emergence of an irrational ideology which is opposed to scientific and industrial progress and impedes economic and social development', was published on the occasion of the 1992 United Nations Conference on Environment and Development (the Earth Summit in [Rio de Janeiro](#)) and was signed by many scientists. It is highly suspected that it was being led by the asbestos industry lobby.

she was illegally deprived of her liberty and should be transferred to a reserve – we are no longer dealing with responsibility for what we have in our care, or our responsibility to treat the orangutan well, we are opposing competing rights, that of zoo visitors and that of the orangutan.⁴³

A third evolution is taking place: a re-evaluation, at a historical moment when the biosphere itself is in danger, of the conceptions of so-called indigenous peoples, which make humankind part of Mother Earth, Pachamama, a Quechua term that has now been consecrated. Thus, in 2008, Ecuador's new constitution qualifies Pachamama as a subject of law and grants it a right to restoration in the event of an attack on its integrity.⁴⁴

Criticism, even in the West, of an exclusively anthropocentric conception of the community has come from ethnologists. Thus, in his book *La responsabilité* published in 1928, Paul Falconnet criticizes the philosophical and legal doctrines of his time, whose authors, he says, '*systematically ignore any rule of responsibility foreign to the law and morality of the societies in which they live*' and qualifies individual and subjective responsibility based on the notion of fault as a '*fleeting moment in the historical future: exhausted, this form of responsibility may even be disappearing*'.⁴⁵

Based on the example of the societies of the Volta Basin, Danouta Liberski-Bagnoud speaks of the role of the custodian of the land, whose function is, she says, to '*transform places into territories where human lineages can grow and multiply*'.⁴⁶ There is no better way to describe how humans and ecosystems become a community. Further, she writes about the custodians of the land, '*one cannot be the owner of what one is, and in fact the custodian of the land IS the land*'.

This observation is consistent with that of ecologists who have shown that what Westerners once called 'virgin lands', existing without any human presence, were in fact the result of interaction with the hunter-gatherer tribes that had occupied and maintained them for thousands of years. Contradicting the opposition between humans and non-humans, between culture and nature, these observations confirm the modernity of a global vision of the community as including the ecosystems. It is interesting to note that even in cases where the artifice of granting legal personality to elements of nature has been used to assert human society's responsibility to them, this has often required a detour consisting in the recognition of indigenous peoples' right to pursue their way of life, which is closely dependent on the integrity of their environment. The cases of Colombia, New Zealand and Hawai'i will be detailed below.

Responsibility: Obligation of means or obligation of results?

As Neyret notes in the text quoted above, in French law the preservation of ecosystems has been achieved through administrative regulations, which are obligations of means. In other words, in this type of legal system, compliance with regulations is a necessary but also sufficient condition for the various actors to exercise their responsibility. This even applies to the 2015 Paris Climate Agreement, where the national commitments dealing with the reduction of national greenhouse-gas

43 . L. Neyret, *op. cit.*

44 . L. Neyret, *op. cit.*

45 . P. Falconnet. *La responsabilité. Étude de sociologie*, Paris: Félix Alcan, 1928, cited by D. Liberski-Bagnoud in the chapter Les gardiens de la terre. La notion de responsabilité dans les systèmes rituels voltaïques, in *Prendre la responsabilité au sérieux*, *op. cit.*

46 . Danouta Liberski-Bagnoud is research director at the Centre d'études des mondes africains at the CNRS; D. Liberski-Bagnoud, *Les gardiens de la terre*, *op. cit.*

emissions of states are to be 'voluntary', with no legal sanctions in the event of non-compliance. This is topped off with a monument of schizophrenia, whereby states jointly commit to limiting temperature increases to well below 2° at the end of the twenty-first century when the sum of national commitments leads to a temperature increase of more than 3°!

Chapter 4. UNLIMITED CORPORATE IRRESPONSIBILITY

The Earth Summit was held almost thirty years ago. It warned of the risks humankind was running by compromising the conditions for its prosperity and survival, and stressed the urgency of acting. Year after year, the message of urgency has been sung in every key. Never before has humankind received so many convergent and authoritative warnings.

But humankind is like Jacques Chirac who, when he was President of the French Republic, pronounced a famous lyrical musing in Johannesburg at the 10th anniversary of the Earth Summit: '*Our house is burning and we are looking elsewhere*'. One second later, he himself looked elsewhere, watching, like 'Anne, my sister Anne' in *Bluebeard*, for the return of growth, which alone in his mental thought pattern, would be able to bring about improvement on the unemployment front.

After the financial crisis of 2008, this galloping schizophrenia, which, clinically speaking, should send us all to a lunatic asylum, reached new heights; the same leaders, heads of state and government, I mean the very same, ran in the fall of 2009 from the G8 summit, where the question asked was about how to revive growth, to the Conference of the Parties (COP) in Copenhagen on the climate, where the question was about how to curb it.

Only thirty more years to act, twenty more, ten more, five more, before perhaps hitting 'rewind' to restart the same countdown, like children who are promised a spanking that never happens. This schizophrenia maintains us in a bizarre state of stupor, of helplessness.

The Vézelay Group, as early as 1987, had taken up the concept of *akrasia*, borrowed from Aristotle, which designates a state where one knows that one should change but does not find the energy, the will to do so, within oneself. It is more current than ever. Look at the evolution of greenhouse-gas emissions and more specifically of carbon dioxide. We are always offered several scenarios for the future: the first, the continuation of current trends, runs us straight into the wall; others, more 'voluntarist', avoid disaster. The latter show a clear break in the curve. But for the past 30 years, this break has been happening... next year. This is the definition of a company of unlimited irresponsibility, the corollary of the '*company of invented limited responsibility*' at the dawn of the modern age, the other side of the coin. For, as we shall now see, it is indeed the sum of the limited responsibilities of all private and public actors that provides the loophole of unlimited irresponsibility. We will now flesh out the mechanisms.

They are similar to a game I used to play when I was a child. It was called '*Monsieur le Curé a perdu son chapeau*' or 'The Priest has lost his hat'. We would stand in a circle and one of us would start: '*Monsieur le Curé* has lost his hat, he will find it at ...' one of our places, let's say Victor's. Then the first would count to three, and before three Victor had to answer: 'No, *Monsieur le Curé* has not lost his hat at my place but he will find it at... Octave's', and the game continued until a second of distraction caused one of the players to lose. This is unfortunately the game being played all over the world on a large scale. Equipped with his limited responsibility, each points out that he assumes it and passes the 'hot potato' on to the next actor.

The construction of unlimited irresponsibility stems directly from the limited responsibility of each actor. For each of the six dimensions of responsibility discussed in the previous chapter, the

definition adopted today, both in law and in fact, is the most restrictive: responsibility, in particular criminal responsibility, is subjective responsibility, attached to the idea of fault, rather than to that of impact; responsibility is limited in time, space and in the extent of the sanction; there is interest in individual responsibility, and the concept of co-responsibility has emerged only very recently; legal systems favour the concept of damages, hence of responsibility relating to the impact of past acts of the damages on the environment; we are almost exclusively interested in the impact on other human beings, in a logic of confrontation between competing rights more than in a logic of common responsibility to the commons; and obligation of means, both through administrative regulations and through professional deontology, prevails over obligation of results.

To describe the resulting unlimited irresponsibility, I will focus successively on its three characteristics: *impunity*, in other words the fact that responsibility cannot be legally challenged, with all its consequences on behaviour; *'dogmatic slumber'*, to use Supiot's appropriate expression to describe the inability or reluctance to tackle our systems of thought and our legal and governance systems despite their flagrant inadequacy for the new challenges; and the *property-sovereignty* pair, each of which is considered *'inviolable and sacred'*, to use the qualification of property in the Declaration of the Rights of Man and of the Citizen of 1789, a pair standing today in the way of the indispensable metamorphosis of our law.

The limited responsibilities of the actors, the unlimited irresponsibility of companies

Today, says Neyret, *'irresponsibility pays off'*.⁴⁷ Turning more specifically to environmental responsibility, he notes, *'Presently, protection of the environment is deficient from the penal point of view, both nationally and internationally. In particular, at the international level, there is powerful 'environmental dumping' that provides a breeding ground for environmental crime. The phenomenon is on the rise, with rare prosecutions and light penalties... because of the considerable profits made from trafficking in protected species, waste, wood or precious metals, all characterized by the English formula "high profit, low risk".'* In this passage we can see a combination of the three necessary ingredients for impunity: national legal systems that remain tolerant of environmental crimes; a race to the bottom under legal systems that remain national; and the difficulty under these conditions to prosecute effectively any economic or mafia actor operating internationally when there is no global law.

The Chevron-Texaco case is a good illustration of the mechanisms by which Chevron, which is supposed to have taken over Texaco's liabilities as well, did not, more than 30 years after the fact, pay any compensation to the indigenous peoples who were harmed. Here we see the two layers of impunity appearing: the mostly anonymous shareholders of Texaco, who committed what some call ecocide, have been out of reach for the longest of time; and the company that succeeded Texaco has had an enormous range of delaying tactics to postpone any financial sanctions indefinitely. And of course, the question of criminal sanctions against leaders or perpetrators who probably knowingly lent themselves to this ecocide is not even raised.

Another very powerful mechanism of impunity is that of *veils*: the *legal* veil and the *national* veil. Actual responsibility is placed beyond reach by the juxtaposition of these veils. A good example is given by Isabelle Daugareilh, that of the obstacles put in the way of the French energy group AREVA's compensation for the families of workers in Gabon who died of cancer as a result of

47 . L. Neyret, *op. cit.*

working in uranium mines.⁴⁸ The legal veil worked: the mine was not operated by AREVA but by a subcontractor, and in 2015 the French Supreme Court of Appeals repudiated for AREVA the status of co-employer in the absence of control over the Gabonese concessionaire, granting the ordering companies full latitude to transfer responsibility to a third party, which probably had neither the means nor the will to ensure the health of their workers; and the national veil: the injury was not suffered in France but in Gabon. As noted by Isabelle Daugareilh, the Court of Appeals left *‘the thorny question of compensation for foreign victims of damage committed abroad by a foreign company’* in abeyance. As Supiot observes, in this type of situation, where the Latin precept *‘ubi emolumentum, ibi onus’* or ‘where there is profit there is burden’ applies, the good old question, ‘Who benefits from the crime?’ has no legal translation.

The 2008 financial crisis is another nearly perfect example of irresponsibility.⁴⁹ Those who were mainly responsible for the crisis, those who invented and disseminated so-called *‘structured’* financial products at the international level – what we would call, in trivial language and according to a Dutch proverb, *‘buying a cat in a bag’* – were not sent to jail. Bernie Madoff was, but he was not convicted as the person responsible for the financial crisis, only for illegal practices that came to light during the financial crisis; in the words of Warren Buffett, *‘It’s only when the tide goes out that you discover who’s been swimming naked.’* In the financial field and more generally in all matters regarding the directors of large organizations, banks, companies or even states, however, a financial penalty does not deter risky behaviour because it is passed on to shareholders or, in the case of states, to the citizens. In fact, with the possible exception of Iceland, where the debts of the offending bank were of a magnitude unrelated to the contributive capacity of individual Icelanders, it was the citizens who, in the last resort, bore the brunt of the crisis. The main perpetrators got away with everything, often with golden parachutes. The result was a true *de-moralization of society*, in the strict sense of the word; it can only be concluded that immorality paid off.

Can we for all that consider that lessons have been learned and that this type of crisis will not happen again in the future? Alas, no. At the European level, *the response has not been to establish conditions for the criminal responsibility of banking-institution managers, but to increase the number of regulations, hence an obligation of means.* With a paradoxical effect, which is that where there is compliance with regulations representing fixed costs for any institution, their multiplication penalizes the small players and reinforces banking concentration, whereas concentration was one of the causes of the systemic crisis.

It can also be observed that *the innovations that preceded the crisis were all moving in the direction of a threefold narrowing of time*: the shrinking of decision-making time thanks to algorithms and robots designed to exploit market malfunctions in a microsecond; a steady reduction over the past 50 years in the length of time asset managers are authorized to hold shares – thus corporate ownership interests; and the shrinking of future prospects with pressure in favour of short-term *‘shareholder value’* to assess corporate performance. Short-term performance is even more important in pension funds, which by their very nature should favour long-term investments, through *benchmarking*, i.e. asset managers’ evaluation of short-term performance.

Janis Sarra notes in fact that short-term pressure has actually increased since the global financial crisis, both because the pressure on senior executives to deliver short-term financial results has

48 . I. Daugareilh, La responsabilité sociale des entreprises en quête d’opposabilité, in *Prendre la responsabilité au sérieux*, op. cit.

49 . See in particular J. Sarra, Assumer notre responsabilité financière en matière de changement climatique, in *Prendre la responsabilité au sérieux*, op. cit.

increased and, *‘because the vast majority of management teams lack the cognitive capacity to think beyond the short term’*.

In this context, and in the absence of an extended criminal definition of shareholders’ and management’s responsibility, what can the reach be of the UN’s Principles for Responsible Investment (PRI)? In the case of real-estate ownership, a land registry and a mortgage department keep track of transactions over a long period of time. There is no equivalent in company law due to the frequency of transactions, the intermediation role of asset managers and investment funds and, above all, the anonymity of shareholders.

After the Enron scandal, US lawmakers had considered for a while enacting legislation to prosecute managers who were notoriously incapable of understanding the activity and value creation of the company over whose destiny they presided. This common-sense measure was discarded – an additional premium for limited responsibility, hence unlimited irresponsibility.

I have mentioned the emblematic cases of climate, biodiversity or the oceans. Here, it is the notion of *personal responsibility* that ensures the complete impunity of those whose impacts compromise our future. Some advances, to which we will return in the next chapter, are possible. For example, German courts ruled that a Peruvian claim against a German energy company for its greenhouse-gas emissions was admissible; similarly, courts in different countries, following the Dutch court which led the way, have ruled that the claims of civil parties against their own states are admissible because of the timorousness of the policy to combat global warming. But these emblematic actions, which have the merit of contributing to a new collective awareness, are unlikely to succeed in law.

As far as states are concerned, international law in its current state does not allow them to overstep the legality of immediate acts, but does not cover the deferred consequences of their actions, as illustrated by the example of the French-English intervention in Libya. The international mandate needed for the intervention that led to the removal from power and subsequent killing of Muammar Gaddafi was discussed. But the dramatic and indirect consequences of this intervention, on the one hand the chaos in Libya and on the other hand the destabilization of many Sahelian countries, especially Mali, as a result of the shameful bargaining between France and Gaddafi’s Praetorian Guard, which came from the Sahel, whereby these latter agreed to abandon Gaddafi on condition that they could return to their country with their weapons, which would become a source of lasting destabilization of the countries of the region, cannot, under international law, be prosecuted.

Finally, there is currently no global law applying to transnational actors. There is no more than an international law that governs relations between states, and states, in the name of sovereignty, take great care not to attack each other.

*‘Dogmatic slumber’ in the face of the new realities*⁵⁰

All the regulatory systems set up by societies, first and foremost the institutions, theories and practices of governance and legal systems, are always faced with an objective contradiction: on the one hand, as the foundation of society, they need stability and, on the other hand, in order to adapt to new challenges they must be transformed. The Platform for a Responsible and United World had

50 . I owe to Alain Supiot the very eloquent image of ‘dogmatic slumber’, which describes the inertia of thought systems in the face of a changing world.

already noted, *'The forms that previously regulated human activity, which were built over thousands of years, have become obsolete without new forms' having had time to emerge.'*

Societies as a whole have become aware of the need to lead a systemic transition towards sustainable societies. In late 2018 and early 2019, this awareness was reflected in collective demonstrations of an unprecedented scale in favour of the climate, strikes by high-school and university students, a flourishing of local initiatives and priority given to ecological issues in European opinion surveys, to name just a few examples. But will these initiatives, a sign and promise of profound change, be enough, or will they break like ocean waves beating against the solid concrete walls of dogmas and systems of thought?

Reflecting for a long time on the conditions of a systemic transition, I became convinced that most often it was not militant and innovative initiatives that were lacking but the capacity to propose a new conceptual and institutional system.⁵¹ This capacity rarely comes, however, from academic institutions themselves, which by nature are attached to reproducing the thinking of teachers and, like any large institution concerned with its credibility, are better equipped for progressive, incremental developments than for major conceptual revolutions. This is how I think we should understand the *'dogmatic slumber'* called out by Supiot.

The seminar organized jointly by the Collège de France and PSL (Paris Sciences Lettres Research University) in February 2017 proposed two keys to understanding this slumber, which made it possible to understand that in the Anthropocene era, humankind has lost control of its own destiny, something I call, graphically, *'the robots' revolt'*. The term 'robot' should be understood here in its broadest sense as human productions, whether technical, conceptual or institutional, which escape the control of their creator to lead their own lives, including when they come to threaten the survival of their creators.

The drama is played out in two acts: Act 1, legal systems became progressively autonomous, cutting themselves off from governance and its evolution; Act 2, legal systems, a fortiori in France with the fragmentation of the law among the various disciplines – civil law, criminal law, public law, private law, international law – became incapable of conceiving and leading the necessary Copernican revolution.

Act 1: *The law becomes autonomous from the rest of the concepts and institutions of governance.* At first glance, this autonomy may seem paradoxical, especially in democratic regimes where it is laws that make the law evolve. And yet, the parallel is striking with the economy. In my *Essai sur l'æconomie* and then in its updated summary, *Petit traité d'æconomie*, I underscore the way in which *'economic science'* has tended, over two centuries, to become autonomous from the theories and practices of governance by seeking to establish itself as a self-legitimized and self-reproducing science, closer to the natural sciences than the social sciences.⁵² Today, on the contrary, in a context where, *mutatis mutandis*, the challenges facing humankind, faced with a fragile planet and limited resources, are comparable to those that prevailed before the industrial revolution, it is necessary to recognize economics as a branch of governance, with the progress of one and the progress of the other feeding off each other.

The same is true of legal systems. Law, political science, administration and public management – not to mention governance itself, which strictly speaking is not taught anywhere – are taught in different faculties, each with its own specific vocabulary, in a way more or less opaque to others. As

51 . See P. Calame, *Petit traité d'æconomie*, Paris: ECLM, 2018, www.eclm.fr.

52 . P. Calame, *Essai sur l'æconomie*. Paris: ECLM. 2009; P. Calame, *Petit traité d'æconomie*, *op. cit.*

a result, the law sometimes even tends to think of itself as regulation par excellence, with other forms of regulation, readily described as ‘soft law’, seeming to some to be a dangerous departure from the majestic edifice of the legal sciences, and, in fact, like governance itself, the sock puppet of a neoliberal world order in which the economy and profit would reign supreme for the exclusive benefit of a global economic and financial elite, all the more dangerous as it would be driven only by profit and would proceed with its face masked.

A parallel with the Anglo-Saxon approach deserves a brief detour. As pointed out by Ivano Alogna, the English language does not bother with the French distinction between *réglementation* – hard law – and *régulation* – soft law – both designated as ‘regulations’ in English.⁵³ What is certain, observes Alogna, is that ‘starting in the 1980s, regulations – in the French sense of the term – were imposed as a new normativity. The English, moreover, translate the passage from *réglementation* to *régulation* (in the French sense of the term) as “from old regulations to new regulations”.’ This evolution reflects the idea, already encountered with regard to the dimensions of responsibility, that in order to manage a complex reality, marked both by global interdependences and by a diversity of local situations, *réglementation*, i.e. uniform obligations of means, is less effective than the more adaptive *régulations*. This flexibility does not signify, however, the primacy of economic calculations, in the face of which hard law would remain the only fortress behind the walls of which ordinary citizens are able to find security. It should not be inferred from the fact that these new regulations emerged in the context of triumphant neoliberalism, roughly from the 1980s to the 1990s, that *in essence* these regulations are associated with this order. The parallel with governance is obvious here.⁵⁴ Although the term ‘governance’ had been reintroduced into French in the 1990s by the neoliberal thurifers, far from leaving them a monopoly over it, it had to be recognized, at a time when our conceptual and institutional systems were in decline, that this generic concept of ‘governance’ was exceptionally rich when it came to inventing modes of regulation for tomorrow’s society.

A quick exploration in time and space suffices to recall that *legal systems were an integral part of governance and could only be understood as one of its dimensions*, which is the art, institutions and methods that a society adopts to regulate relations among its members and ensure the conditions for its own sustainability.

Exploring time. As pointed out by Alain Wijffels, to whom I have already referred, ‘*In the beginning was governance. Jus commune, in the Western sense of the term, was learned law, a constituent element of governance, the apex of a hierarchy of heterogeneous normativities* (smaller communities being governed by their own customary laws, which blended Roman law and the oral law ensuing from the different origins of the new occupants of the vast space formerly initiated by the Roman Empire)’.⁵⁵ This *jus commune* was to ensure relations among the communities within Western Christianity. Its purpose, says Wijffels, was to provide a *foundation for effective and fair governance*. It was an integral part of the art of governance – by art we mean the combination of theory and practice – as developed by medieval jurists. Yet the idea that law, the standard of efficiency and justice of the time, was at the foundation of the art of good government has gradually weakened, marginalizing it as it has become more autonomous... whilst paradoxically maintaining its specialists in ‘the illusion of the central role of law to the point,’ continues Alain Wijffels, ‘that students continue to believe that international law effectively represents international relations.’

53 . Oral communication by Ivano Alogna at the previously cited seminar ‘Vers un jus commune universalisable ?’ December 3–4, 2018.

54 . See for example P. Calame, *La démocratie en miettes. Pour une révolution de la gouvernance*, Paris: Descartes & Cie, 2003.

55 . A. Wijffels, in *Sur les chemins d'un Jus commune universalisable*, op. cit.

Yet, as noted by Emmanuel Decaux, in recent developments in international governance, such as the December 2015 Paris Climate Treaty, the law is totally absent from the adopted regulations.⁵⁶ Thus, if we follow these eminent jurists, by becoming autonomous from the rest of governance, the law would have lost not only part of its effectiveness but also of its *raison d'être*. Today, however, the question of responsibility is still being assessed through the law.

Exploring space. As recalled by Jérôme Bourgon, in the era of influence of Chinese culture – including China, Korea, Japan and Vietnam – legal activity was inseparable from the other dimensions of governance, where a ‘judge’ was simply the one in charge of the administration of a territory in the name of the Emperor.⁵⁷

Thus, the first way out of dogmatic slumber, in both the field of law and that of economics, will be to apply to legal systems the general principles of governance, in particular the art of reconciling unity and diversity. It is also important, however, to remember from history that the foundation of governance and the law is a set of the shared values underpinning the justice and efficiency of community management and are therefore expressed both in individual relationships and in the organization of public authorities. Here again the role of responsibility is central.

Act 2. *The very inertia of legal systems*, which reproduce their own compartmentalizations, makes them unsuited to the current challenges of societies. The hierarchical edifice of legal systems makes us forget the *raison d'être* of these foundations, sending them back to the unthought, the indisputable, somewhat like in modern software, made up of successive layers, we come to ignore the nature, hence the limits, of the ‘deep layers’.

The law, as we have begun to see in the analysis of the different dimensions of responsibility, has become frozen, in a way, in the restrictive definitions adopted for each of the six dimensions. To take just one already mentioned example, the disconnection between civil and criminal law makes it effectively difficult to sanction the managers of economic and financial institutions, for whom damages to be paid by the company do not deter risky behaviour.

Similarly, as noted by Juliette Tricot, the legal tradition of *réglementation* emphasizes the relationship of different actors *to the law*, when we should be increasingly focusing – and this is one of the foundations of responsibility – on the *relationships among the actors themselves*.⁵⁸

Similarly, Emmanuel Decaux points out that today international law is in fact a juxtaposition of closed spaces, those of the states (not to mention that historically it has been built on the distinction between ‘civilized nations’ and the others). All of this makes it difficult to translate into practice the transition ‘*from solitary sovereignty to sovereignty in solidarity*’ dear to Mireille Delmas-Marty.

Paradoxically, the historical success of the legal elaborations based on the Universal Declaration of Human Rights of 1948, by constituting the common ground of current international law, could well be an obstacle to the affirmation of a global law in the future, by confusing it with the current common international culture of law based on the Universal Declaration of Human Rights; we can understand that a professional sphere that has been forged around the Declaration might resist the idea that the latter is insufficient to form the basis of future global law. And yet this is the reality.

56 . E. Decaux, Professor Emeritus in Public Law at the University of Paris 2, in *Sur les chemins d'un Jus commune universalisable*, *op. cit.*

57 . J. Bourgon, Aux fondements dogmatiques de la responsabilité en droit chinois, in *Prendre la responsabilité au sérieux*, *op. cit.*

58 . *Sur les chemins d'un Jus commune universalisable*, *op. cit.*

Ownership and sovereignty

It may seem strange to associate – and even more so in connection with responsibility – property, the symbol of private interests, and sovereignty, the symbol of the general interest. But it is precisely, applied at different scales, *the same absolutist conception of property that prevails in both cases*.

Private or collective property

The passage from the Declaration of the Rights of Man and of the Citizen of 1789 to the Universal Declaration of Human Rights of 1948 led to the suppression of property as an ‘*inviolable and sacred right*’ but maintained the concept and confirmed its importance.

The parallel is in fact striking, in the very wording of the Universal Declaration, between Article 15 – ‘*Everyone has the right to a nationality. No one shall be arbitrarily deprived [thereof]*’ – and Article 17 – ‘*Everyone has the right to own property alone as well as in association with others. No one may be arbitrarily deprived of his property*’. It is interesting to note the phrase ‘*alone as well as in association with others*’ and we will see in the next chapter that openness to the idea of collective ownership can, in some cases, pave the way for the recognition of other relationships between a community and its natural environment. Nonetheless, as attested by the origins of the drafting of the text and the use of this assertion of the right to property, it is indeed the Latin and absolute concept of property that is at the heart of human rights.

Gaël Giraud, chief economist of the French Development Agency (AFD), states that ‘we need to leave the illusion behind, which has been alive since the eighteenth century [hence in connection with the movement of ideas that led to the Declarations of Human Rights of 1776 and 1789], of the supremacy of private property as the sole relationship with natural resources. For indeed privatization of the world is precisely one of the roots of the environmental problem . . . Basically, private property is a recent invention, imported from Roman law through its rewriting by medieval jurists of the Gregorian reform at the end of the eleventh century. Perhaps even its initial writing in Roman law comes from a transfer to the human-thing relationship something of the strange relationship between master and slave. In any case, it combines three types of relationship to things that are not necessarily meant to be linked: the right of use; the right to make a good bear fruit; the right to destroy it.’⁵⁹

And Michel Merlet, in a report to the AFD in 2019, enlightens us on the distinction made by the anthropologist Grégoire Madjarian between property and patrimony: ‘The fundamental duality that separates property regimes lies not in the opposition between private property and collective property but in an opposition between patrimony and property. Patrimony is an objectified memory, property institutes the erasure of memory. Patrimony binds to the past the one who is the present holder, property frees the one who holds the deed from any obligation towards the past . . . Every patrimony corresponds to a concrete community, just as every concrete community [NB: this community may simply be an extended family] corresponds to a patrimony through which its identity is reproduced. The function of the patrimony is to ensure the unity of the members of a community and its permanence throughout the different moments of its existence . . . Patrimony is

59 . Preface to the collective work of the Land Tenure and Development Technical Committee on the commons, 2017.

the objectification of the link among individuals, property is the severing or release of ties to individuals and the community . . . Common language expresses this distribution: one owns a property, one is in charge of a patrimony. In the course of time, the patrimony carries obligations both upstream and downstream, towards both past and future generations. In the course of time, property is free of any obligation, both to those who have possessed the property in question and to those who will possess it in the future in so far as the property lasts and is transmitted . . . It is within this framework that the right to use and to abuse takes on its full weight – the holder of the right to property is endowed with formal, absolute power over property, where the holder of a patrimony has only limited powers, due to the pre-assignment of his property.’⁶⁰

This could not be more accurate. The right to property does not define a relationship either with other members of the human community or even with nature, since it does not include obligations towards them. As such, it is the very expression of responsibility limited in time and space. It may be objected that this view is simplistic, that town and country planning regulations limit the right to a free use of land and real estate in many ways, that the concern to protect farmers by guaranteeing to the farmer permanent occupation has divided the right to property between the owner and the farmer. But this does not fundamentally change the original meaning of property, the right to use and abuse one’s property without taking into account, as is an obligation with patrimony, obligations towards past and future generations.

With the exception of what may generate danger for others, such as buildings threatening ruin due to lack of maintenance, the right to property is not associated with the idea of responsibility for what one has in one’s custody. The consequences for the environment are particularly visible. Take the case of agricultural properties in France. Marion Bardy of the French public research institute dedicated to agricultural science, INRA, notes, for example, that in 2014 ‘in France, 60% of the 2.9 billion hectares favourable to agriculture are affected by one or more forms of degradation: erosions due to rain, wind and ploughing, soil sealing, a decrease in organic matter, the erosion of biodiversity, diffuse or point-source pollution by mineral or organic pollutants (heavy metals, nuclear dust, dioxins, pesticides), settling due to the passage of agricultural or forestry machinery, floods and landslides, salinization due to poor irrigation practices when sea levels rise, . . . under the effect of natural or man-made phenomena.’⁶¹ Sixty percent is no small thing! These degradations, as can be seen from the list, are of two kinds: those that result directly from the use of a particular good and those which, such as the erosion of biodiversity or diffuse pollution, are the result of collective management... which in the general case does not exist.

Reports have been piling up on the causes of biodiversity erosion, on the fragmentation of natural habitats, on the disappearance of places of refuge or reproduction, such as hedges, on the use of pesticides, etc. Nevertheless, until recently (2019), a rural lease could not impose that a farmer should manage leased property in a truly patrimonial way, such as for example, requiring him to practise organic farming. If the ‘*right to property*’ is ultimately shared between the owner and the farmer, the sum of the two has the same effects as a result.

As noted by Neyret, the law views nature through the prism of the right to property. ‘More precisely, a part of the environment is qualified as an appropriated thing, which allows it to benefit from protection by the owner, limited to the fact that the latter has, in principle, absolute power over the thing and, in particular, the power to abuse it . . . Another part of the environment falls into the category of non-appropriated things . . . Whatever the various legal qualifications applicable to the

60 .G. Madjarian, *L'invention de la propriété: De la terre sacrée à la société marchande*, Paris: L’Harmattan, 2000.

61 .M. Bardy, I. Cousin, D. Arrouays and G. Richard, La qualité des sols et son evolution, in *Les cahiers Déméter* No. 15, 2014.

environment, the state must be relied upon to defend it against excesses by the owners or farmers . . . It was not until the 1970s that the state, as custodian of the general interest (in France), took defence of the environment into its own hands and laid the foundations for an ecological public order. It did so by establishing environmental standards and administrative sanctions for non-compliance with such standards; environmental responsibility is therefore still essentially administrative in nature.’⁶² In 2013, the Court of Justice of the European Union had to condemn the French state for failing to comply with European rules on the discharge of nitrates into the waters of Brittany for it to be recognized that these rules were the responsibility... of the very authority that had enacted them.⁶³ The absence of patrimonial responsibility for the past and the future on the part of owners and the absence of obligations to produce results on the part of states are two sources of unlimited irresponsibility.

Sovereignty

State sovereignty, literally sanctified in the aftermath of World War II and during decolonization, generates an unlimited irresponsibility to the planet even greater than the right to property itself. One of the challenges of decolonization was to reaffirm the ownership of the newly independent states over their natural resources, reproducing at the state level the same concept of property as that which applies to individuals and communities. To make things worse, unlike as for private owners, states do not answer to any higher authority.

As noted by Claudia Perrone Moisés, ‘Responsibility does not readily concur with sovereignty, which is understood as the character of a body that is not subject to the control of any other. It is by asserting their sovereignty that states refuse to be judged by other states or by international bodies. Thus, even the rules regarding the possibility of referral to international courts are based on the freedom of states to choose whether or not to submit to their jurisdiction. As a matter of principle, states cannot have any rules imposed on them to which they have not agreed.’⁶⁴ The concept of limited responsibility could not be better described.

This is the radical ambiguity being maintained of a situation in which the dream of building, in the absence of the adoption of a Universal Declaration of Responsibilities, a responsible global society made up of more than 200 sovereign states, each of which reigns supreme over its natural resources and sets the limits of its own responsibility. As Perrone Moisés points out further on, ‘In the field of the environment, responsibility is not taken seriously by states, which do not want to engage in defining the conditions for implementing international responsibility for damage caused by their actions . . . International practice shows that although the principle of its responsibilities is generally proclaimed, the state is careful not to specify and implement it.’

Emmanuel Decaux observes that ‘the twentieth century gave rise to a division of the world into sovereign territories at the time of decolonization whereby sovereign territories, i.e., a closed world, took shape through the territorial entrenchment of the law . . . The idea of sovereignty over space is always in the background. The example of the poles or the high seas shows the attempt by states to appropriate the resources that can be drawn from them and to control them militarily. We then realize that what we used to call the commons was simply what was too far away to be controlled

62 .L. Neyret, *op. cit.*

63 . https://www.lemonde.fr/planete/article/2013/06/13/l-europe-condamne-la-france-pour-ses-eaux-polluees_3429170_3244.html

64 .C. Perrone Moisés, Les instances internationales, in *Prendre la responsabilité au sérieux*, *op. cit.*

and this is why the commons of an era are called into question when, thanks to new technologies, they are no longer too far away.’⁶⁵

The case of the sea is particularly significant. The current law of the sea distinguishes between areas that have long been controllable and under the sovereignty of states, which are free to exploit their natural resources, and the ‘*high seas*’, the seabed of which has been declared ‘*common heritage of humanity*’, but heritage not in the sense introduced previously with regard to property with the term ‘patrimony’, but in the sense of resources to be exploited in common as the means are found to do so, therefore with a bonus to those who are the first to have the necessary technology to exploit them. Here we have again, with the same logic of appropriation and limited responsibility, the previously made distinction with regard to property, but transposing it to the states themselves, between what is appropriated and what is not. This time, however, what is not is, in the legal sense, a ‘*res nullius*’, something that does not exist in the law because there is no ‘super-state’ to protect it, which could, at least as in the case of national states vis-à-vis private owners and the environment, lay down a number of obligations of means to protect them.

Alain Pellet, former president of the United Nations International Law Commission, describes as an oxymoron Mireille Delmas-Marty’s dream of a ‘solidarity-based sovereignty’ in which each state would take its share of the common good; in the current state of international law, it must be recognized that the principle of ‘common but differentiated responsibility’ of the various states towards the planet, a pretty phrase taken from the Declaration of the Heads of State at the end of the first Earth Summit in 1992, has remained... a pretty phrase, that is to say, one with no concrete scope. And this is why, although the Paris Climate Agreement of 2015 constituted real political progress, with all the states having committed themselves to contribute, each according to their means and historical responsibilities, to limiting global warming, it is in reality only a sum of voluntary commitments with no real legal scope, the climate remaining this ‘*res nullius*’ of which no one is the custodian.

Here we see all the consequences of the ambiguity of sovereign states claiming to be custodians of the general interest – and as such retain control over their legal systems – but consider themselves ‘owners’ of their natural resources, with no obligation to manage them.

The first consequence of this ambiguity is that states are the sole subjects of international law. They complain that their sovereignty is being eroded a little more each day by economic and financial actors who are acting on a global scale, but it is they that are primarily responsible for this. Indeed, the very basis of responsibility today is that it is universal and proportionate to the power and knowledge of each actor. Therefore, the basic logic would be that actors with a global impact should be subject to a global law... which to date has been obstructed by states in the name of their sovereignty because it would also apply to them.

The second consequence is that the discourse on states as guarantors of the general interest under democratic responsibility has become hypocrisy of the finest water. Donald Trump is to be thanked for his candour. His motto ‘America first’ is the counterpart to Friedman’s thesis that companies must act solely in the – short-term – interest of their shareholders. Replace *shareholders* by *voters* and indeed you get ‘America first’. The short term of shareholder value in business and finance is equivalent to the short term of our democracies subject to the tyranny of opinion.

65 . *Sur les chemins d'un Jus commune universalisable, op. cit.*

In accordance with international rules, disputes between the economic interests of companies and states are disguised as disputes between states, which reinforces the identification of states with their national champions or with the economic branches that make their prosperity – France with nuclear power, Germany with automobiles, to name but two European cases.

The absence of a global law of responsibility is then painfully felt. The empires of the past, Muslim empires in particular, were characterized by the distinction between Muslim law as such, which applied to the community of believers, and the law of the empire, the ‘common law applying to the various communities and to relations among them’.⁶⁶ There is nothing like this in the twenty-first century.

In the absence of such a global law of responsibility, everyone locks themselves into their limited responsibility. Think that even today it is still ministers of foreign affairs who deal with global warming. Of foreign affairs! This means that we are dealing with the climate, in which in every sense of the word we are immersed, as a foreign affair. It is well known that the way in which negotiations are organized has a decisive impact on the outcome. This is clearly seen, for example, in the case of European Agricultural Policy; Europe-wide negotiations between the various stakeholders in society, consumers, farmers, agrifood companies and local authorities would give very different results from negotiations in which each state begins to forge a pseudo ‘national interest’ and then the states confront their national interests among themselves.

No progress will be made in the thinking about responsibility until we accept to desacralize states on the international scene. What is striking is the parallelism between multinational companies and states, not their difference in nature. Companies profit from the mobility of capital to benefit their shareholders, and states from their legal, social and fiscal dumping to benefit their citizens.

