

Taking Responsibility Seriously

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Every society traditionally grounds domestic law on a bedrock of shared values. This could henceforth also be the case in the international sphere. Thus has the adoption of the Universal Declaration of Human Rights triggered, over the past 60 years, a transformation process that seems to herald the emergence of a global legal system in constant evolution. The principle of responsibility will necessarily also be central to the recomposition of the global legal system in the twenty-first century, not only because accountability for one's actions is a value inherent to any organized community, but also because this obligation is all the greater that the members of this community are interdependent. Interdependences are in fact ever stronger and more visible across the globe, be it among individuals, among countries, or between humankind and the biosphere. Whether in the realm of climate change, health, international trade, financial markets, or the activity of transnational corporations, the change of scale in the impact of human activities on the planet and on societies induces a change of scale and of nature in responsibility.

The current inability of the international community to contain climate change despite the threat that it poses to entire countries is a perfect illustration of the gap that has developed between the magnitude of global interdependences and the state of international law. Given the diversity of national contexts, the principle of “common but differentiated responsibilities” stated at the conclusion of the 1992 Earth Summit is doubtless necessary but in practice, it has resulted in widespread irresponsibility. States have committed to adopt a new roadmap to face climate change at the twenty-first meeting of the Conference of the Parties (COP21) to be held in Paris at the end of 2015 on invitation by the French Government. This could be an opportunity to generate significant progress in international law with regard to responsibility.

The same can be done in the area of health, where shortcomings are manifest with a market reserving for just one-fourth of the population access to more than 90 percent of drugs. Hence the debate, from the World Trade Organization (WTO) to the World Health Organization (WHO), about patents and mandatory licensing, a debate that is being prolonged in the context of the Post-2015 Development Agenda by a consultation on health issues. While the WHO and other participants in this debate have remained within the confines of supporting universal health coverage at the risk of favoring the interests of the market, Brazil is proposing the more ambitious form of fair and complete coverage that characterizes its “Unified Health System” (Sistema Único de Saúde – SUS).

At the same time, the implosion of financial markets that occurred in 2008, far from leading to the adoption of common rules that would require the operators on these markets to answer for the risks they take, has resulted in a transfer of these risks to states and populations. This financial crisis has also shown the adverse effects of the abandonment, in the new international accounting standards adopted at the end of the

twentieth century, of the principle of prudence to the benefit of market value, or “fair value.”

Finally, the free movement of capital and goods has helped multinational enterprises to emancipate themselves from the social and environmental responsibilities imposed on them by domestic laws without having to be subjected to international rules in the same area. Domestic law has thus been drawn into a race for the “lowest social and environmental denominator,” one of the most recent and tragic examples of which was the Rana Plaza work accident that occurred in Bangladesh on April 24, 2013, which took the lives of 1,127 textile workers.

“Social and environmental corporate responsibility” is supposed to make up for the absence of social and environmental rules to police competition at the international scale. Large companies are thus encouraged to organize themselves into mini-states that would have other “concerns” than just the one of making their shareholders richer. The interest of initiatives taken on such bases should not be underestimated, but, for lack of a clearly identifiable entity in charge of overseeing it, an organization likely to demand accountability, and a third party to answer to, such responsibility is obviously not responsibility at all. It is the symptom of an institutional crisis rather than a remedy for a state of the law in which those who have the power to decide are increasingly allowed to not have to answer for the decisions that they make.

Following the lead of a well-known book by Ronald Dworkin, *Taking Rights Seriously* (1977), it therefore now seems urgent to “take responsibility seriously.” From the current perspective, an objective such as this implies not only to analyze carefully the developments of its implementation into positive law, but to reflect on how this law could be designed to prevent the generalization of irresponsible decisions in environmental, social, health, and financial matters.

Consecration of the principle of responsibility should ultimately lead to the adoption of a Universal Declaration of Human Responsibilities by the General Assembly of the United Nations. A necessary complement to the Universal Declaration of Human Rights, such an instrument would testify to the implicit recognition of a global legal system that would engage humankind in its entirety in a common destiny. The adoption of such a declaration is however facing numerous forms of resistance, particularly on the part of states. This declaration might be the culmination of a process of transformation of domestic and international responsibility-related law, but it would be unwise to make it a prerequisite.

Global law, as shown by the experience of the past decades, emerges, progresses, and is consolidated through **a great diversity of transformative processes**, often associating legal professionals and civic movements. Although building responsibility into “hard law” at the international scale is a necessity, along with the establishment of appropriate jurisdictions to state and to enforce this law, it is preceded by the emergence of “soft law.” These transformative processes should be identified, amplified, and if possible synergized to give them greater strength and visibility. The preparation of COP21 is a good opportunity to do so.

This is the purpose of the current cooperation between the Collège de France, the

Réseaux ID (a French-Brazilian network for the internationalization of law), the Charles Léopold Mayer Foundation for the Progress of Humankind, and the international Forum of Ethics and Responsibilities. Their goal is to organize in early 2015 a series of events, the preparation of which will begin in the fall of 2013, that will contribute to bringing existing transformative processes closer together and making them stronger in order to strengthen the synergies between them enduringly and to challenge the states on the eve of COP21.

