

Responsibility, Fraternity, and Sustainability in Law

A Symposium in honour of Charles D. Gonthier

Sustainability and the Law

May 20, 2011, 13:30-15:15, New Chancellor Day Hall, Maxwell Cohen Moot Court
Chair: Professor Marie-Claire Cordonier-Segger, Director, CISDL & Manager, IDLO

Introduction

The chair opened with a discussion of the work Justice Gonthier did in his last decade at CISDL. His mentorship to many researchers at the CISDL is reflected in the depth and breadth of the CISDL's publications. The Centre's role in defining sustainable development as a legal concept and promoting it internationally began with Justice Gonthier. In the last 20-30 years, there have been many treaties and binding covenants between nation states on matters such as economic growth, environmental protection regimes, and human rights, with underlying objectives of fraternity and solidarity. Basing herself in Justice Gonthier's steadfast trust in the moral foundation of law, Professor Cordonier-Segger discussed the important role that law can play in the development of emerging nations. She concluded by reaffirming the role that Justice Gonthier's conception of morality in law can play in the integration of sustainable development into international law.

Sustainable Development as Freedom: Addressing Equity and Sustainability in the Arab Revolution

Mr. Kishan Khoday, U.N. Deputy Representative in Saudi Arabia
Professor Usha Natarajan, American University, Cairo, Egypt (not present)

Mr. Khoday believes that we need to contextualize law reform and justice theoretically. Transitions in present-day Arab regions exemplify this. Individuals and groups throughout the Middle East and North Africa are calling for more transparent and participatory governance. This is closely tied to better management of natural resource utilization and environmental protection. Natural resource issues, specifically those related to oil and water, have shaped the role of the state and its ability to provide services. Mr. Khoday argued that a lack of accountability inhibits justice and participatory governance structures and marginalizes the poor. In this scenario, a legal empowerment agenda could be hugely important in stabilizing a country post-upheaval. Though constitutional issues may take priority after the upheavals in this region, Mr. Khoday argued that structural issues tied to the economy, society, or natural resource development will also have to be worked out at the national level.

The presenters illustrated how food price spikes and wide unemployment contributed strongly to the current situation in North Africa and the Middle East. Global commodity prices, particularly that of wheat, were very high, and as these are especially dry regions, water security is always a key social issue. From the dangers of climate change in North Africa to Jordanian tribal grievances over water use to internal migration in Syria over water, natural resources security is often a key component of social unrest. As an example, flooding in Saudi Arabia led to public protests by women over the use and abuse of natural resources.

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It is predicted that the world will reach peak oil between 2015-2050. The presenter pointed out that as the populations in North Africa and the Middle East are disproportionately young, their future employment situation has become a key issue, often contributing to the various revolutions of the “Arab Spring.” The calls for freedom in the region are leading to the development of new social contracts. Though freedom in these contexts often refers to judicial and political reform, Mr. Khoday thinks that, based on the United Nations’ conception of freedom as basic access to healthcare, education, and food security, sustainable development could also be seen as a component of freedom. As citizens realize that the ‘energy intensity’ of their country is spiking now, there is a growing interest in switching Arab economies over towards renewable energy frameworks and higher expectations for more accountability in the use of natural resources. The presenters concluded by emphasizing how much work still remains to be done to merge sustainability with freedom in the context of the Arab revolutions.

Health, Development and Fraternity: The Overlooked Value

Dr. Maya Prabhu, CISDL & Yale School of Medicine, Yale University, New Haven, CT

Global health law has changed greatly over the last decade since the CISDL was founded. The WHO agenda used to drive the debate. However, a renaissance has occurred: international conventions on tobacco control and disability rights have arisen, a new global mental health movement has developed, and transnational health threats such as resurging diseases and bioterrorism, the continuing prevalence of HIV-AIDS, and the mass migration of persons due to environmental and civil crises, have made us question the relevance of health threats in the law. Moreover, philanthropic activity, new financing mechanisms, and public-private hybrids have changed the face of global health. The most significant change has been the securitization of health: infectious disease outbreaks are widely known to affect economic stability and President Obama views health as an extension of soft power. During the discussion period, Dr. Prabhu elaborated on this issue, arguing that state responsibility for health cannot be replaced by that of philanthropic organizations.