It is interesting in this respect to note the cries of outrage of many regarding the private arbitration modalities provided for between states and foreign investors in the framework of bilateral agreements. They throw up their hands in horror, about the denial of state sovereignty, about the privatization of law to serve private interests and other sweet fables. And it is true that the asymmetry in the possibilities of recourse, with investors being able to file suits against states accused of having infringed their ‘legitimate expectations’ but not the other way round, is not normal; states also have legitimate expectations of foreign investors. But it can be pointed out, without excessive malice, that none of the states complaining of this has been forced to sign the bilateral agreements on the basis of which disputes are judged! Moreover, it was civil-society organizations that, in 1997–98, brought about the collapse of the Multinational Agreement on Investment, MAI, which was being negotiated, leaving the way open for bilateral agreements where the asymmetries of power between the signatories are much greater than in the framework of an international agreement.⁶⁷ The agreement had been negotiated at the time in the greatest secrecy, in defiance of democracy and was certainly not a good one, but it will have to be put back on the table, this time subjecting all actors, states and economic actors alike, to universal principles of responsibility.

It is easy to understand why, despite all its weaknesses, the very existence of the European Union is an insult and a threat to a Vladimir Putin in Russia, a Donald Trump in the United States or a Xi Jinping in China. By pointing the way to a supranational law, in this case European, though based today only on the European Convention on Human Rights, but that is already a great deal, defining guiding principles that each state must then apply according to its own context, the European Union

66 . S. Mourad, communication at the seminar ‘Vers un jus commune universalisable ?’ *op. cit.*

67 . Multilateral Agreement on Investment, https://en.wikipedia.org/wiki/Multilateral_Agreement_on_Investment.

is living proof that it is possible to overcome the unlimited irresponsibility that derives from state sovereignty.

Part Two: The Metamorphosis of Responsibility

Chapter 5. THE PREMISES OF AN EXTENDED DEFINITION OF RESPONSIBILITY

In the preceding chapters we have discovered the emergence of a global ethics based on an extended definition of responsibility, but also the obstacles to adopting a third international pillar and to affirming a responsible global society, due to the resistance of states to the idea of submitting to ethical and legal principles defined on a global scale and due to dogmatic slumber.

History has shown us that there is no ‘big revolution’ in this field but rather something like a sprint, to which we referred as early as in the 1993 Platform, being raced between awareness of the inadequacy of the regulations of human activities inherited from the past and the ability to implement new regulations adapted to the challenges of the twenty-first century.

It is indeed the feeling of the risk that this sprint will be lost that has given rise to the success of ‘collapsology’. According to this theory, humankind will not be able to invent new regulations before our intellectual laziness and political improvidence are punished by massive disasters, leading to the collapse of our civilizations, or even the outright disappearance of humankind. In support of this apocalyptic vision various observations have been made, on the limited lifespan of animal species since the cataclysm that led to the disappearance of dinosaurs, or on the collapse of past civilizations. These reminders are undeniably useful, but repeating them is demobilizing and risks leading to fatalism: ‘*Après moi, le déluge*’, or once I’m gone, damn the consequences.

Yet resistance is real, and it would be wrong to think that nothing is moving. Throughout the first two decades of the twenty-first century successful initiatives have been slowly building up, driven by growing movements of opinion, seeping through the cracks in the once solid edifice of sovereignty and limited responsibility, drawing from the ecological and social disasters that are acting as warnings – such as the sinking off the coast of Brittany of the oil tanker Erika, which was transporting a cargo of oil for Total, or the collapse of the Rana Plaza building in Bangladesh, where more than a thousand workers working for a subcontractor of many European clothing brands lost their lives – and they are foreshadowing a new concept of responsibility.

Deep obstacles remain. Thus, in 2019, the International Electrotechnical Commission set up to prepare for the centenary of the International Labour Organization proposed to adopt a Universal Declaration of Human Responsibilities. The proposal was taken off the table; the obstacles in 1992 to adopting a third pillar of the international community remain as strong as ever. But this might be rearguard action. The time for a political and legal revolution has yet to come. Current advances are more something of inventive tinkering, of a consummate art of using all the loopholes and opportunities, here voluntary commitments made by states or companies, there a new interpretation of existing legal principles, there again emotions aroused by tragedies leading to taking a step forward towards an extended definition of responsibility.

It is not impossible that the geopolitical developments at the end of the second decade of the twenty-first century, symbolized by the election of Donald Trump as President of the United States, may paradoxically contribute to this revolution. At first glance, we are witnessing a stiffening of sovereignty almost everywhere in the world, thus calling into question the progress made in previous decades in favour of a multilateral management of global affairs. This is reflected in the United States in the slogan ‘America first’ and in Asia, particularly in China, in the challenge to the universality of human rights. The withdrawal of the United States from the Paris Climate Agreement is another strong symbol of the regression of multilateralism.

On closer inspection, this can also be an opportunity for a region like Europe. Indeed, in the 1990s, marked in particular by the Marrakesh Agreement giving birth to the World Trade Organization, the two legs of this multilateralism were the globalized market on the one hand, and human rights on the other. Beyond the sometimes more symbolic than real actions carried out in the name of human rights, it is the modalities for settling trade disputes between states, set up under the WTO, that have constituted the greatest advances in international law, establishing the supremacy of new forms of regulation, such as arbitration, over traditional legal forms. There is however persistence in confusing two radically different notions, that of globalization and that of specifically economic globalization.

Economic globalization is an ideology, in fact a belief, whereby unification of the world market drives human progress. It does not deny the existence of environmental challenges but acts as if the development of new economic tools, such as taking into account the externalities of economic activity, remuneration for ecosystem services or the polluter-pays principle, will be enough to manage humankind in the twenty-first century and preserve the global commons, which are moreover described as common *goods* or natural *resources*, assimilating them to a commodity.⁶⁸

Globalization, on the other hand, is the realization that the interdependences among societies, and between humankind and the biosphere, have changed in nature and are irreversible. They must therefore give rise to regulations that are themselves global.

The confusion between globalization and economic globalization has been largely maintained by the fact that in English a single term is used for both, namely *globalization*. It took years of struggle, notably within the Alliance for a Responsible and United World, to achieve a certain semantic stabilization of the two concepts in French. But throughout the 1990s, movements such as Focus on the Global South embodied ‘*anti-globalization*’, often translated into French as ‘*anti-globalisation*’. Their favourite target was not corporate irresponsibility but the multilateral institutions, the World Bank and the IMF.⁶⁹ As such, they were precursors of the neo-sovereignism embodied two decades later by Donald Trump or Viktor Orbán. For our part, we have tirelessly argued not for anti-globalization, which for us consisted in denying the irreversible nature of interdependence, but for *alter-globalization*, or a world in which the wellbeing of all can be reconciled with the need to preserve a fragile and threatened biosphere; hence a responsible global society.

68 . In his introduction to *Prendre la responsabilité au sérieux*, *op. cit.*, Supiot recalls Karl Polanyi’s description of ‘*fictitious commodities*’ in *Origins of our Time: The Great Transformation*. New York: Farrar & Rinehart, 1944. Polanyi attributes to nature, labour and money the quality of ‘*fictitious commodities*’ because capitalism leads to treating them as commodities when they are not in fact products of economic activity.

69 . See for example, Walden Bello, https://en.wikipedia.org/wiki/Walden_Bello. Bello was the executive director of Focus on the Global South from its inception in 1995 to 2012. Even in 2019, the Wikipedia article devoted to him continues to speak of ‘deglobalization’ and ‘anti-globalization’, maintaining the confusion between economic globalization and globalization.

The semantic decantation has progressively transpired.⁷⁰ By taking the lead in the neo-sovereignist crusade, by getting the United States to react against a multilateral order inspired in the aftermath of the war by the United States itself, an order which enshrined the fusion of globalization, human rights and liberal democracy, Donald Trump might well be performing a service to the West, and Europe in particular. Europe has been dominated for 70 years by US thought; the questioning, by US citizens themselves, of the doctrine they had forged should enable Europe to emancipate itself intellectually and to assert with force the pre-eminence of globalization over economic globalization. Like in the area of defence, the refusal of the United States to remain the guardian of an international order based on free trade, representative democracy and human rights should force the European Union to come of age and to propose with increasing clarity its own vision of a humanized globalization. It took almost three decades for the abandonment in 1971 of the dollar-gold parity, enshrining the refusal of the United States to continue to bear the cost of managing a world currency, to lead the European Union to create its own common currency. The United States, considering that the rules of the World Trade Organization did not ultimately serve its interests vis-à-vis China, is taking similar action 47 years later. This opens up a new avenue for a possible European initiative, putting responsibility and sustainable production chains at the heart of trade agreements. Whether the Union will be able to go down this avenue is another question. But whether it does or not, this context, by acknowledging that globalization is the major fact of the twenty-first century, gives emerging forms of responsibility an overall coherence.

To put the different aspects of the current developments in order, I shall classify them here into two categories: ‘societal’ developments, all of which have in common that they emphasize the principle of responsibility; and increasingly frequent recourse to the law, as well as legal innovations that are contributing to a broader definition of responsibility.

1. A societal affirmation of principles of extended responsibility

A growing awareness of our common responsibility? During the first two decades of the twenty-first century, developments have been contradictory. The financial crisis of 2008 did not substantially transform the logic of major financial and economic institutions – the pursuit of short-term interests has remained dominant. Just as in the field of fossil-fuel consumption the turning point is constantly being postponed to the future, the emergence of a finance and economy truly imbued with an awareness of their responsibilities and the need for long-term strategies is constantly being postponed to sometime later. Nonetheless, part of the business world is aware of the suicidal behaviour of capitalism in which the gap is ever widening between the very rich and the rest of the population. The conspiracy theories in vogue, according to which the ‘Davos Party’ is pursuing its project of world domination at the expense of the people, reflect the awareness, within economic circles, of the deadly evolution of financial capitalism.⁷¹ In recent years in Davos, this discourse, once the prerogative of anti-globalization or alter-globalization proponents, is now being delivered by some of the economic leaders themselves.

The media’s spread in 2019 of the mobilization of high-school and university students in favour of the climate in answer to the call by the Swedish teenager Greta Thunberg reflects the collective awareness of what the unlimited irresponsibility of the societies in which we live means for the

70 . A recent illustration can be found in the fact that the proceedings that were published of a conference devoted to Simone Weil at the Collège de France in 2017 were entitled *Mondialisation ou globalisation ? Les leçons de Simone Weil* [Globalization or economic globalization? The lessons of Simone Weil]. Paris, Collège de France, 2019. These proceedings enshrined the semantic distinction that we make.

71 . See G. da Empoli, *Les ingénieurs du chaos*, Paris: JC Lattès, 2019.

younger generations.⁷² It is interesting to note that unlike the protest movements of twenty years ago, for whom the economy and finance were at the heart of the world's excesses, it is now the irresponsibility of states that is directly at stake.

The attention being paid to the impact of our consumption patterns is another sign of the progressive affirmation of a personal ethics of responsibility. It is revealed by the growing popularity of multiple ethical-consumption labels, through which the idea is spreading of individuals' co-responsibility to the planet.

This increase in citizens' awareness of their responsibility is coming with a multiplication of voluntary declarations and commitments by economic and financial actors: economic ones, with the generalization of the principles of corporate social and environmental responsibility, CSR; financial ones, with the 'six principles for responsible investment', the PRI, set out by a group of investors in partnership with the UNEP and UN Global Compact financial initiative.⁷³ In both cases, these are initiatives involving companies and multilateral organizations, the OECD in the case of CSR and the UN in the case of the PRI.⁷⁴ Moreover, also in both cases, what might initially appear to be a simple way for economic and financial actors to clear their conscience is gradually becoming the basis for fully-fledged policies. Ambiguity certainly continues to reign supreme, but commitments are becoming more substantial year to year through a gradual densification of standards – voluntary commitments are becoming enforceable against those who make them and new regulatory requirements are emerging. The recruitment by large companies of compliance officers, responsible for ensuring that the institution complies with the rules and commitments, speaks volumes about the awareness of the legal or reputational risks now being incurred. In the third part of the book, devoted to the societal charters of the actors, we will detail these evolutions and their limits.

National legislative initiatives or European directives are part of this movement of progressive normative densification. Thus in France, the PACTE law (action plan for business growth and transformation) adopted in the spring of 2019 and based on the model created in the United States in 2010, introduces the concept of '*mission-led companies*' which allows a company to recognize that its legal vocation is no longer to act exclusively for the benefit of its shareholders but also to take into account the social and environmental issues surrounding its business.⁷⁵ This is a distant echo of Paul Ricœur's distinction between imputation-based responsibility and mission-based responsibility, but in a form that for the moment is purely declarative; it remains to be seen whether we will also see a progressive normative densification that will lead companies to state what rules they have in place to implement the mission that they themselves have recognized. A few months earlier, in May 2018, the European Commission published a directive for sustainable finance aimed at transforming financial practices within the Union with the stated objective of *fighting climate change while there is still time* and of putting capital at the service of European environmental objectives.⁷⁶ The negotiations initiated by the UN Human Rights Council of an international treaty binding multinational companies to respect human rights are part of the same movement.⁷⁷

72 .Greta Thunberg, https://fr.wikipedia.org/wiki/Greta_Thunberg.

73 . Principles for Responsible Investment, <https://www.unpri.org/>.

74 .Guidelines for Multinational Enterprises, <http://mneguidelines.oecd.org/guidelines/>.

75 . Mission-led companies, <https://prophil.eu/en/the-research-centre/mission-led-companies/>.

76 . European Commission, Sustainable finance: Commission's Action Plan for a greener and cleaner economy, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1404.

77 . Towards a binding international treaty on business and human rights: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI\(2018\)620229_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/620229/EPRS_BRI(2018)620229_EN.pdf).

Halfway between voluntary commitments and legislative and regulatory action lies the evolution of ISO standards.⁷⁸ These standards, negotiated under the aegis of the International Organization for Standardization by companies and public authorities, are a major reference; the certification of a particular ISO standard can indeed condition a company's access to certain markets, particularly public markets. These ISO standards, which were at first highly technical, gradually expanded to include the ISO26000 standard, published in 2000, on the societal responsibilities of companies and more broadly, of organizations. All these developments have one feature in common, namely that the term '*responsibility*' is central to them and is increasingly broadly defined, systematically linking societal responsibilities and environmental responsibility.

In the second decade of the twenty-first century, the global companies of the digital economy, known as the GAFA group (Google, Amazon, Facebook and Apple), have been at the heart of a different kind of debate on responsibility. It has three dimensions: the *responsibility to pay taxes* to the communities that are the source of their profits when they have adopted global tax optimization strategies that allow them to locate their profits where they are least taxed; the *protection of personal data*, with the adoption in May 2018 of the European Data Protection Regulation (DPR); and finally the increasingly burning issue of *circulation on social networks, Facebook and Twitter, of hateful, racist or sexist messages* and fake news. The third of these components is the most significant one in terms of responsibility. These social networks present themselves as mere platforms and as such, except when flaws in their security system allow certain agencies to seize millions of personal data, they do not consider that like traditional publishers they have any responsibility with regard to the content they disseminate. This is a good example of the distinction between objective and subjective responsibility. Although social networks do not consider themselves to be subjectively responsible, in other words the messages circulating on their platform do not put them at fault, they are nonetheless *objectively responsible* and they are now under pressure from public authorities and public opinion to block, immediately, the circulation of such messages on their platform. The viral dissemination of the video of the terrorist responsible in March 2019 for the massacre in the two mosques of Christchurch, New Zealand, a video that he himself produced by staging his own barbarity, could well play a role with regard to social networks comparable to that played by the Erika or Rana Plaza disasters in raising the issue of the objective responsibility of companies towards their subcontractors.

Another societal development is the growing demand for *traceability*. We saw earlier how legal and national veils have contributed, by concealing the reality of relations of allegiance between economic actors, to concealing the latter's objective responsibility. From then on, *unveiling* has become a major ethical and political issue. A number of initiatives in the second decade of the twenty-first century have however shown the possibility, indeed the necessity, of lifting these veils. These have essentially been whistle-blowers' initiatives. The best known in the media is Julian Assange, who in 2006 created Wikileaks, an NGO whose objective is to publish documents that are partly confidential, violating the law on the confidentiality of information to show its contradiction with the general public's need to be informed of what is really going on in the secrecy of the major political and financial powers. Whilst the revelations relating to US foreign policy are the best known, many other revelations are related to tax fraud or tax optimization. This is the case, for example, of the whistle-blower Antoine Deltour, who with the 'Luxembourg Leaks' revealed the contents of hundreds of very advantageous tax agreements concluded with the Luxembourg tax authorities on behalf of numerous international clients. This has also been the case of the 'Panama Papers', the publication of millions of confidential documents from a Panamanian law firm, which

78 . ISO 26000, https://en.wikipedia.org/wiki/ISO_26000.

revealed the extent of offshore companies through which governments and billionaires have managed to evade their tax obligations.

According to legend, Chancellor Bismarck used to say: ‘There are two things that the German people must not know, the way laws are made and the way sausages are made’. *There can be no objective responsibility without transparency and traceability*. This is particularly true for companies that spend millions or even billions just to deny any negative consequences of the products they put on the market. In 2017, following a lawsuit from US farmers who had been victims of blood cancer, which they attributed to the use of Monsanto’s flagship glyphosate-based pesticide Roundup during their careers, the US justice system decided to declassify much of the agrochemical company’s internal correspondence. These documents revealed the extent and diversity of the strategies used by Monsanto to deny the harmfulness of Roundup, contrary to all available information on it. As shown by the lawsuits filed in 2018 and 2019 against Monsanto and especially against Bayer, which, having bought Monsanto in 2017, will have to bear the consequences of its actions, this manipulation of information intended for the general public, scientists and expert committees responsible for authorizing the marketing of products is at the crossroads between objective responsibility (the duty to assume the consequences of acts irrespective of the illegal nature of the acts that gave rise to them, since Roundup was authorized) and subjective responsibility, with the common practice of lies and data manipulation.

This demand for traceability and for the assessment of objective responsibility is only possible through new *forms of alliance between scientists, civil organizations and jurists*. The impact of the marketing of products that are potentially dangerous for the environment or for human health can no longer be expressed in the classic terms of the causal links between an act and the damages it produces. As illustrated by the more than decade-long debate on the carcinogenicity of glyphosate, complex epidemiological or clinical studies are generally required to assess possible causal links, and these are the subject of conflicting debates. In the case of glyphosate, some commissions, suspected to have been manipulated underhand by Monsanto – as accredited by the Monsanto Papers – have ruled in favour of the product’s safety, whereas others, considered more independent, have concluded that it is toxic.

These reflections on transparency and allegiance have already given rise to legal provisions: the *laws on whistle-blower protection*, which have multiplied in a number of countries since 2010, and more recently, the French law on the *duty of vigilance*, which for the first time gives a definition of the co-responsibility of contractor companies and their subcontractors and suppliers.

2. Innovative uses of the law lead to an extension of the scope of responsibility.

Since traditional law is based on the concept of limited responsibility, making the law evolve now by using all its resources will allow us to some extent to anticipate its metamorphosis. This evolution has been happening for some time. The cross-jurisprudence of the regional Courts of Human Rights or a new interpretation of old principles, as occurred in the nineteenth century with the broadening of ‘*liability for risk*’, provide some insight into the *application of old principles to new challenges*.⁷⁹

79 . A. Supiot, Introduction, *Prendre la responsabilité au sérieux*, op. cit.

Nevertheless, in recent years, it has been the new alliances between scientific communities, civil-society organizations and committed jurists that have been the most visible drivers of this evolution. Not surprisingly, the climate issue is the one that has led to the most sensitive developments, since the global warming issue challenges the current limits of the six dimensions of responsibility.

Activist jurists who are very close to civil society, such as the Sherpa organization in France set up by the lawyer William Bourdon, are the embodiment of these new alliances.⁸⁰ Even if the Sherpa's favourite subjects are the defence of populations that are victims of economic crimes, the organization and its founder illustrate this evolution by their imaginative ability to mobilize all the resources of the law – commercial law, administrative law, civil law, criminal law and European law – in difficult legal actions, as they are most often related to the misdeeds abroad of well-known persons or companies with a foreign status.

Several factors should in the coming years contribute to legal action initiated by civil-society organizations to change the law. I will mention three. The first is related to the role of constitutions. The idea of principles 'above the law' is not new; even in a country like France, under the so-called absolute monarchy what the Parliament of Paris called '*the laws of the kingdom*' were deemed superior to the '*laws of the king*'. The idea of fundamental principles that are enforceable against the powers that be is therefore older than the constitutions that have succeeded one another since the French Revolution. In the constitution under which France lives today, that of the Fifth Republic adopted in 1958, there was no question at the outset that citizens could challenge the constitutionality of laws. Only the President of the Republic or Parliament could refer a bill to the Constitutional Council to assess its conformity with the Constitution.⁸¹ The extension of constitutional power in France has taken place in three stages: the new jurisprudence of 1971, in which the Constitutional Council decided to give a normative value to the preamble of the Constitution, *reasserting the idea that respect for the common values that unite a community is the ultimate basis for the legitimacy of the exercise of power*; the reform of 1974, at the end of which a group of 60 parliamentarians could refer to the Constitutional Council; lastly and above all, the reform of 2008, which allows individuals to refer to the Constitutional Council on the conformity of laws with the Constitution *whether they are laws in the process of being drafted or laws that have already been voted*. This evolution is not an isolated fact in France, it is also found in other countries, giving a new role to both the preamble of a constitution and civil society. One can thus imagine that the precautionary principle, enshrined in the Constitution since the integration of the Environmental Charter in 2004 but little implemented so far by the state, could be invoked, *extending the question of responsibility to the future*.

A second evolution, outside the strictly legal field, is related to governance. Over the last few decades, the idea that the public good was not, as had been the dominant ideology since the French Revolution, the monopoly of public power, but was in fact the result of a co-production by a *great diversity of actors*, has gradually imposed itself over the last few decades. This cultural evolution has laid the ground for the fundamental idea of the co-responsibility of actors, giving new vigour to the idea of collective responsibility.

Finally, there is the recent introduction into French law of *class action*, a procedure allowing a large number of people to sue a company or a public institution whose actions they believe have harmed them. It was introduced into French law only as recently as in 2014 but it is already traditional in

80 . SHERPA, [https://en.wikipedia.org/wiki/SHERPA_\(organisation\)](https://en.wikipedia.org/wiki/SHERPA_(organisation)).

81 . Information taken from the lecture in October 2014 by Guy Canivet, former President of the Court of Cassation, former member of the Constitutional Council of France, in M. Delmas-Marty and R. Guillaumond (eds.), *La constitutionnalisation du droit en Chine et en France. Rétrospective, perspectives, prospective*, Paris: Pedone, 2017.

the United States and it facilitates, in the many cases where damages are caused by a powerful institution and is suffered by a large number of individuals, the right of access to justice.⁸²

We can therefore speak here of a range of developments all pointing in the direction of an extension of the scope of responsibilities. But is this a positive development? Does it allow by successive leaps and bounds to dispense with a deeper metamorphosis of responsibility? I do not think so. The judicialization of social life, a trend coming to Europe from the United States where it is largely encouraged by a powerful lobby of lawyers whose interests it serves, can generate harm as well as progress in society. This is evidenced by the deleterious effects on the social fabric of ill-considered lawsuits filed by parents against teachers. What is indeed worrying about the systematic recourse to lawsuits and justice rather than to mediation and arbitration is that in the first case each complainant defines himself first and foremost as a victim. In a way, it is the culmination of an evolution already discernible in the pre-eminence and successive enlargements of human rights; it is not a relational concept but a concept that opposes the right of victims to the responsibility of a power holder, be it the state, a company, the educational institution or even simply the macho order of society. It is also quite striking to see that the advocates of judicialization regard arbitration procedures, or even amicable settlements following a lawsuit, as a kind of degraded and soft form of law, the stakes sometimes being essentially symbolic, i.e. to proclaim the guilt of the adversary. Hence my conviction that this judicialization must be seen as progress, but also as an intermediate step in the reconstruction of what is at the heart of responsibility, namely the social contract. Thus, the challenge of a Universal Declaration of Human Responsibilities is not only intended to give a more solid foundation to law and justice but also, and above all, to promote new values within society. It is with these limits in mind that we will look at how the evolution of jurisprudence or legal actions contributes, for each of the dimensions of responsibility, to broadening its scope.

2.1 Objective responsibility or subjective responsibility?

The concepts of ‘*wrongful failure*’, ‘*reasonable diligence*’ or ‘*due diligence*’, a term used by the International Criminal Court, have the advantage of putting the consequences of inaction by certain actors on the same level as action. As Alain Supiot observes, the judges’ invention of an extension of the principle of wrongful failure to act paved the way for the idea of climate responsibility.⁸³

The most famous case deals with the action of the Dutch NGO Urgenda against the Dutch state, urging it to step up its fight against climate change. In June 2015, the District Court of The Hague ordered the Dutch government to reduce its greenhouse-gas emissions by at least 25% by 2020 compared to 1990 levels, in line with the minimum threshold required by the IPCC. And in October 2018 The Hague Court of Appeal confirmed this first judgment. The explanatory memorandum of the Court of Appeal is particularly interesting because it extends three dimensions of responsibility at the same time: objective responsibility is imposed; it involves the future; and it deals with co-responsibility, therefore collective responsibility. I quote: ‘*Climate change is a grave danger. Any postponement of emissions reductions exacerbates the risks of climate change. The Dutch government cannot hide behind other countries’ emissions. It has an independent duty to reduce emissions from its own territory.*’ It is easy to see how this type of case law could be applied, for example, to a state not really applying the precautionary principle.

82 . Class action, https://en.wikipedia.org/wiki/Class_action.

83 . Introduction, *Prendre la responsabilité au sérieux*, op. cit.

The historical propensity of judges to privilege the individual character of responsibilities makes it rather difficult today to make this type of lawsuit flourish, but the Hague judgment has given Urgenda's action strong political visibility. Moreover, following the Court of Appeal's ruling, the Dutch Government decided not to go to the Supreme Court and announced that it would comply with the court's decision, in particular by speeding up the closure of its coal-fired power stations and imposing an unprecedented reduction in CO₂ emissions by 2030.

Numerous actions have been undertaken by civil-society organizations in the wake of this Dutch ruling.⁸⁴ By the end of 2018, Pakistan and the United States had already been convicted by national judges for their insufficient action to reduce greenhouse-gas emissions or their inertia in dealing with the effects of climate change. Similarly, in August 2018 the Court of Justice of the European Union (CJEU) ruled as admissible the summons for '*climate inaction*' filed against the European Parliament and the European Council by ten families from different countries in the European Union and elsewhere. These complainants believe that the European Union's target for 2030 is insufficient to guarantee their fundamental rights to life, health, activity and property, and to achieve the goals set by the Paris Climate Agreement. Here again, irrespective of the outcome of the suit, what is significant is both the admissibility by the courts and the grounds invoked. Admissibility means *the growing recognition of an extended objective responsibility, directly associated with the power of each actor*. As for the arguments invoked, they are striking in their diversity, illustrating what Mireille Delmas-Marty calls '*the imaginative forces of law*'.⁸⁵ Are indeed invoked compliance with voluntary international commitments, such as those of the Paris Agreement, human rights and the way in which global warming threatens them, the right of future generations, the obligation for public authorities to preserve the commons, which gives states the responsibility of last resort, i.e. the objective responsibility to organize *the responsibility of other actors* so that preservation of the commons is effectively ensured. This is the thesis that Klaus Bosselmann upholds by referring to the classical doctrine of '*public trust*' (which refers to the obligation to take care of the property of a person in one's custody). According to this doctrine, natural commons should be considered under the custody of public authorities as capital intended to serve the public good.⁸⁶ The concept of trust is also interesting because it applies to the management of children in one's care and therefore refers to the *objective responsibility to preserve what is not able to preserve itself*. This is a serious departure from the traditional concept of '*res nullius*' for that which has no owner or homeland.

2.2 Limited or unlimited responsibility in space and time

The climate is an excellent precursor for the extension of this dimension of responsibility; the effects of greenhouse-gas emissions will be felt over several centuries and are by definition global in nature. As an illustration of this recognition of unlimited responsibility in time and space, the German courts have finally accepted jurisdiction over a Peruvian farmer's claim against the German energy giant RWE for its contribution to global warming.⁸⁷

84 . A number of examples in the following pages are taken from the summary prepared by Juliette Decoster for the Foundation Board of the Charles Léopold Mayer Foundation for the Progress of Humankind. J. Decoster, Droit devant. Faire progresser le droit à l'heure de la mondialisation, FPH internal document, January 2019.

85 . M. Delmas-Marty, *Le Relatif et l'Universel. Les Forces imaginantes du droit, I*, Paris: Le Seuil, 2004.

86 . K. Bosselmann, *Earth governance: trusteeship of the global commons*, Cheltenham: Edward Elgar Publishing, 2015. Klaus Bosselmann is a law professor at the University of Auckland, New Zealand and Chair of the IUCN World Commission on Environmental Law (WCEL) Ethics Specialist Group.

87 . Mutatio watch. Affectio mutandi, December 2018 newsletter, '*Etats et entreprises vs. justice climatique*'.

It is through the extension of the concept of ‘*vicarious responsibility*’ that the relations of allegiance and power can be grasped, making it possible, on the one hand, to affirm the link between objective responsibility and power and, on the other hand, to extend responsibility over time and space in terms of these relations of allegiance. According to this logic, the *finance* sector is directly involved. For example, the 2018 ‘*carbon majors*’ report drawn up by a coalition of international NGOs challenges banking activity with regard to the climate.⁸⁸ Both banking activity and climate are in fact global in nature.

For the same reasons, the PRI has developed a collaborative platform (a clearing house) in which groups of investors analyse the social and environmental impact of global supply chains. The 2017 report, drawn up by a coalition of garment companies and the Boston Consulting Group, is a good example of a very detailed analysis of the impacts of the sector, in this case the textile and fashion sector.⁸⁹ The very fact that both a coalition of companies and one of the best-known US corporate consulting firms are involved in the drafting process is a sign of the times. Indeed, these steps provide a factual basis for assessing the ‘*duty of vigilance*’ of parent companies. Here too, several dimensions of responsibility are involved: the unlimited character in space, on the one hand, and collective responsibility, on the other.

2.3 Personal or collective responsibility

Personal responsibility can be understood in two ways: as the personal responsibility of managers but also as the individual responsibility of companies. The idea of co-responsibility has undeniably gradually come to the fore, but it is also undeniable that there remain legal obstacles to the transition from the admissibility of a lawsuit to the actual conviction of the actors. As Affectio Mutandi noted in December 2018, ‘On the corporate side, while no climate justice action has yet resulted in a conviction, with the plaintiffs facing obstacles in terms of jurisdictional competence or proof of causal links in the context of a global and diffuse phenomenon, they are nevertheless experiencing a major boom.’

A census drawn up in November 2018 for a law firm includes more than a thousand actions related to climate change in 25 countries around the world.⁹⁰ The report underscores the parallel, at least in the United States, between current action on climate change and past action on tobacco and asbestos; in both cases the grievances against the state were related to failure of ‘*duty of care*’ or the *failure to warn* of dangers. In all these cases, it is precisely the issue of co-responsibility that is on the table.

A good example of the co-responsibility of actors is the action taken to the Commission on Human Rights of the Philippines in 2017 against 47 companies that together represented massive emitters of carbon dioxide, the so-called ‘*carbon majors*’. The Philippine Commission’s argument was that the *combined* action of these companies constitutes a violation of human rights because of the climate-change impact leading to the increase in extreme weather events such as typhoons. The state was also challenged under its ‘*duty to protect the human rights to life, health, food, water and housing*’. The carbon majors have so far challenged the Commission’s jurisdiction in this case, but the tendency to bring co-responsibility into question is also evident.

88 . Mutatio watch, *op. cit.*

89 . J. Kerr and J. Landry, *Pulse of the Fashion Industry*, Copenhagen and Boston: Global Fashion Agenda and the Boston Consulting Group, 2017.

90 . M. Clarke and T. Hussain, *Climate change litigation: A new class of action*, New York: White and Case, 2018.

As noted by Adrian Macey, former New Zealand Ambassador to France and President of the 2011 Kyoto Protocol Conference, the idea of a common responsibility for the climate, broadly stated in the Paris Agreement, is also ‘*multi-stakeholder*’ responsibility involving businesses, and local and regional authorities.⁹¹

If we now turn to co-responsibility in the sense of partial responsibility, the parallel with asbestos is particularly relevant. The case that has set a precedent in this area is that of Eternit in Italy.⁹² In June 2013, the Court of Appeal of Turin sentenced the Swiss tycoon Stephan Schmidheiny to 18 years in prison for exposing to asbestos thousands of employees and neighbouring residents of the multinational’s Italian plants since 1970. Dark humour: it was to Schmidheiny that Maurice Strong had entrusted the mission to set up, at the time of the Earth Summit in 1992, a coalition of large companies working for sustainable development, namely the World Business Council on Sustainable Development, WBCSD. Hoisted by their own petard. This trial was significant in more than one way, including the fact that in November 2014, the court quashed the prison sentence that had been given to Eternit’s CEO, considering that the facts were subject to statutory limitations 12 years after the establishments had closed down. This raises the question of whether the nature of ecological and health disasters can make them subject to statutory limitations. But the most important lesson for our purposes is what this judgment revealed as an evolution in the interpretation of the law: the plaintiffs, despite the evidence, were not able to establish a strict causal link between fine particle rejection and this or that case of cancer; the only thing that could be demonstrated was the considerable increase in the number of cancers. From that point on, the judge moved from proof of damages to *legal responsibility for endangering the lives of others*. This new legal exploitation of an old principle has paved the way for the recognition of co-responsibility that at least puts an end to the impunity of companies whose activities or products are a threat to society. As Kathia Martin-Chenut and René de Quenaudon say in the introduction to their book, current law explores the narrow path ‘between organized irresponsibility and unlimited responsibility’.⁹³

2.4. Responsibility for the past or for the future? Predictability or unpredictability?

This fourth broadening of the dimensions of responsibility has already been extensively discussed in the previous points. Through the statement of the rights of future generations, a concept that began as a philosophical rather than a legal concept, it has become commonplace to state the responsibility of present society to future generations.

‘Our Children’s Trust’, a set of initiatives carried out by the NGO of the same name, is very significant in this respect. Indeed, a ‘trust’ is traditionally used to preserve the property of minor children and can, as we have seen, be applied to the protection of any actor or any community that is not in a position to defend itself. As far as children are concerned, it is a legal transposition of a saying popularized at the 1992 Earth Summit: ‘*We do not inherit the Earth from our ancestors, we borrow it from our children*’. But as noted by Christian Huglo, an expert lawyer in the field of

91 . Adrian Macey, The principle of responsibility in the global response to climate change: Origins and evolution, in *ResponsAbility*, *op. cit.*

92 . See in particular, L. d’Ambrosio, L’affaire italienne Eternit : quelles leçons ? in K. Martin-Chenut and R. de Quenaudon (eds.), *Développement durable : Développement durable et redéploiement de la responsabilité juridique*, Paris: Pedone, 2016.

93 . *Développement durable : Développement durable et redéploiement de la responsabilité juridique*, *op. cit.*

environmental law, on 30 July 2018, the United States Supreme Court handed down a favourable opinion on the continuation of the legal action of Our Children's Trust, even though the Trump administration had done everything possible to suspend the proceedings.⁹⁴

This is about a lawsuit filed by 21 young US citizens against the federal state. According to the lawsuit, the United States has been subsidising the fossil-fuel sector for decades while knowing that this poses a significant risk to the environment and to US citizens, which constitutes a deliberate threat to the fundamental rights of young people.

Responsibility to the future, like the concept of trust itself, opens up great prospects, considerably extending the idea of responsibility to all that one has 'in one's care'. It is another way of linking responsibility for the future to the power held over people and things. What is most remarkable about the recent Supreme Court decision rejecting the Trump administration's request for a stay of proceedings is that it was pronounced unanimously.

With regard to responsibility for the partly unforeseeable consequences of society's current activities and consumption patterns, the precautionary principle has been the major advance in recent years. So far, its use has been particularly timid; the risks analysed are essentially linked to scientific and technological innovations for which the consequences have been insufficiently apprehended. From this point of view, application of the precautionary principle is related to the obligation to carry out an impact study, an obligation of means rather than an obligation of results. Nevertheless, the fact remains that for example in the case of France, incorporation of this principle into the Constitution, combined with new possibilities of referral to the Constitutional Council, may open the way in the coming years to joint challenges by civil society and scientific circles of bills for which impact studies are deemed too weak or of approval and marketing authorization procedures, which have become, particularly in Europe with GMOs or endocrine disrupters, a major battleground.

As President of the Charles Léopold Mayer Foundation for the Progress of Humankind, I was directly involved in supporting the research conducted by Gilles Eric Séralini on the toxicity of Roundup and of maize genetically modified to make it resistant to Roundup.⁹⁵ The publication of the research results in 2012 provoked considerable media controversy. Our goal in funding this research was not, as the presentation of the work suggested, to 'demonstrate' the toxicity of GMO maize, but to raise the problem of product approval procedures within the European Union, pointing out that the modalities of studies prior to pesticide approval – short-term monitoring, the assumption that the impact should be similar for both genders, the assumption of proportionality between dose and effect – were seriously biased and insufficient. In other words, the precautionary principle, the scientific effort to try to assess the far-reaching consequences of marketing a new product, was not, in our view, being respected. The rest of the story proved us right: GMO maize was designed precisely to be resistant to Monsanto's Roundup, opening the door to an even more massive and indiscriminate use of this pesticide. In 2018–2019, the increasing number of legal actions against Monsanto and Bayer, and a review of the approval procedures have shown the relevance of our fight. Meanwhile, the publication of the 'Monsanto Papers' revealed the duplicity of the agrochemical giant.