This cooperation will unfold in three dimensions:

1) Rooting the legal principle of responsibility in different cultural traditions and ongoing hybridizations

The legal world, often in connection with civic movements, is today contributing in many ways to the emergence of a global legal system through mechanisms as diverse as incorporation into domestic law of international principles, hybridization of different domestic laws, cross-jurisprudence of Supreme Courts, national and regional, and more generally speaking what might be called a “dialog of judges.” Although the idea of a global legal system has been the subject of fierce controversy in the United States and has not (yet?) been admitted in China, such a system is being built on the basis of the legal cultures of different regions of the world and is contributing to the emergence of an ordered pluralism. This movement involves both legal academics, who are helping to highlight universal principles, and legal practitioners, who are using existing laws creatively to give rise to new jurisprudence.

This creative approach is embodied by the Réseaux ID networks, facilitated by Professor Mireille Delmas-Marty, in the in-depth dialog they have generated among European, Chinese, American, and Brazilian jurists. In the run-up to the 2015 event, it has been proposed that they focus their dialog on responsibility. A meeting of these networks in early 2015 will be their culmination. On this occasion the networks will be opened to internationally reputed jurists from other legal traditions, for instance from India, the Pacific region, and the Arab world.

2) Implementing convergence of the responsibility approach by various socioprofessional circles and by the economic world

There are several levels of responsibility: that of individual choices; that of collective standards; and that of the law. The Charles Léopold Mayer Foundation for the Progress of Humankind has, since the early 2000s, supported the emergence of different socioprofessional networks reflecting on how to fulfill their responsibilities. These networks include: academics, journalists, the military, youth, the elderly, company executives, etc. A first dialog has been established among them to confront their approaches. It will be expanded to try to identify the principles that are common to all and to outline the principles of universal responsibility.

In the economic world, the theme of social responsibility has gained increasing importance. Although sometimes no more than a public-relations approach or the companies' concern to show that they are sufficiently active in this area in order to avoid having legal standards imposed upon them, the movement has nevertheless

never stopped growing deeper. The adoption by many countries of the ISO 26000 standard opens up new perspectives with an emphasis on social responsibility. It extends reflection on responsibility well beyond the legal scope of businesses. The 2008 financial crisis has highlighted the global consequences of the behavior of leaders who, without acting contrary to law, have been deeply irresponsible, demonstrating ignorance or indifference to the consequences of their decisions. Recently, the English commission set up to reform the banking system proposed that this irresponsible behavior could be the subject of sanctions, not only against banking institutions but also against their leaders, including prison sentences. International institutions such as the OECD and UNEP have issued principles of responsible investment. They have no legal reach so far, but they can gradually acquire prescriptive value.

What will be at stake here will be to reveal and mutually reinforce the changes at work, the intermediate stages between “soft law” and “hard law.”

3) Organizing an international conference on the transformations of responsibility-related law

This approach will draw from the one undertaken in 2013 by Professor Alain Supiot at the Collège de France on the subject of solidarity. Its first and foremost goal will be to understand how the principle of responsibility is rooted in history and take the linguistic and cultural measure of the multiple meanings that it has covered. It will then go on to confront the most advanced legal research on the mutations affecting this principle in the contemporary world, on the legal resources available for its implementation, and finally on the obstacles that will need to be removed to facilitate its implementation. Combining comparative law and international law, the conference will make it possible to compare the dimensions of the law of responsibility that too often are dismissed: on the one hand, by grasping the different legal procedures (civil, criminal, and ethical) for its implementation; and the other by examining how the principle of responsibility is exercised in the crucial areas of nature, health, work, and currency.

This theme-based approach will make it possible in particular to examine in the light of the principle of responsibility the legal instruments that the international community has given itself to manage issues of global interest. In some areas these instruments have taken the form of international institutions that have often been granted certain normative jurisdiction (such as the World Trade Organization, the International Labour Organization, the World Health Organization, the International Monetary Fund and the World Bank). In other areas, they are merely international conventions (such as the UN Convention on Climate Change or the UN Convention on Biodiversity). These instruments are all ways, among others, to implement the responsibility of states. The idea will be to see what brings them together and what makes them different in the way this task is fulfilled. In the case of international organizations, what will be questioned will be related to their own responsibilities. This comparative analysis should make it possible, not only to take stock of the current state of play in the implementation of the principle of responsibility at the global level, but also to identify common legal principles likely to give this set of instruments strength and consistency.

These three dimensions will converge during the first half of 2015 at one or more events, the nature of which will become clearer in the coming months. These will focus on three objectives:

- **presentation of these reflections to a wide audience** thanks to their dissemination through the media; young jurists and law schools will be encouraged to engage in these new perspectives;
- **publication of the work** so as to set a milestone and make it an enduring step in the international reflection of the legal world and of civic movements on this theme;
- **a summary of the findings**, disseminated through different channels to the heads of state who will meet at COP21.