

# Towards a responsible and inclusive global society

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## INTRODUCTION

The book you are opening tells of the indispensable metamorphosis of responsibility in the twenty-first century. It is the fruit of a collective work that spans three decades, with the constant support of the Charles Léopold Mayer Foundation for the Progress of Humankind, FPH. This work has gone through four phases.

From 1986 to 1993, a handful of French-speaking intellectuals, brought together in the Groupe de Vézelay, worked on clearing up the major challenges of our time. It leads to the publication of the Platform for a Responsible and United World, written in consultation with personalities from all over the world. The Platform underlines that humanity is facing three interrelated crises. These are, significantly, three crises of relations: of human beings among themselves; of societies among themselves; of humanity with the biosphere.

From 1994 to 2001, the Platform gave birth to the Alliance for a Responsible and United World, a dynamic that brought together people from all continents and all socio-professional backgrounds to develop perspectives for the twenty-first century. Within this framework, an intercultural and interreligious workshop is opened on the values common to humanity. The workshop concludes that responsibility will be the backbone of the ethics of the twenty-first century. As a high point of the Alliance, the FPH organizes in December 2001 a World Citizens Assembly, bringing together personalities from all over the world for ten days to try to identify, beyond countless differences, the major challenges of the century that is beginning. Four common challenges are identified: agreeing on common values; creating a global community of destiny; launching a revolution in governance; inventing a new model of economic development. At the end of the Assembly, a Charter of Human Responsibilities is published.

From 2003 to 2018, the Charter of Human Responsibilities is being debated by an Alliance for Responsible Societies which continues the previous movement but focuses on the ethics of responsibility and its multiple implications. The Alliance, convinced of the need for states to adopt the fundamental principles of responsibility in the twenty-first century, is synthesizing them in a draft Universal Declaration of Human Responsibilities.

Finally, in 2014, was launched a fruitful cooperation of the Alliance for responsible societies with the Collège de France, under the direction of two successive holders of the Chair of International Law of the Collège, Mireille Delmas Marty and Alain Supiot. This gives rise to the idea of a metamorphosis of liability from a legal point of view. It leads to two collective works: "Taking Responsibility Seriously" and "On the Road to a Universalizable Common Law".

If these countless dialogues have nourished me, the conclusions that I draw from them and which are the subject of this book are my own.

Why talk about shifting responsibility? Hasn't responsibility always been at the heart of social relations? Is it not the foundation of all legal systems? Yes, and that's precisely its interest. Responsibility is at the heart of relationships. A community is defined as the group of people who recognize a mutual responsibility, the duty of each person to take into account the impact of his or her actions on the other members of the community. But over the centuries there have been two contradictory movements: the contours of responsibility have narrowed at the very moment when the scale and scope of interdependencies between individuals, between societies, between humanity and the biosphere were radically changing, making the whole of humanity a community of destiny. We see the consequences today: while the responsibility of each actor is limited, the irresponsibility of companies has become unlimited! No one is responsible for developments which, as we can see with the climate, nevertheless threaten the very survival of humanity.

During the second half of the twentieth century, an ideology based on three foundations became widespread: the market as a means of regulating human activities; sovereign states as an unassailable level of management of communities and the common good; and human rights as the foundation of common values. None of these three foundations is able to respond to the three crises in the relationship. 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 about this false symmetry, hence the awareness, emanating from different horizons, of a necessary balance between rights and duties, between rights and responsibilities. What I am translating, as a result of all our collective work, is the need to supplement the Universal Declaration of Human Rights with a text of equal force, the Universal Declaration of Human Responsibilities.

In the book we will go step by step, starting from the question of the universality of values in a multi-cultural world to lead to global governance, international law, the social contract between different socio-professional milieus and society as a whole.

## **COMMENTED SUMMARY**

### **Part One: Responsibility as the backbone of global ethics**

#### **Chapter 1: The Emergence of a Planetary Ethic**

After the Second World War, the international community adopted two pillars: the United Nations Charter, which deals with relations between States, and the Universal Declaration of Human Rights. They form the first elements of a planetary ethic 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 humanity and the biosphere. The idea of an "Earth Charter" was then launched,

constituting a third pillar. The 1992 Earth Summit gave rise to a flurry of draft Charters without resulting in a text adopted by the UN Assembly. Over the years, it became clear that supplementing planetary ethics with a text dealing with the environment was insufficient. Numerous reflections are then carried out on the nature of the planetary ethics of the 21st century, necessary to manage the interdependencies between individuals, between societies, between humanity and the biosphere.

The Alliance for a Responsible and United World, bringing together personalities from all countries and all socio-professional horizons, led an inter-cultural and inter-religious reflection which concluded that the planetary ethics of the 21st century would be built around the ideas of responsibility and co-responsibility.