94 . C. Huglo, 'La Cour suprême des Etats-Unis favorable à la poursuite de l'action judiciaire de Our Children Trust', in *Actu-Environnement. Com*, 2018, <https://www.actu-environnement.com/ae/news/christian-huglo-lepage-cour-supreme-etats-unis-our-children-trust-31831.php4>.

95 . Séralini affair, https://en.wikipedia.org/wiki/S%C3%A9ralini_affair.

2.5. Responsibility to humans alone or to the biosphere as a whole?

As we have seen in the previous points, it is the extension of human rights to the rights of future generations that has been the essential means – the term ‘artifice’ would be excessive but telling – to raise the broader question of the responsibility of societies to the biosphere as a whole. Another artifice also deserves attention, namely that which consists, in the same way as the attribution of rights to animals that can be ‘assimilated to man’ based on their sensitivity, the expression of their emotions and their capacity to suffer, in granting legal rights to certain elements of nature or to ecosystems.

This is not a new idea. It was put forward as early as 1972 by a Harvard law professor, Christopher Stone, in a famous article, ‘Should Trees Have Standing?’⁹⁶ By considering that trees have rights, in the context of opposition to a project by the Walt Disney Company in California, which threatened a sequoia forest, Christopher Stone was basically asking the question of the capacity of states to assume alone the function of custodian of the common good. He therefore introduced the idea that ‘nature’ could defend itself through representatives, which is similar to the idea of ‘guardian of the Earth’.

It is interesting to note that Christopher Stone’s article was published four years after another famous article by Garrett Hardin, a biologist, entitled ‘The Tragedy of the Commons’.⁹⁷ This article, which established Elinor Ostrom’s reputation through her rebuttal of Hardin, enshrined by her being awarded the Nobel Prize for Economics in 2009, argued that community management of common goods, or more precisely free access to these goods, leads to their destruction. According to Hardin, only individual property rights could ensure their sustainability and prosperity.

Thus, the terms of a debate around the question of the preservation of ecosystems were already being established in the early 1970s, and this debate has bounced back in recent years; neither the state nor free access to a common good can ensure its sustainability. With their seemingly opposite conclusions, Hardin and Stone’s two articles contained a common assumption, namely that *we need to invent ways for corporate responsibility to be exercised for the integrity of ecosystems*. According to Harbin, this will be achieved through private property. According to Stone, we need an independent guardian of the integrity of nature. But as we have seen with regard to the rights of future generations, what is being favoured is the extension to nature of the logic of rights; we attach ourselves to pre-existing doctrines rather than forging a doctrine of responsibility.

Starting in 2010, another, potentially richer angle of attack was used, namely that of recognizing the conception of so-called ‘indigenous’ peoples who consider the biosphere as a whole, including humans and non-humans. Betsan Martin quotes the words of Sir Taihakurei Durie, the first and only New Zealand Supreme Court Justice of Māori origin: ‘Māori for example see themselves as part of a familial web in which humans are junior siblings to other species beings and forms of life. People therefore don’t understand themselves as exercising knowledge over the natural world but as existing always already *inside* or *as* relationships.’⁹⁸

96 . C.D Stone, ‘Should Trees Have Standing? Toward Legal Rights for Natural Objects’, *Southern California Law Review*, No. 45, 1972, pp. 450–501, <https://iseethics.files.wordpress.com/2013/02/stone-christopher-d-should-trees-have-standing.pdf>.

97 . G. Harden, ‘The Tragedy of the Commons’ *Science*, Vol. 162, No. 3859, 13 December 1968, pp. 1243–1248.

98 . B. Martin, *Responsable Laws for Water and Climate*, in *ResponsAbility*, *op. cit.*

It was through this approach that in March 2017 New Zealand granted legal status to the Whanganui River.⁹⁹ For the first time in the world a river was recognized as a living being with its own legal personality, rights and responsibilities. According to the Act, the Whanganui River, New Zealand's longest navigable river, is 'a living, indivisible whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements'. To get to this point, Māori jurists, led by Sir Durie, first had to recall the constitutional nature of the Treaty of Waitangi signed between the Māori people and the first settlers from Great Britain, a treaty that allowed the latter to settle but had gradually been discarded in favour of English common law, which introduced the Western conception of nature as a resource, allowing the Whanganui River to become the outlet for waste, sewage, and agricultural and industrial pollution.¹⁰⁰

The 2017 law is the culmination of a very long struggle. As early as 1990, a lawsuit filed at the Waitangi Court, which was responsible for verifying the conformity of laws with the founding treaty, had claimed the effective application of the treaty, which guaranteed New Zealand tribes full possession of what they had collectively and individually. To this lawsuit, the British Crown had replied that no one could own running water and that under these conditions the Crown's role was to manage running water for the entire nation. It is the length of this debate and its conclusion that makes the New Zealand case so interesting; it places the issue of the '*legal standing*' of the river in a much broader perspective of compliance with a holistic view of the biosphere.

The book *ResponsAbility* gives another significant example of this evolution, that of compliance with the traditional conception of water in Hawai'i society.¹⁰¹ The indigenous peoples of Hawai'i understand that 'the land is the chief and people are the stewards'. As the authors of this chapter of the book write, '*Similar to other indigenous societies, our relationship with our natural and cultural resources is familial: land is an ancestor; fresh water is deified as a physical embodiment of one of our principal gods; and we as younger siblings have a kuleana – a unique cultural duty – to care for these resources as a public trust for present and future generations. For us, kuleana infuses responsibility that must be shouldered before any "right" may be claimed.*' Here we find Simone Weil's intuition that obligations precede rights, and are not their corollary.

The Constitutional Convention of 1978 made the preservation of the rights and way of life of the indigenous people of Hawai'i a constitutional obligation, combining in the same text, significantly, the state's obligation 'to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people.'

Ecuador's new constitution, adopted by referendum in 2008, is part of this historical evolution, again with reference to the traditional view of indigenous peoples whose vision of humankind's being part of the biosphere, considered less than a century ago as a vestige of the past predating civilization and the reign of reason, is becoming a founding element of the nation's identity. Ecuador is the first state in the world to have recognized Pachamama, nature, as a subject of law. It has ceased to be an object of appropriation and has been given the right to compensation in the event of damages. To this end, the Constitution takes into account the symbiosis between man and nature and makes Sumak Kawsay (or good living) the link between human rights and the rights of nature, between ecology and the economy.¹⁰²

99 . A. Salmond, Rivers as ancestors and other realities, in *ResponsAbility*, *op. cit.*

100 . E. Taihakurei Durie, Indigenous law and responsible water governance, in *ResponsAbility*, *op. cit.*

101 . K. Sproat and M. Tuteur, The power and potential of the public trust: insight from Hawai'i's water battles and triumphs, in *ResponsAbility*, *op. cit.*

102 . T. Lefort-Martine: Des droits pour la nature ? L'expérience équatorienne, Paris: L'Harmattan, 2018.

In such a constitutional text, the state remains the ultimate guarantor of the integrity of Pachamama. Subsequent history has shown the limits, like in Western countries, of this role of the state. This has been the case of the project to exploit a vast oil field in the middle of the Amazon, to the great discontentment of indigenous defence organizations. As early as 2007, Ecuadorian President Rafael Correa launched, with some skill, before the United Nations General Assembly, an unprecedented global campaign aimed at compensating, with 3.6 billion dollars' worth of foreign aid, the non-exploitation of the deposit in the name of international solidarity to preserve a resource that is itself of global interest. The call failed bitterly. In August 2013, Rafael Correa then applied to Congress for authorization to exploit oil in the natural park, which was granted. And in 2013, Ecuador began mining this deposit located in a World Biosphere Reserve, classified as a UNESCO World Heritage Site. The constitutional recognition of Pachamama did not weigh heavily in the balance.

In the summer of 2019 the issue bounced back with the multiplication of forest fires in the Amazon, to the point that it was put on the agenda of the Biarritz G7 at the end of August. The impact of the deforestation of the Amazon on the global climate balance has long been known, and Brazil, ever since its military governments, has always hidden behind national sovereignty to exclude any attempt to recognize the Amazon as a global commons under the safeguard of the international community. The return of democracy and the 'left-wing' presidencies of Lula da Silva and then Dilma Rousseff did not change this doctrine. With the drama of the fires, the issue has returned to the international agenda, putting Brazil's climate-sceptical president on the defensive. But in the absence of an international law of responsibility, what action can be taken? In the French daily *Le Monde* of Wednesday, 25 August 2019, two forums reflected the current state of thinking. The first, by anthropologist Philippe Destola, a professor at the Collège de France, proposed to draw inspiration from the New Zealand precedent in order to use the argument of the world vision of the Amazonian Indians and thus recognize the reciprocal relations between the human community and the ecosystem. But we must recognize that using this subterfuge to defend a global commons is a somewhat fragile move. The second, written by Jean-Baptiste Jeangène Vilmer, Director of the Institute for Strategic Research at the French Ministry of the Armed Forces, supports the need to move from 'sovereignty power' to 'sovereignty responsibility (the responsibility to take care)'. That is exactly the point. But can we, as he proposed, rely for this on the 'responsibility to protect', accepted by all UN member states when it comes to mass atrocities? Nothing is less certain. This example shows the need to address directly the issue of sovereignty, responsibility and human/non-human relations, but to do so generically through a new and extended definition of responsibility, applying to all actors and all scales.

2.6. Obligation of means or obligation of results?

An obligation of means without an obligation of results runs the risk of masking the inadequacy of the means implemented for the results that are claimed to be sought; an example of this is that of the voluntary national commitments of the Paris Agreement. Conversely, an obligation to achieve results expressed in vague terms runs the risk of constituting a toothless, spineless mechanism that may well remain at the stage of good intentions. The above-mentioned example of Ecuador and the protection of Pachamama is also fully eloquent.

This is a governance issue, beyond the strictly legal field. Let us take the example of the 'right to health'; it is obviously subordinated to the material and financial means available to a country. Typically it is a question of articulation between the obligation to achieve results – to make the right to health effective – and the obligation to provide means – the mechanisms to be implemented to

ensure the health of all considering the available means. Its implementation is tantamount to saying that a state must be inspired by the best examples in the world so as to use the technical and financial means at its disposal to the best in the service of health for all. We will elaborate on this essential principle in Chapter 7.

Chapter 6. THE UNIVERSAL DECLARATION OF HUMAN RESPONSIBILITIES: AN EXPRESSION OF A WORLD COMMUNITY IN FORMATION

Dominique Rousseau, a professor of constitutional law, asks the following question: *'Have we not reached a historical moment when it is no longer enough to tinker, when it has become necessary to find concepts to think about what is happening to us?'*¹⁰³ The various forms of progress we have just described are still just tinkering. They have made it possible to move around the different dimensions of responsibility, to put states in front of their own responsibilities in the management of the global commons, but have not touched on the essential absence of a third pillar of international life, a global ethics applying to all actors, based on a relational principle.

I recalled the definition given by Kathia Martin-Chenut and René de Quenauon of the current efforts being deployed by jurists: finding a middle ground between organized irresponsibility and unlimited responsibility. Understandably, legal scholars are worried that the principle of unlimited responsibility, were it to be introduced into law, would lead to a cancerous proliferation of litigation. But we must move beyond this legal point of view by first looking at responsibility strictly speaking, that related to the irreversible impacts of our societies on the biosphere and on the future of our children and grandchildren, which is an imprescriptible responsibility; only then, in a second stage, should we look at its possible legal translations.

Indeed, we can point out to those fearing a proliferation of litigation that the economic and social rights set out in the Universal Declaration of Human Rights could, on the basis of this argument, indeed be the subject of endless litigation.

The linchpin of the metamorphosis of responsibility is the Universal Declaration of Human Responsibilities project.

This declaration is the result of work conducted in the framework of the Alliance for Responsible and Sustainable Societies. The Charter of Human Responsibilities adopted at the 2001 World Assembly was, as we said, a 'pre-text'. It had a hybrid status – halfway between what could be expected from a text of international scope and what might allow various actors, particularly from civil society, to reflect on their own responsibilities. It was translated as such into various languages, including Swahili and Wolof in Africa. But over the years, the thinking settled on a clear distinction between a founding text, the form and format of which reflected what could be expected from a document adopted by the UN General Assembly to found new relations among societies, and multiple 'implementation texts', in particular societal charters for different types of actors, which will be the subject of Chapter 8.

The text presented here is the one we reached in 2011. At that time, with the idea of responsibility rising, we had hoped for a state ready to introduce it into the international debate at the 'Rio+20' Summit in June 2012 in Rio de Janeiro and had thought that the host country of the conference was best placed to do so. Unfortunately, in spite of the interest with which we had met among various members of the Brazilian government, when Michel Rocard met in the spring of 2012 with Dilma Rousseff, then President of Brazil, she was more concerned about the development of the large offshore oil resources that had been discovered off the Brazilian coast than about preserving the

103 . *Sur les chemins d'un Jus commune universalisable, op. cit.*

biosphere, and did not wish to support the idea of introducing the declaration of responsibility into the debate.

We then understood that it would take some time for this declaration to make its way through minds and institutions before it could be adopted by states. Mireille Delmas-Marty summed this up by saying that adoption of this declaration by the UN General Assembly would not be a *prerequisite* for the metamorphosis of responsibility, including in the legal field, but rather the *culmination* of a collective and multifaceted dynamics. I will discuss different possible scenarios in the last chapter of this book.

Following is the text of the Declaration project. Its preamble acknowledges globalization, that is the extent and irreversibility of the interdependences among human beings, among societies and between humankind and the biosphere, and then sets out the eight general principles of responsibility in the twenty-first century.

Universal Declaration of Human Responsibilities

A project led by the Alliance for Responsible and Sustainable Societies

Preamble

We, Representatives of the Member States of the United Nations

Recognize:

1- that the interdependent relationship that has been created between human beings, among societies, and between humankind and the biosphere is irreversible and of an unprecedented scope. It constitutes a radically new situation in the history of humanity, irrevocably uniting our communities as a single community of destiny.

2- that the perpetuation of our current lifestyles and development models, along with the tendency to minimize one's own responsibilities, is incompatible with building harmony among societies, preserving the earth's ecological integrity and safeguarding the interests of future generations;

3- that the extent of changes now needed is beyond any single human being, and requires the commitment of each and every individual and every public and private institution;

4- that the current legal, political and financial procedures designed to steer and monitor public and private institutions, in particular those that have an impact worldwide, fail to motivate the latter to assume their full responsibilities, and may even encourage their irresponsibility;

5- that awareness of our individual and collective responsibilities towards the earth is crucial to the survival and progress of humankind;

6- that our collective responsibility, beyond the legitimate interests of our peoples, is to preserve our fragile planet and only home by preventing climate-related ecological and social disasters affecting all the world's peoples;

7- that consideration for the interests of others and for the community, and reciprocity among its members are the basis for mutual trust, security, justice and respect for the dignity of each individual;

8- that proclaiming and pursuing universal rights is not enough to change our behaviour, as rights are ineffective when there is no institution equipped to ensure these rights are respected;

9- that these facts require adopting common ethical principles on which to base the conduct and rules of our leaders, as well as those of our peoples.

In the name of our peoples, we undertake to adopt the Universal Declaration of Universal Responsibilities. This Declaration will serve as a pillar for institutional and legal development and will constitute a reference for our behaviour and our relations. The Declaration may be promoted among all sectors of society, integrated into our values, decisions and practices, and provide the basis for further development of national and international law.

Principles of human responsibility

1. *The exercise of one's responsibilities expresses our human freedom and dignity as a citizen of the world community.*
2. *Individual human beings and everyone together have a shared responsibility to others, to close and distant communities, and to the planet, proportionately to their assets, power and knowledge.*
3. *Such responsibility involves taking into account the immediate or deferred effects of all acts, preventing or offsetting their damages, whether or not they were perpetrated voluntarily and whether or not they affect subjects of law. It applies to all fields of human activity and to all scales of time and space.*
4. *Such responsibility is imprescriptible from the moment damage is irreversible.*
5. *The responsibility of institutions, public and private ones alike, whatever their governing rules, does not exonerate the responsibility of their leaders and vice versa.*
6. *The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.*
7. *The exercise of power, whatever the rules through which it is acquired, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.*
8. *No one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed.*

I will comment on these principles one by one in relation to the six dimensions of responsibility.

First principle. *The exercise of one's responsibilities expresses our human freedom and dignity as a citizen of the world community.*

There are two forms of citizenship, based on the Roman and the Greek definition. In its Roman definition, being a citizen automatically confers a number of rights.¹⁰⁴ This first form of citizenship could be described as 'passive', acquired at the same time as nationality. Greek citizenship, by contrast, could be described as 'active', where citizenship derives from the exercise by each of his or her responsibilities towards the city, in particular that of participating in the management of public affairs and defending it.

¹⁰⁴ . Thus, in the Acts of the Apostles, the Apostle Paul reminds the authorities that he is a Roman citizen, which allows him to appeal to the emperor and his righteousness in the face of a conviction by local authorities.

This first principle is a reflection of the Greek conception. It refers to the definition of community: *the totality of human and non-human beings* to whom we feel responsible for the impact of our actions. Responsibility stems from *freedom*, and is therefore distinct from the idea of duty. It is the corollary of irreversible interdependences and therefore an *objective* responsibility independent of the intentions guiding our actions. Finally, by recognizing the universal nature of this responsibility, we are laying the foundations of the very idea of a *world community*.

Far from being defined as a burden and as a kind of original sin for which we would have to bear the consequences from generation to generation, responsibility is the very expression of the dignity of a citizen.

Second principle. *Individual human beings and everyone together have a shared responsibility to others, to close and distant communities, and to the planet, proportionately to their assets, power and knowledge.*

This sentence contains three essential ideas: universality; proportionality; and shared responsibility, or co-responsibility.

Universality first. There are not on the one hand irresponsible people by nature and on the other hand responsible people by nature. ‘Universal’ is therefore understood in both senses: *it applies to everyone and extends to the whole world.*

Proportionality. Proportionality stems from the two characteristics of responsibility, its link with freedom and its link with impact. As we have seen with regard to allegiance relations within the global production chains, the different actors’ leeway in the chain are quite variable and cannot be reduced to the legal status of the actors. The extent of responsibility must therefore be assessed in relation to *effective power*.

Knowledge, for its part, is the condition of awareness of the – even very indirect – impact of one’s actions. As we will see with the eighth principle, ignorance does not in itself justify irresponsibility. That would be too easy. A good example of irresponsibility through wilful ignorance is the approval of the marketing of new products: their dangerousness is assessed on the basis of current scientific knowledge, and companies, at least some of them, take great care to make sure that the necessary research is not conducted so as to ensure their impunity in the event of negative consequences.

Finally, *co-responsibility* stems from the fact that the impact of our actions on societies and on the planet is the result of a multitude of interactions, whether related to our individual impacts on the climate, biodiversity or the oceans, or the individual impact of such and such player within global production chains. This is therefore a matter of *collective responsibility*.

An essential corollary of this principle of proportionality is that *actors are defined not by their status but by the extent of their impact*. In application of this principle, the state on the one hand and transnational economic and financial actors on the other are therefore on an equal footing; for an actor with transnational impact, responsibility is itself transnational. In this respect, states are accountable to the world community both for their own action and for their eminent role in the organization of responsibilities among the various national actors – what we have called their *ultimate responsibility*. By failing to organize the responsibility of national actors, states instead become accountable for their actions.

Third principle. *Such responsibility involves taking into account the immediate or deferred effects of all acts, preventing or offsetting their damages, whether or not they were perpetrated voluntarily and whether or not they affect subjects of law. It applies to all fields of human activity and to all scales of time and space.*

This principle makes explicit the idea that the limits placed a priori on responsibility are what give rise to societies with unlimited irresponsibility.

It first states the *objective*, not subjective nature of this responsibility – consideration of the impacts of acts is independent of whether or not they were committed voluntarily.

It then extends the scope of responsibility in *time and space*. This is the corollary of strict responsibility. Reflecting a world community of destiny, responsibility is understood at all scales of space. It is not limited to a national community.

The principle also acknowledges that in today's societies impacts may be delayed in time. This generalizes the *precautionary principle* – when the delayed effects of acts are not known, one must abstain from committing them or be in a position to prevent them.

Finally, by stressing the need to prevent or offset damages, whether or not they affect subjects of law, responsibility recognizes that the *world community includes the entire biosphere*.

Objective responsibility, unlimited responsibility in time and space, to both the past and the future, including non-human beings, this third principle touches on four of the six dimensions of responsibility.

Fourth principle. *Such responsibility is imprescriptible from the moment damage is irreversible.*

This principle makes explicit the past and future dimensions of responsibility. It speaks for itself. It also recalls the objective and collective dimension of responsibility. Global warming, the erosion of biodiversity, the irreversible degradation of the soil or the oceans and the depletion of certain resources essential to life raise the question of transgenerational responsibility. This is the difference between responsibility and guilt. Children cannot be held responsible for the misdeeds of their parents 'up to the seventh generation'. However, it cannot be denied that the current prosperity of developed countries has benefited from the way in which, since the beginning of the nineteenth century, they have exploited the world's natural resources for their benefit.

In the economic and financial field, this raises the question of amnesia, and therefore of the irresponsibility associated with the anonymous nature of shareholding – selling off shares does not allow the responsibility to lapse that arises from holding them at the time when damages were caused.

Fifth principle. *The responsibility of institutions, public and private ones alike, whatever their governing rules, does not exonerate the responsibility of their leaders and vice versa.*

This principle is essential for ending the impunity of states, big businesses and big banks. One does not put a state or a company in jail. And financial sanctions are usually not very dissuasive, at least for the leaders of these institutions, who are free to share the cost with their citizens or shareholders, the cost being weighed against the political or financial benefits of irresponsible behaviour. Hence

the need to assign responsibility not only to legal persons, public or private, but also to their managers, their directors and, in the case of companies and banks, their shareholders.

To address the issue of recognizing and punishing irresponsible leadership, imprisonment is not the only thing to bear in mind. The idea that *responsibility and belonging to a community are two sides of the same coin* can help in this respect. In the past, the punishment for irresponsible behaviour towards the community was exclusion – proscription in Greek cities, excommunication in the Christian Middle Ages, a threat that could bring emperors to their knees. The modern equivalent, for executives, would be ineligibility in the political field and a ban on holding corporate office in the economic and financial field. An international implementation of this fifth principle will lead to the invention of various forms of total or partial exclusion from the community.

Sixth principle. *The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.*

This principle puts an end to the current absolute visions of sovereignty and ownership. Owning a good or a resource is fundamentally about having it under one's care, for the benefit of the planet and future generations. We have seen the wealth of the concepts of 'public trust' or 'guardian of the Earth'. The proportionality of responsibility to the powers held does indeed have as a corollary the effective exercise of responsibility for what one has in one's custody. This means defining the commons of humankind broadly and recognizing that responsibility for protecting the commons lies with those who have a part of them in their custody or who benefit from their use.

Seventh principle. *The exercise of power, whatever the rules through which it is acquired, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.*

This principle reinforces the previous ones but also opens up a broader issue, which will be explored later, that of the legitimacy of the exercise of power. Because of the proportionality of responsibility to power and the fact that the impact of the actions of managers, and of public and private institutions goes far beyond the impact on citizens or shareholders, the legality of the exercise of power, that is compliance with the rules, constitutions and articles of association that delimit its exercise, does not exhaust the question of responsibility. What is really raised is the question of legitimacy: Are these leaders worthy of the power that has been delegated to them? *The principles of responsibility thus place the legitimacy criteria above the legality criteria*, associating them with the responsible exercise of power, for which leaders are accountable not only to their constituents but also to all those on whom their actions have an impact.

Eighth principle. *No one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed.*

Power and knowledge are social constructions. Since responsibility today is almost always collective, resulting from the cumulative effect of myriads of actions or actors, and since long-term consequences are difficult to predict, especially as in some cases they can be corrected by subsequent initiatives, departing from unlimited irresponsibility requires *organizing collectively to act and to know*. We shall examine in the next chapter the full scope of this eighth principle in relation to the societal charters of various social and professional milieus.

Chapter 7. UNIVERSAL RESPONSIBILITY: THE METAMORPHOSIS OF GOVERNANCE

When discussing the challenges of the twenty-first century, two images always come to mind: that of a *metamorphosis* and that of the *Copernican revolution*. The metamorphosis image suggests that a radical transformation is taking place within the cocoon, to give birth, from the same genetic material as the larva, to something completely different: a butterfly or an adult insect. The image of the Copernican revolution refers to the fact that in the sixteenth century Ptolemy's traditional astronomical model was less and less consistent with reality, a more complete knowledge of which we had thanks to the progress of optics. At first, astronomers did not dare to question the vision of their predecessors and the assertion, backed by theology, that the Earth was at the centre and the sun revolved around it. So they began by tinkering with the explanatory system, making it more and more complicated to fit in with the trajectories of the planets. Until the day when Copernicus flipped the table and stated that what was at issue was the ancient model itself, proceeded to reverse his view by asserting that it was not the sun that revolved around the earth but the earth around the sun, and reorganized all the available observations according to a new theory.

These two images, of a metamorphosis and the Copernican revolution, are a good reflection of the current reality. The facts are piling up. The changing world is making traditional responses that are less and less appropriate. At first, we tinker, we use to the best the concepts and tools we have at our disposal, until this policy of small steps is no longer enough and a major conceptual change is needed. But following the example of a metamorphosis or the Copernican revolution, one does not start from a blank page, one reorganizes pre-existing materials, often by putting in the *centre what was peripheral and in the periphery what was central*.

This approach applies perfectly to responsibility, governance and law. We saw in Chapter 5 how, through successive innovations or ingenious tinkering, the best use has been made over the past twenty years of the already available 'material' such as the Universal Declaration of Human Rights, national legal systems, the various treaties or international commitments of states, to progressively extend the various dimensions of responsibility. Nevertheless, the fundamental obstacles identified in the previous chapter remain: impunity of the major players, dogmatic slumber, sovereignty and ownership. The time has come to take the plunge and answer Dominique Rousseau's question: *'Have we not reached a historical moment when it is no longer enough to tinker, when it becomes necessary to find concepts to think about what is happening to us?'* And the proposed response is that of the Universal Declaration of Human Responsibilities, the fruit of historical and intercultural reflection, which, based on the recognition of irreversible global interdependence, places at its centre the new dimensions of responsibility.

This Copernican revolution of responsibility must be accompanied by two others: the general revolution of *governance*, and the more specific revolution of *law and legal systems*. We will devote this chapter and the next to describing these two revolutions. They both follow the same approach, that is *a historical and intercultural approach*.

The historical approach reflects Reinhart Koselleck's previously mentioned thesis that a concept has both a *retrospective* dimension – the reflection of an accumulation of experiences – and a *prospective* dimension – the ability to give the future meaning and shape. Values, governance and law being constitutive of societies, this is not about making a clean sweep of the past, but rather

about beginning by relativizing, thanks to a *historical perspective*, the conceptual and institutional systems in which we are immersed daily, too often perceived as timeless and therefore untouchable, and then, as a second step, inventing answers to the challenges of the twenty-first century by drawing on the answers provided in the past.

The intercultural approach is the result of two considerations. The first is that the world has become multipolar. Under these conditions, the West is no longer in a position to impose its values, political systems or law on the rest of the world. To deal with global interdependences, it is therefore necessary to *invent responses with which the different religious and political philosophical traditions can identify*. And secondly, the diverse responses provided by different civilizations to questions common to all *broaden the field of experience available for inventing new answers* and make it possible to *discover common principles behind the concrete diversity of the answers provided*. This is, for example, the approach adopted by a legal anthropologist, Etienne Le Roy, which is to draw, from the comparison between Western property law and the African conception of land management, the general questions posed to each society by its relationship with land and territory.¹⁰⁵ Taking a step back in this way is necessary to detach ourselves from our own ‘*self-evidences*’.

For managing societies, this dual historical and intercultural approach has led me to adopt the concept of *governance* to designate *all the representations, values, institutions, rules and cultures through which societies try to ensure their survival and development*.¹⁰⁶ Applied to economics, the approach helped me realize that so-called ‘economic science’, or economics, was a recent invention. Taking a detour through history convinced me that the profound nature of the economy in the twenty-first century – ensuring the wellbeing of all while respecting the limits of the biosphere – was similar to the challenges that all societies had had to face before the industrial revolution, which is why I adopted the concept of *œconomy* to describe the new economic model to be invented. (Economy was indeed the goal of the economic model until the industrial revolution came along, which is why I speak of a ‘great forward comeback’ from the economy to the *œconomy*).

The same approach has been followed for rethinking law in the twenty-first century. Indeed, legal scholars have a front-row seat to note the inadequacy of the framework and categories of law for managing global interdependence. This is what makes Mireille Delmas-Marty say: ‘*Humankind seems incapable of influencing its own destiny, and the law is part of this incapacity*’.¹⁰⁷ The first collaboration between the Alliance for Responsible and Sustainable Societies and the Collège de France, with FPH support, made it possible to draw up a panorama of the new challenges of responsibility. The book *Prendre la responsabilité au sérieux*, extensively quoted in the preceding pages, was the fruit of this first collaboration in 2016. On this basis, Mireille Delmas-Marty, Professor Emeritus of the Chair of International Law at the Collège de France, proposed to launch a second stage of our cooperation in 2017 with the institution of an international think tank on the conditions for the emergence of what she called ‘a *common, universally applicable jus commune*’. ‘*Jus commune*’ refers to the European context of the Middle Ages in which, beyond the customary rights of the different peoples who shared the Roman Empire, a combination of Roman law and canon law constituted the frame of reference accepted by all Western Christianity when it came to managing relations among peoples. Hence the idea that today we need to invent, this time on a global scale, a new ‘*jus commune*’. But this needs to be a ‘*universally applicable jus commune*’

105 . E. Le Roy, ‘La terre de l’autre. Une anthropologie des régimes d’appropriation foncière’, Paris: LGDJ Lextenso, 2011, *Revue d’histoire moderne & contemporaine*, 2016, Vol. 4, No. 63-4/4 bis, pp. 250-252.

106 . P. Calame, *Œconomy, le grand retour*, in *Petit traité d’œconomie*, op. cit.

107 . EHHS Seminar, ‘Repenser le droit à l’heure de l’anthropocène’, Paris, 1 February 2017.

because, in a multipolar world, a common global law can only emerge from convergence and cross-fertilization that will lead to the recognition of common principles on a global scale.

To discover these principles, the working group adopted the twofold approach of historical perspective and comparison of the foundations of the legal systems of different civilizations. In doing so, the first discovery was that, like in economics, ‘legal science’ had only belatedly detached itself from the whole of governance, in a context where, in the West, the affirmation of state sovereignty had made national legal systems the exclusive references of law.¹⁰⁸

Building on this first given, I will now describe the *Copernican revolution of governance*, focusing on the principles of governance most related to responsibility, and then, in the following chapter, I will describe the revolution in law in the Anthropocene era.

Governance in changing societies

The concept of governance is very broad – it covers all the mechanisms through which any society seeks to ensure its survival. To understand governance, we should not confine ourselves to its most visible aspects: institutions, laws, the distribution of power, and the organization of different geographical levels or legal systems. Governance is revealed through a set of shared mental representations – on the nature and exercise of power, on the common good and on the existence of communities – and through modes of social regulation or conflict management of which the judicial system itself is only the tip of the iceberg. Moreover, in changing societies, governance is always facing a contradiction; on the one hand, being an element of stability in society, governance must have immutable features; and on the other hand, it must adapt to changes in society, otherwise it will prove incapable of providing satisfactory responses to challenges that are new in nature, scale or scope. The preceding pages have provided many examples of this.

In a stable society, regulation systems, which themselves are stable, are rolled out through successive adjustments. Governance is thus balanced on three legs: institutions; a division of competences among these institutions; and rules. But in a changing society, flexibility must be introduced into the solidified gears. Governance is then balanced on three other legs: *the common goals to be pursued; the values accepted by all to manage relations among the actors; and the establishment of mechanisms and processes to resolve common problems or conflicts among actors*. Governance requires that it be in constant learning. Its evolution is not a sign of instability but of adaptability. The stability of governance is no longer that of the *means* put in place at a given time – institutions, distribution of powers and rules – but that of the *principles* to be respected in order to achieve the goals of governance.

The eternal goals of governance

Since the ultimate challenge of governance is to ensure the long-term survival of societies, governance, across the ages and across cultures, has three constant goals: *to maintain the social cohesion of the community, which implies in particular that inequalities are tolerable and tolerated; to have the capacity to resist external aggression or unpredictable events; and to maintain a long-term balance between society and its ecosystem*.

¹⁰⁸ . To the point that in France, studies in comparative law have always been considered marginal, and in the United States it was only after World War II that it was considered useful to teach the rudiments of ‘*continental law*’ alongside ‘*common law*’.

Together, these goals form the equivalent of what biologists call maintaining an organism in its area of viability: within this area, the organism is able to implement corrective measures to ensure its equilibrium – this is homeostasis; outside this area, return to equilibrium is no longer possible. The three goals are not independent of one another. A society undermined by internal conflicts is vulnerable to external aggression, just as an already weakened human body is vulnerable to microbes; similarly, when imbalances appear between society and its ecosystem, when the latter becomes impoverished, when resources become scarce, competition for control of resources worsens, old balances are shaken and social cohesion disintegrates to the point of collapse. André Malraux said that civilizations are mortal. This is a no-brainer. From China to the Middle East and India, there has been a relentless succession of periods of political fragmentation and periods of unification under the leadership or control of great empires, periods of stability and prosperity and periods of crisis and ruin. In every period of crisis, and current in-vogue collapsology will not deny this, parallels are sought with periods of collapse of past political and economic systems and civilizations, anxiously wondering what lessons can be drawn from them and what analogies can be drawn with our times. The retro-prospective book by the late Pierre Thuillier, *La grande implosion*, supposedly the fruit of the work of a research group that in 2085 looked at the great collapse of our productivist civilization at the beginning of the twenty-first century, wonders after the fact why no one seems to have seen the events coming.¹⁰⁹

These three eternal goals of governance also find their equivalent in the *three crises of relations* based on which we have begun to reflect on responsibility: among individuals (social cohesion), among societies (peaceful coexistence), between humankind and the biosphere (the balance of societies with their environment).

In relationship management, recourse to the courts should only be a last resort. As we are reminded by a Chinese proverb, ‘the state is well administered when the school staircase is worn out and grass is growing on the court’s staircase’. Transposed to the contemporary world, this image means that the new forms of non-legal regulation that have appeared in recent years are, contrary to their implicitly pejorative qualification as ‘soft’ law, to be promoted and desired. ‘Hard’ law remains indispensable because in the event of an asymmetry of the powers and resources of the parties in conflict, it is the only one capable of partially rebalancing the balance of power, but the fact remains that *in a trial it is not the relationship between the actors that matters, but the relationship of each of the actors to the law, which makes the primary goal of conflict management, restoring the relationship, difficult to achieve*. In traditional societies, rituals, especially after a murder, are less about punishing the guilty party than about restoring harmony within the community.

An established community or building a community?

Having our noses glued to the present, taking as timeless evidence the governance we know, induces the illusion that the sole purpose of governance is to provide communities with the means to manage themselves. These communities seem timeless, established from all eternity. That is not the case, of course. On the contrary, recent or ancient history shows us communities caught up in a permanent movement of fragmentation and recomposition. The primary role of governance, in fact, is to *build communities*. Contrary to the ‘essentialist’ theories of nationhood that flourished in the

109 . P. Thuillier, *La Grande Implosion. Rapport sur l'effondrement de l'Occident (1999-2002)*, Paris: Fayard, 1995.

nineteenth century, a community is a social construction, the fruit of a historical process, which moreover, is reversible.

What is a community, what was it based on in the past, what can it be based on in the future? Reflection on responsibility has given us a *relational* definition: a community is the set of people who recognize themselves as being accountable for their impact on its other members. In the past, the tribal community defined itself as the descendants of an eponymous ancestor. Identification can also be made to a national god, protector of the community. This is the most common case in the ancient East.¹¹⁰ Or be the result of a long shared history. In the particular case of France, analyses of the formation of the nation are numerous, from the invention of a '*Gallic people*' to the teleological idea of a French nation that would have been built gradually to fulfil its destiny by occupying a territory that would have been devolved to it from all eternity. Everyone knows this is a fantasy. Nevertheless, the gradual enlargement of Capetian royalty, the forced adoption of a common language, the extension to the whole kingdom of the customary law of the Ile de France region, the generalization of primary education, the role of which was, in particular, to instil in all French children, including those of the colonized peoples, a largely invented '*national epic*', and then, with the French Revolution, the deification of the '*nation*', which contributed to imposing the idea of a '*one and indivisible republic*' sanctified by the Constitution.

