

INSTITUTIONAL ARRANGEMENTS FOR ETHICS AND JUSTICE

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Summary

A conceptual framework for global institutions for ethics and justice will often use the rhetoric of sustainability. However, there is no globally shared interpretation of sustainability. The cases of Japan and New Zealand illustrate the problems of dealing with sustainability claims and “rights” within non-Western cultures and multicultural societies. The concern for ethics and justice as implied in the definition and agenda of sustainable development are culturally biased. However, this does not mean that the call for ethics and justice is beyond practical and political significance. Instead, it calls for a more dynamic, open strategy, a dynamic learning process of intercultural understanding. The most important characteristic of political and legal institutions is, therefore, not their foundation in substantive normative principles, but their ability to function as a flexible, adjustable framework for ethical decision making. The basic task for sustainability is not to create a tight system of norms that is supposed to regulate almost any approaching challenge in an unambiguous, predictable way. It is to establish an institutional framework that motivates all relevant parties to cooperate in an endeavor to meet actual challenges in a most appropriate way. This is true for social institutions, too.

1. Sustainability and the Quest for Global Institutions for Ethics and Justice

Sustainability in any of its current interpretations is considered to be a global issue demanding global solutions. Such solutions presuppose a minimum agreement on basic issues such as a common terminology, a shared diagnosis of present conditions, an agreed concept of a desirable development, and a consensus on procedural rules. However, at the beginning of the twenty-first century none of these issues obtained global consent. As a consequence, the attempt to give the concept of sustainable development a specific *material* interpretation while searching for a universal agreement has been almost entirely abandoned. Utilizing its rhetoric strength, the main

focus is now primarily on necessary processes of change in response to particular environmental problems (i.e. to perceived instances of clearly unsustainable conditions). There is no general answer to what sustainability aims at, but there is a consensus that something has to happen to meet actual challenges to humankind and other natural beings now and in the near future.

The non-committal reference to sustainability in legal documents and policy statements has at least two valuable effects: they force politicians, administrators, researchers, business people, and communities to reflect on problematic socioeconomic (i.e. unsustainable) practices and they may eventually initiate actions to address them. Due to its high level of abstraction, however, the concept of sustainability invites ideological misuse and neglect of relevant specific circumstances. The concept of sustainability is intertwined with a renewal of universalism and as such is unfit to deal with the peculiarities of actual situations. This is increasingly the case when sustainability is given a global interpretation and institutionalized in international law and policy.

Thus, on the one hand sustainability is considered to be a global issue; and on the other hand the search for global solutions runs into substantial problems. This article deals with problems connected with the attempt to promote sustainability by establishing transnational institutions, in particular where they deal with questions of ethics, justice, and equivalent matters (Section 2). The next step is to elaborate necessary and ideal conditions and models for institutionalizing ethical and ethical-like concerns (Section 3). How these ideas can be realized and already are partially realized within social, political, and legal institutions is exemplified in Section 4 before conclusions are drawn in Section 5. To make institutions work, questions of ethics, justice, and the like play a vital role. Socioeconomic, political, and legal problems are often derivatives of substantial existential (or ethical) challenges. To answer the question “What kind of institutions of ethics, justice, and equivalents are needed to promote sustainable development?” is, therefore, a matter of substantial political interest. The following discussion is not intended to be an overview and analysis of existing institutions. Its aim is to provide a normative framework for ethically sustainable institutionalizations (see *Ethics and Justice Needs for Sustainable Development* and *Human Resource Development: Ethics and Justice Needs for Sustainable Development*).

2. Problems for Global Justice and Ethics Institutions

2.1. Introduction

In discourses on sustainable development, the concern for ethics and justice mitigates social and environmental effects of economic activities. Thus, while ethical issues are not acknowledged as the primary objective of the political agenda they form the normative framework and provisos of sound economic development. Without the intervention of ethics, justice, and equivalent considerations, the distribution of economic benefits and costs and of externalities (environmental load) would generate problems of equity and threaten the social and political order. So far, there is widespread global agreement on the importance of having at least some kind of ethical parameters to handle the distributional aspects of human entrepreneurship. This is reflected in many international and national documents that address this problem in their

preliminary statements or objectives, although usually in very general terms. Here, however, agreement also ends. When it comes to the identification and interpretation of policies and their implementation, divergences emerge and the process often terminates. This not only prevents joint international action, but national progress, too.