## **Chapter 2: Responsibility as the backbone of ethics in the twenty-first century**

The World Citizens' Assembly, organised in 2001 by the Alliance for a Responsible and United World, is an opportunity to clarify the reasons why a new text is needed and to outline its contours. The debate held during this assembly allows us to state six theses:

1: Faced with a radically new situation of humanity, a third pillar common to all societies and all walks of life is needed to complement 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 at the personal and collective level, both guiding individual conduct and providing a basis for law".

3: The notion of responsibility, inseparable from all human interaction, is a universal principle.

4: Because of the impact of human activities and the interdependence between societies, a broader definition of responsibility is needed, with three dimensions: assuming the direct and indirect consequences of our actions; uniting to overcome powerlessness; and recognizing that our responsibility is proportionate to the knowledge and power of each person.

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

6: Each social and professional environment 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 him to the rest of the company".

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

## **Chapter 3: The Six Dimensions of Responsibility**

The idea of mutual accountability is not new. On the contrary, it is the foundation of any community and the basis of legal systems, which explains the universality of this principle. What is new is the changing spatial and temporal scale of interdependencies between people, between societies, between humanity and the biosphere. However, the concept of

responsibility that prevails today goes back to earlier states of societies and does not correspond to these new realities: in fact, the limited responsibility of each actor leads to unlimited irresponsibility of societies as a whole. The six dimensions of responsibility must therefore be revisited:

1. Objective liability (related to the consequences of actions) or subjective liability (related to the intentions behind the action)?
2. Limited or unlimited liability 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 result?

## **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 on climate change, to the failure to prosecute serious environmental and human rights abuses by multi-national corporations, the examples of the unlimited irresponsibility of our societies are legion. After reviewing the numerous examples of impunity of all actors in society for acts that jeopardize our future, and analysing the reasons that each time allow this impunity, two major obstacles are highlighted.

The first is the "dogmatic sleep" of lawyers in the face of new realities. The analysis here owes much to the work carried out within the Collège de France and led by two of the College's chairholders, world-renowned jurists Mireille Delmas Marty and Alain Supiot. The second is our absolutist conception of state sovereignty and property, which leads 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 which leads owners to have no responsibilities attached to the management of their assets.

## **Part Two: The Metamorphosis of Responsibility**

### **Chapter 5: The Premise of an Expanded Definition of Liability**

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 nationalist withdrawal that is 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 companies themselves and at the level of the law, which contribute to a broad definition of liability.

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

The possible recourse of organizations and even individuals before the Constitutional Courts gives a new scope to the preamble of the institutions, reinforcing the opportunity to include principles of extended responsibility.

New alliances are being forged between scientists, civil society organizations and jurists to develop innovative uses of law: just as at the end of the 19th 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 subcontracting 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 by means of examples: they are only shivers, but together they constitute a breeding ground for the reformulation of the principles of responsibility.

## **Chapter 6: The Universal Declaration of Human Responsibilities as an expression of a world community in formation**

We are certainly, as Dominique Rousseau, professor of constitutional law, says, at 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. This is the case with liability. The irreversible global interdependencies that characterize globalization must be matched by general principles of accountability for the challenges of the 21st century.

The international working process led by the Alliance for a Responsible and United World and then by the Alliance for Responsible Societies 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 is an expression of one's freedom and dignity as a citizen of the world community;
2. Each human being and all together have a co-responsibility towards others, towards the community near and far, and towards the planet, in proportion to each person's assets, power and knowledge.
3. This responsibility implies taking into account the immediate or delayed effects of its acts, preventing or compensating for damage, whether or not committed voluntarily, and whether or not affecting legal persons. It applies to all areas of human activity and to all scales of time and space.
- 4 This liability is not subject to any statute of limitations as long as the damage is irreversible.
5. The responsibility of institutions, both public and private, whatever the rules governing them, does not exonerate the responsibility of their leaders and vice versa.
6. Possession or enjoyment of a natural resource entails the responsibility to manage it for the common good.
7. The exercise of a power, notwithstanding the rules by which it is vested, is legitimate only if it is accountable to those over whom it is exercised and if it is accompanied by rules of responsibility commensurate with the power of influence exercised.
8. No one can exonerate himself from his responsibility in the name of his powerlessness if he has not made the effort to unite with others or in the name of his ignorance if he has not made the effort to inform himself. »

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 has 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. In the face of the challenges of the 21st century, governance and law are called upon to embark on a Copernican revolution, placing at the centre of this revolution what has hitherto been treated as marginal, in particular the global level and the necessary articulation between levels of governance.