But when interdependences of all kinds became stronger and extended to the planet, humankind found itself facing the need to establish communities on the scale of these new interdependences, and thus go beyond the idea of sovereign states, delimited once and for all by national borders and considered as communities that were assumed to last forever. Under these conditions, *the institution of supranational communities, as in the case of Europe, and even more so the institution of a world community, have become a historical necessity*. What process should be invented to do this? These communities, having neither a common history, nor a common religion, nor a common ancestor, must be built *around common values and around common goods to be preserved*, which together forge a common destiny.

The construction of Europe is, despite its weaknesses and crises, the most promising geopolitical invention of the twentieth century, the only example of the peaceful overcoming of national sovereignties in the name of a common good, namely peace. Over the years, has the establishment of European institutions, the single market, the common currency, of all these things that are characteristic of an established community, been enough to establish a community of destiny? Nothing is less certain. On the contrary, one could think that the construction of Europe, so far, has not been able to give birth to a '*European people*' convinced of sharing a common destiny. True, the European institutions keep repeating that the different peoples that make up the Union today share common values: human rights, democracy, the rule of law, freedom of trade and movement, the autonomy of local and regional authorities, etc. Unfortunately, none of these values is *sufficient* to build a community. In essence, they correspond to the triptych on which the neoliberal order is based, which, as we recalled in the introduction, has proved powerless to organize and manage the human family. This explains why we need a *citizen-building process* in the twenty-first century, enabling the European project to be rebuilt on two pillars: responsibility and a shared vision of the challenges to be met together.

Building a world community is even more difficult. For although despite its many internal differences and the conflicts that have marked its history, Europe can boast a common history and a widely shared Christian heritage, this is not the case on a global scale. Emmanuel Decaux, Professor

110 . On this subject, see for example, M. Liverani, *Más allá de la Biblia*, Barcelona: Editorial Crítica, 2005.

of International Law, notes that building a common law is achieved by crossing two approaches: based on practical issues to be dealt with jointly; and based on shared values. He quotes René Jean Dupuy, for whom the world community is the result of ‘*what needs to be managed in the name of humankind*’.¹¹¹ For his part, the Italian jurist Roberto Ago, who for 16 years was a judge at the International Court of Justice, defined global law as ‘*the search for principles and rules governing the law of international responsibility of states*’. Shared values, universal responsibility, common challenges – these are the elements of a world community of destiny. This is precisely what the adoption of the Universal Declaration of Human Responsibilities can contribute to. For as the aforementioned professor of constitutional law Dominique Rousseau points out, *the idea of a World Constitution is associated with that of a world society, not a world state*.¹¹² Even in the case of France, the preamble of the Constitution refers to French *society* and not to the French state; to the community and not to the institutions that manage it. This distinction is fundamental. The Universal Declaration of Human Responsibilities and the Universal Declaration of Human Rights can be considered as the founding elements of a World Constitution, referring to the idea of a common home, a community of destiny and not to the idea of a world state. *It is because responsibility and community are two sides of the same coin that a world community is inconceivable without the formal act of adopting a Universal Declaration of Human Responsibilities*. Emmanuel Decaux further notes that ‘1945 exalted the individual, individual freedom. But today, in a context of interdependence, the question is raised of building a global civil society, as opposed to inter-state relations’.¹¹³

Legitimacy

The concept of legitimacy appears in the seventh principle of the Universal Declaration of Human Responsibilities: ‘*The exercise of power, whatever the rules through which it is acquired, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.*’ Legitimacy appears to be a fundamental characteristic of the way in which power is assumed. And the principle states, ‘*whatever the rules through which it is acquired*’. This introduces the essential distinction between the legality and the legitimacy of power.

Legality of power derives from compliance with agreed rules, whether enshrined in a constitution or in customary practice. Legitimacy, on the contrary, results from the feeling of the majority of the members of a community that it is well governed, by people whose behaviour justifies the trust placed in them.

In our democratic societies, legality and legitimacy in the exercise of power are sometimes considered synonymous, and political science often confuses the two. It is easy to understand why; in democracies, the people, who are at the origin of constitutional or customary rules and the choice of their leaders, should logically have confidence in the exercise by the latter of the power delegated to them. Yet the crisis of democracy reflects a disturbing paradox, namely that in every opinion poll, politicians are the least trusted.

Not only is legitimacy not reduced to legality but it encompasses it, because the question of the legitimacy of the exercise of power arises regardless of the political regime. I have already pointed out that even under the regime of absolute monarchy in France ‘the laws of the kingdom’,

111 . R.J. Dupuy, *La clôture du système international. La cité terrestre*, Paris: PUF, 1989.

112 . *Sur les chemins d'un Jus commune universalisable, op. cit.*

113 . *Ibid.*

established by custom, took precedence over ‘the laws of the king’. Exercise of power must be legitimate for it to be sustained over time. Without this consent, sooner or later revolts or revolutions emerge or, even more surely, multiple passive resistances, or parallel regulations are put in place. In many African countries, the state, inherited from colonization, is a superstructure that is imposed on society and with which society finds it difficult to identify. In the villages, for example, it is common to see a mayor, recognized by the state and responsible for acting as a buffer between the village community and authorities that remain foreign to it, and a village chief invested according to the rules of tradition and who alone holds legitimate power. These two parallel logics are found in the exercise of justice.

It is therefore fundamental to understand the sources of legitimacy, once again taking a detour through history and intercultural comparison, in order to explore the scope of this concept in the future. I have identified five criteria of legitimacy: limits to individual freedom must be justified by the pursuit of the common good; exercise of power must be based on common and recognized values and principles; governance must be effective in relation to the objectives pursued; those who govern must be responsible and trustworthy; and any rules and limits imposed on freedom in the name of the common good must be as light as possible, which I have called the principle of *least constraint*.¹¹⁴ To make the connection with the historical thinking of jurists on governance, it should be noted that two of the criteria, the second and fourth, relate to *values* and the other three, the first, third and fifth, relate to the *effectiveness* of the mechanisms put in place with respect to the fundamental goals of governance.

First, the value-related criteria. From Europe to China, respect for common values is the condition of legitimacy in the exercise of power. In medieval Europe, Alain Wijffels and Olivier Descamps explain, the two criteria of legitimacy were justice and effectiveness.

The ideal of justice, the model of the righteous ruler, is a constant in the ancient East. As noted by Mario Liverani, ‘[a] prestigious dynasty had to be solidly rooted in its relationship with God, but it also had to be solidly rooted in its relationship with the people and the Court. Hence the insistence, in the Iron Age, on wisdom and justice, the proper qualities of a good king.’¹¹⁵ Many centuries later, popular imagery in France would preserve Saint-Louis, the reference par excellence of the good king, the image of the sovereign rendering justice under an oak tree at Vincennes. At the other end of the Eurasian continent, in China, says Jérôme Bourgon, ‘[t]he Emperor’s responsibility is to be an intercessor between the sky and men, acting as a principle of compensation, of a return to balance, as constant as it is impartial.’¹¹⁶ And he illustrates this with regard to land management: ‘the role of the sovereign and the administration is to manage the two major sources of wealth, labour and land, by trying to find the best relationship between the two’. This combines the two criteria of justice and effectiveness.

There are not, on the one hand, one set of values that would apply to interpersonal relationships and on the other, another set of values that would apply to those who govern. *Power that is exercised on the basis of values alien to the culture of a people cannot be recognized as legitimate*. And of course, the basis of trust in leaders depends on the latter’s ability to assume and practice these values. We have here the continuity described by Lao Tzu between personal virtue and the virtue cultivated throughout the Empire. This is precisely the nature of the responsibility to be exercised at the three levels of individual conduct, collective norms, and governance and law.

114 . P. Calame, *La démocratie en miettes*, *op. cit.* See in particular the chapter, L’institution de la communauté, les fondements éthiques de la gouvernance, le contrat social.

115 . M. Liverani, *Más allá de la Biblia*, *op. cit.*

116 . J. Bourgon, Aux fondements dogmatiques de la responsabilité en droit chinois, *op. cit.*

In a context of global interdependence, the responsibility of legitimate rulers can be expressed in three ways: it is first the ability to *organize society* and social relations in such a way that the various actors take responsibility for their actions; secondly, it is the ability to *effectively and personally assume responsibility* for the consequences of actions taken during their term of office; and, finally, it is the ability to *lay the foundations for global governance based on responsibility* because, contrary to past historical situations, the community within and on behalf of which power is exercised no longer coincides with the community of those who suffer the consequences of decisions.

The second group of legitimacy criteria is effectiveness. We will detail its terms and conditions in the following paragraphs.

Effectiveness of governance: Adopting appropriate governance regimes

One of the responsibilities of states is to establish legal structures and principles that will lead the various public and private actors to behave responsibly, in accordance with the principles of the Universal Declaration of Human Responsibilities. This could be called '*the ultimate responsibility of states*', which could be held accountable for the irresponsible behaviour of national actors if these benefit from impunity. This is already illustrated by the lawsuits brought against states for wrongful failure to act.

This responsibility of last resort is a special case of a more general obligation to *design and implement appropriate governance regimes*. Managing companies always involves implementing regulation methods, even in political regimes that have adopted the market economy and its 'laissez-faire' approach. The market economy is itself a social and political construction. The European Union is a living example of this, with anti-trust laws, banking regulations and the 40 thousand product standards that guarantee the nature of what is placed on the market.

By *governance regime* what is meant is the set of measures that govern the production, distribution and use of a good or service, or the management of a community. The effectiveness of governance depends on adapting governance regimes to the nature of the goods and services being managed and the goals being pursued. We gave an overview of this debate about the current ownership regime for land and natural resources, and observed that the governance regime in Africa or China is substantially different from that which has prevailed in the West, where property has been declared 'inviolable and sacred'.

In today's governance and economy, governance regimes are divided into two families: that of public goods and that of private goods. This classification is however simplistic and does not do justice to the great diversity of goods and services. I have been able to show that it was more relevant to distinguish four categories of goods and services: those that are destroyed when shared (Category 1); those that are divided when shared and are finite in quantity (Category 2); those that are divided when shared and are of an indeterminate quantity (Category 3); and those that are multiplied when shared (Category 4).¹¹⁷ Each category corresponds to a family of related governance regimes.

¹¹⁷ . P. Calame, Les différentes catégories de biens et de services et leurs régimes de gouvernance, in *Essai sur l'économie*, op. cit.

In my *Essai sur l'économie*, I detailed how to build governance regimes according to the different characteristics of goods, services and the commons, and here I will stick to one example, that of land management, which refers to the sixth principle of the Universal Declaration: 'The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.'

The aforementioned debate between Garrett Hardin and Elinor Oström focuses on the adequacy of the governance regime to pursue the overall goal of soil fertility. Hardin believes, in accordance with the Haitian proverb that 'everyone's pig dies of hunger', that joint management of land use can only lead to the destruction of fertility, and Oström illustrates by various examples that collective governance of a territory, by distributing its uses, can be superior to private appropriation. In Africa, in the Volta Basin, the '*guardian of the Earth*' proposes a third model. And we have seen that in China, a fourth model is the responsibility of the Emperor and his administration to find the best relationship between labour and land.

Land governance also refers to justice and social cohesion. History over the millennia is one of processes of concentration of the land, the main source of wealth and prestige, in the hands of the few, followed by revolts or revolutions. The collapse of urban civilizations at the end of the Bronze Age is the earliest evidence of this. With land concentration being a radical threat to social order, mechanisms were provided for recovering heritage that had been ceded in a moment of distress or famine. Leviticus, one of the five books of the Pentateuch of the Bible, thus specifies the conditions for returning land to its former owner on the occasion of a Jubilee, which was supposed to wipe the slate clean every fifty years.¹¹⁸

The governance of land is highly interesting to the theory of governance because there is no governance regime established once and for all. As shown by the work of the organization AGTER, regulations are the result of collective learning and must be revised when the situation changes in order to reconcile the interests of different communities and collective rights at different scales and to ensure soil fertility and social cohesion.¹¹⁹

The same challenge stands for fossil fuels. Its governance regime addresses the three broad goals of governance at once: social cohesion, as illustrated by the tensions arising from the energy insecurity in which a growing part of the population finds itself in the event of an effort to impose energy efficiency through higher energy prices; the relationship among societies with the geopolitical question of the control of oil and gas resources; and the balance between society and the biosphere given the impact of greenhouse-gas emissions on the climate. I have shown that the appropriate governance regime is that of territorial tradable quotas of fossil energy.¹²⁰

The governance regime for intellectual property refers to the second principle of the Universal Declaration: 'Individual human beings and everyone together have a shared responsibility to others, to close and distant communities, and to the planet, proportionately to their assets, power and knowledge.' The question for the governance regimes for Category 4 goods and services is typically: Is it legitimate, in the name of amortizing research and development costs, to 'privatize' and make scarce an inherently abundant good that multiplies when shared? Thus, the farmers' seed network *Réseau semences paysannes* has led a long struggle to impose the legitimacy of the age-old practice of exchanging seeds among farmers, in the face of the monopoly that the seed industry has

118 . Leviticus 25, verses 23–28.

119 . AGTER: An Association to contribute to improve the Governance of Land, Water and Natural Resources
http://www.agter.asso.fr/rubrique68_en.html

120 . P. Calame, *Petit traité d'économie*, op. cit.

tried to claim for itself in the name of intellectual property protection and consumer safety, which has caused the disappearance of 75% of cultivated biodiversity in 50 years.¹²¹

In the context of global interdependences and threats arising from the irreversible destruction of climate, land, biodiversity or oceans, governments' prominent responsibility is to agree on appropriate governance regimes for global commons. The World Conference on Biodiversity held in Paris in May 2019 showed that whereas everyone now agrees that preserving biodiversity is humankind's responsibility, states are far from having agreed on their co-responsibility to it by defining a governance regime associated with obligations of results. The same can be said for all global commons.

The effectiveness of governance: Cooperation among actors

Although the art of governance is the art of *managing relationships*, its current practice has particularly strayed from this idea. Its dominant feature is rather instead that of segmentation: segmentation of public policies, reflecting those of the administration, into ministerial departments; segmentation of competences between the central state and the different levels of territorial authorities; and segmentation of the actors. In a country like France, the segmentation of actors was theorized by the French Revolution, which vested the state, the embodiment of the people, with a monopoly over the public good. The state's monopoly over the public good is mirrored by the idea that the sole vocation of economic and financial actors is to act for the benefit of their owners. The common good, in accordance with Adam Smith's theory, is supposed to be ensured by the efficiency of the markets, including financial markets, with each person pursuing his or her private interest. From this perspective, the concern displayed by companies and financial players claiming to assume their economic and societal responsibilities is at best hypocritical, at worst illegal, as Donald Trump reminded US pension fund managers.

This historical distinction between public and private actors also explains why current international law is the law of relations among states, not law governing actors, public or private, whose impact is global. But the economic and political reality is obviously not the one Adam Smith was experiencing when he published *The Wealth of Nations* in 1776; the current reality is characterized by the dominant position of major players, whether private or public. Comparison between states and very large companies, whether in terms of their financial dimension or their capacity for action and influence, is increasingly shifting in favour of the latter. The constant relationship between political and economic leaders, celebrated every year at the World Economic Forum in Davos, is not only, as is sometimes claimed, the result of a shameful collusion of public and private interests, the result of the emergence of a global plutocracy cemented by its attendance of the same universities or schools, the same clubs and maintained by the power of lobbies; it is a simple fact of life. When Bill Gates, the hero of the new philanthropy coming out of the leading economic circles, invites himself and imposes himself several times in a row at the General Assembly of the World Health Organization to take the floor, a privilege reserved in principle to representatives of the states, it is because his financial contribution to the organization exceeds that of even the most powerful states. As for the economic and trade disputes dealt with in the World Trade Organization, they are officially disputes among states, but if we take the example at the end of the second decade of the twenty-first century of the mutual accusations by the United States and Europe of supporting

¹²¹ . Réseau semences paysannes, www.semencespaysannes.org; H. Tordjman, 'La construction d'une marchandise : le cas des semences', *Annales. Histoire, Sciences Sociales*, 2008/6, pp. 1341-1368.

Boeing and Airbus on the one hand and Airbus on the other, they only show the community of interest of aeronautical companies and national economies on both sides.

As for the capacity to influence, social networks and the emergence of a global civil society mean that neither political parties nor states today can claim a monopoly over the public good.¹²² *It is therefore, from the local to the global level, the relationship among the actors that needs to be re-examined with consideration of the public good as the fruit of cooperation among all the actors.* This is not an ingenuous statement; it does not imply that business leaders or the heads of financial institutions or even civil-society organizations will suddenly be touched by grace and have no more in mind than the public good. We should however recognize that political leaders themselves are as concerned as private sector leaders about keeping their place and are, more often than not, more attentive to short-term political profits than to the good of humankind.

Co-production of the public good supposes, from the local to the global level, *organizing cooperation among actors* with a view to the public good. This implies giving back its full force to the idea of the social contract.¹²³

At the local level, the territories most committed to the transition towards sustainable societies are those that have been able to build genuine long-term multi-actor contracts, involving the local authorities themselves, organized civil society, economic actors, universities and technical centres. It is indeed by regaining a sense of duration over time, by generating the capacity to define stable relationships, conditions for mutual trust and a common strategy, as opposed to an instantaneous transaction, that we can hope to bring about such a transition.¹²⁴

At the global level, I have brought up Adrian Macey's remarks according to which the idea of a common responsibility for the climate implies that of a multi-actor responsibility involving not only states but also companies and local authorities, all of which should be reflected in a global social pact.¹²⁵ Kofi Annan, when he was Secretary General of the United Nations, had this intuition when he formed the '*global compact*' and, very symbolically, launched the idea in 1999... at the World Economic Forum in Davos. Unfortunately, in the current state of global regulations and the law, commitments made by companies are voluntary, vague and in any case not enforceable.

From the local to the global level, a renewed social contract can only be based on principles of objective responsibility and co-responsibility. No good intentions, no set of rules will do. The proof of the pudding is in the eating, says the proverb. The reality of commitments is measured by their actions and their assumed impact.

The effectiveness of governance: Traceability and membranes

Today's world is populated by borders, national borders but also legal borders. Does not the very idea of limited liability/responsibility draw a boundary beyond which impacts are not taken into account? Our world is thus populated by institutions and legal boundaries that, as pointed out by the previously cited Emmanuel Decaux, consider, for example, international law as the reality of

122 . P. Calame, *La démocratie en miettes*, op. cit. See in particular the chapter, La gestion des relations entre acteurs : l'enjeu et la pratique du partenariat.

123 . P. Calame, L'économie pratique l'art de la gouvernance, in *Petit traité d'économie*, op. cit.

124 . P. Calame, Les nouveaux pactes sociaux de coresponsabilité, in *Petit traité d'économie*, op. cit.

125 . P. Calame, Un pacte social mondial, in *Petit traité d'économie*, op. cit.

international relations or that the legal independence of the various actors in the production chains are proof of effective independence.

On the other hand, what I have called the *pivotal actors of the œconomy*, the territory and the sector, pivotal in the sense that they organize relations among the actors, are not themselves institutions.¹²⁶ In an issue of the journal *Passerelle* published in March 2019, I highlighted the fundamental difference between boundary and membrane.¹²⁷ By analogy with the functioning of cells in living organisms, the membrane, physical or virtual, delimits an organism and separates it from the outside world, making it possible to measure exchange flows of all kinds between the organism and the outside world. This ability to measure exchange flows is essential when we are interested in the impact of actors and all the more when we want to measure the impact of their actions on the entire human and non-human community. In governance, the ability to know the flows is essential. The contrary of this is illustrated with territorial governance, which is handicapped by the fact that territories do not have such a membrane: they are houses without doors or windows.

Use of the same currency and the generalized monetarization of trade do not, for example, allow a territory to distinguish between trade within the territory and trade with the outside world. Unlike a company, the accounts of which are supposed to reflect incoming and outgoing flows, a territory – I am not talking here about the public accounts of the local authority per se – has no accounts. Even in the case of a company, the accounting framework imposed by the International Financial Reporting standards IFRS does not capture the evolution of human and natural capital in essential areas of its activity.¹²⁸ As for production chains, they have neither membrane nor consolidated accounting of the different actors that make up the chain.

Measurement is obviously essential in a context where responsibility is collective and requires the definition of rules of co-responsibility with regard to impacts. As illustrated by the cases of asbestos, tobacco or pesticides, these cannot be reduced to simple causal relationships and their evaluation requires extensive epidemiological studies, giving rise to scientific controversies skilfully orchestrated by the ‘doubt mongers’. This is why designing regulations in governance requires new tools for measuring flows, accounting and describing the mechanisms established to assume responsibility. In principle, quality labels and ISO standards should guarantee procedures.

The effectiveness of governance: The quest for guiding principles

Whilst analysing the scope and limits of economic and social rights, I already mentioned the example of the right to health. Implementing the right to health, something that is subordinated to the material and financial means available to a country, means that a state *must draw inspiration from the best existing examples in the world so as to make the best use of the means at its disposal at the service of health for all*. This idea leads to a fundamental principle of governance – to be effective, one must be willing to learn from others. In a changing society, governance is a product of continuous learning.

126 . P. Calame, Les deux acteurs pivots de l'œconomie : le territoire et la filière, in *Petit traité d'œconomie*, op. cit.

127 . *Passerelle* N° 19, '(Dé)passer les frontières', March 2019.

128 . IFRS: International Financial Reporting Standards; 'The œconomy must promote company functioning and an accounting framework that enables them to assume their long-term responsibilities', P. Calame, *Petit traité d'œconomie*, op. cit.

But what exactly do we learn from others? International institutions in the 1990s responded with something they called '*best practices*', which it would suffice to copy. In terms of responsible investment, asset managers have responded in a fairly similar way: 'in each category of assets, there is a large number of players – investing responsibly means investing preferentially in the player who seems to be the most responsible ('the best of the class')'.

There are two weaknesses in the notion of '*best practices*'. First of all, a practice is, in a given country, the result of a sometimes very long learning process that has involved different types of actors. A '*good practice*' is an expression of the *result* of the process but not of the process itself, which makes practices difficult to transpose – the picture is mistaken for the film. The second weakness lies in the fact that each context is singular, and the configuration of problems and actors is, in every instance, unique.

If best practices cannot be copied, what can be learned from others' examples? Experience, as I was able to discover as early as 1991 at an international meeting held in Caracas on the rehabilitation of run-down neighbourhoods, shows that by comparing the successes and failures of policies in a given area, it is possible to identify *common guiding principles*, generally few in number, compliance with which is the key to success.¹²⁹ This process of discovering the guiding principles has two direct consequences for the responsibility of governments: the need to participate in collective learning processes; and the need to seek, in their particular context, the concrete translation of these guiding principles.

Whilst the statement of rules is an obligation of means, the *statement of guiding principles is an obligation of results*. This dynamic approach is based on the idea that the concrete situations to be addressed are infinitely diverse and, moreover, often unpredictable. It is therefore illusory to claim to design rules capable of guiding the conduct of actors in all possible situations. On the other hand, there can be a constant back and forth between a small number of guiding principles and the infinitely diverse concrete realities to which they respond. Here we find the difference between *responsibility*, which is based on the freedom and discernment of the actors and enables them to invent responses to the situations they encounter, and *duties*, which are presented as the codification of responses in a very large number of predefined situations.

The *principle of active subsidiarity* describes this philosophy and practice of governance. *Subsidiarity* refers to the idea of the autonomy of the actors most directly confronted with having to take an action; the qualifier *active* refers to the fact that these locally invented responses must be inspired by guiding principles that have been drawn up jointly.¹³⁰ In October 2018, the European Commission, following the conclusions of the task force set up to examine the conditions for the effectiveness of European decision-making processes, established this terminology.

The principle of active subsidiarity is the embodiment of the second aspect of the art of governance namely *reconciling unity and diversity as best as possible*. It is striking that this philosophy also guides legal systems in different civilizations. Jérôme Bourgon, for instance, reminds us that Chinese law is based on the fundamental distinction between the *lǚ* – the codified criminal laws, which are few – and the *lǐng* – the moving and proliferating set of administrative regulations, the 'Emperor's order'.¹³¹ The *lǚ*, he says, are few in number, in accordance with the Chinese saying,

129 . P. Calame, *La réhabilitation des quartiers dégradés. Leçons de l'expérience internationale. La Déclaration de Caracas*. Paris: ECLM, 1992, http://docs.eclm.fr/pdf_livre/132LaRehabilitationDesQuartiersDegrades.pdf.

130 . P. Calame, *Le Principe de subsidiarité active. Concilier unite et diversité*, Paris: Institute for Research and Debate on Governance, 1996, <http://www.institut-gouvernance.org/en/analyse/fiche-analyse-32.html>.

131 . J. Bourgon in *Sur les chemins d'un Jus commune universalisable*, *op. cit.*

‘*the more laws, the more crimes*’. Olivier Descamps and Viviane Curran, for their part, show that the opposition so often made between continental law and ‘common law’ is largely artificial. Historically, Roman law was close to present-day common law, based on countless concrete cases and gradually deriving from them a number of major principles; codified law such as the Civil Code, deploying rules applying to a wide variety of cases on the basis of a few overarching principles, basically reflects the same back-and-forth movement between analysis of concrete cases and identification of common principles, but looking not at the bottom-up part, from concrete cases to the principles they reveal, but at the top-down approach, from principles to cases.

At the end of the comparative reflection carried out by the International Working Group on Universally Applicable *Jus Commune*, Mireille Delmas-Marty argued that in each legal tradition there is a bipolarity between ‘*the rule*’ and ‘*the spirit of the rule*’.¹³² The spirit of the rule is the equivalent of the guiding principles in active subsidiarity.

The effectiveness of governance: Multilevel governance

Since the EU Committee of the Regions published the White Paper on Multilevel Governance in June 2009, the concept has spread rapidly and has even been taken up by the OECD.¹³³ The concept follows from an observation: *no serious problem of our societies can be dealt with at only one level*. Education, health, housing or energy – in all cases, to implement an effective and comprehensive policy, these different levels must work together. For a long time, the terms of this collaboration were left unthought. The seemingly opposing centralizing and federal traditions of governance do indeed have one thing in common – they consider it necessary in a democracy for citizens to know who is responsible for what, to distribute exclusive competences to each level of governance, from the highest to the most local level. Since no problem can be managed at a single level, placing cooperation among the levels at the centre of governance leads to a radical transformation; it is necessary to move from the *sharing of responsibilities to shared responsibility*, and it can therefore be said that multilevel governance is a ‘*spatial*’ translation of the principles of co-responsibility.¹³⁴

The concrete modalities are similar to the one just mentioned for the elaboration of guiding principles: each level of governance determines along with the level immediately below it the common guiding principles that it will be up to the latter to implement in the best way possible, according to the local realities. Where traditionally the level ‘above’ laid down rules to which the level ‘below’ had a duty to conform, the principle of active subsidiarity substitutes responsibility for duty, replaces the duty of obedience with a duty of relevance.¹³⁵ The articulation between national legal systems and global *jus commune* flows from this philosophy of multilevel governance.

132 . *Sur les chemins d'un Jus commune universalisable, op. cit.*

133 . European Union Committee of the Regions, The Committee of the Regions’ White Paper on Multilevel Governance, 80th Plenary Session 17 and 18 June 2009, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:211:0001:0027:EN:PDF>

134 . P. Calame and A. Talmant, Du partage des responsabilités à la responsabilité partagée, *L’État au cœur. Le meccano de la gouvernance*, Paris: Desclée de Brouwer, 1997.

135 . P. Calame and A. Talmant, Du devoir d’obéissance au devoir de pertinence, *L’État au cœur, op. cit.*

Chapter 8. GLOBAL GOVERNANCE, JUSTICE AND COMMON LAW IN THE ANTHROPOCENE ERA

Through the chapters we have discovered the different facets of one and the same vital issue, which is to *ensure the survival and continuation of the human adventure in the context of global interdependences that have become irreversible and of human activity that is disrupting the biosphere*. Let us begin by recalling them briefly.

Firstly, *globalization is not economic globalization*, it is the emergence of a new state of humankind, the historical moment when a set of transformations have combined to give rise to a qualitatively different reality from which we must progressively draw all the consequences. Globalization implies the adoption of a *global ethics* underpinning the relations among human beings, among societies and between humankind and the biosphere. This ethics is that of responsibility (Chapter 1).

The second facet is the *definition of community*. Community is a group of people who recognize their duty to assume the consequences of the impact of their actions on the rest of the community. This is what makes the principle of responsibility universal and rooted in every culture (Chapter 2).

The third facet is the *changing nature of responsibility*. Responsibility is anything but a new issue. It is the foundation of legal systems. It is characterized by six dimensions, each defined by a pair of opposite terms: subjective - objective; limited - unlimited in time and space; individual - collective; concerning the impact of past acts - including the future consequences of present acts; taking into account the human community - including the biosphere; obligation of means - obligation of results. For each of these six pairs, we move from responsibility centred on the first term to responsibility centred on the second (Chapter 3).

The fourth facet is the *Universal Declaration of Human Responsibilities*. Its eight principles reflect the evolving dimensions of responsibility: the exercise of responsibility is the foundation of citizenship; everyone is co-responsible in proportion to their knowledge and power; responsibility is objective, its unlimited character deriving from the magnitude of the impacts in time and space; it cannot be subject to statutory limitations when the impact of the acts is irreversible; it has two components, personal and institutional; it is exercised with regard to the goods and natural resources in one's care; responsibility and legitimacy are inseparable; it entails the obligation to unite in order to leave the state of helplessness or to know in order to leave the state of ignorance (Chapter 6).

Fifth, *legal systems are an integral part of governance*. We have underscored nine of its characteristics: in the governance of a changing society, learning processes are decisive; the institution of communities around common values and challenges is a prerequisite for the management of instituted communities; governance has three eternal objectives, which correspond to the three major relationships, among human beings, among societies, between humankind and the biosphere; the legitimacy of governance precedes and encompasses the legality of the exercise of power and is based on a set of criteria of fairness and effectiveness; a major function of governance is to design and implement governance regimes adapted to the nature of the challenges facing society; the public good is not the monopoly of public actors but the fruit of cooperation among actors; the regulations to be established presuppose the measuring of flows of all kinds; in order to

reconcile unity and diversity, cohesion and autonomy, common principles and an infinite diversity of contexts, governance is based on the principle of active subsidiarity and on a constant ‘to-ing and fro-ing’ between common guiding principles and their concrete translation into a wide variety of contexts; governance is multilevel and the relations among the levels are defined by the principle of active subsidiarity and by cooperation among them (Chapter 7).

Sixth facet, *we have precursors*. Over the past two decades, there have been a number of developments that have foreshadowed transformations in responsibility, law and governance: the distinction between globalization and economic globalization has become clear; new partnerships have been made among economic actors, multilateral institutions, and civic, scientific and legal organizations; principles or commitments relating to production methods (labels), investor responsibility (PRI), risk management (TCRD – Test Capability Requirements Document) or governance (ISO 26000) are paving the way for a broader definition of responsibility; laws have been adopted, contributing to a ‘normative densification’ of the environmental and societal responsibility of public and private actors; the precautionary principle has been introduced in a number of constitutions; civil society’s means of action have increased, with the possibility of direct referral to the Constitutional Courts or the European Court of Human Rights; the preambles of the constitutions, affirming common values, the need to preserve the environment and even recognizing a legal personality for the Earth itself (Pachamama) or for certain ecosystems (such as rivers) have become a reference that can be used to oppose laws and rules that do not conform to them; the responsibility of states for the protection of future generations has gained in consistency; the extension of vicarious responsibility has made it possible to take better account of relations of allegiance and power; international and European law have introduced new ways of combining general principles defined at a supranational level with national legal systems, such as in the transposition into national law of European law with national margins of appreciation; co-responsibility and proportionality with the principle of common but differentiated responsibilities; principle of subsidiarity with the International Criminal Court, which intervenes only in the event of failure by national courts; and consideration by national legal systems of international law and cross-case law among national courts, contributing to the drafting of common law supported by regional and national courts (Chapter 5).

These are the elements that we can now draw on to move from the current tinkering approach to a profoundly reorganized global system. We will describe this system in five stages: affirming the global level as the fundamental one of governance and law; adopting a process to provide the world community with constitutional elements; organizing a multilevel global legal system; and establishing global governance regimes and state accountability.

The global level is the fundamental level of governance and law

Today, whether in terms of governance or of the legal system, the national level remains central. It is the fruit of a long history, intimately connected to European history, and more particularly to French history: first that of royal absolutism unifying the legal system and the language, subjugating feudalism; then the history of the French Revolution, deifying the Nation and dismantling the intermediate bodies; then the Napoleonic epic that exported nationalism throughout Europe.

In 1988, when with the Vézelay Group we launched the ‘*Call for a World States-General*’, I remember the reaction of Karl Friedrich Von Weizsäcker, a Christian physicist and philosopher and one of the inspirers of the ecumenical programme Justice, Peace and Integrity of Creation (JPIC). In

essence, he wrote the following to me: 'I do not agree with the idea of a States-General of the planet because it refers to the history of the French Revolution, which is at the origin of the nationalism that has done Europe so much harm.'

The European countries then exported this ideology to the colonized countries. The struggle for independence in most African countries was led by leaders imbued with the nationalist ideology learned from the European colonizers, so that despite the longstanding existence of a pan-African movement, of which Ghana's first president, Kwame Nkrumah, was one of the most prominent representatives, the independence of the colonies consolidated the borders and the state organization inherited from colonization, along with borders that were artificial in terms of the reality of African societies – cutting ethnic communities linked by a long history in two or putting together ethnic and linguistic groups that had no connection among them – and state organization was imposed on intra-border societies. In spite of efforts since the 1950s in favour of a United States of Africa, efforts that materialized in 2002 with the creation of the African Union, inspired by European integration and reproducing most of the EU institutions, African states are all the more concerned with demonstrating their sovereignty as they know the social and historical fragility of their construction. As noted in relation to sovereignty, the historical movements found in Asia, where most countries, starting with the largest – China, India and Indonesia – were either colonized or submitted in the nineteenth century by Europe, independence was synonymous with the recovery of sovereignty over natural resources.

Under these conditions, current global governance is reduced to inter-state relations, in which 'nations' are seen as unquestionable 'natural communities', and the responsibility of states is to represent 'national interests', themselves unquestioned. For the same reasons, there is no common global law but an international law which is in fact inter-state law, dealing only with relations among states and built with treaties signed among them, from which any signatory can withdraw at any time. The most blatant example of this reversibility in the twenty-first century is that of Donald Trump's United States, successively withdrawing from the Paris Climate Agreement and the agreement on Iran, and threatening to withdraw from the North Atlantic Treaty Organization (NATO), the Nuclear Non-proliferation Treaty and even the World Trade Organization.

Today we are in a paradoxical situation. On the one hand, it is clear to everyone that current global governance, consisting of the United Nations, its various specialized agencies and the three economic and financial organizations, namely the two institutions born from Bretton Woods – the World Bank and the International Monetary Fund – and the World Trade Organization, are not up to the task of interdependence; but on the other hand, in the eyes of most states, particularly in the South, this global governance has no real legitimacy for being seen as designed to serve the most powerful countries, so that there is very little willingness to strengthen its prerogatives and means.

The debate in the 1980s and 1990s on 'sustainable development' or the more sectoral debate on what to do about climate change illustrates that it is impossible to talk about effectiveness without talking about justice. Emerging or less developed countries immediately understood in the discourse on the finiteness of the planet's resources or on climate change an attempt by the rich and previously developed countries to deny them their turn and right to develop. Under these conditions, it is understandable that they imposed the concept of 'sustainable development' at the Earth Summit in 1992, the fruit of a political compromise, an oxymoron claiming to reconcile the protection of the biosphere and the right of all to development, and that the vague principle of 'common but differentiated responsibilities' for safeguarding the planet was stated at Rio. This principle has not been applied in practice so far, except that under the Kyoto Protocol signed in 1997, developing countries were not required to make any commitments to limit greenhouse-gas emissions. As for the

Paris Agreement of December 2015, it obliges all countries, regardless of their level of development, to make commitments to reduce their emissions, but these commitments have no legal value whatsoever. The debate, which has been dragging on without leading to a collective financing of adaptation measures to be taken in the developing countries, which are the main victims of climate change, reinforces the feeling of injustice, further undermining the idea of global governance.

Relations among national communities, those that are still sacred today as the only 'natural communities', are comparable to what might have existed in the past among neighbouring villages, trading periodically with each other, fighting from time to time, but knowing that in the end everyone would return to his or her own village. Today, however, relations among national communities should rather be compared to roommates in the same apartment who have to share both space and the use of common areas, and have no choice but to get along with each other.

Thereupon, the notion of *human family* introduced in the first line of the 1948 Universal Declaration of Human Rights became the founding concept. The relationship between the global and the national was reversed. The global here is the main reference point and national states should have, in their relationship with the global level and within a multilevel governance, the type of relationship that local and regional authorities can have today within a national community with states. The guiding principles of the law must themselves be global and then be broken down according to the specific problems to be solved. Inter-state law, governing relations among states, should be only one among other forms of this breakdown.

If the human family is the natural community of values and destiny, the primary aim of its governance will be to ensure its survival, by implementing the three objectives that I have described as eternal: social cohesion, that is the relationship among human beings; peace, that is the relationship among players and societies; and the long-term balance between humankind and the biosphere. *As all three of these objectives are related to the quality of relationships, the goal is to establish or re-establish harmonious and stable relationships.* One of the major functions of a global law and its regional and national variations will be not to sanction but to restore relations.