Dr. Prabhu argued that health has been seen as only important to the life sciences for far too long. Only in recent times has the governance of health law been truly internationalized. Researchers looking at AIDS victims in Congo have spurred society to conceptualize health and human rights as inextricably linked. Dr. Prabhu discussed how the second-class status of women in the Congo, and the consequent lack of legal empowerment, denied them access to the medical treatment they needed. To turn the tide of the epidemic, health workers and human rights scholars needed to collaborate fraternally.

Justice Gonthier urged Dr. Prabhu to view her profession as a form of fraternity. For her, practicing medicine is about creating a place of refuge for a person in need—a therapeutic community. A tremendous part of a patient’s experience is also about tolerating others in the therapeutic community. Using empathy, or what Justice Gonthier termed “fraternity,” Dr. Prabhu believes that

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we can bridge cognitive deficits and a lack of capacity in order to connect with patients. Though society may need laws and technologies, it certainly also needs fraternity.

Fraternité, responsabilité et développement durable: Différentes pistes pour la protection des migrants climatiques

Mr. Benoît Mayer, CISDL & Faculty of Law, McGill University, Montreal

250 million persons will be displaced by climate change before 2050. In his presentation, Mr. Mayer questioned whether we as a world need to alter previous conventions on refugee law, or create a new one to deal with this phenomenon. Alternatively, he wondered whether we could protect refugees through soft law, policy, and reinvigorated cooperation.

There are various types of dangers presented to displaced populations. Aside from the physical displacement, many may deal with the emergence of new health issues. The *Universal Declaration of Human Rights* calls the world to provide for the universal family. Mr. Mayer pointed out, however, that legal mechanisms often fall short of the mark, such as the limited stoppage of US deportations to Haiti after the earthquake. Citing Riski, Mr. Mayer discussed how these failures are related to the nationalistic issues that motivate international policy.

Mr. Mayer questioned whether developed nations' foreign policy towards developing nations is charity, or whether developed nations have an obligation to do more. Though Tuvalu's frequent threats of pursuing a carbon mitigation case against the United States at the ICJ may be mere political tactics, it is nonetheless possible that this sort of action could be litigated in the future. Mr. Mayer also used the example of mass migration, which, as a result of criminal involvement in migrations and fears that increased immigration would create political instability, has become a major security issue. As Mr. Mayer pointed out, though states are currently mandated to extend basic protections to political refugees, the law is less clear on the subject of climate migrants. Looking to the increasingly likely possibility of mass migrations in these new risk zones, Mr. Mayer argued in favour of the recognition of climate refugees under international law. During the discussion period, he elaborated that any such recognition would involve a very unique legal definition designed to encompass the varying kinds of climate migrants.

Le développement durable et le Nord du Canada

Mr. Jean-Benoît Deschamps, Faculty of Law, University of Ottawa, Ottawa

According to Mr. Deschamps, common conceptions of the 'North' of Canada are not based in reality. The North of Canada is a vast geographic region spread across three territories and federal agreements with the Aboriginal groups that live there are key to ensuring sustainable development in the North.

Mr. Deschamps focused on the Northwest Territories (NWT) during his presentation. Though mineral exploitation forms the backbone of the NWT's economy, recent natural resource development has been matched by relatively progressive environmental legislation emerging from an

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recent entente signed between the federal government in Ottawa and the NWT outlining a pathway to devolution of powers. This devolution has led the way for the development of accords between the three major tribes of the region and the federal and NWT governments on a variety of subjects. Mr. Deschamps sees the importance that protecting the earth for future generations has for Aboriginal culture as very nearly mirroring the philosophy motivating the Brundtland Report of 1987. Though the NWT's environmental laws, supported by the federal sustainable development strategy and the Northern Strategy for Canada impose a precautionary principle on development planners, create environmental assessment plans and promote sustainable exploitation of the NWT's natural resources, Mr. Deschamps concluded by warning of the difficulties in attempting to give these documents and strategies sufficient legal force.

Conclusions

This session highlighted the paradox of modern efforts to meld matters of health governance with international law and sustainable growth planning. Matters of health governance should be approached with a fraternity mindset, and not with a sole focus on state security. The presenters agreed that considerable risks must be undertaken to cure mass health problems, especially the threat of mass migration, and all the related health issues coming with it, due to climate change. The philosophical underpinnings of efforts to preserve human dignity in the face of tremendous environmental strains must not be solely driven by security, economic or nationalistic concerns. A commitment to internationalism, 'fraternity', and sustainable development can provide a better pathway for decision-makers, and ultimately strengthen the decision-making process.

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