Some people believe in a cosmopolitan, global understanding that creates legitimate expectations to find a basis for global ethics. A general framework for global ethics must comprise basic ideas of social and environmental justice. It is commonly believed that, in spite of any differences in personal and cultural values, principles of justice or fairness can reasonably be expected to be shared among people all over the world. But even John Rawls, whose famous *Theory of Justice* moves intentionally beyond particular historical and social positions, is aware that the project of a global concept of justice as fairness is unsuccessful. He acknowledges that the rationale of his concept of fairness is intimately bound with occidental culture and that the spirit of liberalism gives his search for interpersonal agreement an unmistakable normative bias. What would change this situation is the complete Westernization of the world. The concern for ethics and distributive justice is part of occidental culture and, according to some, largely absent in any other cultural tradition.

As a consequence, the dialogue on sustainable policies, based on globally shared moral institutions or principles of justice, will run into problems, most probably on an intermediate, strategic level. Negotiators with different cultural backgrounds will often find it convenient to sign agreements backing business contracts and other forms of cooperation. Often, top-level political agreements use theoretical vocabulary and formulate rhetorically convincing objectives that rarely include specific obligations. For more specific tasks, pragmatic interests will relatively easily determine the necessary conditions for cooperation. If general objectives are interpreted in specific tasks, the will to cooperate is great. International agreements are most successful if they are quite specific and refer to well-defined, short-term actions. However, if the question is to frame strategic policies, important differences appear and generate long, exhausting, and often unsuccessful controversies. The reason is that, at this level, considerations of ethics and justice are important but are not universally shared, because of major cultural differences. In this article, two cases, involving Japan and New Zealand, will illustrate this problem and give an indication of what can be expected of institutions of ethics and justice that claim global adherence.

However, it should be noted that cultural obstacles are not the only obstacles that prevent implementation, compliance, and effectiveness of policies of sustainability. Weiss and Jacobson's overview of factors affecting implementation, compliance, and effectiveness is reproduced in abbreviated form in Figure 1.

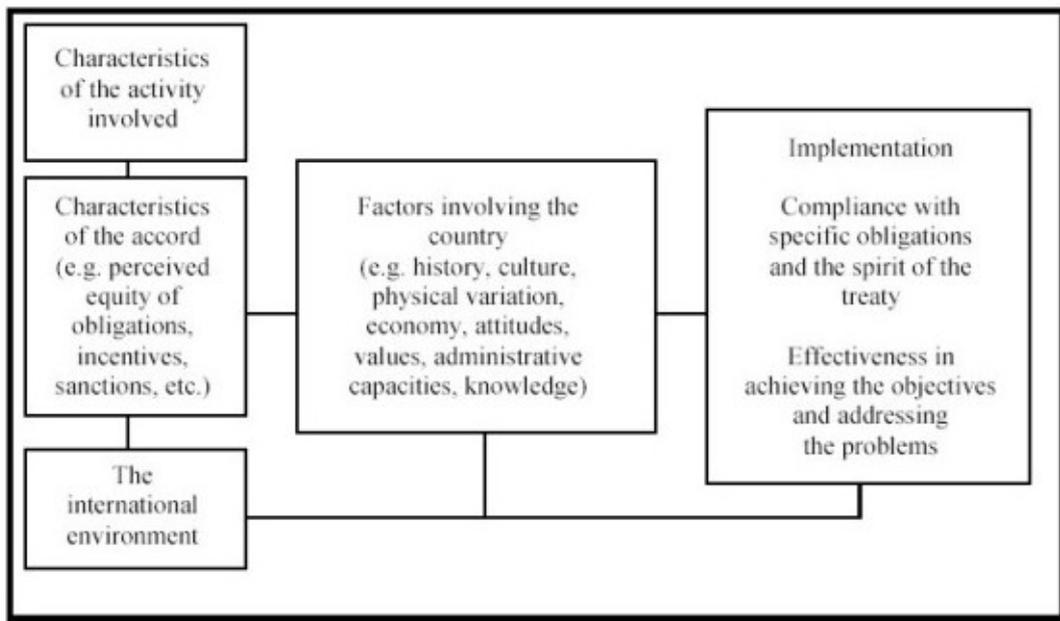


Figure.1. A model of factors that affect implementation, compliance, and effectiveness (Source: E.B. Weiss and H.K. Jacobson, eds., *Engaging Countries: Strengthening Compliance with International Environmental Accords* (Cambridge, Mass.: MIT Press, 1998))