In the field of economics, I have been able to show that today's economy favours immediate transactions, be it in financial management and shareholding, commercial relations, or even the substitution of labour relations with commercial relations with the great movement of outsourcing and subcontracting that we are seeing with companies.¹³⁶ The economy, on the other hand, will favour the organization of stable relationships.

Can we consider that the current 'International Community', characterized by the UN and its agencies, the Bretton Woods institutions and the World Trade Organization, are preparing for this change? Does the almost unanimous adoption in 2015 by the UN Member States of seventeen sustainable development goals broken down into one hundred and sixty-nine targets and two hundred and forty-four indicators reflect this awareness of unity and the human family and of the pre-eminence of the global over the national? Nothing could be less certain.

To understand the genesis, we have to go back to the mid-1990s, when Boutros Boutros-Ghali was Secretary-General of the United Nations and the fiftieth anniversary of the UN was being prepared. Ideas for reform aimed at strengthening the UN circulated at the time, but failed to come to fruition because of the defiance shown by both the United States and developing countries regarding global

136 . P. Calame, *Petit traité d'économie*, op. cit.

governance. From then on, only human rights remained, and so it was that Boutros-Ghali gave rise in 1993 to the 'Vienna Declaration', according to which all human rights, civil, political, economic, social and cultural rights, were declared universal, indivisible and interdependent.¹³⁷ This has been the trend since 1990 according to which the United Nations Development Programme has regularly published a global report on human development inspired by the work of the Indian economist Amartya Sen and the Pakistani economist Mahbub ul Haq.¹³⁸ The laudable goal was to move beyond the narrow economic view of measuring the development of countries on the basis of Gross Domestic Product, GDP, and to replace it with a Human Development Index, HDI. The unification of human rights led to the eight Millennium Development Goals (MDGs) adopted in 2000 in New York, quantified objectives related to economic and social rights and reflecting what can be considered as the minimum conditions of human dignity: reduction of extreme poverty and hunger; universal primary education; the equality and empowerment of women; reduction of child mortality; improvement of maternal health; the fight against diseases; and a sustainable human environment. Only the eighth goal, 'Develop a Global Partnership for Development', deals with relations between the rich and the poor countries. Later, merging these social objectives with sustainable development concerns gave birth in 2015 to the seventeen Sustainable Development Objectives. Various actors, multilateral institutions, businesses and civil-society organizations were invited to work alongside states to achieve all these objectives. But this very proliferation is reproduced by accentuating the limits of the statement of rights without the corresponding statement of responsibilities. I have seen this with regard to the implementation of the principles of responsible investment; faced with a plethora of indicators, the temptation is great to use the most appropriate indicator as an illustration of responsibilities. *Displaying common goals gives the feeling that there is indeed a 'world community' sharing the same values and cemented by common challenges. Unfortunately, the very multiplication of goals, targets and indicators, failing the affirmation of universal human responsibilities, maintains the illusion of a community rather than building its reality.*

Founding global society and global governance

Given that the global dimension is first, the world community is the natural community of the twenty-first century, but *a community that has yet to be built*; this implies a process *establishing* the community, leading to a World Constitution based on shared values and the recognition of three common goals defining 'what needs to be managed on behalf of humankind'. The function of such a Constitution is to give meaning – both significance and direction – to the human adventure. In accordance with the tripod of governance of societies in motion, it must affirm in its preamble the world's shared goals and values and then describe the learning processes through which the regulatory methods best suited to these goals and values will gradually be invented.

Community and global governance do not imply a 'world state'. Our mental models today are so inclined to equate governance and the state that it is useful to remember that this is not the case. This is an age-old debate: Can a community manage itself on a sustainable basis without hierarchical authority, whether from a king or a dictator concentrating all the powers or whether, as in our democracies, from a balance of executive, legislative and judicial powers that are partially independent of one another (I use the term 'partially independent' deliberately because there are necessarily mutual checks or influences that can include removal of the executive, dissolution of parliament, appointment of judges to the Supreme Court, etc.)? This debate agitated the Jewish

137 . Boutros Boutros-Ghali, https://en.wikipedia.org/wiki/Boutros_Boutros-Ghali.

138 . Human Development Index, https://en.wikipedia.org/wiki/Human_Development_Index.

community in the fifth century BC when the priestly and aristocratic elites of Judah returned from their deportation to Babylon. The Bible tells the story as invented after the fact and attributed to the prophet Samuel, who asks the Jewish people if they really want to establish a monarchy.¹³⁹ He points out all the drawbacks. The Jewish people reply that they are aware of this but persist in wanting a king to lead them, as do all the peoples around them. The alternative that Samuel implicitly offers is that of regulating the community through rules, in this case the Alliance with Yahweh. We know how oppressive a theocratic drift can be, but the fact remains that the intuition of managing the community by means of commonly agreed rules deserves attention at precisely the moment when transnational and plural communities need to be established. This is already on a small scale what exists in management of the commons.

Closer to home and on a scale approaching the global scale, the integration of Europe is an example of stateless governance. The intuition of Europe's founding fathers, and in particular Jean Monnet's, was that the peoples of Europe, even in the aftermath of World War II when the collapse of the states and the crisis in nationalism opened a window of opportunity, were not prepared to merge into a super-state. Hence the fertile idea of dissociating power of *proposal*, having a monopoly on stating the common interest, and a Council of States, later supplemented by the European Parliament, in charge of *deciding*. As noted in an interview given to the magazine *Toute l'Europe* in 2010 by George Berthoin, who as Jean Monnet's chief of staff accompanied the entire European integration process since the Schuman Declaration of 1950, 'When [the Schuman Declaration] was implemented in 1952, we discovered that what seemed historically impossible became possible. At the time we were considered as somewhat irresponsible idealists, but in fact we were realists before the realists of the time.'¹⁴⁰ He continued further on, 'What we have achieved in Europe will one day be usable in terms of global governance, and this is the great challenge of the twenty-first century.' The development of European law is part of this stateless governance. At a time when a Copernican revolution in governance and law is becoming vital, this lesson gives hope to those who, today in their turn considered as 'somewhat irresponsible idealists', may prove to be the true realists. In any case, the European Union's model of governance remains a source of inspiration because there is no equivalent at the global level, where UN agencies ensure coordination among the states but do not have the responsibility of developing the common interest, much less a monopoly.

What could a founding process be?

It must be consistent with the radical novelty of its purpose. It can be neither a new summit of heads of state, like those that punctuated the 1990s and of which the Rio Earth Summit in 1992 was the most successful example, nor a meeting of delegates from the various national parliaments.

The example of the Earth Summit helps to explain the impasses of state summits. Responding to the wishes of Maurice Strong, many non-state actors, civic organizations, scientific communities, businesses and local authorities were involved in the preparation and holding of the summit, but were relegated far from the official delegations. As for the 'meeting of heads of state', it was in fact the culmination of a process led by diplomats; in practice, each head of state marched to the podium to deliver his message without listening, with a few exceptions (such as Fidel Castro, who did not

139 . 1 Samuel, Chapter 8. For an interpretation of the historical context of the writing of this book, see M. Liverani, *Más allá de la Biblia*, *op. cit.*

140 . Interview of Georges Berthoin by the online journal *Toute L'Europe* in 2010: <https://www.touteurope.eu/actualite/georges-berthoin-entre-l-inspirateur-monnet-et-l-homme-de-pouvoir-schuman-s-est-produit-un.html>.

have a plane waiting to take him back to Cuba), to what his colleagues had to say. Bearing in mind the symbolism of this distancing of the non-state actors, COP21, which met in Paris at Le Bourget in December 2015, managed to ensure that the different types of actors were physically in the same place, but the separation between inter-state dialogue and other actors remained.

The Constituent Assemblies model is of greater interest, with delegates elected by the whole of society but then ineligible for legislative functions, which in principle avoids reproducing political cleavages. Nevertheless, what we need to build the world community is of an entirely new kind. It would be a process closer to deliberative democracy, in which citizens are drawn by lot to reflect the diversity of society, receive the best information available on the subjects they are to deal with, and deliberate with a view to arriving at consensual proposals.

In 2016, I proposed a model of this type for the laying of new foundations of the European project; it consisted of a two-stage process, the first at the level of the European regions and the second at the level of Europe as a whole under a year-long information and deliberation process.¹⁴¹ This two-stage deliberative model would be very appropriate for building the world community, this time at the level of the regions of the world. Experience of the various summits of the 1990s, for example on higher education or on science, shows that the dialogues that took place at the level of the regions of the world were often richer than those that were held at the global level. Moreover, with a view to a renewed and multilevel global governance, the level of the regions of the world is particularly relevant, even in the absence of political institutions comparable to the European Union or the African Union at this level.

In view of elaborating Charters of Societal responsibilities of different socioprofessional spheres, which will be the basis of a renewed global social contract and the details of which we will discuss in the next chapter, a global founding process should bring into dialogue not only states but also the different socioprofessional actors and stakeholders of the different global challenges to be taken up jointly. The Secretary General of the 1992 Earth Summit Maurice Strong's intuition was already pointing in this direction. He wished to involve non-state actors in the process, and so, within the UN framework, 'Major Groups' were set up and to reflect the stakeholders in sustainable development.¹⁴² Nine Major Groups were instituted: Business and Industry, Children and Youth, Farmers, Indigenous Peoples, Local Authorities, Non-Governmental Organizations, Scientific and Technological Community, Women, Workers and Trade Unions. The list sounds like a poem by Jacques Prévert, but the intuition is interesting.

On a modest scale, during the 1990s, the Alliance for a Responsible and United World explored the modalities of such an approach. To this end, it combined what we had called the '*three paths of the Alliance*', reflecting the threefold diversity of the world: the diversity of regions and cultures – the '*geocultural*' path; the diversity of socioprofessional milieus – the '*socioprofessional*' path; and the diversity of challenges to be taken up in common – the '*thematic*' path. The World Citizens Assembly of December 2001 was designed on these foundations and became the starting point of the present reflection with its adoption of the Charter of Human Responsibilities. The 400 participants had been chosen to ensure a balance among the regions of the world, among socioprofessional milieus and among those taking up the various challenges. The selection method for participants was based on a reputational principle, by cross-referencing the proposals of different informants. But what was possible for the Alliance is not possible for a truly great

141 . P. Calame, Une réponse au Brexit : organiser l'Assemblée instituante européenne, http://blog.pierre-calame.fr/public/FR_article_assemblee_instituante.pdf.

142 . Sustainable Development Knowledge Platform, About Major Groups and Other Stakeholders <https://sustainabledevelopment.un.org/aboutmajorgroups.html>.

Founding Assembly, for which we can decide to draw lots in each milieu among those who have shown their commitment to world affairs by signing the Charter of Societal Responsibilities specific to their milieu. It is conceivable that with the help of social networks, such a deliberative process, reflecting the true diversity of global society, could have a far-reaching impact.

In 2012, when our reflection led to the drafting of the Universal Declaration of Human Responsibilities presented in Chapter 6, we were driven by the parallelism between the Universal Declaration of Human Rights and the Universal Declaration of Human Responsibilities. Like the former, the latter was, in our view, to be adopted by the heads of state at the UN Plenary Assembly. But to expect states and states alone to adopt a declaration that makes them accountable to the international community is, as the Chinese proverb says, a bit like wanting to cut the handle of a knife with its own blade. Hence the preference for a multi-stakeholder Founding Assembly.

A World Constitution and governance bodies reduced to the essentials

A World Constitution must speak to all societies, touch their hearts. This is the fundamental principle of legitimacy in the exercise of power and is why, recalling the history of the search for a global ethics, we felt it was so important that the values on which governance and common law are based should be effectively owned by the various societies. It is therefore necessary to imagine that, at the end of the deliberative process just outlined, a World Constitution will be drafted, submitted to broad public debate and then adopted, giving priority to the voices of the various milieus that have drawn up their own Charter of Societal Responsibilities. It might be objected that the snake is biting its own tail since these charters are themselves supposed to stem from a Universal Declaration... which we are proposing to adopt. On the contrary, it is consistent with governance based on permanent learning processes – a virtuous spiral, not a vicious circle. We shall see in the next chapter that an autonomous dynamics for the elaboration of societal charters, concrete applications of the Universal Declaration of Human Responsibilities, is indeed possible.

Another objection to a multi-stakeholder adoption process such as this is that, as experience shows, everyone comes with their own concerns and wants them to be incorporated into a founding text. The example of the 1992 Earth Summit shows that this risk must be taken seriously. The ‘People’s Treaties’ adopted on that occasion do not provide the basis for a real strategy because they put together the concerns of all stakeholders to reach what could be called an ‘additive consensus’. This is also the case for the sustainable development goals we have discussed; each of the 169 targets identified has its own rationale, but adding them together weakens the strategic scope for their adoption. The participatory process of drawing up the Constitutions of Ecuador and Bolivia in the early 2000s led to a similar misadventure. Proudly presented by their promoters as ‘Constitutions of a new generation’, they are characterized above all by their volume. Ecuador’s Constitution, adopted by referendum in September 2008, is more than 200 pages long and has 400 articles. Moreover, the long-term relevance of some of these articles is doubtful, even though a constitution should be a fundamental charter for the whole of the society concerned. But in the case before us, this risk can be avoided by defining from the outset the format to be achieved by the Assembly, namely shared values, common goals – the contribution of states to peace, human rights and human responsibilities – and a small number of guiding principles, in accordance with the philosophy of active subsidiarity; in a word, a World Constitution reduced to its essentials, its preamble.

It would look like this:

* An introduction affirming the unity of the human family and the need of common governance for the transition to sustainable societies, taking up some of the points of the preamble to the Universal

Declaration of Human Responsibilities: the evolution of the world irrevocably transforms humankind into a community of destiny; awareness of our shared responsibilities towards the planet is a condition for the survival and progress of humankind; our co-responsibility is to preserve our unique and fragile planet; reciprocity between the members of the community is the foundation of mutual trust; and rights and responsibilities are inseparable conditions for dignity and citizenship.

* Two central affirmations. The first is related to *objectives*: the aim of global governance is to ensure the continuity of the human adventure by ensuring harmonious relations among individuals, among societies, and between humankind and the biosphere. The second is related to *legitimacy*; for governance to be legitimate, it must conform to an ideal of *justice* (*'respect for the common values that unite a community is the ultimate basis for the legitimacy of the exercise of power'*, in the words of the Universal Declaration) and to a requirement of *effectiveness*.

* The statement of *governance principles to be implemented at the global level*: establishment of governance regimes suited to the different types of goods and services; co-production of public goods through cooperation among actors; traceability requirements, without which shared responsibility is not possible; implementation of the principle of active subsidiarity; and the design of multilevel governance and the rules of cooperation among these levels, from local to global.

Global governance could furthermore be endowed with three bodies: a Constitutional Court; a Commission, inspired by the European example; and a College of Custodians of the World Commons ensuring the integrity of the commons.

The Constitutional Court. Its function would be to ensure compliance by public and private actors with the principles set out in the Constitution. In the spirit of restoring fair relations, the Court would not be in a position to impose sanctions such as fines or imprisonment, but it could act broadly and through a variety of channels to denounce, bring in actors who have the means to intervene, and recommend boycotts. It could reflect the diversity of actors who contributed to the drafting of the Constitution. It could be called upon by civil-society organizations or by any other public or private actor with a simple screening procedure that would make it possible to consider only actions that are actually related to the spirit and letter of the Constitution. Its members would belong to socioprofessional networks that have adopted a Charter of Societal Responsibilities, a concrete translation of the general principles of the Universal Declaration, and would also commit personally to bring their behaviour and way of life into line with the principles of the Charter.

The main function of the *Commission* would be to lead the collective work of developing guiding principles for policies of global concern, for 'what needs to be managed on behalf of humankind'. This would, of course, include the global commons as a condition of biosphere integrity.

The *College of Custodians* would be in charge of ensuring the effective integrity of the commons.

A universally applicable jus commune based on the general principles of responsibility

We have shown in the previous chapters that a twofold approach, historical and intercultural, makes it possible to affirm that the different legal systems inherited from history share a number of founding principles. These common principles give credibility to the idea of a global common law that is 'universally applicable', i.e. can be accepted by all and adapted to each culture and each level of governance. And the same approach has established our conviction that *responsibility will be the*

backbone of this universally applicable common law. Responsibility alone meets all the necessary criteria. Although it is a principle common to the various societies, it is not expressed in identical terms from one society to another, approaching the idea of duty in societies where the collective takes precedence over the individual, and the idea of freedom owned in societies where, conversely, the individual takes precedence over the collective; it is already present in all legal systems; it builds a bridge between the past and the future as it is fed by all responses given in the past to concrete situations whilst changing to meet the challenges of globalization; finally, as we have seen with regard to the six dimensions of responsibility, it is emblematic of the ongoing Copernican revolutions.

This global common law of responsibility and its implementation can already benefit from the *collective learning processes of the last two centuries*, by using either the *institutions* that have already been established, or the *procedures* already designed, or the *ways of doing things* already enshrined in practice. Six historical experiences are among the many sources of inspiration.¹⁴³

The first source of inspiration was *the many follow-up actions to the Universal Declaration of Human Rights*, which celebrated its 70th anniversary in 2018. It gave rise to institutions such as regional human rights courts, in particular the European Court and the Inter-American Court. This regional level, with its cross-case law, corresponds exactly to the needs of the new law of responsibility. Hence the proposal to *change these Courts into Regional Courts of Rights and Responsibilities*. This is all the more natural as rights and responsibilities are two sides of the same coin.

The human rights example also pointed the way to a progressive realization of general principles, supplementing nine international treaties with numerous protocols ranging from 1965 (International Convention on the Elimination of All Forms of Racial Discrimination) to 2014 (Optional Protocol to the Convention on the Rights of the Child).¹⁴⁴ Each of these treaties has established a *committee of experts* to monitor the implementation of the provisions of the treaty by the state parties. This allowed for the progressive normative densification of what in 1948 was only a declaration of intent. This precedent will save decades by hitching the human rights car and the human responsibilities car to the same locomotive. Implementation of human rights has also led to the establishment of the four monitoring bodies – the Human Rights Council; the Universal Periodic Review; the Special Procedures; the Complaint Procedure – and nine follow-up and monitoring committees, each corresponding to one of the treaties. None of these bodies has the sanction and policing means necessary to enforce sentences, but together they form a social and political context that places on the defensive those states not complying with either the spirit of the Universal Declaration they have signed or with the clauses of the treaties they have ratified. The *Universal Periodic Review* provides, in particular, an opportunity to review the human rights record of all UN Member States and to receive contradictory views from civil-society organizations during the reviews. So there is no need to reinvent hot water, just to extend the approach and the bodies to responsibility or to copy the mechanisms.

The second source of inspiration is the *International Labour Organization*. It celebrated its centenary in 2019. The ILO shares with the Economic and Social Councils the intuition that *representation of society is not limited to political representation* but is expressed through dialogue among different actors. Forms of representation have often aged – they favour two types of actors:

143 . My deep gratitude to Mireille Delmas-Marty, whose work group on a universally applicable common law allowed me to hear the testimony of specialists on each of these fragments of international law. The lessons I've drawn here are my own, of course.

144 . United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org>.

‘employers’ on the one hand and ‘employees’ on the other. This bipartition is far from representing the diversity of society or even the diversity of the labour market today. But the example of the ILO can inspire common law that can be universalized on two levels.¹⁴⁵ First of all, its expertise makes it *an accepted recourse by various parties in the event of a dispute*, which is a good reflection of the priority given, in the area of responsibility, to arbitrations accepted by the parties. Secondly, the ILO, with its expertise and comparative knowledge of situations in different countries of the world, advises governments wishing to reform their own labour laws. These two ideas, applied to the implementation of a global law of responsibility, confirm the interest of having at the global level what I have previously described as a ‘*Constitutional Court*’ made up of representatives of the various socioprofessional colleges that will have had to set up their own Charter of Societal Responsibilities.

The third source of inspiration is *European law*. Its implementation, through the obligation for Member States to transpose European law into their national law but with a ‘*national margin of appreciation*’ is a good example of reconciling unity and diversity. This historical teaching can be used for a global law of responsibility, which, failing a global state, will gradually take shape and strength through its transposition to regional and national levels.

The fourth source of inspiration is the *International Criminal Court*. It intervenes in only a subsidiary manner, when national courts have proved incapable of prosecuting and subsequently of effectively punishing perpetrators of crimes against humanity. This principle must be generalized to a global law of responsibility where all jurisdictions form an interconnected network.

Fifth source of inspiration, the *Constitutional Courts*. *Civil-society organizations*, which are gradually forming international networks, are often in the best position to identify serious breaches to the principles of responsibility. They must therefore be in a position to refer cases directly to the Constitutional Courts or tribunals and are sometimes the only ones able to present facts and evidence to the Courts of Justice. Moreover, civil-society networks have invented new forms of cooperation with large companies, as these latter are, in practice, less able to identify breaches of the principles of responsibility within global production chains that often involve hundreds of actors.

Multilevel governance and law

The conception of a universally applicable common law must derive from the two complementary principles of governance: *active subsidiarity and multilevel governance*.

The entire legal system must be considered as a whole, not a juxtaposition of systems in which universally applicable global law would be just another layer. The challenge is not to set up an institution but to *set up a global process for the development and implementation of a law of responsibility mobilizing, around common principles, different levels and different types of actors*. The common principles are those of the Universal Declaration. They translate into countless concrete situations that will gradually give them consistency.

It is here that the expression ‘universally applicable common law’ and the distinction between the spirit of the law and the rule take on their full force. The goal is not to build a uniform global law, a kind of global civil code, which, based on a few fundamental principles, would cover all possible

145 . J-M. Servais in *Sur les chemins d'un Jus commune universalisable*, op. cit.

situations. A constant back and forth, possibly leading to reviewing the fundamental principles in the light of experience, must be established between the principles and their application to the diversity of concrete cases. This must be done in three directions, those I have called the '*three paths*' in connection with the Founding Assembly.

The first path, the 'geocultural' one, is *the transposition of the principles at the regional and national levels*. It may be the adoption of the Universal Declaration of Human Responsibilities in the preamble of regional or national constitutions, as has been done for human rights or for the precautionary principle (which is itself no more than a variation of one of the principles of the Universal Declaration). It can also be the transposition of the general principles into national law, using regional and national margins of appreciation as in the case of European law. These are the means through which the principles resulting from the comparative approach can be truly reacclimatized in each culture. There is nothing to prevent such reacclimatizing from taking place through a plain and simple transposition from one legal system to another; history shows that legal systems have constantly influenced each other. But it can also be a 'cultural translation' of the general principles of responsibility in a country's culture. What is important is that, beyond the jurists, the population itself identifies with the transposition, that it is experienced as a continuation the tradition of justice specific to each culture.

The second path, the 'socioprofessional' one, is that along which the principles are applied to different socioprofessional milieus. It is reflected in the drafting of Charters of Societal Responsibilities specific to each milieu. We will flesh out the philosophy and practice of this process in Part Three.

Finally, the third path, the 'thematic' one, is that of applying the general principles to different domains, '*those that need to be managed on behalf of humankind*'. This is particularly focused on the global commons that humankind ultimately has 'under its care' and the management of which it must delegate under multilevel governance.

Given the role that regional and national courts will have to play in the deployment of such multilevel global law, one of the major functions of the global level is to *build a common bank of case law of the different cases that have been dealt with*. This common bank, fed in particular by the practice of cross-case law among Courts of Justice, will have three functions: to be *a source of inspiration* available to all, with the virtue of accelerating legal cross-fertilization and the development of a common corpus; to constitute the *basis of a common teaching of law* because, as noted by the US jurist Vivian Curran, national courts must increasingly see themselves as players in international law – it follows that the development of a common culture of judges is a powerful accelerator of a dynamics already under way; finally, to allow, in the light of the myriad concrete cases examined, to *review periodically the guiding principles themselves*.

Scale of the impact and scale of the law

The impact of the activity of different types of actors can range from the local level to the global level. Today, international law is the law of relations among states – the level at which problems are dealt with is not defined through consideration of the magnitude of the impact but through that of the legal nature of the actors. A universally applicable common law introduces another Copernican inversion: *logically, the magnitude of the impact is that which determines the level of jurisdiction to be addressed*.

How would this be applied? Let us take one of the characteristic examples of current economic globalization, that of the environmental or social damages caused by a subcontractor or supplier in a country that is not the country where the company organizing the sector is registered. With a global law of responsibility, the national court of the country where the parent company is registered will have to acknowledge its jurisdiction to judge the responsibility of the parent company, whilst the Court of Justice of the country where the damages occurred may do the same, but the different courts, considered as part of the same global law of responsibility system, should be obliged to enforce the sentence handed by another court, subject to its conformity with the general principles of responsibility and with case law.

By virtue of the global nature of this law of responsibility, the *various international or bilateral treaties should, within a period to be determined, for example ten years, be brought into line with the general principles of human rights and responsibilities*. Indeed, as things currently stand, the various organizations of the current international system ignore one another, failing an actual hierarchy of the norms. Thus, multilateral or bilateral trade treaties are evolving in a world that is closed in on itself, with no reference to international treaties on rights or the environment.

I have shown in the preceding pages that in trade treaties, the notion of the ‘legitimate expectation’ of investors must be supplemented by the notion of ‘legitimate confidence’, namely that which each is entitled to expect from the other. Legitimate confidence will be based on the fact that we are dealing with responsible partners, thus implementing, with no need for this to be specified in the treaties, the general principles of global law, in particular the principles of responsibility. This gradual homogenization of the various international treaties is an integral part of what I have called the application of general principles to what humankind must manage, where each international treaty is deemed to be the expression of an issue to be managed jointly.

The responsibility of states under a common global law of responsibility

When analysing in Chapter 4 the emergence of ‘societies of unlimited irresponsibility’, we noted the role played by the sovereignty of states, which are the bearers of the particular interests of a national community in a globalized world, while at the same time claiming a specific status, justifying that their actions should not be subject to the control of any other entity. And I concluded by saying that no progress would be made in thinking about responsibility until we agree to desacralize states in the international arena.

Nonetheless, under a universally applicable common law, the responsibility of states should be considered from two angles: *that of actors like any other*, whose impact and share of responsibility should be assessed according to the same general principles as for other actors; *that of an important level of governance* and implementation of the law within a multilevel governance ranging from the global level to the local level.

The first angle is easy to summarize and stems from the fact that *the magnitude of the impact is what determines the level at which responsibility is to be assessed, not the legal status of the actors*. As such, the state is first and foremost a stakeholder, the decisions of which have a transnational impact, both on other societies and on the biosphere, placed at the same level as other transnational stakeholders such as large companies and banking institutions. *The only thing that matters here is objective responsibility*. At the international level, states are placed under the scrutiny of others and

are subject to the same jurisdiction as others. In the event of inaction, the failure of states is of the same nature as the lack of due diligence or vigilance on the part of companies that are part of global production chains.

Nevertheless, even if ‘desacralizing’ the state is in itself a cultural revolution, the second angle of approach is in fact the most fruitful; we will now turn our attention to it by distinguishing four eminent roles of the state: to participate fully in global governance under multilevel governance; to establishing governance regimes in line with the three fundamental objectives; to set the normative conditions needed to trace the impact of all actors; and ultimately to assume the responsibilities that fall on national actors.

To participate fully in global governance under a multilevel system. The eighth principle of the Universal Declaration of Human Responsibilities states that ‘[n]o one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed.’ This principle particularly applies to states. Whether the issue is justice or tax evasion, the ability to react to transnational economic and financial powers or the harnessing of new technologies, many governments are seen to be shedding crocodile tears in the political debates, claiming that ‘there is no alternative’ (Margaret Thatcher’s famous ‘TINA’ syndrome), complaining about unfair competition in a race for the ‘lowest social and environmental bidder’ or acknowledging that a particular state is not in a position to overturn the table and propose a new model of economic development compatible with the pursuit of the human adventure. Crocodile tears in the sense that those complaining have neither made the effort to unite to do away with helplessness or to think and become informed so as to imagine global alternatives to the ready-to-wear thinking in which the political elites so often indulge. *Failing to unite with others in order to step up to the scale of global issues is indeed responsibility for wrongful failure.*

It is also in the context of multilevel governance that each state exercises with others a shared competence that will lead it to *transpose into domestic law the general principles of responsibility and to implement court decisions emanating from other national courts of justice in application of these general principles*. The famous dispute between Ecuador and Chevron mentioned in Chapter 4 comes here as an illustration of the irresponsibility of the current legal systems. The company’s impunity was ensured by the fact that the United States dissuaded third countries from seizing Chevron’s assets in order to ensure compensation for the Ecuadorian population seriously affected by the actions of Texaco, which Chevron had subsequently acquired. Under shared competence, this refusal would hold the states responsible.

The obligation to unite includes establishing common arrangements. The International Financial Reporting Standards (IFRS) in accounting mentioned in Chapter 7 are an example; they are not strictly speaking state competence, but today only states are in a position to encourage their evolution in order to integrate human and environmental dimensions into corporate accounting. A similar accounting framework should be designed for states themselves.

State responsibility and governance regimes

The second responsibility of states is to set up *appropriate governance regimes*. This question goes beyond the law in the strict sense of the term but has legal dimensions that cannot be ignored. It is the application of the sixth principle, *[t]he possession or enjoyment of a natural resource induces*

responsibility to manage it to the best of the common good. 'The principle involves three of the four categories of goods identified in relation to governance regimes: Category 1 goods, which are destroyed when shared; Category 2 goods, which are divided when shared and are finite in quantity; and Category 4 goods, which are multiplied when shared. All global commons fall into one or another of these categories.

With the exception of soil, which is territorialized by nature, most of these commons are both part of a territory and deterritorialized. This is the case for water, energy, climate and biodiversity. The territorialized part is placed 'under the custody' of the states that control the territory and it is up to them to set the rules of responsibility of the actors who hold it and the governance regimes that guarantee its integrity through a land governance regime, management of the water cycle, a governance mechanism for fossil energy ensuring that the country does not exceed its greenhouse-gas-emission quota and the maintenance of internal biodiversity. As for the deterritorialized part, this implies giving a legal status to the global commons, which today, as has been noted, are 'res nullius', that is, non-existent in law simply because they are not subject to private or state appropriation. Granting these commons legal personality is a sleight of hand required by the currently exclusive role of human rights in the international conception of the law. We need to move towards 'public trusts' that have custodians.

Governance regimes have also been introduced in relation to the effectiveness of economic and social rights. I have taken the example of health; it is the state's responsibility to reconcile, in the best possible way, everyone's right to health within the limits of the technical and financial resources available in each country. In this case, the states' responsibility is translated into the terms of active subsidiarity, namely looking at others' experiences, drawing guiding principles from them and applying them to one's own case.

Establishing the membranes and conditions of traceability, without which, in the absence of adequate data, it is impossible to measure the impact of the various actors, is an integral part of governance regimes. I have just alluded to this with regard to accounting standards, but this is a much broader issue. Let us take the example of businesses and financial institutions. It is imperative to lift all the legal, national or monetary veils concealing the reality of the relations of power and allegiance among actors or the materiality of trade flows. Then, we must be able to effectively question the exercise of their responsibility of those managers, directors, administrators, parliamentarians and shareholders who actually exercised power at the time a harmful decision was made. For example, a rule according to which voting rights would be granted to shareholders only after they have held shares in a company for a certain period of time can only be adopted at the international level. This also means putting an end to anonymity in company shareholding. The rule according to which there are no statutory limitations to responsibility when impacts are irreversible imposes the establishment at the international level of a common body of rules on this issue.

The ultimate responsibility of the state

The fourth role and responsibility of the state is to *be ultimately responsible for national actors that can be considered 'under its watch'*. I have stressed that responsibility to others is by its very nature an expression of belonging to a community. It follows that evading responsibility is tantamount to excluding oneself from the community. For those holding power, this exclusion should logically result in a ban on holding corporate offices. In a natural community that has become the whole of humankind, states are jointly and severally responsible for implementing this exclusion; one cannot

be banished from the city when it has become global, but a ban can be decreed on exercising certain offices and this should encompass the entire community. This is the most effective measure to prevent risky behaviour by the leaders of economic and financial organizations.

Part Three: The Actors' Charters of Societal Responsibilities

Chapter 9. CHARTERS OF SOCIETAL RESPONSIBILITIES FOR SCIENTIFIC RESEARCH AND FOR HIGHER EDUCATION

Prologue: When the children and the young lead the way

In Western culture, centred on human rights, responsibility seems to be reserved for those who hold institutional, economic, intellectual or financial power. This is the face-off described at the beginning of the book between the 'powerless' who have to claim their rights, a condition of their dignity, and the 'power and knowledge holders' whose responsibility it is to make the rights of the former effective. From this perspective, the responsibility of children and the young appears to be an oxymoron. Are they not, as opposed to those who are 'responsible', or in charge, those who cannot and do not know? Those who must be taken care of?

The story that follows reverses this perspective; the reversal is inevitable because our grandchildren will have to deal with the consequences of the unlimited irresponsible society we have formed. We have placed the burden of our irresponsibility on the shoulders of future generations.

The story begins in 2001, with the adoption by the World Citizens Assembly of the Charter of Human Responsibilities. Two Brazilian women, Isis de Palma and Rachel Trajber, actively contributed to the preparation of this Charter.¹⁴⁶ Rachel Trajber is a pedagogue specializing in environmental education, and Isis de Palma specializes in communications. In 2003, Ignacio Lula was elected President of Brazil on a slogan of participatory democracy. In the early years of his term, he launched a series of broad national consultations. Rachel Trajber was appointed General Coordinator of Environmental Education, a strategic position between the Ministry of Education and the Ministry of the Environment. Riding the wave, she launched a vast process that would mobilize for three triennial conferences, in 2003, 2006 and 2009, 20 thousand schools and several million children and youngsters. The process followed an active pedagogical approach – children and youngsters were involved collectively in concrete projects; they were supervised by facilitators who were close to them in age, between 18 and 25 years old; and they elected their delegates to a National Conference in Brasília.¹⁴⁷ In the movement of the Charter of Human Responsibilities, the goal of this bottom-up process was not to make demands on those with power but instead to enable children to come together to define their conception of their own responsibilities. This was the meaning of the title of the programme, '*Vamos cuidar do planeta*': we are going to take care of the planet. *Prendre soin*, take care, *cuidar*, in French, English and Portuguese, is the very expression of responsibility for what one has in one's care.

In 2006, Edith Sizoo, international coordinator of the collective work of the Charter, participated in the National Conference and was bedazzled. With tears in his eyes, President Lula received a

146 . Charter of Human Responsibilities, http://base.alliance-respons.net/docs/charte_eng.pdf

147 . The story is told in E. Sizoo, *Responsibility and Cultures of the World*, *op cit*.

delegation of children who came to present to him... their own Charter of Responsibilities. ‘This is the first time,’ said the President, ‘that people have not come to see me to ask but to offer!’ In the contagious emotion of the moment, Edith Sizoo asked the young delegates: ‘Why don’t you invite young people from all over the world to draw up a World Children’s Charter?’ The idea was too good, too obvious somehow, not to go ahead with it. And so in June 2010, 400 young delegates from around the world, aged 11 to 15, met for a week in Brasília. I, too, was overwhelmed by this conference, by the enthusiasm and energy it generated. One sentence symbolizes the Youth Charter: ‘*If not us, who? If not now, when?*’ A sentence that sums up what is at stake in responsibility: responsibility enthusiasm, responsibility commitment, not responsibility burden or responsibility guilt. This is essential. Since 1992, modules in education for sustainable development had proliferated; they emphasized the multiple dangers facing the planet, the climate, biodiversity, the oceans, etc.; but although they were well meaning and claimed to make students aware of these issues, in practice they fostered a feeling of guilt among young people, who were by no means guilty.

After the Brasília conference, the torch was taken up at regional or national levels in different continents.¹⁴⁸ In Europe, the organization Monde pluriel, facilitated by Delphine Astier, coordinated actions in ten countries of the European Union.¹⁴⁹ In 2015, during the preparations for COP21 and the Paris Climate Agreement, I was participating in a group of people convinced that education would be an essential lever for the transition, which presupposes the emergence of an awareness of global citizenship for which the current education systems are not prepared. This was the meaning of the Manifesto, ‘*Pour vivre ensemble à 10 milliards, changeons l’éducation*’ [For 10 billion of us to live together, let’s change education].¹⁵⁰ The manifesto was picked up by the French Minister of Education, Najat Vallaud-Belkacem, and she organized, for the first time in the framework of a COP, a thematic conference on education. Monde pluriel was involved. At its initiative, a group of youngsters from different European countries prepared its own charter. We can take away five major ideas: *personal commitment* is inseparable from the *commitment of others* – ‘If not us, who? If not now, when?’ also required the question ‘*If not with you, with whom?*’; an aspiration of *interdisciplinary training* that helps to understand the complexity of the world and to face its real problems; the *link between reflection and action* – the wish that concrete interdisciplinary projects for the application of knowledge should be the norm; an *aspiration for international exchanges*, a desire ‘for a school that develops a real interest in others, whether here or on the other side of the world’; *co-responsibility* with other actors, particularly at the territorial level – ‘meet within the local community all those who are committed to sustainable development’. In response to the youngsters, a French official from the Ministry of Education said that the Ministry was preparing a directive, while the Finnish official explained that the Ministry had drawn from the collective experience a number of guiding principles, and that it was up to *each territory to translate them into practice, in accordance with the principle of active subsidiarity*.

This youth dynamics was rich in general lessons on the issue of Charters of Responsibility.