The revolution in the law involves its re-enchantment 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 accountability:

1. Governance in changing societies is defined by: the statement of common objectives; the recognition of shared values, at the heart of which is a broad definition of responsibility; and problem-solving processes;
2. Before setting out principles for the management of established communities, governance must create the conditions for the institution of communities, which is particularly true today for the world community;.
3. The 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 objectives pursued. This effectiveness is based today on the definition of governance regimes adapted to the different goods and services, on the organisation of cooperation between the different types of public and private actors for the common good, renewing the relevance and importance of the concepts of social pact and social contract;
5. In order to best combine unity and diversity, governance must articulate the actions of the different levels, from local to global, what is known as multi-level 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 Age**

No one doubts, in principle, that the management of irreversible interdependencies between societies and between humanity and the biosphere presupposes global governance and global law based on the Universal Declaration of Human Responsibilities. But neither this governance nor this right will fall from the sky. Fiercely attached to their sovereignty, all the more so as in reality it is shrinking like a skin of sorrow, the States will undoubtedly be the last to adopt such a Declaration in the framework of the UN General Assembly. In this chapter we look pragmatically at the steps that need to be taken to achieve this.

The first step is to consolidate the concept of the "human family" introduced by the 1948 Universal Declaration of Human Rights. It means that it is no longer the Nations that

constitute "natural communities of destiny" but the entire human family. In the global village, Nations are like roommates in the same apartment forced to co-manage common resources.

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 the preamble to a constitution, a European law, and a Commission responsible for proposing policies that respond to 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 equip itself with the rules for the management of the common good, in particular legal rules. Such a multi-stakeholder process already benefits 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 Organisation, European Law, the International Criminal Court and the various Constitutional Courts.

The construction of a global common law is part of this perspective. It is a multi-level right, with each actor, both private and public, depending on the level to which the scale of its 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 between courts has multiplied 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.

### **Third part: the societal charters of the actors**

The general principles of the Universal Declaration of Human Responsibilities are the foundation of the relationship between each social and professional environment and society as a whole. In the third part of the book, this general principle is declined and illustrated for a certain number of circles for which the reflection on the nature of the new social contract is already well advanced: it is thus not an exercise in chambers but an extension, an amplification, of dynamics already at work.

#### **Chapter 9: Charters of societal responsibilities for scientific research and higher education**

While 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 young people lead the way". It describes the dynamic resulting from the work of the Alliance for a Responsible and United World which, at the beginning of the 2000s, crossed the initiatives of the Brazilian President Lula Da Silva to give birth in 2010 to the Brasília World Youth Meeting and then to its extensions, particularly in Europe. Young people, characterized by their powerlessness and facing challenges that large

institutions have not been able to meet to date, answer: "If not us, who? If not now, when?".

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

Today, these renewal efforts continue to be led by minorities within each community. The so-called representative institutions, themselves born in the aftermath of the Second World War, remain, through their corporatism, attached to the old contract but can see that societies themselves are calling it into question, which manifests itself in an increasingly pronounced mistrust towards them.

## **Chapter 10: Corporate Social Responsibility Charter**

Taking up the approach for which the two cases of research and higher education laid the foundations, the chapter begins with an analysis of the successive social contracts, implicit or explicit, which have in the past defined the relations between business and society and justified the freedom to undertake. One by one, these contracts have become obsolete. The affirmation of social and environmental responsibility, which has been omnipresent for large companies since the beginning of the 21st century, is the beginning of a new social contract, even if it remains very ambiguous.

Then the foundations are 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, shareholders. To this first form of horizontal co-responsibility is added vertical co-responsibility, which unites within global production chains the thousands of actors who are legally independent of each other but bound by complex relations of power and allegiance.

It is with this double 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 Corporate Social Responsibilities for Financial Actors**

Many political leaders make "finance", an abstraction that covers "vulture" funds as well as pension funds or sovereign state funds and the "financialisation of the world", a kind 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 demonisation and idealisation, this chapter adopts a pragmatic approach, making the multiple actors in finance, whose roles are precisely characterised, actors like the others, subject to the same need to redefine the social contract. To do so, we must begin



by highlighting the main characteristics of a finance that is both internationalized through the interconnection of financial markets and highly socialized with the decisive role of pension funds and undertakings 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 in 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, in a still very timid way, 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 so-called "ethical" financial vehicles still remain, 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; 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 Corporate Social Responsibility 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 challenge their mandate at each election. However, as amply demonstrated in the previous chapters, 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 planetary. This means that the "political responsibility" of the leaders of large democratic countries is paradoxically the very example of limited liability giving rise to unlimited irresponsibility. Moreover, the actions of leaders are often based on political and economic doctrines suffering from the "dogmatic slumber" already noted in relation to lawyers. The first responsibility of political leaders should be to develop thinking about governance and society that is commensurate with the challenges of the 21st century.

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