2.2. Inter-Cultural Problems: The Case of Japan and New Zealand (see *Cultural Relativism; Cultural Justice; and Local Knowledge and Community Security*)

2.2.1. Japan

In the 1960s people in several parts of Japan suffered the effects of industrial pollution and vehicle emissions. The negative impact of this local pollution, when finally publicly recognized, caused instant political action. The first environmental laws in Japan's history date back to these years. At approximately the same time, environmental science with a significant technological outlook was born. Today, environmental science and technology is solidly represented in public and private research institutions with extensive international cooperation. Also, politically, there is broad consensus on the relevance of major environmental issues and Japan has signed most international agreements on nature protection and pollution control. Notwithstanding these efforts, any observer of Japanese society will know that people in Japan engage only reluctantly in multipurpose environmental organizations. Their lack of a deep commitment to environmental issues is an expression of a culturally determined lack of abstract thinking and ethical reflection, not an expression of a lack of concern for natural phenomena as such.

The modernization of Japanese society, inaugurated with the Meiji revolution in 1868 and accelerated after World War II, was largely taken over from outside, as a useful instrument rather than something that grew out of the hearts and minds of the Japanese people. In the case of philosophy, an academic discipline that came to Japan with European science in the last three decades of the nineteenth century, it is surprising that

no genuine Japanese philosophy is to be found at major universities. If philosophy is addressed at all, it is as an area of study that is regarded as part of the study of European or Chinese culture rather than a subject expressing a deeply felt research need of Japanese society. Existential and other ethical questions are dealt with pragmatically, and only occasionally interpreted within the framework of religious culture.

Like philosophy and ethical theory, the growing concern with “nature” and “the environment” in the Western world became an issue of political and academic interest to the Japanese, too. However, as can be expected from basically imported concepts, they are used in a technical sense only. Devotion to natural phenomena is highly discriminative, which makes very abstract concepts like nature and the environment inappropriate. This explains the zealous and careful concern for a small potted plant squeezed into the outer wall of one’s home or the attentive study of a single cherry blossom coexisting side by side with the disregard of unrelated community yards, or the negligence of rainforests or global climate.

This is reflected in a Japanese language that originally had no word for the English concept of nature, but a variety of expressions for particular natural phenomena. The reason for this is that nature was not conceived to be an object vis-à-vis the human being to be exploited, dominated, cultivated, or protected. Instead, humans are considered to be deeply engrossed in a particular context of nature as their existential place or space of action. This focus on particular circumstances as lived but not objectified is a characteristic feature of Japanese language visible in distinctive traits of communication. An analysis of Japanese language discloses two important things: firstly, the dependence of the choice of appropriate terms and concepts on the character of the particular situation in a way that presupposes an intuitive understanding and familiarity with the circumstances; secondly, and closely connected, the basically non-dualistic, although not tensionless, attitude imbuing linguistic understanding. Seeing humans not as autonomous individuals but as living out of the “between human and human” is an example of a language structure that moves beyond the subject-object dichotomy. Both traits of Japanese language unveil the grave disparities that still exist between European and non-European culture.

Tetsuro Watsuji (1889–1960) has often been consulted to make sense of the peculiar features of Japanese attitudes to nature. His famous, but not uncontested, climate theory is repeatedly referred to. In Bin Kimura’s account in *Zwischen Mensch und Mensch*, “only under the presupposition of the trustful-intrusive feeling of confidence, that nature will not punish you, you will be able to behave freely and unforced in the Japanese climate.” While Europeans find their trust in nature in the rationality and lawfulness of nature, this rational guarantee is missing in the Japanese mind. Being free from natural catastrophes is rather accidental. But to live with this insecurity would be nerve-racking. That is why the Japanese need moments where they can breathe, using *amae* (i.e. presupposing the benevolence of nature and behaving as if there were no danger). One’s ultimate responsibility for the state of things has important limitations, because in the end things are really not under one’s rational control. To a certain extent, technology has given limited power. But technology is fundamentally at the mercy of the unpredictable power of nature, which favors a pragmatic and humble attitude.