To start with, they are *collective Charters*. They combine personal commitments, collective commitments and institutional commitments. A new awareness of responsibilities certainly implies personal commitments, a little like the ‘*colibris*’ [hummingbird] movement, but beyond their

148 . For the methodology, process, atmosphere and outcome of the International Conference of Youth, Let’s Take Care of the Planet, 2010, see the official video, http://www.alliance-respons.net/bdf_fiche-action-23_en.html (in six languages).

149 . Monde Pluriel, <http://www.mondepluriel.org/>.

150 . Collectif Paris-Education 2015, *Manifeste pour une éducation à la citoyenneté planétaire. Pour vivre ensemble à 10 milliards, changeons l’éducation*, Paris: Les Amis de Circée, 2015.

‘witnessing power’, in order to be effective they must be included in collective commitments.¹⁵¹ Charters are the fruit of dialectics; to emerge, they require the existence of networks, and their discussion and adoption is in turn a means of strengthening and expanding networks, as illustrated by the youngsters’ aspiration to take part in international exchanges.

Then, they are charters that *challenge how institutions work*. As emphasized in the December 2015 Manifesto, implementing Youth Charters of Responsibility *presupposes a deep transformation of the education system* – ‘taking care of the planet’ is the *leaven and the lever*. Monde pluriel therefore developed a programme with several French regions, called ‘Climate change is happening in my home, so let’s take charge of our air’.¹⁵² Through this programme, which involves youngsters in monitoring the air quality in their neighbourhood, young people are invited not only to think about their own mobility but also to acquire notions of physics and chemistry, and even mathematics and philosophy. Promoting this sort of transformation of the education system does not contradict the needs of the labour market. On the contrary, the pedagogical approach of the ‘Let’s Take Care of the Planet’ network develops the know-how and knowledge most sought after today by employers, namely the capacity of cooperation around a project, a sense of initiative, linking various disciplines, and mobilizing different kinds of knowledge to face a concrete challenge.

Third, it is not children and youngsters alone who can promote and lead systemic change in education. Their Charter implies a similar approach on the part of other actors. The youngsters’ commitment calls for a commitment not only from the education system but also from local and regional authorities. In fact, the main European meetings of the ‘Let’s Take Care of the Planet’ network were held at the headquarters of the European Committee of the Regions in Brussels.

And finally, what is *the model of change underlying these charters*? It is revealed through the answers given at Le Bourget by the head of the French Ministry of Education and by her Finnish counterpart. For the former, imbued with Jacobinism, transformation of the education system is to be a top-down process happening through directives. For the second, the approach should be simultaneously top-down and bottom-up, which is consistent with the philosophy of responsibility.

Academic research and higher education: Towards a new social contract

Academic research and higher education are of particular interest in shedding light on the link between charters of societal responsibility and the social contract. They both mobilize public resources, but to a fairly large extent leave it to the actors themselves to decide how these are to be used. Researchers claim their freedom of research subjects and methods, professors the autonomy of their teaching within the framework of the programme set by their disciplines. Researchers and university professors also believe that only their peers can legitimately assess the quality of their work. This claim was also once made by clerics, who were subject to ecclesiastical courts, or by soldiers, who were subject to military courts. *These exceptional circumstances are only conceivable when there is an implicit or explicit social contract between a professional body and the rest of society*. What exactly is this contract? How has it evolved over the last few decades? What is its

151 . Initiated in particular by Pierre Rhabi, the *colibris* movement took its name from the story of the hummingbird that sees a forest on fire and flies back and forth from a stream carrying a few drops of water in its beak to put out the fire. When told that what it is doing is not at the scale of the problem, it replies, ‘I know, but I’m doing my share, I’m doing what I can.’

152 . See for instance, Lycéens, collégiens, prenons notre air en main : la vidéo ! <http://www.driee.ile-de-france.developpement-durable.gouv.fr/lyceens-collegiens-prenons-notre-air-en-main-la-a3392.html>.

relationship with the revolution of responsibility? This is what we shall examine for scientific research and for higher education successively.

A new social contract for scientific research

In the aftermath of World War II the social contract was explicit. It was summed up by the dialogue between Vannevar Bush, who was the mastermind of scientific research in the United States during the war, and US President Harry Truman.¹⁵³ It was about defining – after the massive mobilization of US scientists in the war effort, notably to achieve control of the atomic weapon before the Nazis – the future of basic research. What was the point of asking society to fund it now that the peril had passed? Vannevar Bush then set out what might be called the basic research equation, namely that free basic research was the condition for the development of applied research, which in turn would condition the innovation that would lead to employment and economic development, which in turn would guarantee social order and peace. This is what Isabelle Stengers, the Belgian philosopher of science, called ‘the goose that laid the golden eggs’.¹⁵⁴ Any attempt to direct basic research would be tantamount to killing the goose and depriving the research of its many benefits. Under these conditions, the claim of many researchers was that the scientific world should keep general control over the conduct of research. The ethics of researchers’ responsibility tended to be reduced to a deontology of scientific rigour – the transparency of sources and methods, and the replicability of results. By complying with this scientific rigour, society, in the context of this contract, is supposed to ‘trust science’ to ensure progress.

As we have seen in the case of governance, however, a social contract may have been set at a given time and no longer reflect, a few decades or centuries later, the new realities and challenges of society. This is what has happened in the case of scientific research. In June 1999, UNESCO organized the World Conference on Science in Budapest and called it, ‘Science for the twenty-first century: a new commitment’. I participated in it. The outcome was a Declaration and a Science Agenda, a compromise between the concerns expressed at the conference and UNESCO’s vocation to promote research.¹⁵⁵ The general tone in Budapest was that society trusted science less and less. The idea that science was freeing humankind from natural fatalities was gradually being supplanted by the idea that progress driven by science had become, on the contrary, the new name for destiny. This was expressed in the popular saying, ‘you can’t stop progress’.

When the foundations of the social contract break down, we are reluctant to question them. Again in Budapest, most of the delegates were reassured that society’s loss of trust in scientific research was the result of a misunderstanding that could be overcome by a better communication policy. In addition to the ‘goose that lays the golden eggs’ argument, the scientists had two counter-arguments to justify the trust and credit society should continue to give to scientific research. The first was to make a distinction between ‘pure’ research, which could only be disinterested and good, and ‘applied research’ from which all evil would arise. And the second was that of technologists, summed up by the Heidelberg Appeal, according to which the negative effects of science and technology would be corrected by the progress of science and technology itself. In the context of

153 . J. Mireniewicz, *Sciences et Démocratie, le couple impossible ? : le rôle de la recherche dans les sociétés capitalistes depuis la Seconde Guerre mondiale, réflexion sur la maîtrise des savoirs*, Paris: ECLM, 2000.

154 . I. Stengers, *Une autre science est possible ! Manifeste pour un ralentissement des sciences*, Paris: La Découverte, 2013.

155 . UNESCO, *Science for the twenty-first century: a new commitment. Declaration on science and the use of scientific knowledge. Science Agenda – Framework for action*, Paris: UNESCO, 2000.

increased economic globalization, a third argument has been added: if we do not do it, others will and will pocket the benefits of technological innovation.

In the Budapest compromise for the ‘Science Agenda – Framework for Action’, responsibility is mentioned in one sentence: ‘The ethics and responsibility of science should be an integral part of the education and training of all scientists. It is important to instil in students a positive attitude towards reflection, alertness and awareness of the ethical dilemmas they may encounter in their professional life.’¹⁵⁶ It falls under a section entitled ‘*Ethical Issues*’. The dilemmas referred to are for the most part related to the progress of molecular biology and the emergence of bioethics. A year and a half earlier, UNESCO’s General Conference had adopted the ‘Universal Declaration on the Human Genome and Human Rights’. Genome deciphering is indeed exemplary of the contradictions inherent in human rights. Historically and in continuation of longstanding practices of plant and animal variety selection, genetic research is the result of a ‘eugenicist’ desire to improve the race, the consequences of which were seen under the Nazi regime. Deciphering the human genome is part of this desire but also stems from the freedom of research that is at the heart of the social contract. How can this freedom be made compatible with the principle of non-discrimination which is at the heart of the Declaration of Human Rights? UNESCO gets away with a twist in the preamble to the Universal Declaration on the Human Genome and Human Rights, by stressing that ‘the recognition of the genetic diversity of humanity must not give rise to any interpretation of a social or political nature which could call into question “the inherent dignity and . . . the equal and inalienable rights of all members of the human family”.’ Freedom to search but prohibition to find, as it were.

The traditional social contract was also shaken by the changing nature of scientific research itself, which depends for its conduct on increasingly sophisticated technical means, to the point that we commonly speak of ‘*technoscience*’ to underscore that the boundary between ‘pure science’ and ‘applied science’ is increasingly artificial. In practice, the resulting evolution of the social contract tends to place scientific research at the service of economic and technological competition among nations.

Another shock has originated from the crisis in democracy, which is neatly summed up in the title of Jacques Mirenowicz’s book, *Science et démocratie, un couple impossible ?* [Science and democracy, an impossible couple?]. Indeed, the evolution of our societies is more and more closely conditioned by the evolution of science and technology. Under these conditions, if scientific and technical priorities are defined by scientists themselves, what is left for democracy? And if only knowledge produced under the very reductive protocol of Western natural sciences is considered legitimate knowledge, what does that leave to societies?

The Budapest Science Agenda reflects the awareness that the world has changed and that a new social contract is taking shape. Ethical issues are included in the third chapter of the Agenda, entitled, ‘Science in Society and Science for Society’. Both terms are equally revealing. Science *in* society implicitly recognizes that scientists are *actors like any other*, where scientific research was once equated with ‘science’ and as such was placed above society. And science *for* society is specified as follows: ‘The practice of scientific research and the use of scientific knowledge should always aim at the welfare of humankind, be respectful of the dignity of human beings and of their fundamental rights, and take fully into account our shared responsibility towards future generations’. And further, ‘Countries should promote better understanding and use of traditional

156 . Ethical Issues: http://www.UNESCO.org/science/wcs/eng/framework.htm#3_2.

knowledge systems, instead of focusing only on extracting elements for their perceived utility to the S&T [science and technology] system.’¹⁵⁷

When Tim Berners-Lee, a British researcher at the European Organization for Nuclear Research, CERN, designed the World Wide Web in 1989 to enable universities and institutes around the world to exchange information instantaneously, could he foresee that this prodigious tool, with the development of social networks, would be used to manipulate elections in large democratic countries or to spread messages of hatred?¹⁵⁸ No, of course not. But the corollary to this is the need to establish, with the very active involvement of scientists, the conditions for an effective control of uses; this is expressed in the third principle of the Universal Declaration, which is to ‘. . . tak[e] into account the immediate or deferred effects of all acts, preventing or offsetting their damages, *whether or not they were perpetrated voluntarily* . . .’. Yet to this day this has remained largely foreign to the scientific world. Joseph Rotblat, a Polish physicist and the only scientist to have left the Manhattan Project before Hiroshima was destroyed in August 1945 by an atomic bomb, told me personally, on the side-lines of a meeting of the Pugwash movement that he had started, a significant anecdote to which he had been a witness. Manhattan Project leader Robert Oppenheimer belatedly expressed concern to General Thomas Handy, Chief of Staff of the US Army, about what use would be made of the atomic bomb, claiming the right for its inventors to control it.¹⁵⁹ Thomas Handy had answered him: ‘Your mission is to make the stick; I’m the one who decides how it’s used’.

Facing the crisis in democracy, another movement has emerged, the technology assessment movement. Its aim is to help citizens form an opinion on the societal consequences of science and technology. In France it developed notably under the impetus of Jacques Testart, a renowned biologist, the scientific father of the first French test-tube baby in February 1982 and, like Jozef Rotblat, one of the rare scientists to have ended his career in research when he considered that the conditions for a democratic control of scientific advances were no longer being met. He is one of the founders of the organization ‘*Sciences citoyennes*’, with which we developed in 2015 one of the first societal charters derived from the Universal Declaration of Human Responsibilities, *A Manifesto for a Responsible Academic research*.¹⁶⁰

As early as 2007, Jacques Testart stated in an article published in the daily *Le Monde* that ‘we need[ed] to rebuild our research system around a new contract between science and society, new missions and orientations for research and a strong alliance between public research actors and civil society, which is what represents non-market interests’. One of his advocated modalities was the citizens’ conference, which would apply to scientific choices the methods of deliberative democracy.

The Manifesto, now widely disseminated, was the subject of symposia organized in 2018 by the organization Sciences Citoyennes on the modalities of responsible scientific research. It carries numerous lessons. First of all, it is an illustration of the fact that a *Charter of Responsibilities is the expression of the social contract that links a community with the rest of society*. Then, it spells out the different stages of the development of this contract. It confirms the inertia of the pre-existing implicit or explicit social contracts and the way in which institutions and cultures born out of these earlier contracts are resisting evolution when the conditions under which they had emerged have

157 . <http://www.UNESCO.org/science/wcs/eng/framework.htm#society>

158 . The birth of the Web, <https://home.cern/science/computing/birth-web>; *Les ingénieurs du chaos*, op cit.

159 . https://en.wikipedia.org/wiki/Joseph_Rotblat

160 . A Manifesto for a Responsible Scientific Research, <https://sciencescitoyennes.org/a-manifesto-for-responsible-scientific-research/>

changed. Finally, it shows the benefits running through several different dynamics: *the dynamics specific to a milieu* facing the shaking of certainties – here, Nazi eugenics, the atomic bomb or the effects of social networks or artificial intelligence; the *overall evolution of society*, as revealed at the end of the twentieth century by societies' growing distrust of scientific research; and application to this milieu of the Universal Declaration of Human Responsibilities.

A new social contract for the university

The history of the university is centuries old. It was marked by two founding developments.

The first is the separation that was established between religious institutions and universities. The university of the Middle Ages was built within the church. One of its vocations was to train the future ecclesiastical elite. Law, philosophy, mathematics and music were a part of it. Gradually, the lay disciplines would free themselves from ecclesiastical tutelage to give birth to the modern university. This emancipation was accompanied by a demand for autonomy vis-à-vis society. Since the Middle Ages, universities have defended their franchises, their administrative autonomy, vis-à-vis both the church hierarchy and the public authorities. This tradition has been upheld for centuries. Suffice it to recall that in France the major student movement of the spring of 1968 was launched when the police came through the doors of the university.

The second evolution is its *organization into faculties*, each devoted to a discipline, initiated by Von Humboldt in 1809 for the new University of Berlin and nourished a few decades later by Auguste Comte's effort to categorize the sciences. Academic freedom, organization into faculties and regulation essentially ensured within each faculty by peers would build an ideology, structures and reflexes that have crossed the centuries. Academic research and higher education are also closely linked, which strengthens the link between the two social contracts.

Society's significant efforts for the benefit of higher education must be justified by some form of social contract. Until the 1980s, it was based on the idea that the freedom to teach and the development of higher education would provide countries that made financial efforts in its favour with the elites they needed to develop a society that is increasingly complex and dependent on the mobilization of knowledge.

Faith in this social contract has however also been gradually shaken. The question can be summed up in a trivial way: Is society getting value for money? Does higher education provide it with the professionals and managers it needs to help it meet its major challenges? Matching training to the labour market is only part of the problem; the young people who at one time are on the benches of higher education will exercise social, economic and political responsibilities several decades later, and it is during their training period that their way of viewing the world will essentially be forged. Does the institutional autonomy of higher education institutions and the organization by discipline of teaching, with the frequent disconnect between reflection and action, guarantee that they will be up to the challenges of society? Nothing is less certain.

It was around these issues that cooperation with the International Association of Universities (IAU), formed in 1950 under the auspices of UNESCO, was established in 1996 within the framework of the Alliance for a Responsible, Plural and United World.¹⁶¹ I was given the opportunity to speak at an IAU General Conference in Thailand in 1997. One of the three broad sub-themes of the conference was 'Anticipating Change'. Universities were wondering how they could not be caught off guard by

161 . International Association of Universities, <https://www.iau-aiu.net/?lang=en>.

economic and technological developments. To this I replied in my lecture ‘let us rather talk about *building change*’, stressing that it was the power of strategic orientation, in times of change, that defined our responsibility. I asked them how the university had to change in order to keep up with these changes and I mentioned four avenues.

The first is related to the fundamentals of the institution. IAU’s Founding Charter gives it the mission to defend ‘[t]he right to pursue knowledge for its own sake and to follow wherever the search for truth may lead’. Freedom as the necessary and sufficient condition for the common good? This is also the thesis of the market economy. Notwithstanding, for the economy like for education, this hypothesis requires in the twenty-first century to be confronted with the reality of society’s challenges.

The second is related to ‘disciplinary verticality’. The way in which higher education compartmentalizes knowledge and cuts knowledge off from concrete action makes it difficult to think and manage complexity. The latter, which requires a good understanding of the parts of the system, can only be approached from the top or from the bottom. ‘From the top’ through a vast and hypothetical interdisciplinary synthesis, the difficulties of which can be sensed; and, more realistically, ‘from the bottom’ because complexity is understood with the feet, rather than with the head, based on concrete realities. Teaching that integrates the local society of which the university is a part thus has a threefold virtue: it recognizes that the university is not off-ground and must place its skills at the service of the society in which it is located; it compels students to articulate different disciplinary approaches; and it prepares them to ‘hear the logic of others’.

A change of perspective such as this, and this was my third challenge, covers the curriculum of professors: ‘How can we ask professors whose careers depend on the judgment of their peers and on publications in listed journals to undertake radical innovations?’

Finally, fourth avenue, which is that all of this implies collective reflection within the scientific world. It is not enough to say, as was done at the time, that in view of the technological changes to come, we must ‘learn to learn’, for while technical responses are still unpredictable, the challenges to be met in the next century have been perfectly identified.

The fact that at that time the International Association of Universities welcomed these questions with interest shows that the old social contract had already lost its self-evidence. The discussion with the International Association of Universities, however, came to a quick halt. Its members, university rectors and presidents, were more concerned about the financing of higher education or the international training market that was being established than about the societal responsibilities of their institutions. Thanks to Michel Falise, the first non-ecclesiastical Rector of the Catholic University of Lille, and at the time Vice-President of the IAU, this dialogue continued in 1998 with the European Federation of Catholic Universities (EFCU), which he chaired. The language of responsibility was more familiar in this milieu than in higher education as a whole. Called upon to summarize the symposium organized by the EFCU in Leuven, I had again identified four questions: What elites do you wish to train? What challenges will our societies have to face? With whom will they face them? What relationships to knowledge do we want to build and disseminate? In my view, all of this was the blueprint for a ‘*citizen university*’, where rights and responsibilities were balanced.¹⁶²

¹⁶² . EFCU Conference, ‘European Catholic University and Citizenship’, paper by Pierre Calame, Leuven, 24–25 April 1998.

The last years of the twentieth century were propitious for organizing major world conferences to prepare for the coming century. Parallel to preparations for the 1999 World Conference on Science, preparations were underway for the World Conference on Higher Education in the Twenty-first Century, which was held in October 1998. Its Final Report, *Towards an Agenda 21 for Higher Education: Vision and Action*, was an opportunity to redefine the social contract.¹⁶³ This did not happen. Otherwise, the declaration reflects the state of collective thinking at that time. Some observations are interesting; based on the observation of the genuine explosion of higher education in the second half of the twentieth century, the report notes that '[t]his great quantitative change in such a short period has not been accompanied by conceptual and qualitative changes of comparable scale and depth . . . '.

The responsibility of higher education is explicitly invoked, but by referring to the responsibility of '*higher education*' as an abstract and anonymous entity, the question of the institutional responsibility of universities and the personal responsibility of teachers is avoided. The rest of the declaration shows the implications of this shift – the affirmation of the responsibility of higher education feeds a *pro domo* plea: 'Unless it is to risk jeopardizing its normal functioning and progress, society cannot reduce its support for education by cut-backs. It should be doing the opposite . . . '. And further on: 'There is indeed a need to reflect on the consequences for a modern economy - with its high technicity and sophisticated technology, its need for innovation . . . if higher education with its "low rates of return" were to have its resources cut back and were thus obliged to reduce staff costs . . . '.¹⁶⁴

The agenda presented in the rest of the declaration confirms the oscillation between the need for change and the hope of enshrining it in the old social contract. Thus it states that the mission of higher education is: 'participating actively in the solving of major global, regional and local problems . . . to promote: sustainable human development . . . understanding among nations . . . ' etc. And for this 'its task is to educate responsible, enlightened and active citizens and highly qualified specialists, while ensuring all-round education . . . and well-rounded individual development . . . This mission has an important ethical and civic aspect . . . '. Partnership with the state is presented as 'a key means of developing constructive interaction with the principal social actors, which should mobilize "to bring about a fundamental change in higher education on the basis of the establishment of a new 'social consensus' . . . ".¹⁶⁵

Eleven years later, in July 2009, a new World Conference was an opportunity for UNESCO to revisit the 1998 report. The assertion was still that 'clearly' the role of higher education and scientific research was to contribute to development. Nevertheless, the first chapter of the Conference Communiqué is entitled '*Social responsibility of higher education*'. It recognizes that '[h]igher education as a public good is the responsibility of all stakeholders' but also that '[f]aced with the complexity of current and future global challenges, higher education has the social responsibility to advance our understanding of multifaceted issues, which involve social, economic, scientific and cultural dimensions, and our ability to respond to them . . . ', and to do so, '[h]igher education institutions, through their core functions . . . carried out in the context of institutional autonomy and scientific freedom, should increase their interdisciplinary focus and promote critical thinking and

163 . UNESCO, *Higher Education in the Twenty-first Century: Vision and Action*, World Conference on Higher education, Paris: UNESCO, 2018, <https://unesdoc.unesco.org/ark:/48223/pf0000113603>.

164 . UNESCO, *Higher Education in the Twenty-first Century: Vision and Action – Towards an Agenda 21 for higher education – Challenges and tasks for the twenty-first century viewed in light of the regional conferences*, Working document, World Conference on Higher education, Paris: UNESCO, 2018, <https://unesdoc.unesco.org/ark:/48223/pf0000113603>.

165 . *Ibid.*

active citizenship . . . not only give solid skills for the present and future world but must also contribute to the education of ethical citizens . . .'.¹⁶⁶ Eleven years later, the idea of social responsibility had thus become clearer, but still relying, as far as responsibility was concerned, on the abstract concept of higher education, straddling the fence between the autonomy of institutions and disciplines on one side, and an interdisciplinary approach and the training of future world citizens on the other.

Parallel to UNESCO's official work, the Alliance for a Responsible and United World had given rise to a reflection, led by Edgar Morin, the conclusions of which were summarized in an Alliance 'Proposal Paper' on university reform.¹⁶⁷ This was the result of a remote discussion among committed academics from some twenty universities in different continents. There was a twofold difference with UNESCO's approach: the question was no longer one of evolution but of *reform*; the subject was no longer higher education but the *university*, namely a clearly identified institutional and human actor. As Edgar Morin writes in the introduction to the book based on the Proposal Paper, 'it is an understatement to say that the meaning and mission of the university, a multidisciplinary institution dating from the Middle Ages, first reformed at the dawn of the scientific and technical revolution of the nineteenth century, have lost some of their self-evidence in our societies . . . In this context, the problem of university reform cannot be limited to internal issues regarding its functioning or effectiveness, . . . it refers above all to the role . . . that the university could and should play in our globalized societies and that in fact it plays little or not enough, which is that of a place that produces meaning for our societies . . . The social contract governing, albeit implicitly, the relationship between the university and society is what needs to be rethought, and this requires a debate involving the academic community and all citizens'. Further on, the text emphasizes that 'the responsibility of the university and academics lies in an institutional and individual combination . . . the university must develop the notion of individual responsibility. The need is to reformulate and assert a concept of ethical responsibility measured not only by the obvious and direct damages caused by technical applications but also by the relationship of academics to the world and to society in general.'¹⁶⁸

As early as 2001 the *need for a new social contract became clear, with a threefold commitment on the part of the institution, the professors and the students*. Could we have, at that time, converted the test and made this Proposal Paper the basis for a real Charter of Societal Responsibility? This is what we hoped by setting up as an extension of the Proposal Paper an International Observatory of University Reforms, ORUS. A commitment in the years that followed by the Brazilian Minister of Education, Cristovam Buarque, former Rector of the University of Brasília, strengthened us in this direction. In 2003, together with ORUS, Buarque organized an international conference which for public university was the high point of this dynamics. Unfortunately, Buarque's resignation shortly after the international colloquium would destroy this outlook.

A decade later, in 2014, a dialogue with the Rector of the Catholic University of Lyon, Thierry Magnin, Vice President of the International Federation of Catholic Universities (IFCU) made it possible to pick up the thread of collective reflection on the societal responsibility of universities, this time with the support of the IFCU. An outline of a societal charter inspired by the Universal

166 . UNESCO, *World Conference on Higher Education 2009. Final Report*, Paris: UNESCO, 2009.

167 . A. Pena-Vega and E. Morin (eds.), *Université, quel avenir ? Propositions pour penser une réforme*, Paris: ECLM, 2003, http://docs.eclm.fr/pdf_livre/283UniversiteQuelAvenir.pdf

168 . *Ibid.*

Declaration of Human Responsibilities gave birth in 2019 to a reference framework adopted by IFCU members for the definition of their societal responsibility.¹⁶⁹

Interval: Social contracts, from special cases to the general case

The parallel between the approaches to renewing the social contract of scientific research on the one hand and the university on the other allows us to draw a number of lessons that are also valid for other socioprofessional spheres.

The first concerns the actors. We have moved from science to scientific research and researchers, from higher education to universities and scientists. Societal charters do not concern a *field* of human activity, but *institutions and their actors*, the only ones in a position to make commitments.

The second lesson is that a societal charter implies the pre-existence of a collective or the building, within a socioprofessional milieu, of a more militant group that will produce the charter. This is what happened for scientific research with the initial Sciences Citoyennes core and what was attempted for the university with the Observatory of University Reforms. But then the challenge was to extend the dynamics of a founding core to the international scale. The ability to do so depended on the pre-existence of collective organizations in line with the effort to redefine the social contract. The IFCU is an excellent example.

Third, the World Conferences on science and on higher education showed that institutions set up at the global level had a strong corporatist component, hence attachment to an old social contract that emphasized the actors' rights rather than their responsibility. These conferences were nevertheless *a good indicator of the crisis related to the pre-existing social contract*. It could be thought that the shock wave of a new social contract will eventually reach these corporatist institutions and the UN agencies, but this cannot be a prerequisite.

In scientific research and the university the question raised is that of the social contract of those who possess knowledge, participate in its production and ensure its transmission. In both cases, the social contract is about the benefits that these knowledge holders bring to society and the support they receive from society. In the preceding chapters, it is rather the holders of political power – the states – or economic and financial power – large companies and financial institutions – whose responsibility has been called into question. The logic of universal responsibility does not, however, draw a line between the 'powerless', who would therefore be 'without responsibility' on the one hand, and the powerful and the scientists who would have a monopoly over it on the other. Much to the contrary, everyone assumes a responsibility commensurate with his or her knowledge and power. *This suggests that the question of the social contract, the relationship between one type of actor and the rest of society, is itself a general question*. In the same way that responsibility towards others is the corollary of belonging to a community, the social contract characterizes the links between all types of actors and the rest of society.

This universal character of a social contract linking each type of actor to the rest of society is all the more important as in a closely interdependent world, *co-responsibility* is the rule rather than responsibilities easily separated from one another where each actor is tempted to shift ultimate responsibility to his or her neighbour, and indeed does not refrain from doing so. Thus, in 2018, a

169 . Charte des universités responsables et solidaires, http://www.alliance-respons.net/bdf_fiche-document-242_en.html; Principles of the Assessment System, http://www.fiuc.org/bdf_projet-4_en.html.

major US oil company, challenged about its responsibility in greenhouse-gas emissions and climate change, was able to respond with aplomb: 'We are not responsible, we are only responding to consumer demand.' This is a very tempting game for economic actors in a market economy where it is easy to pass the buck to their customers and for political leaders in democratic systems to pass the buck to their constituents.

In this game, it is no fault of the car manufacturers if society as a whole has become heavily dependent on cars, it is no fault of Bayer if farmers need glyphosate to maintain their productivity and it is no fault of the farmers if the world needs to be fed. The French electricity company EDF has nothing to do with the fact that the low price of electricity charged to households in France has led to widespread use of electric heating. Pension fund managers are not responsible for what happens if their constituents and employee representatives judge them on the basis of the short-term performance of investment portfolios. And how can elected political leaders be blamed if the short-term risks to jobs and growth outweigh the long-term need to protect the climate and the planet?

Of course, it is easy to remind all these economic and financial players of their considerable advertising and marketing expenditure to convince customers to buy new products all the time and the intensive lobbying of national or European public institutions to convince them to abandon all new regulations in favour of the environment in the name of defending jobs and the need for growth, arguments that cannot nevertheless simply be dismissed. We also have proof that the opposite is true; the youth demonstrations in 2019 in favour of the climate, the willingness of part of the population to eat healthier food and the growing popularity of ethical investment labels show that when societies themselves begin to move, when new socioprofessional groups claim their own responsibility, it is the whole system that begins to change.

The generalization of social contracts is consistent with a common law based on responsibility and on the idea of the unity of the human family. This is in fact why the founding process I am imagining will bring about a dialogue among various socioprofessional players and stakeholders on the various global challenges to be tackled together. Each of these challenges can be seen as putting into practice the co-responsibility of actors united by social pacts. We know that a global law based on the adoption by the UN Assembly of the Universal Declaration of Human Responsibilities will meet with a great deal of resistance, but this is not a prerequisite for the adoption on a smaller scale, in a few regions of the world and in a few socioprofessional spheres, of social contracts that are the concrete translation of the principles of the Declaration.

The examples of scientific research and higher education have already allowed us to identify two paths for building these new social contracts: identification of pre-existing contracts, implicit or explicit, that no longer correspond to the new realities of the world; and the existence or emergence in each milieu of possible allies, who are precursors either because they are naturally inclined towards long-term thinking or because they are naturally imbued with a sense of responsibility. This means combining a universalist approach, reviewing the different categories of actors, with a pragmatic approach focusing on the most important actors or favouring places and actors who have already made progress in this direction.

The universalist approach is based on the classification of socioprofessional spheres into four main categories: actors who embody culture and intellectual and mental representations – scientists, academics, religious leaders, the media, educators, journalists and artists; actors in the economy and finance; actors in society who can themselves be classified according to different demographic, economic or sociological criteria; and finally, actors in governance – political parties, governance of political leaders, local elected officials and territorial authorities, jurists and the military. It would be

far beyond the scope of this book to review them all, but this overall panorama is worth keeping in mind.

The pragmatic approach leads to privileging among the actors those who are most directly concerned with the long term. At the heart of society, it is the young, who have their lives ahead of them and see more and more clearly the consequences they will have to suffer from our lack of foresight, and, at the other end of the demographic pyramid, the 'senior citizens' who, freed from professional and family constraints, are questioning the world they are going to leave to their grandchildren. Within the economy and finance, it is pension funds, which in funded pension systems guarantee the purchasing power of contributors several decades from now, or sovereign wealth funds, such as those in Norway or Singapore, the vocation of which is to be able to convert present resources into future prosperity.

But we also need to talk about the obstacles. There are many. I shall take two. The first is that most milieus have a definite tendency to blame others for their own responsibility. The second stems from the eighth principle of the Universal Declaration, which is the obligation of uniting in order to become informed and to act. Generalization of the spirit of competition is however an obstacle to this obligation to unite. Companies are afraid of missing out on a technological change, journalists are afraid of not being the first to publish on an event, financiers are afraid of losing clients by posting lower short-term results than their competitors, etc. This means that when responsibility is exercised in a solitary, individual way, the result may simply be the disappearance of the bold. So it is necessary to find or form a pioneering nucleus ready to act collectively to open up new avenues.

Chapter 10. CHARTER OF SOCIETAL RESPONSIBILITIES FOR CORPORATIONS

Because of their power, companies, especially the very large ones, are the first to be concerned by the issue of responsibility. Nowadays there is virtually no company, with the exception of very small businesses, that can evade communicating about its environmental and societal responsibilities. And in the eyes of civil society, large multinational corporations are often equated to the Great Satan, ready to sacrifice the planet, the climate, the environment and human rights for their own profitability. Their power and their mobility, from one territory to another, from one tax system to another, make them players of comparable or even greater influence than many states, and their leaders are, together with the heads of state, the pillars of the annual High Mass of the World Economic Forum in Davos. They ritualistically address, with real or feigned concern, the major challenges of the contemporary world. Between the Great Satan of activist organizations and companies swearing to take their social and environmental responsibilities seriously, how do you separate the wheat from the chaff?

A succession of social contracts that one after the other have become obsolete

The relationship between companies and the rest of society is not a new issue. Can we characterize the social contracts of the past? No need to go back to the dawn of time. Suffice it to look at the emergence of transnational corporations. It is intimately connected to the colonial adventures of the West. At the time, the states signed genuine ‘development’ contracts with companies set up for the occasion, such as the East India Company, delegating to private entrepreneurs the right to exploit, or even conquer, the newly discovered territories. ‘Freedom of action versus profit sharing’ sums up the first social contract.

At the small-business scale, it has been rather Adam Smith’s moral philosophy that has prevailed, and in England then in France has justified removing the regulatory or corporatist obstacles put up until the eighteenth century against the freedom of enterprise, thus justified in turn by theory as the best possible contribution to the common good – a social contract by nature, one might say.

In the nineteenth century, the development of heavy industry, particularly mining and the steel industry, which was localized according to the availability of raw materials rather than to pre-existing urban concentrations, then gave rise to another social contract, which could be described as a ‘paternalistic contract’, whereby the company mobilizes a work force for its own benefit and in return, assumes responsibility for the conditions of its reproduction such as housing, health, education, places of worship and even food. This paternalistic contract, the purest expression of which was the philanthropic entrepreneur, lasted for more than a century. It gradually came to an end with the closing of the mines or the decline of the steel industry, long after World War II.

At the same time, in the first half of the twentieth century, a fourth type of social contract had emerged, usually called the ‘Fordist contract’ after the car manufacturer Henry Ford, summed up in his words, ‘I’ve got to pay my workers enough so they buy the cars’. This contract defines rather well the period of growth known in France as the ‘*Trente Glorieuses*’, or the ‘glorious’ 30 years following World War II. It was the affirmation and the pinnacle of the welfare state and, in the broadest sense of the term, of social democracy: the burden of reproducing the labour force no

longer fell on companies but on society as a whole and in particular on the public authorities through taxes; companies, especially large companies, were the driving force of development and the vectors of technological innovation; and the status of earning a salary was becoming the norm in developed countries. This social contract worked fine for several decades in economies that were still largely national or part of a relatively homogenous group of industrialized countries, whereas the others remained confined to their role as suppliers of raw materials and consumers of industrial products.

In 1967 the US economist John Kenneth Galbraith described in his book *The New Industrial State* the zenith of the system... on the verge of its decline.¹⁷⁰ In large companies, the technostructure, consisting of top management and the most qualified persons, were, much more than the shareholders, the central organizing core. They were the ones capable of transforming increasingly diverse and complex techniques into consumer products designed to satisfy consumers. Marketing, a discipline becoming widespread at the time, took on the task of making them desirable. In short, in this contract society exchanges the possibility of choosing its way of working or living for an insurance of prosperity, guaranteed jointly by the state and the large corporations. Here, the rest of the world and the relationship between humankind and the biosphere were of no importance.

The early 1970s then shook up this fourth social contract. The oil crisis of 1973 made the world discover the power of those countries controlling the oil reserves. This initiated a process of redistribution of wealth among the different continents that would accelerate with economic globalization and the industrial take-off of the major emerging countries. At the same time, the 1972 Meadows report to the Club of Rome, *The Limits to Growth*, imposed new considerations on economic thinking and business, which henceforth had to include the finitude of the planet's resources.¹⁷¹

It was in this context that the neoliberal counter-revolution, which founded a fifth social contract, began to gain traction. It was symbolized intellectually by the appointment, in the same year 1972, of Milton Friedman as President of the Mont Pelerin Society, composed of thinkers convinced of the unsurpassable virtue of the free market.¹⁷² Returning to the fundamentals of a liberal economy, this current of thought denies both technostuctures and public authorities the capacity and legitimacy to steer companies in the service of the common good. It therefore proposes to redistribute power to the benefit of shareholders and to the detriment of technostuctures, and imposes the horizon of short-term profitability to the detriment of long-term planning. The coming to power in the early 1980s of Ronald Reagan in the United States and Margaret Thatcher in the United Kingdom gave this neoliberal counter-revolution a decisive political basis. Companies were returned to their basic function of providing a return on the capital invested by their shareholders. The 'invisible hand' of the market would then wield its magical virtue. According to theory, by seeking to maximize profits for their shareholders, companies will best contribute to the wellbeing of the whole of society. It is up to the public authorities, themselves weakened by increasingly intense international competition among countries, which pushes them to the lowest social and environmental standards, to impose rules of the game applicable to all companies.

Affirmation of their social and environmental responsibility, which has been omnipresent for large companies since the beginning of the twenty-first century, seems to be the beginning of a sixth social contract. But this statement is ambiguous. Discourse on the voluntary commitments of

170 . J.K. Galbraith, *The New Industrial State*, Boston: Houghton Mifflin, 1967. Revised editions in 1972, 1978 and 1985.

171 . *The Limits to Growth*, op. cit.

172 . Mont Pelerin Society, <https://www.montpelerin.org/>.

companies in the service of society and protection of the environment was initially less the beginning of a real social contract than an attempt to resist too much regulation. Thus, the World Business Council for Sustainable Development, WBCSD, born in the very early 1990s, even before the 1992 Earth Summit, was formed by large companies for which displaying a commitment to sustainable development was a means of avoiding excessive constraints being imposed on them. This tendency to present voluntary commitments as a credible alternative to regulations makes it difficult today to develop a real social pact that rises to the stakes by relying on employers' associations because these commitments were designed not to promote corporate social and environmental responsibility but to resist regulations. As recently as in the spring of 2019, the magazine *Novethic* published an analysis showing that at the European level employers' associations, first and foremost Business Europe, have a more conservative stance on climate issues than their own members, because they are perpetuating their *raison d'être*, while the companies themselves, at least the most innovative ones, are aware of the need to move away from these defensive attitudes and start to consider effectively a new social contract.¹⁷³ It is the contours and conditions of this new social contract that we will now examine.

The foundations of a new social contract

Because of the considerable influence of companies in our societies, their limited liability/responsibility is, like that of states, one of the major reasons for the prevailing unlimited irresponsibility. The extension of responsibility according to its six dimensions is therefore particularly applicable to large companies: from subjective to objective responsibility; from limited in time and space to unlimited; from individual to collective responsibility; from past to future; from impact on humans to impact on the biosphere as a whole; and from obligations of means to obligations of results. These developments require both new dimensions of corporate commitments and changes in legal standards and systems.

The new social contract will be the transposition to the business world of the eight principles of the Universal Declaration of Human Responsibilities. But in order to carry out this transposition, several characteristics of the economic world must be kept in mind.

The economic world is first of all a *competitive* world in a largely unified global market. In most industries a particular company, unless it is in a quasi-monopoly situation, cannot impose on itself constraints that others would not impose on themselves. A combination of demands from society and voluntary commitments made collectively or individually by companies must therefore be considered. The commitments can take various forms, from boycotting irresponsible companies to public or parapublic international standards such as the ISO standards, as well as labels reflecting the specificities of each branch of business. On the other hand, the joint commitment of a few powerful companies in the same industry can have a knock-on effect. Standards and voluntary commitments therefore complement each other. Companies' commitment to commonly agreed standards such as new accounting standards is part of their responsibility.

It is, secondly, a *heterogeneous* world, ranging from very small companies, which in many countries are close to the informal economy, to multinational corporations having power

¹⁷³ . A. Dumas, 'À Bruxelles, les organisations patronales continuent leur lobbying contre le climat... et ne reflètent plus la position des entreprises', *Novethic*, 31 May 2019, <https://www.novethic.fr/actualite/gouvernance-dentreprise/lobbying/isr-rse/a-bruxelles-les-organisations-patronales-continuent-leur-lobbying-contre-le-climat-147311.html>.

comparable to that of the states. But size alone does not sum up the diversity of situations. It is more relevant to distinguish companies in terms of market insertion, with on the one hand companies with local outlets and on the other hand companies that are part of global production chains. In accordance with the principle of multilevel governance, the former are governed by local law, possibly derived in the future from the principles of common law, and the latter by global common law. The eighth principle of the Universal Declaration, the duty to unite, should even encourage companies involved in the global market to demand the emergence of a law of responsibility that is itself global.

Third characteristic, companies and then of course sectors are not monolithic objects but *arrangements of actors*. Of course we can talk about the legal responsibility of a company as a legal entity, but it can include the impunity of the actors that make it up. Among these actors, co-responsibility is the rule, individual responsibility the exception. But what co-responsibility and among which actors? In order to reflect the economic reality of today's world, two types of co-responsibility must be distinguished: a '*horizontal*' co-responsibility among all the stakeholders of a company; and a '*vertical*' co-responsibility expressing the relations among a set of legally distinct companies within global production chains. In both cases, power and allegiance relationships determine the shares of responsibility of the different actors.

Under the heading of *horizontal* co-responsibility, a distinction must be made between management bodies, highly qualified personnel and executives, employees, directors and shareholders. The social contract can be broken down for each of these categories and for the relationships among them. Thus, in the early 2000s, a number of organizations developed an international Manifesto on the Societal responsibilities of Professionals & Managers, stating the specific place of managers within companies and their resulting personal responsibility.¹⁷⁴ For them, as for all employees, the question of responsibility refers to a *hierarchy of loyalties*: loyalty to society and to humankind as a whole on the one hand, and loyalty to the employer on the other. For many managers, this conflict of loyalty translates into real moral dilemmas, which are all the more difficult to overcome because of the prevailing code of silence and because loyalty to the employer is also, in many cases, an expression of solidarity with colleagues.

'Whistleblowers' who when informed of irresponsible or illegal actions by their employers, make the decision to denounce them either to the courts or to the media are the revelations of these conflicts of loyalties, which are unravelled in favour of loyalty to society. Recent legislation to protect them from the vindictiveness of their employer and even colleagues speaks volumes about the depth of these potential conflicts. The principle of responsibility today gives precedence to loyalty to society. Many business leaders are aware of this. They know that failing the reconciliation of the two interests, that of the company and that of society, and failing consistency between words and deeds, the company will not be able to deal with the employees' loss of direction.¹⁷⁵ This is why we will have to move from the current system of exception, that of protecting whistleblowers, which leads to their being passed off as heroes or emotionally disturbed, to a clear principle of hierarchy of loyalties making whistleblowing not a right but an *obligation*. In the case of France, over the last few decades a series of laws have reinforced either the obligation to denounce, in the

174 . Le Manifeste pour la responsabilité sociale des cadres, *Ingénieurs sans frontières*, <https://www.isf-france.org/articles/le-manifeste-pour-la-responsabilite-sociale-des-cadres>.

175 . By way of illustration, it was noticed a few years ago that the first effect of implementing the 'Natural Step' approach (see https://en.wikipedia.org/wiki/The_Natural_Step) in a company was a decline in the turnover of qualified personnel, namely those who feel more consistency between the company's goals and modes of action, and their own convictions.

case of civil service, or the protection of whistleblowers.¹⁷⁶ But it is still difficult to draw a line between warning and slanderous denunciation. There is the previously mentioned risk of judicializing societies and of replacing the rebuilding of the relationship among the conflicting parties with each of their relationship with a judge. The idea of a new social contract is precisely that the different stakeholders in the company agree *together* on the pre-eminence of society's interest over the company's short-term interest. Is this idealism? Not necessarily. We will return to this when considering the first principle of the Universal Declaration with the concept of corporate citizenship.

The question of the personal responsibility of corporate shareholders, and for even stronger reasons corporate directors, for the actions of a company is of a different nature. We will discuss it in greater detail in relation to the social contract of financial actors, but we will note here the flagrant contradiction currently existing between the neoliberal discourse, which makes the interests of shareholders the sole purpose of a company, and the irresponsibility of these same shareholders, both civil and criminal, protected by their anonymity.

'Vertical' co-responsibility is that which unites within global production chains thousands of actors who are legally independent of each other but bound by complex relations of power and allegiance. In many sectors, there are large companies that organize the entire production process. They are the most visible to consumers, but most of the time the most negative impacts of the sector on society and the biosphere are out of their sight. A fashion store, with its elegant display, makes people forget the thousands of seamstresses on the other side of the world without which the product would not exist; food consumers are not directly affected by most pesticides, animal husbandry and slaughter conditions, soil sterilization or the miserable living conditions of farm workers; the image of the electric vehicle as a clean vehicle overlooks the production conditions of batteries, their energy and environmental cost, and their dependence on rare soils; the white and sanitized computer-equipment stores conceal the almost prison-like production conditions of their components. This means that the social contract of economic actors can only be a *sector contract*.

Many of the early discourses on corporate social and environmental responsibility were short-sighted, precisely because they focused on the company and not on the industry. Civil-society organizations have played a decisive role in shedding light on the reality of relations among the actors in a sector – there can be no effective responsibility without the ability to lift the legal veil that hides the reality of the allegiance and power relationships among its actors. Industrial, social and ecological disasters have made a powerful contribution to awareness. Global sector studies have multiplied, for example at the initiative of civil society or the UN Principles for Responsible Investment (PRI), the collaborative platform of which is a particularly interesting forum for collective reflection by companies on the sectors in which they are involved.¹⁷⁷ Even the most cynical companies are now being driven, if not to take their responsibilities seriously, at least to pay attention to the reputational risk they incur by hiding the reality of the global impact of the sectors.

176 . Law No. 2013-1117 of 6 December 2013; Law No. 2016-1691 of 9 December 2016 on transparency and the fight against corruption; Act of 1986, Article 40 (2) of the Criminal Procedure Act, requiring a civil servant to report an offence, in particular an illegal act by his own administration.

177 . An example of a civil-society initiative in the French-speaking world, the work of the Bureau for the Appraisal of Social Impacts, BASIC, <https://lebasic.com/activites/>; PRI collaborative platform, <https://www.unpri.org/esg-issues/explore-the-pri-collaboration-platform>.

The social contract: Putting the Universal Declaration of Human Responsibilities into practice

In line with what has just been mentioned, we will draw a parallel, principle by principle, between what can fall under the voluntary commitments of a company or group of companies and what should fall under a normative framework that responsible companies should promote.

1. *The exercise of one's responsibilities expresses our human freedom and dignity as a citizen of the world community.*

This principle applies both to the company as a legal entity and to its various stakeholders. First of all, it gives rise to the idea that the company is a citizen of the different levels of territories in which it is involved: from the local level, where its production units are located, to the global level.

The basic form of citizenship is paying taxes. The debate launched in 2019 on the taxation of large digital companies, in particular the so-called 'GAFA' group, and the debates surrounding the tax optimization practices of multinational corporations, which, while not illegal, are clearly (and successfully) intended to evade the payment of corporate taxes in the location where the companies actually make their turnover and profits, show that this elementary citizenship is far from being acquired. Within the framework of a renewed social pact, dominant companies in different sectors are expected to push for new tax rules falling under the already mentioned Latin precept, '*ubi emolumentum, ibi et onus esse debet*', or where there is profit, there must be burden.

A second form of citizenship is to recognize and assume concrete responsibility at the different levels of a territory and to seek with the public authorities and with all the actors of the territory the way to get the best out of its assets or to offset possible impacts. Certain aspects of nineteenth-century philanthropic enterprises deserve to be revisited and brought up to date, however without returning to the paternalistic social contract of the time. Civic engagement can take many forms. In the Anglo-Saxon and Protestant world, this is often the basis of philanthropy; making a fortune is rather well regarded but on condition that the fortune is recognized as coming from the community and that beyond paying taxes, all or part of it must return to the community in various forms. For instance, Bernard van Leer, who had started a flourishing packaging company, set up a foundation with his fortune to support early childhood wherever the company had factories. In other examples, the company, in agreement with its employees, has decided to allocate part of its profits to local actions of general interest and these actions are often taken with a commitment from the employees themselves, including partly on their work time. Companies know that such a commitment to citizenship will benefit them in the medium and long term in the sense that it will give some of their employees meaning and direction. The adoption of a Charter of Societal Responsibilities for Corporations recognizing the company's duty and willingness to contribute to meeting the major challenges facing the planet will generalize this civic attitude.

Does this mean that the legal definition of a company needs to be changed? This is currently a widely debated issue. As a company is a complex collective living being combining multiple stakeholders and multiple talents, it is true that its traditional definition, an association of shareholders whose purpose is to enhance the value of the capital they have invested in it, no longer reflects reality. In France, the debate in the spring of 2019 on the PACTE (Action Plan for Business Growth and Transformation) law crystallized the arguments of all sides around the usefulness or not of setting up a new optional legal status for companies, that of a 'mission-led company', which should allow all the stakeholders of a company – employees, shareholders, directors and managers – to unite around an objective of general interest. This legal translation of the first principle of

citizenship may be useful, but the main thing is that the collective development by the various stakeholders of a charter of responsibilities should make it possible to translate such citizenship into clear commitments that can be enforced, including before the courts, in the event of failure.

2. Individual human beings and everyone together have a shared responsibility to others, to close and distant communities, and to the planet, proportionately to their assets, power and knowledge.

In this principle the community is the main concept. It can be applied to different levels: the company, the sector and the entire human family.

At the company level, the idea of community can be put into practice through the scale of salaries and remuneration, abandoning forms of remuneration for executives and managers that separate their income from that of other employees, participation of all the staff in the company's strategic choices or introducing whistleblowing as a duty. These are simple illustrations of the prospects that can be opened up in companies through discussing possible measures to implement the second principle.

At the value-chain level, recognition of co-responsibility as a share of assets, power and knowledge can translate into commitments on value sharing among the different actors in the value chain. This is the philosophy underpinning fair trade. Involvement of the various stakeholders in the strategic choices of the dominant companies in the sector can be another way of translating the idea of co-responsibility. Above all, the principle of proportionality to knowledge and power is radically opposed to use of the legal veil to conceal the overall impacts of the sector. This is certainly one of the areas where it is most necessary to combine voluntary commitments with legal obligations. The French law on the duty of care adopted in February 2017 affirms the responsibility of the large ordering companies with regard to the behaviour of other players in the sector, assimilated to '*what companies have in their custody*'. Although it only imposes an obligation of means, that of establishing a care-related plan, it constitutes a significant legal advance by writing into law the principle of co-responsibility within the sector.

Co-responsibility of the players in the sector naturally implies the traceability of the entire cycle of production, use and recycling of industrial products. At both the European and French levels, the directives on circular economy, product lifespan, recycling and functional economy are all in line with the traceability requirement, without which responsibility at the industry level would be no more than wishful thinking.¹⁷⁸ This effort will have to be complemented by the aforementioned reform of the international accounting standards themselves, the IFRS. Finally, traceability can benefit from technological advances such as blockchains.

In the field of fossil energy, the players' co-responsibility in the sector will become effective only when a new system of governance of fossil energy is adopted, that of individual negotiable quotas, which will provide the sum of the fossil energy mobilized throughout the sector.¹⁷⁹

3. Such responsibility involves taking into account the immediate or deferred effects of all acts, preventing or offsetting their damages, whether or not they were perpetrated voluntarily and whether or not they affect subjects of law.

178 . Circular economy: France: <https://www.ecologique-solidaire.gouv.fr/feuille-route-economie-circulaire-frec>; Europe: <https://www.europarl.europa.eu/news/en/headlines/priorities/circular-economy>; functional economy: <https://www.novethic.com/csr/isr-rse/the-functional-economy-from-selling-goods-to-selling-solutions-145579.html>.

179 . P. Calame, Le régime de gouvernance de l'énergie fossile, in *Petit traité d'économie*, op. cit.

This principle deserves to be taken up fully in the societal charters of sectors as well as in national legal systems. Indeed, the goal is not to nail companies to the wall or to look for scapegoats who would be given full responsibility for an economic system in which all sectors of society are involved. By stressing that damages must be offset, whether or not they were perpetrated voluntarily, we are involving both consumers and businesses, and moving away from seeking culprits and towards strict responsibility. The principle generalizes the ordering companies' duty of care, but this time includes obligation of results – if there are damages at one stage or another in the chain, they must be offset.

The notion of 'act' must be taken in its broadest sense; by deciding, for example, to set prices as low as possible for suppliers and subcontractors, these latter are undoubtedly induced to pay their employees badly or mistreat them and to harm the environment. The principle also implies looking at the decision-making system itself or at the strategic choices of the sector, such as the technologies chosen for batteries in the automobile sector or the rapid renewal of products in both telephony and clothing. Thus inclusion of this principle in the charters does not automatically lead to legal proceedings, which deals with downstream effects and transforms responsibility into guilt, but rather to opening upstream forums for reflection and consultation involving all the actors in the sector.

4. Such responsibility is imprescriptible from the moment damage is irreversible.

This principle also deserves to be included as such in all sector charters. Our societies fear the idea of imprescriptibility, seeing in the refusal to forget, assimilated with the refusal to forgive, a source of destabilization of societies and a threat to peace. Cases of mutual resentment of societies, each selectively remembering what it has had to suffer at the hands of its neighbour, or of vendettas between families or clans, each in turn having to demand reparations for previous outrage, justifies the attempt to make imprescriptibility a specific rule reserved for crimes against humanity and, at the other end, to make prescription a general rule. This explains why, faced with the irreversibility of environmental damages, legal experts are seeking inspiration from crimes against humanity to define what they call 'ecocide', assimilating it to the crime of genocide, to qualify particularly serious and conscious attacks on ecosystems. But this particular qualification for the most serious crimes does not address the general problem of irreversible damage to societies or the biosphere resulting from economic activities, none of which is dramatic in intensity but the sum of which is destructive, which is the common lot of the current economic system. So that reserving imprescriptibility today for conscious and serious faults actually contributes to what I have called the unlimited irresponsibility of companies.

Once the non-applicability of statutory limitations to certain damages has been recognized, another difficult question is to determine who the beneficiaries of reparations may be. The issue resurfaced in 2019 in the United States about compensation for the harm suffered by the African-American population as a result of slavery. Can financial reparations to the descendants of slaves repair the suffering of their ancestors? Probably not. Reparations for imprescriptible damages will inevitably be the subject of debate and case law, but to start with, it is still necessary to recognize the general principle of imprescriptibility by dissociating it from the idea of fault.

For companies, the stage of recognition of non-applicability of the statute of limitations is essential because it requires collective reflection among stakeholders. It has two important corollaries. The first is the reform of accounting standards, which, over the years, and therefore while there is still time, requires recording damages to the human capital and natural capital of the enterprise. The

second, which constitutes a profound revolution, consists in *putting an end to the anonymity of shareholders* because when there are irreversible damages, a company cannot be treated as a timeless legal person serving as a lightning rod and a screen for the indictment of well identified persons, made of flesh and blood, whose action or inaction has caused the damages. Current law on the responsibility and anonymity of shareholders is an encouragement to ill-considered or irresponsible decision making. The share of responsibility to be attributed to corporate officers, directors and ordinary shareholders when harmful decisions are made will vary according to the level of knowledge and power of each, but the prerequisite is that they all be identified by name.

In *Essai sur l'œconomie* I argued that the simple idea that a shareholder should not have voting rights in the company, and therefore a share in the decision-making power, until after a period of holding the shares of a company that could range from three to five years.¹⁸⁰ In the period when a shareholder does not have voting rights, he or she is not in a position to influence decisions, which reduces his or her responsibility. The opposite situation prevails in the case of preferential voting rights or veto rights.

What happened to 5?

6. *The possession or enjoyment of a natural resource induces responsibility to manage it to the best of the common good.*

As was pointed out when presenting the Universal Declaration, this principle broadens the idea of the common good considerably; it tends towards the idea of all actors' responsibility for what they have in their care. This is also expressed in the concept of 'functional property', which associates the idea of responsibility with the idea of ownership and recognizes, in line with the typology of goods and services, that natural resources are not a market-related category. For companies, this principle requires them to go much further than the polluter-pays principle; they must justify the mobilization of non-renewable or scarcely renewable resources and even justify the societal usefulness of the products they market; the fact of having customers to buy them cannot be considered sufficient justification when the production method may harm natural resources.

It is easy to imagine, here too, the laborious work that will be required for companies, sectors and society as a whole to develop case law and probably new doctrines. By including this principle in their sector's charter, companies will show their willingness to commit to this effort; this is the essential point.

7. *The exercise of power, whatever the rules through which it is acquired, is legitimate only if it accounts for its acts to those over whom it is exercised and if it comes with rules of responsibility that measure up to the power of influence being exercised.*

This principle has the advantage for companies of introducing into the economic field the distinction between legitimacy and legality, the importance of which we have seen in the field of governance. It is part of the previously mentioned reflection on conflict of loyalties. The duty of obedience, and therefore loyalty to the company, loses its primacy in favour of loyalty to society as a whole if the managers do not show themselves worthy of exercising power through their manner of exercising it. One would be tempted to draw a parallel with the preceding principle: functional property, which is subordinate to the use one makes of a good, is echoed by *conditional authority*, which is subordinated to the use one makes of one's power.

180 . P. Calame, *Essai sur l'œconomie*, op. cit.

8. *No one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed.*

This eighth principle is also of singular relevance for sector charters. It is in fact the duty of the dominant companies in the sectors not only not to oppose public regulations but also to act *collectively as advocates for them*, since such regulations are essential, in the context of international competition, to avoid stowaway-type phenomena and jeopardizing the economic survival of companies that are determined to assume their responsibility.

Similarly, it must be admitted that within sectors involving thousands of players, some of which are in direct but others in very indirect contact with the dominant companies, it is very difficult for the latter to have a clear vision of the impacts – which may themselves be very indirect – of their decisions. The obligation to become informed leads quite naturally to alliances, sometimes already outlined, between companies and civil-society organizations, which are much better able than the former to obtain reliable information locally. Thus, this article leads to an innovative approach to the triangular relationship between companies, public authorities and civil society.

Chapter 11. CHARTER OF SOCIETAL RESPONSIBILITIES FOR FINANCIAL ACTORS

Financialization of the world! ‘*My adversary is the world of finance!*’ This was declared by French president-to-be François Hollande in a speech in Le Bourget during his 2012 presidential campaign. So the case is rested? We have found the true, faceless Satan, who is leading the world in his own interests and to its ruin! And yet everyone agrees that the transition to responsible and sustainable societies presupposes public and private investments geared towards the long term, and therefore an increased capacity to mobilize savings for the benefit of these investments. This is what responsible finance is about. In March 2018, the European Commission presented its Financing Sustainable Growth action plan for a greener and cleaner economy and the various European financial hubs began fighting over which would be the capital of sustainable finance.¹⁸¹ ‘Green Bonds’, ethical investments, Principles for Responsible Investment, the ‘Green New Deal’ in the United States and Europe involving the mobilization of hundreds of billions of dollars in the service of an ecological transition – never has finance been so in the spotlight and the ethics of finance so invoked.

The 2007 financial crisis brought the world into turmoil. It was the result of financial institutions’ creating increasingly sophisticated products that were further and further removed from the real economy, and of the interdependence of financial markets. For example, subprime mortgages, structured products about which their purchasers knew neither the exact content and even less the risks involved, spread worldwide with a contagion effect that destabilized the entire international financial system. Only the massive intervention of central banks, at the expense of citizens, were able prevent the system from collapsing completely. This is a perfect example of irresponsibility: the behaviour of private actors provokes damages; the chain effect is out of all proportion to the interests pursued by these actors; the public authorities must intervene urgently; and yet those who are really responsible for the crisis have not suffered the consequences. The crisis has also shown how banking institutions have masked real, highly speculative practices with a soothing discourse on market efficiency, in line with the dominant neoliberal theories but in contradiction with well informed analyses, a discourse relayed to the public authorities through intense lobbying activity.¹⁸²

‘*Never again!*’ they all cried out, and sought the answer in regulations and supervision by adopting at the European level a principle consistent with multilevel governance, where the supervisory authority is European or national, depending on the size of the financial institution.¹⁸³ The goal of the system was on the one hand to prevent bank failures in the future by improving supervision of the soundness of the banks’ balance sheets and limiting adventurous investments made with savers’ money, and on the other hand to avoid contagion effects in the event of the failure of a major banking institution.

181 . European Commission, Sustainable finance: Commission's Action Plan for a greener and cleaner economy, Press release 8 March 2018, Brussels: EC, 2018, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1404.

182 . In 1998, almost ten years before the financial crisis, George Soros, a master craftsman in the field, published a book on this subject, G. Soros, *The Crisis of Global Capitalism: Open Society Endangered*, New York: PublicAffairs Books, 1998; at the EU level, the annual expenditure of the banking lobby is estimated at 400 million euros; this is what led a number of organizations to set up in 2011 with Finance Watch (<https://www.finance-watch.org/>) a forum for civil society to reflect and make proposals on banking issues.

183 . Read a pedagogical presentation of the new arrangements in French, La finance pour tous, ‘Quelques précisions sur la législation européenne’, 2019, <https://www.lafinancepourtous.com/decryptages/crise-financiere/crise-de-la-zone-euro/2012-les-reformes-europeennes-du-secteur-bancaire-et-financier/quelques-precisions-sur-la-legislation-europeenne/>.

Can regulations be a substitute for a charter of responsibilities or vice versa, or can they be complementary? As we have just seen with regard to corporate responsibility, they are complementary and both are indispensable. In a competitive world, common rules are needed. Promoting governance regimes that are truly adapted to the complexity and diversity of situations should be a major responsibility for financial actors. But these rules are never more than obligations of means and as such are powerless both in preventing moral hazards and in gearing finance to serve society.¹⁸⁴ Moreover, like with non-financial enterprises, regulations deal with financial institutions as a whole, whereas responsibility is about the diversity of their stakeholders. We will therefore adopt the same approach as for companies by examining the current state of finance, whether or not there is a social contract and the possible reasons for its inadequacy, and then by examining the necessary combination of general rules and voluntary commitments on which to base a new social contract.

Can we talk about a succession of social contracts in the field of finance, as we have done for non-financial enterprises? I do not believe we can. On the other hand, finance has been at the heart of the functioning of communities since time immemorial, for better or for worse. Borrowing entails, in relations among members of the same community, a commitment to repay. As is commonly observed in international cooperation, however, this same obligation is highly diminished when the money comes from outside the community, hence the distinction between ‘hot money’, which comes from local savings, that is from other members of the community, and ‘cold money’, which comes from outside, in respect of which the moral obligations to repayment are highly diminished.¹⁸⁵

In the past, the obligation to repay was ‘unconditional’ and went as far as debt bondage, hence the theoretical rules of the Jubilee, which allowed wiping the slate clean every fifty years. Similarly, collective repayment commitments form the very fabric of solidarity. Alain Supiot reminds us that before being a moral concept solidarity was a legal concept, that of a joint commitment in solidarity.¹⁸⁶ We should therefore speak less of a social contract between financial institutions and the rest of society than of financial relations as a founding element of any community.

What transformed the world of finance radically in the twentieth century was the growing distance between lender and borrower, a distance erasing the original idea of a relationship within a well defined community. International financial institutions were set up. Monetary creation itself was increasingly the result of loans granted by banks and not of central-bank decisions, much to the discontent of sovereignists.¹⁸⁷ French society still remembers the Russian Loan, a series of loans launched on Western financial markets for the benefit of the Russian Empire, particularly between 1890 and 1914. After the 1917 Revolution, the Soviet regime refused to repay.¹⁸⁸ The very image of the first globalization, this loan was, alongside colonization, one of the expressions of the

184 . Moral hazard: A situation where a decision that is harmful to the community is made by an actor who does not suffer the consequences, the very definition of irresponsibility. See https://en.wikipedia.org/wiki/Moral_hazard.

185 . Hot money and cold money: the mobilization of local savings by cooperative-type institutions and its impact on local development. See G. Bédard, ‘Argent chaud et argent froid. La mobilisation de l’épargne locale par des institutions coopératives et son impact sur le développement local. Synthèse de sept études de cas africains’, in *Cahiers de l’université coopérative internationale*, No. 7, 1986. In the financial world, ‘hot money’ is sometimes used in a very different sense, namely speculative money temporarily invested in emerging countries.

186 . A. Supiot, *Les solidarités en Europe : mise en perspective historique*, Introduction to the seminar *Revisiter les solidarités en Europe*, Collège de France, June 2018 <https://www.college-de-france.fr/site/alain-supiot/symposium-2018-06-18-09h15.htm>.

187 . A. Jackson, J. Ryan-Collins, R. Werner and T. Greenham, *Where does money come from ? A guide to the UK monetary and banking system*, London: New Economics Foundation, 2012.

188 . Repudiation of debt at the Russian Revolution, https://en.wikipedia.org/wiki/Repudiation_of_debt_at_the_Russian_Revolution.

mobilization of the surplus savings of already developed and aging countries for the benefit of the development of new countries.

After the backward flow of globalization that had followed World War I, the movement of finance internationalization resumed with renewed vigour in the 1970s with the need to recycle the surpluses from oil revenues (petrodollars) and with the US decision to unpeg the dollar from gold. The resulting exchange-rate fluctuations among currencies in a context of booming international trade gave rise to the first derivative products, aimed at having third parties assume the risks and opportunities arising from relative currency fluctuations. All of these movements have contributed to dissociate the relationship between lenders and borrowers from sustainable relationships within identified territorial communities.

Another development that has contributed to diluting the social ties between creditors and debtors is the collective management of savings. A personal capital holder's decision to 'make an investment' in a particular business known to him or her has become a minority decision. Pension funds, which manage employees' savings for retirement in all countries that have favoured funded retirement, have developed very rapidly and have become major financial operators. In the United Kingdom or the United States they represented only 13 to 14% of the gross domestic product in 1962, compared to 70 to 80% in 2011, and even more than 100% in Switzerland and the Netherlands. In addition to pension funds, most private individuals rely on specialized institutions, banks and asset managers to manage their savings.¹⁸⁹ These institutions offer them the opportunity to invest in a wide range of collective investment schemes (UCITS, or Undertakings for Collective Investment in Transferable Securities). Most banks offer their clients 'in-house' mutual funds, which are an important source of profit. This form of collective investment management has led to the emergence of new players whose role, and therefore responsibility, is essential, namely asset-management companies, which generally manage assets on behalf of third parties.¹⁹⁰ It has also given rise to the 'modern portfolio theory', which aims to build sufficiently diversified portfolios of assets based on the risk-return tradeoff, where risk and return are assumed to be inversely proportional.¹⁹¹ This logic makes it possible to offer savers a range of investments, from bonds issued by the major developed countries, with virtually zero risk and very low returns – in 2019, for the first time in history, there were 12,000 billion euros invested in investments with negative real interest rates – to high-return, high-risk hedge funds. Building diversified asset portfolios adds another degree of abstraction to the relationship between lender and borrower.

Finally, the development of telecommunications, the interconnection of stock exchanges and markets and the introduction of decision-making algorithms that make it possible to buy or sell in a microsecond in the (statistically illusory) hope of taking advantage of market micro-dysfunctions completed the edifice. To repeat an often repeated fact, financial transactions represent between 20 and 100 times the value of the world's gross domestic product, which reflects their large disconnection from the 'real economy'.¹⁹² *Transaction has replaced the relationship*; where the relationship of trust within a community was the basis for transforming savings into long-term investment, it is the liquidity of the markets, the possibility of instant withdrawal from an investment, that makes it possible to manage risks. The paradox has been pushed to its extreme,

189 . Investment fund, https://en.wikipedia.org/wiki/Investment_fund.

190 . Asset management, https://en.wikipedia.org/wiki/Asset_management.

191 . Modern portfolio theory, https://en.wikipedia.org/wiki/Modern_portfolio_theory.

192 . It is doubtful that these financial innovations benefit anyone other than the financial players themselves. In February 2018, Paul Volcker, former chairman of the FED, the US central bank, said, 'I wish that somebody would give me some shred of neutral evidence about the relationship between financial innovation recently and the growth of the economy', P. Volcker, 'Think More Boldly', *Wall Street Journal*, 14 December 2009.

where the long-term relationship constituted by an investment is being managed at all levels in the short or very short term.

To understand the gap that has been growing between the ‘financial economy’ and the ‘real economy’ and between a company’s shareholders and its managers, another fact is particularly significant, which is the average holding time of a listed company’s shares. From seven and a half years in 1970 it collapsed in 2010 to less than one year.¹⁹³ We can see the break that has occurred between what I have called the ‘post-war social contract’ between business and society and the ‘neoliberal social contract’ that succeeded it. In 2018, Unilever’s Chief Financial Officer Paul Polman noted that during the same period, the average term of office of corporate CEOs had fallen from ten to five years.¹⁹⁴ This illustrates the fact that, faced with shareholders who are only passing through and only hold these shares according to criteria defined by asset-management companies, company managers are judged almost exclusively on the basis of short-term financial performance. Thus the neoliberal revolution, which was supposed to give back the levers of control of companies to their real owners, the shareholders, has in fact transferred these levers to asset-management companies whose criteria are strictly financial or even simple algorithms.

This is the context in which the sense of responsibility has been radically diluted in the world of finance and in which the new social contract must be reinvented.

Scope and limits of responsible investment

In theory, the ultimate responsibility of financial players is that of the shareholders. In fact, through all the mediations that we have just mentioned, collective forms of savings management and the decisive role of asset-management companies, it is definitely the holder of a capital, however modest, who in theory has the final decision. For financial institutions, the ‘client’ is the one whose investment preferences will reflect his or her desire to promote responsible finance. And indeed ‘responsible shareholder’ movements, born several decades ago in the Anglo-Saxon world, eager to solve the potential contradiction between the desire to get a return on their investment and the desire not to encourage activities contrary to their moral, religious or political convictions, have started a groundswell, which have quickly reached Protestant Europe, then later, Latin Europe. Financial institutions, in order to capture this clientele, set up elements of a doctrine on responsible investment and ethical investment funds.¹⁹⁵ As early as 2015, the French business weekly *Les Echos* noted the existence in France alone of more than 400 investment funds with an ethical label.¹⁹⁶

In spite of this proliferation, it must be said that in investment matters, ethics remains the icing on the cake, a condition that is *added* to the requirement of economic profitability, a ‘subsidiary ethics’, so to speak. Unlike militant solidarity savings, the principle of which is to accept a low return on savings on condition that this sacrifice allows the development of activities useful to society, the challenge of truly responsible finance is that the exercise of responsibility by companies is the *condition* of their access to socialized savings. Although listed companies represent only a

193 . J.C. Bogle, *The Little Book of Common Sense Investing: The Only Way to Guarantee Your Fair Share of Stock Market Returns*, New York: Wiley, 2007.

194 . Lecture by Paul Polman at the PRI Annual Congress, PRI in Person 2018, San Francisco, September 2018.

195 . For the emergence of this movement, see in particular, R. Perez: ‘L'actionnaire socialement responsable’, *Revue française de gestion*, Vol. 5, No. 141, 2002, pp. 131-151.

196 . ‘L'investissement responsable au rendez-vous de la compétitivité’, *Les Echos*, 16 December 2015, <https://www.lesechos.fr/2015/12/linvestissement-responsable-au-rendez-vous-de-la-competitivite-264178>.

subset of economic activity, they are the ones that structure all the world's production and consumption chains. This shows the tremendous leverage that the financial world has to redirect economic activity. The day when the major investment funds make it a condition for investing in these companies that they have drawn up a charter of responsibilities for the entire sector of which they are the backbone, sector charters will spread very quickly. This is at the heart of the responsibility of finance, but today, niche products such as ethical funds and the principles of responsible investment as they are currently implemented are still a long way off. All the more so as so-called ethical finance is still too frequently interested in the exercise by companies of their direct responsibility but without clearly raising the issue of the overall responsibility of the sectors. Here again we can illustrate this with an example. In March 2015, I had the opportunity to speak at the closing conference of the French Institutional Investors Forum.¹⁹⁷ I was struck by the speakers' emphasis on companies that 'create value'. But what is the measure of this creation? In many cases, this is really about the ability of a dominant firm to capture for its own benefit a significant share of the value created within the entire value chain. The notion of value creation in this case is opposed to that of a responsible sector, in which one seeks a fair distribution among the different actors in the sector of the created value.

The world of finance also has a major responsibility to public authorities. A concrete example will make this clear. In 2019, the 'climate emergency' and the idea of a '*Green New Deal*' invited themselves into the European Parliament elections. There was talk of hundreds of billions of euros to be found each year for the energy transition and some, for example with the Finance-Climate Pact launched by an eminent member of the IPCC Jean Jouzel and the economist Pierre Larrouturnou, called for the European Union to invest 1 trillion euros in the form of low-interest or even zero-interest loans for the energy transition.¹⁹⁸ At the same time, however, as has been mentioned, 17,000 billion euros have been invested in the world at real interest rates that are not only zero but negative. The reason why this huge amount of money is not being invested in the energy transition is because under the current state of fossil-fuel governance regimes, such an investment is not profitable! As a result, what is missing is not the money, but the projects to be financed. This means that truly responsible finance should unite the major financial institutions to press governments for a new governance of fossil energy and a new economic model. Even in 2019, however, this responsibility was still not being assumed. Thus, in September 2019, speaking to the congress participants at the meeting, Emmanuel Macron and the French Minister of the Economy, Bruno Le Maire, proclaimed the need for a break with the past and the need to reinvent capitalism, adding that they were counting on the world of finance to do so. Yet the world of finance today is quite incapable of taking up the challenge addressed to it.¹⁹⁹ Each expects from the other an intellectual audacity that he does not have.

In order to identify the current scope and limits of commitments in favour of responsible finance, it is interesting to analyse four partly interrelated processes: the UN Principles for Responsible Investment (PRI) movement; the 'Climate Action 100+' initiative, born in 2017 in the wake of the Paris Climate Agreement; and implementation of the TCFD, or Task Force on Climate-related Financial Disclosures, the goal of which is to ensure that asset managers assess the risks to which their portfolios are exposed as a result of climate change, according to the criteria used by ethical funds and rating agencies.

197 . Association française des investisseurs institutionnels, Forum des Investisseurs institutionnels français, second edition, Paris, 1 July 2015, <https://www.af2i.org/investisseurs-institutionnels/af2i-actualite-forum-investisseurs-institutionnels-francais--695.html>.

198 . Agir pour le climat, Call for a European Finance-Climate Pact, <https://www.pacte-climat.eu/en/the-call/>.

199 . Personal observation at this convention, which I attended.

First process, the PRI movement. It brings together asset owners and asset managers. Launched by the United Nations with a few pioneers in 2006, its aim was to encourage investors to integrate ethical considerations into their asset management by encouraging the companies in which they invest to take their environmental and societal responsibilities seriously (under the so-called ESG, or Environmental, Social and Governance criteria). Some fourteen years later it has become a worldwide movement. There are more than 100 PRI staff, and it is estimated that at least half of the assets under management worldwide are managed by PRI signatories. Hence the current ambivalence of the movement. Many institutions are keen to be signatories for reasons of reputation or to avoid closing themselves off from markets, while hoping that the resulting constraints will be as light as possible. For the PRI's tenth anniversary, its permanent team set forth a new roadmap attempting to give more substance to the initial principles, which, briefly, consisted of requiring companies to submit extra-financial reports on the implementation of their social and environmental responsibility, without making great demands on the actual scope of these reports and the commitments resulting from them. The new roadmap sets out three goals: to make responsible investors more competent; to make financial markets more sustainable; and to promote a prosperous world for all. These three lines reflect the limitations of the current arrangements. Making investors more competent means that formal criteria such as publishing extra-financial reports can no longer be relied upon. Making financial markets more sustainable illustrates the fact that today the risk factors that led to the global crisis of 2007–2008 remain, but also and above all that a profound reform of the governance regimes for goods and services will be necessary to redirect investments towards the long term and towards transition. Promoting a prosperous world for all means that the virtues of neoliberalism have been exhausted and that the financial world must contribute to inventing a new economic model. A more sustainable market and promoting a prosperous world for all imply that investors leave their comfort zone and put themselves in a position to collectively formulate proposals to the world's heads of state. Not surprisingly, according to PRI officials this roadmap has met with only mixed success.

Participating in September 2018 in San Francisco in the annual PRI world conference, I was struck by the expectation there of intellectual leadership and insight into the great challenges of the future, the sign of a disoriented financial world. At the same time, however, most investors are bound by their fiduciary duty to serve their members' interests exclusively.²⁰⁰ Demonstrating that consideration of climate risks, for example, is in line with these interests, however, is still an acrobatic feat. Proof of this is that less than a month after the San Francisco conference, Priya Mathur, President of the Board at CalPERS, the pension fund California Public Employees Retirement System, one of the largest in the world and reputed to be at the forefront of responsible investment and active shareholding, was removed from her post in favour of a candidate who campaigned against these ethical considerations, believing that they went against the interests of the contributors.²⁰¹

Moreover, the financial world doubts the seriousness of the states' commitments. I shall give three illustrations. First of all, at the same conference in San Francisco, PRI Chair Martin Skancke, former director of the Norwegian sovereign wealth fund, presented the results of a survey of PRI

200 . The debates on fiduciary duty are particularly instructive because they raise two issues of a different nature. The first is related to *possible conflicts of interest among financial actors*. In 2015, for example, pension fund asset managers were strongly opposed to the US Department of Labor's fiduciary rule requiring them to detail their remuneration, illustrating the words of Robert Jenkins at the annual dinner of the Investment Management Association of the UK, which he chaired a dozen years ago, who stated that asset managers knew that their role was not to make their clients rich and that regulators knew that, but wondered whether the clients did. The second is the fact that *savers themselves should assume their own responsibility and consider that preserving the planet is in their own interest*.

201 . Active shareholding consists in attending company general meetings.

signatories on the probability of different prospective scenarios on the evolution of political power. This shows that investors believe the most likely scenario is that of a ‘disorderly’ reaction of political power to a probable crisis, but that they will have been unable to anticipate it. This is not far from collapse theories! A second illustration is that a British NGO, Carbon Trackers, analysed the strategy of major energy companies and concluded that these companies did not take the commitments made by the heads of state under the Paris Agreement seriously, thinking that they would be unable to meet them. Finally, as a third illustration, at a conference of the Institut Louis Bachelier in June 2019, Michel Lepetit, Vice-President of the Shift Project, presented the results of his analysis of the financial risk reports of the portfolios of the largest life-insurance companies in France.²⁰² The result was that climate risk was not being taken into account by any of them! The responsibility of financial actors and the responsibility of political leaders, which I will discuss in the next chapter, are thus closely connected.

Second process, the ‘Climate Action 100+’ initiative. It was taken in December 2017 on the occasion of the One Planet summit organized by Emmanuel Macron in Paris. It is an interesting idea. Both in the world of finance and among companies that are major emitters of greenhouse gases, a relatively limited number of ‘heavyweights’ dominate the scene; getting the heavyweights in finance to force the heavyweights in industry to move towards sustainable industries is in line with the idea that in order to build a new social contract within a community, it is essential to have a significant group of leaders. Thus in 2019, more than 300 investment funds (asset owners) or management companies (asset managers), representing investments amounting to 33 trillion dollars, are signatories of the declaration and commitments of Climate Action 100+, which proclaims on its website, ‘Global Investors Driving Business Transition’. The target signatories originally consisted of 100 large companies, which grew to 160 by 2018, comprising the leaders in the industrial sectors emitting the most greenhouse gases: oil and gas extraction and processing, mining, and car manufacturers. Innovation here is twofold and in line with the thinking on the new social contract of the economic world; focus is not only on the company but more broadly on the way it structures the sector; and account is taken not only of the greenhouse-gas emissions due to the production cycle of the industrial product but also those due to its use, which is essential in the automotive world.

Despite its interest, this movement has quickly revealed its limits. They stem from the nature of the actors and their size. In the absence of a real societal charter of responsibilities in the world of finance, all these players are caught in a conflict of loyalties between the loyalty due to their principals, expressed through fiduciary duty, and loyalty to society as a whole and to the planet. Loyalty to the constituents remains the primary legal principle, and it is essential, as in the case of the PRI, to subordinate action in favour of the planet to the constituents’ interests. Such reconciliation between the two loyalties, by masking the contradictions between the two, is achieved by focusing on the systemic risks weighing on equity portfolios that have not adequately taken climate risk into account. Hence an almost exclusive emphasis on the commitments made by companies that are major greenhouse-gas emitters to establish a strategy in line with the Paris Agreement, that is, compatible with the commitment to keep global warming ‘well below 2°’. Companies have therefore set an obligation of means rather than an obligation of results. At the PRI World Conference in San Francisco in September 2018, many participants privately acknowledged that today these ‘two-degree strategies’ remain largely academic in nature. We see this with the car manufacturers. Alongside the fine talk about the increase in sales of electric cars – the global balance sheet for the planet of which is far from being drawn because it depends to a great extent on the energy cost of the manufacturing of the batteries and the source of electric energy used – the

202 . The Shift Project: <https://theshiftproject.org/>.

sales of new cars reveal the opposite movement, namely an increase in cylinder capacity and emissions.²⁰³

These limits are the quid pro quo for the fact that the initiative has been taken by very large investors and concerns very large emitters; the latter stand for such an important part of the portfolios of the former that it is very difficult for investors to part with them and to act vigorously to impose changes that would have the primary effect of... collapsing the value of their shares. This explains, for example, why, according to the information presented at the previously mentioned Louis Bachelier seminar, the great movement to divest from fossil energy announced with a vengeance, only concerns in practice shares that are more symbolic than significant, for example divestment from coal mines when it represents a minimal part of the investment portfolio. Finally, on the basis of the commitments made by the signatories of Climate Action 100+, it will be very difficult to challenge in court the responsibility of any of them for not complying with the commitments that were made.

Third process, the TCFD (Task Force on Climate-related Financial Disclosures). I have already mentioned the fact that, as far as France is concerned, life-insurance reports show that they themselves have little faith in this risk and overlook the risks of systemic collapse. If I relate this to the recognition in the survey of PRI signatories that we should probably expect a chaotic evolution of the world due to the inability of political leaders to meet the challenges, there is a sense of a financial world that is tucking its head beneath a wing while waiting for the collapse, without any real awareness of its power, and therefore its responsibility, to prevent this from happening.

The fourth process is the proliferation of ethical funds and the emergence of rating agencies that take the ethical character of companies into consideration in their investment strategies. Do we have here, as their descriptions suggest, the foundations of a new social contract? I highly doubt it, though in fairness it is a relatively recent dynamics set to grow richer and richer over time. Having for many years directed the Charles Léopold Mayer Foundation for the Progress of Humankind, I was confronted, in the management of its financial assets, with the dilemma of any foundation, which was whether to ensure a return on capital to finance its goals or to ensure that the financial investments made to obtain these returns did not involve companies or states whose actions were contradictory to these same goals. In other words, we had to avoid being schizophrenic. With our financial advisor, Mohsen Sohrabi, we felt that the first ethical criterion in financial management was to *re-establish the relationship* by basing it on trust and duration, hence the importance given to the length of time shares are held. However, in so-called 'ethical' funds, in many cases the holding period for shares does not exceed two years and is not significantly different from other funds. Moreover, the proliferation of ethical funds is the tree hiding the forest – the sum of these ethical funds represents a very small part of the world of finance. Finally, the ethical assessment of investments remains largely dependent on the available information. This is obvious for the rating agencies. All too often, due to a lack of substantial investigative resources, they limit themselves to exploiting the reports of the companies themselves. One example is the great importance attached to the governance of the company in which the fund is invested. It is far from proven, however, that such corporate governance, which, according to the new dogma, aims at greater separation between the function of management and that of control, encourages companies to behave more responsibly. Similarly, a frequently used criterion is to invest in companies that are 'best in the class' in their sector. But this does not say much about the ability to move value chains towards greater responsibility and sustainability.

203 . P. Thouverez, "ElectricGate' : la voiture électrique est-elle vraiment un leurre énergétique ?", *Techniques de l'Ingénieur*, 24 January 2018, <https://www.techniques-ingenieur.fr/actualite/articles/electricgate-la-voiture-electrique-est-elle-vraiment-un-leurre-energetique-51391/>.

These four processes illustrate both the awareness of the stakes of responsible finance using its considerable power to reorient economic models and the distance that remains to be covered to move towards truly responsible finance.

Foundations for a new social contract in the world of finance

Finance is characterized by the diversity of intermediary institutions between the holder of a savings investment and the final beneficiary of this investment. For each type of institution, it is possible to draw up a prototype for a charter of societal responsibilities derived, following the same approach that has been followed for companies, from the eight principles of the Universal Declaration. But given the diversity of situations, putting these different charters together would be tedious and with not much added value for readers. I have therefore opted for a number of general ideas. To do so, we must keep in mind the three *levers* available to the financial world to generate responsible and sustainable finance. The first two flow directly from the eighth principle of the declaration, '[n]o one is exempt from his or her responsibility [as an investor or an asset manager] for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed'. As such, and this is the first lever, the various financial institutions have the duty to promote sustainable commodity chains jointly and, initially, to promote and co-finance global impact studies of the commodity chains for which the PRI collaborative platform can provide the framework. Whether it is the PRI signatories, which together account for more than half of the financial assets under management worldwide, the signatories of the Climate Action 100+ initiative, which together wield critical power among the major greenhouse-gas emitting sectors, or pension funds and sovereign wealth funds, such groups of actors are in a better position than states themselves to demand that sustainable sector contracts be drawn up.

The second collective lever is the *power of proposal that these financial actors have as a group vis-à-vis the public authorities* to carry out reforms of international scope, inspired from but also precursors of global governance and law. The assertion of this comparative advantage of the world of finance to lay the foundations for a global law of responsibility might seem a provocation to all those who, noting the predatory nature of many financial institutions and their central role in tax evasion or in the recycling of dirty money, currently see it as the main obstacle to responsible companies. But precisely because of tax competition among the states, the major financial players are best placed to promote new principles of responsibility. Its detractors are right to underscore the major role of the deregulation of capital transfers in the current economic and financial globalization but, faced with these abuses, two types of reaction can be envisaged: a retreat to the old regulations and sovereignties; or, conversely, which is the sense of this work as a whole, the emergence of new global regulations in the conception and implementation of which the financial world has considerable responsibility.

The third lever is, unlike the two previous ones which involve collective action, the expression of the responsibility of each financial institution through the corporate societal responsibilities charter to which it adheres. The charters of financial institutions will have two specific features, similar to those described above for companies: a choice among the different sectors, once it has been decided that each of them must be sustainable; and the desire to make commitments over the long term. The

pendulum, in the past fifty years, has swung the financial world from a lasting relationship to an instantaneous transaction; it must swing back, from transaction to relationship.

Among the various stakeholders in the financial world a hierarchy of responsibilities is established expressing the actual distribution of powers. Thus, for the same capital, a saver will have less responsibility if he invests in bonds issued by public authorities or enterprises, hence with no voting rights, than if he has voting rights. On the other hand, a bank that becomes a company's largest lender has the capacity to influence a company and is therefore responsible even if it has no voting rights. Similarly, asset managers, who do not hold any capital, but whose knowledge of companies and markets and the trust placed in them by investors give them decisive influence in the choice of investments, must also assume considerable responsibility. The three levers just described can give rise to several changes: in the hierarchy of loyalties; in the legal translation of responsibility; and in the distribution of responsibilities among the players.

Hierarchy of loyalties first. It is necessary to move from the current state of subsidiary responsibility, where the primary requirement is that of performance, to a reverse hierarchy, where performance can be legitimately pursued provided that responsibility has actually been assumed. This reversal of the hierarchy of loyalties will have to be reflected in a review of 'fiduciary duty'. This is a very topical issue, as we have seen in the United States in particular. It is a context in which the European Union would be in a position to take the initiative. The new priority of fiduciary duty will be reflected in the application of new accounting standards applicable to financial institutions, which, beyond the current prudential considerations aiming to prohibit large banks from taking risks unrelated to their capital, should reflect the very content of portfolios, leading financial institutions to 'consolidate' the new balance sheets of companies by factoring in the entire industry and the evolution of human and natural capital. On a global scale, this would also lead to an annual publication on the state of global finance, giving transparency and publicity to essential but often hidden data such as the average holding period of shares or the share of profits of financial institutions in total corporate profits.

The hierarchy of loyalties should also establish another philosophy and hierarchy of remuneration within financial institutions. At present, a trader playing with billions that do not belong to him and making decisions based on algorithms is much better remunerated than an executive responsible for verifying compliance of the institution's policy with regulations and its own voluntary commitments.

What can be the legal translation of the responsibility of financial institutions? I have already referred to this with the need for legislation to make voting rights, or even dividends, subject to a period of shareholding and to require shares to be removed from anonymity by keeping a register of shareholders, which, in the case of deferred damages, will allow responsibility to be imputed at the date on which the damaging decision was made. The principle according to which damages must be offset, whether or not they have been committed voluntarily and whether or not they affect legal subjects (second principle of the Universal Declaration of Human Responsibilities), implies that the shareholders' contribution to the compensation of damages may largely exceed their stake. This is the basis for unlimited responsibility in space and time. It may involve a new role for insurance, similar to the role it plays in motor vehicle accidents or civil responsibility. But here there is no all-risk insurance; in order to prevent the pooling of risks from increasing moral hazard, insurance companies would intervene only when the damages to be repaired exceed the shareholders' stake and then distribute the responsibility for repairing the damages among the various stakeholders. If shareholders' responsibility is called into question, this will have a direct impact on the general meetings. They will have to put on the agenda the risk that the responsibility of the financial

institution will be called into question because of the content of their portfolios. Shareholders who do not take part in the voting will, from the point of view of their responsibility, be deemed to agree with the decisions made. This will lead to a serious evolution of the asset-management companies that represent them. The imprescriptible responsibility of shareholders will certainly encourage the conversion of many existing shares into non-voting shares. This will concentrate power within the company in the hands of those who are committed to the long term and therefore take full responsibility for the decisions made.

As regards the distribution of responsibilities among the players, two proposals are worth noting: the responsibilities of directors and the special responsibility of financial institutions when they hold more than 3% of the capital of a listed company. Following the Enron scandal and at the time of the debate on the Sarbanes-Oxley Act, which was intended to prevent the recurrence of such scandals, a number of US congress members had proposed that corporate directors should be held criminally liable if they were found to be incapable of understanding the nature of the company's activity and even more so the real sources of its profits.²⁰⁴ Abandoned at that time, the idea should be taken up and generalized; firstly, holding by a financial institution, in particular a pension fund, more than 3% of a company's capital would make it a *de facto* administrator, with the corporate officers of the pension fund having civil and criminal responsibility; this civil and criminal responsibility should be enshrined in law; the possibility of exercising the position of *de jure* or *de facto* director of a company should be accompanied by a general training obligation on the responsibility of financial institutions and on the sectors in which the institution holds more than 3% of the capital; finally, the first sanction in the event of damages would be to cause persons exercising the position of director to lose their right to exercise the position of corporate officer.

In the particular case of asset-management companies, to which the above principles do not apply because they do not themselves own shares in the capital and yet exercise significant power, their responsibilities could be strengthened in three ways: by prohibiting any remuneration for their activity linked to the rapid rotation of the portfolios they manage, remuneration which encourages speculative attitudes and generates a conflict of interest between clients and managers; their functions could be assimilated to those of directors when the managed portfolios exceed 3% of a company's capital, thus encouraging them to look at the company in the reality of its impact and not only in its capacity to ensure dividends; finally, a return to forms of association of these companies' employees with their capital, and therefore with the risks taken, should be encouraged, in contrast to the trend over the last 30 years, when the listing of major asset-management companies on the stock exchange and the development by the major banks of branches specializing in asset management severed the link between the professionals who make investment decisions and the risks taken.²⁰⁵

As we can see, the responsibility approach can have far-reaching consequences for how financial systems work.

204 . Debates around the Sarbanes-Oxley Act in 2002.

205 . No private bank in Geneva has gone bankrupt for several centuries. Why? Because until recently, every partner was personally and indefinitely responsible with all of his or her assets (including house, car, etc.). They were responsible for the consequences of their decisions as well as for those of their partners, and obviously for the actions of their subordinates. Conversely, according to Moshen Sohrabi, no listed US investment bank is older than 30 years. At some point they go bankrupt because their managers do not personally assume the consequences of their decisions, whether in the short or the long term.

Chapter 12. CHARTER OF SOCIETAL RESPONSIBILITIES FOR POLITICAL LEADERS

In the introduction to the Universal Declaration of Human Responsibilities, I brought up Dominique Rousseau's question: *'Have we not reached a historical moment when it is no longer enough to tinker, when it has become necessary to find concepts to think about what is happening to us?'* 'This is echoed in Alain Supiot's expression *'dogmatic slumber'*, which characterizes an era in which thinking about what is happening remains in the ruts of doctrines built in another time for other problems.

These two qualifications, 'tinkering' and 'dogmatic slumber', are especially true for political doctrines. The confrontation between advocates of free markets and individual responsibility on the one hand and advocates of public intervention and solidarity on the other, which dominated the political scene in the twentieth century, is the legacy of the first industrial revolution. The dogma of national sovereignty dates back to the seventeenth century. And we are seeing the major traditional parties chasing after events, trying to mould the big new issues – irreversible global interdependences and the ecological urgency – into the old doctrines, with a sort of tinkering that escapes no one, including the interested parties themselves.

Throughout this book, there has been a lot of talk about the state. We have seen its two complementary requirements, which are: to *desacralize* it by making it an actor like any other on the world stage, subjecting it to the same analytical criteria and the same legal requirements of responsibility as for other major actors of its size, namely transnational corporations and financial institutions; and to assert *its ultimate responsibility* to national actors 'under its care'. Analysis of the various societal charters has indeed shown us, if only because of the competition among players on the international scene, that new social contracts need rules that apply to all players in order to exist: a governance regime for fossil energy that ensures the long-term profitability of investments in the energy transition, new accounting rules, limits on shareholders' voting rights, a redefinition of the fiduciary duty and a method of remunerating management companies, to name but a few examples. This ultimate responsibility could be summed up by saying that *the state is responsible for the irresponsibility of other actors if it has not set up the conditions for their responsibility to be exercised*.

But who is the state? This is a question we have encountered in other circles: Who is higher education? Who is business? Who are financial institutions? The fifth principle of the Universal Declaration of Human Responsibilities takes on its full value here: *'The responsibility of institutions, public and private ones alike, whatever their governing rules, does not exonerate the responsibility of their leaders and vice versa'*. For each social contract it has been necessary to identify the stakeholders and define each of their share of responsibility.

In this chapter, we will focus on key stakeholders of the state, political leaders. They have a twofold function: as producers of doctrine and as leaders of public institutions. We shall ask ourselves what a Charter of Societal Responsibilities could be to which those who aspire to exercise executive and legislative power would adhere, putting them in a position to make major public-authority decisions and to draw up rules applying to other actors.

Explicitly in democracies, implicitly in authoritarian regimes, there is a traditional contract for political leaders that is the foundation of the legality of their action but also and above all of the legitimacy of their power. It boils down to the rules of balance and alternation of powers laid down in constitutions: responsibility of the government to parliament and primarily, responsibility of leaders to citizens, sanctioned by periodic elections. These rules define a *limited responsibility*, limited in space and in time.

Limited in space. Those who speak out on responsibility are the voters, particularly at the national level. It is not the scale of the impact of the decisions made that matters, only the impact on the citizens of a country. General interest, which the public authorities and their leaders boast about, is in reality the interest of their electorate. As a result, and viewed from a distance, from the point of view of the interests of the planet, there is very little difference between the political leader of a state and the leader of a large company or financial institution. The only major difference is that in the economic world the influence of shareholders is proportional to the capital they have invested, whereas in the political field, in principle, each voter carries the same weight. This difference aside, the role of political leaders is not very different from the role that the neoliberal doctrine assigns to business leaders, namely to serve the best interests of voters as one serves the best interests of shareholders. Political leaders have therefore to face *the same conflict of loyalties* as economic and financial leaders do, between the interests of the planet and society as a whole on the one hand, and the interests of voters/shareholders on the other. The President of the United States, Donald Trump, far from being an aberrant case, is rather the pure model of the responsibility of political leaders in the old social contract. His slogan ‘America first’ is nothing more than the transposition of Milton Friedman’s doctrine into the political field. An emblematic figure, a caricature rather than an exception. The sale of arms to Saudi Arabia by the major industrial countries or the defence of the industrial branches from which countries derive their prosperity and power regardless of their impact on other societies and on the planet shows among our political leaders that the major universal principles are of variable geometry and that they are discreetly forgotten when presumed national interests are at stake.

Strange as it may seem to a public that is fed exclusively with Western values, it is perhaps in ancient China that less narrow conceptions of political responsibility should be sought. One of China’s great national holidays, the Dragon Boat Festival, celebrates the memory of a Mandarin who committed suicide more than 2,000 years ago by throwing himself into the river for failing to convince his ruler not to wage an unjust war.²⁰⁶ The imperial ideology of ancient China made the ruler the guarantor of universal harmony, a notion quite close, all things said, to the idea that the ultimate goal of governance is to establish appropriate relations among human beings, among societies, and between humankind and the biosphere. Is this still true in contemporary China? This can be doubted, and I do not think the Uyghurs would be pleased with this parallel, but at other levels the reference remains meaningful to the population – a *harmonious society*, the new Chinese Communist Party watchword undoubtedly refers to this tradition.

Limited in space, the responsibility of political leaders is also limited in time. Once a political leader has relinquished power, either voluntarily or after losing an election, he or she is no longer concerned about damaging decisions made during the time he or she was in power. A former leader can only be blamed for illegal acts, such as falsified campaign accounts, the use of public officials

206 . Dragon Boat Festival, https://en.wikipedia.org/wiki/Dragon_Boat_Festival.

for private purposes or attempted corruption, but not for the far-reaching consequences of decisions made in the course of his or her duties. We have described recent legal actions against states that are not doing enough to combat climate change. This is undeniable progress. Nevertheless, it is the abstract and timeless responsibility of the state rather than the personal and time-bound responsibility of political leaders, heads of government or members of parliament that the complainants are addressing. Coming back to the classic concept used with regard to financial institutions, there is nothing in the current system to combat moral hazard in political decision making. In July 2019, quoting the first report of the High Climate Council set up in 2018 by French president Emmanuel Macron, which noted that in France successive governments had voted for ‘low carbon strategies’, were unable in fact to implement them and limited themselves in the following period to voting for an even more ambitious strategy, a journalist from *Le Monde*, Sylvestre Huet, observed that for French politicians, their inability to meet the targets they had set had no legal consequences, not even temporary ineligibility.²⁰⁷ Yet prohibition from holding social mandates when one has been irresponsible would seem to be a common sense measure.

Similarly, despite their assertion that they are abiding with the principle of the rights of future generations, the responsibility of political leaders has little to do with the future. This statement is admittedly a bit abrupt. There is an old saying that ‘voters get the politicians they deserve’, and when voters start to worry about the future in the long term, for example under the influence of their own children, political leaders revise on the double their own intellectual software. But is this so different from the previously mentioned oil company, which said it had no responsibility for greenhouse-gas emissions because it was meeting its customers’ demands? It is striking to note that only a few political leaders have left a lasting memory, such as General De Gaulle, Pierre Mendes France or Michel Rocard, for having given the feeling of being driven by convictions and a sense of the general interest, even if they sometimes had to depart from the electorate’s expectations.

Towards a new social contract

Like for the other actors, the Charter of Societal Responsibilities for Political Leaders would follow the eight principles of the Universal Declaration of Human Responsibilities. To avoid repetition, I shall confine myself to highlighting a few key points.

The first concerns the hierarchy of loyalties and communities. This hierarchy stems from what I have described as a vital issue in relation to common law, which is to ‘ensure the survival and continuation of the human adventure in the context of global interdependences that have become irreversible and of human activity that is disrupting the biosphere’. Focusing his or her energy on this vital issue and mobilizing citizens to address it is the first responsibility of a political leader, the essential loyalty to which loyalty to the electorate is subordinated. It is to recognize that the natural community is the human family and not a national community inherited from history, but that this community has yet to be built. Thus, the Charter for Political Leaders would fully incorporate the first two paragraphs of the preamble to the Universal Declaration:

‘We, Representatives of the Member States of the United Nations

Recognize:

1- that the interdependent relationship that has been created between human beings, among societies, and between humankind and the biosphere is irreversible and of an unprecedented scope.

207 . S. Huet, ‘Le Haut Conseil pour le Climat frise la Révolution’, in *Le Monde*, 3 July 2019.

It constitutes a radically new situation in the history of humanity, irrevocably uniting our communities as a single community of destiny.

2- that the perpetuation of our current lifestyles and development models, along with the tendency to minimize one's own responsibilities, is incompatible with building harmony among societies, preserving the earth's ecological integrity and safeguarding the interests of future generations . . .'

With these observations and priorities, a Charter of Societal Responsibilities for Political Leaders constitutes a 'meta-political programme', a programme defining the major objectives of political action upstream of preferences expressed in terms of the organization of societies. The idea of a meta-programme contains what I have described as the eternal objectives and general principles of governance. The eternal objectives: the establishment or re-establishment of the three fundamental relationships among human beings, among societies, and between humankind and the biosphere. The constant principles of legitimacy and efficiency of governance: the establishment of appropriate governance regimes for the different goods and services; cooperation among actors; the traceability of flows; the search for guiding principles derived from experience and enabling the best possible reconciliation of unity and diversity; and multilevel governance.

Is it so Utopian to imagine European political leaders adopting such a Charter? To propose it would be to implement the eighth principle of the Universal Declaration: *'No one is exempt from his or her responsibility for reasons of helplessness if he or she did not make the effort of uniting with others, nor for reasons of ignorance if he or she did not make the effort of becoming informed'*. I pointed out, in connection with the other charters of societal responsibilities, the need for a vanguard group to emerge in each milieu, showing that what to many seemed Utopian was only an obvious response to the systemic crisis we are facing. The noble role of political leaders is precisely to light up the way for collective action and give it meaning.

Given the resistance to be expected from certain states, we noted that the adoption in the UN General Assembly of the Universal Declaration of Human Responsibilities will be the result of a laborious and undoubtedly slow process, and that consequently, societal charters, following the framework of the Universal Declaration, could not wait, to be developed, for this inter-state anointment. Rather, the charters are essential steps showing that universal principles of responsibility can begin to be applied through a combination of voluntary commitments and rules, at the national or regional level. This is also true for a Charter for Political Leaders. Its development and adoption, as broad as possible, would be a prelude to the development of a World Constitution as I have defined it, and a common law.

Political leaders united by a transparent and transnational Charter of Societal Responsibilities such as this would have the legitimacy to undertake the multi-stakeholder founding process for which I have described the principles, a process from which the broad outlines of this World Constitution could emerge. This would be the best way for them to embody the first principle of the Universal Declaration, *'The exercise of one's responsibilities expresses our human freedom and dignity as a citizen of the world community'*, and to bring their actions into harmony with the third and fourth paragraphs of the preamble of the Universal Declaration, recognizing:

'3- that the extent of changes now needed is beyond any single human being, and requires the commitment of each and every individual and every public and private institution;

4- that the current legal, political and financial procedures designed to steer and monitor public and private institutions, in particular those that have an impact worldwide, fail to motivate the latter to assume their full responsibilities, and may even encourage their irresponsibility. . .'

The Charter would rely on the fourth paragraph in particular to affirm its signatories' common will to set up the conditions for the responsibilities of the various actors.

Conclusion: Towards a responsible and inclusive global society

Four challenges for the twenty-first century; in fact four complementary approaches to a systemic transition to a sustainable society. Page after page we have been able to see how the different challenges stand in cross-reference. Four challenges is not much, and that is the good news – humankind has a clear roadmap. Unfortunately, meeting each of these challenges requires a genuine Copernican revolution, as we have seen, with regard to responsibility. Describing its nature and contours is one thing, leading it is another. Whatever the challenge, and in roughly the same terms for each of them, the question is raised of transitioning from one system to another and managing the change.

In 2018, in connection with the great ‘forward comeback’ from economy to œconomy, I recalled Teilhard de Chardin’s premonitory sentence: ‘*It is the same in every domain: when anything really new begins to germinate around us, we cannot distinguish it . . . when we look back, that everything seems to have burst into the world ready made.*’²⁰⁸ This also applies to responsibility. The day will come when it will be clear that responsibility is at the heart of ethics and that its different dimensions must be attuned to the reality of interdependences among human beings, among societies, and between humankind and the planet. In the meantime, dogmatic slumber remains deep and, like a horse resisting an obstacle, our societies are having a hard time taking the plunge.

Between 2018 and 2019, there was an accumulation of conflicting signals. On the one hand, faced with the illusions of unregulated economic and financial globalization, societies and political leaders have literally turned back the clock, hiding behind their borders as if sovereignty, identity retrenchment or denial could abolish irreversible interdependences. On the other hand, in the face of the evidence of imbalances in the biosphere, of which climate change has become the symbol, more and more voices have been raised, particularly among young people, to proclaim the urgency of a radical transformation. But these cries are only meaningful if we see new ways to lead the transition.

The diagnosis made in the 1993 Platform for a Responsible and United World – ‘*If our societies maintain their present ways of life and forms of development much longer, humankind is bound for self-destruction.*’ – remains as accurate as ever. Nevertheless, I continue to believe in the possibility of another way out, in humankind’s ability to pull itself together, but this ability must be organized. A positive change is as logical as a disaster. A disaster, whether natural or industrial, occurs when a number of factors coincide, none of which is in itself catastrophic and unusual, but whose unlikely concomitance produces a sudden break. The challenge of a positive change is to grasp different more or less independent developments and to organize their convergence in order to bring about a break, but a saving break.

In *Essai sur l’œconomie*, I presented a theory of transition showing that a transition requires bringing together a set of factors and actors, most of which are pre-existing but whose synergy has yet to be organized. I thus identified the ‘three lozenges of change’: the lozenge of actors, the lozenge of stages and the lozenge of scales. The *lozenge of actors* brings together *innovators*, who take concrete action in the face of a situation they consider intolerable, *theorists*, who offer a coherent framework for thinking about what is happening to us, *generalizers*, who disseminate and link innovations together, allowing them to make a change in scale or gain visibility in the public

208 . P. Teilhard de Chardin, *The Phenomenon of Man*, New York: Harper and Brothers, 1959.

arena, and *regulators*, who can change the legal or regulatory context in which the actors' activity takes place. Each is indispensable, none is sufficient. *The lozenge of stages* reflects the different elements of the start of a change by providing: *a general awareness of the crisis*; *a shared vision* of the direction in which to go; the search for *allies for change* in all walks of life; and the *first concrete steps* to ensure the capacity to move forward. *The lozenge of scales* affirms the need for change at the *local, national, regional and global levels*.

To speak of a Copernican revolution, of awakening dogmatic slumber or of the need to stop being content with tinkering, themes that have come up again and again throughout these pages, is to emphasize what today is the main missing link in the strategy for change, namely an overall vision, a *common frame of reference* allowing everyone to think about what is happening to them, to give meaning to the future and to humankind's collective adventure, to recognize the similarity of developments arising in milieus that are unaware of each other. In this book, I have sought to contribute to the emergence of this common frame of reference. The principles of responsibility set out in the Universal Declaration of Human Responsibilities are the foundation for this to happen. They can provide the basis for the global common law that is lacking so sorely. The six dimensions of responsibility give overall coherence to efforts around the world to move beyond the narrow definition of responsibility and the national legal framework that are at the root of the current unlimited irresponsibility of our societies.

The other two 'lozenges of change', of stages and of scales, are also present in various ways. Awareness of the crisis and of the inadequacy of the principles of international law or national legal mechanisms is fairly widespread. The beginnings of a broad definition of responsibility are already visible and are giving rise to new alliances among various actors, including academics, jurists, civil-society organizations and others. In most socioprofessional circles, the need to renew the old social contract is being expressed and is the subject of enlightened avant-garde initiatives. Networks have gradually been set up, of judges, civil-society organizations, researchers, young people, educators, companies and pension funds. Regulators for their part are aware of the incompatibility of the old system and the neoliberal world order with the reality of interdependences and the imperatives of safeguarding the planet. From the rights of future generations to the precautionary principle, from the ordering companies' duty of care to the protection of whistleblowers, from the legal redefinition of companies to the principles of responsible investment, laws and constitutional reforms have mushroomed. Even the business circles most traditionally closed to any consideration of interests other than their shareholders' have come to adding water to their wine and recognizing, if only through lip service, the need to factor in the interests of other 'stakeholders'.²⁰⁹ Young people around the world have understood where societies of unlimited irresponsibility are leading them.

The whole issue today is, through convergence, to bring about a change in scale of these changes and a systemic break in the conception of responsibility and related international law. Today, with Donald Trump's United States, Xi Jinping's China, Vladimir Putin's Russia and even the European Union, where the intellectual software continues to see an unconditional free market as the engine of prosperity, it seems that the path of the community of heads of state will be blocked for a long time to come. But this situation is hardly sustainable, far from it. Such nationalisms and inward-looking sovereigntisms are in many ways desperate reactions to new situations to which traditional ideologies are incapable of providing answers; dogmatic slumber is not the privilege of jurists, it is at least as deep where political doctrines are concerned. The impasse of these withdrawal reactions

209 . On 19 August 2019, Business Roundtable, which includes the major US companies, presented a new Statement on the Purpose of a Corporation. Business Roundtable had hitherto held the view, against all odds, that shareholders' interests should be served exclusively. The new statement moves away from shareholder primacy to include commitment to all stakeholders.

will sooner or later prove to be a dead end. Donald Trump's political survival is far from assured. Xi Jinping's power may seem undivided, but internal power struggles within the Chinese Communist Party are no less raging and the evolution of the Chinese economy, as well as the massive protests by the population of Hong Kong, may well reveal its fragility in the near future. The election of the European Parliament in May 2019 revealed a deeper attachment than imagined by European citizens to the construction of a united Europe, but also an aspiration for a Europe that is more capable of dealing with the climate emergency. Even at this level, we cannot rule out faster changes in posture than the current situation of ideological freezing suggests. Then you have to be prepared to propose.

For example, I have mentioned the hypothesis of a 'global founding process' at the initiative of progressive networks from different backgrounds, of which the Alliance for a Responsible and United World was a first prototype. Even if limited to the level of the European Union, such a process would have considerable symbolic significance and could lead to an awakening of political ideologies. The new President of the European Commission, Ursula von der Leyen, assumed office in December 2019. She indicated that organizing a broad debate on the future of Europe would be one of the priorities of her term of office. I have however, on several occasions, stressed that expectations of Europe come not only from its citizens but also from other peoples calling for a new Age of Enlightenment. The first, in the eighteenth century, was the invention of political economy and limited responsibility. The new Century of Enlightenment will be the century of answers to the challenges of the twenty-first century.²¹⁰ Responsibility is obviously part of it. And there is no doubt that the adoption of a European Charter of Responsibilities, benefiting from the traditions and bodies of the European Court of Human Rights established by the Council of Europe, would have a worldwide impact. The process of bringing into line the international trade treaties signed by the European Union would be the corollary.

There will be neither a 'Big Day' of responsibility where in view of the new principles of extended responsibility each in his or her own way would find himself or herself guilty, nor, no doubt, a rapid adoption by the international community of the Universal Declaration of Human Responsibilities, but rather, in the image of the active and joyful responsibility of the youngsters of the international *Let's Take Care of the Planet* network or in the image of those favela leaders claiming their responsibility as actors in their own lives, the awareness that another global society, responsible and in solidarity, is possible and that its advent depends on each and every one of us.

210 . P. Calame, Refaire de la construction européenne une épopée : un nouveau siècle des lumières pour éclairer le 21ème siècle, <http://blog.pierre-calame.fr/post/2019/04/Refaire-de-la-construction-europ%C3%A9enne-une-%C3%A9pop%C3%A9e>.