This cultural trait is reflected in the concept of human beings and the specific character of human relations. Individual human beings are not single, autonomous entities, whose identity is primarily related to an individual's personal life history. Rather, identity relates to something prior to the individual subject and from which this subject evolves: the "between human and human" (*ningen* = human being, derived from *nin* = person and *ken* = between). The human being (*ningen*) is the source of duty and gratitude. This has interesting implications for the concept of responsibility. In European culture, responsibility is basically a causal concept and the emphasis is on the identification of a single (responsible) actor. In Japanese culture a quite different approach prevails. Kimura explains that "between one's guilt and the other's misfortune is no room for causal relations. Both are indistinguishable dimensions of the same event. Neither do I hurt someone because I am bad, nor am I bad because I hurt someone. To be bad and to hurt someone is one and the same thing." If, due to some problematic action, I have lost face, this is not primarily in relation to myself as single responsible individual, but to the something between human and human to which I owe my existence.

The import and development of Western technology in Japan is part of a pragmatic lifestyle. To try to justify this attitude, referring to philosophical assumptions and theories, might satisfy the European-American mind but is basically alien to the Japanese culture. With this in mind, any appeal to human rights, clear causal responsibilities, or natural duties must fail. Nor is it easy to discuss issues dealing with sustainability. As long as agreements can be based on particular reduction measures (e.g. nitrogen oxides, decibel, etc.), the term has a sharable technical meaning. But as a global demand based on justice and rights, it is meaningless. On a pragmatic level some kind of coordination and cooperation between Japan and Europe is quite possible, but there seems to be a major disagreement about the reasonable terms of this cooperation. It is important, therefore, to look for alternative ways to improve local, regional, and global environmental conditions beyond international agreements and strategies.

2.2.2. New Zealand and the *Resource Management Act*

In the late 1980s several countries initiated comprehensive legal reforms resulting in the enactment of a unitary environmental law as a substitute and general framework for previous uncoordinated, unintegrated hotchpotch legislation. The 1991 New Zealand *Resource Management Act* (RMA) has been regarded worldwide as an example for other national and transnational legislations, because it claims to incorporate different sets of ethical and cultural values into a coherent legal and administrative framework by asking: How can socioeconomic, health, and safety interests be reconciled with quite different values as expressed in Maori culture and with controversial ethical assumptions such as the intrinsic values of ecosystems? If successful, the RMA would be an example of how transnational institutional arrangements for ethics and justice could be conceptualized, while respecting dissimilar cultural paradigms. The RMA has two different interpretations: one anthropocentric and one eco-centric. The anthropocentric (and minimalist) reading stresses that the core of sustainability and of the RMA is an enhanced quality of life both for individuals and for the community as a whole. The legal framework for sustainable management is not concerned with ethically and ecologically right solutions but with the avoidance of serious damage to the human-

nature relationships that may be sufficiently prevented and effectively enforced by a minimalist law respecting the historically attainable social consensus.

Eco-centrism, which emphasizes the concept of “intrinsic value,” should, it has been suggested, be included as an objective in resource management law for both scientific reasons—to preserve the integrity of the biosphere and ecological processes—and for moral reasons. Whether this “inclusion” may be interpreted in a pluralistic sense or entails the rejection of the priority of human values depends on the exact definition of eco-centrism. Following Bosselmann’s and Taylor’s specifications, an eco-centric or ecological approach is largely based on two principles. First, humanity is perceived as being an integral part of nature, a member of the community of nature. This membership entails responsibilities to nature often expressed in terms of guardianship or stewardship. Second, nature has an inherent or intrinsic right to exist, and thus should be protected for its own sake. Taking nature’s intrinsic rights seriously and acknowledging human membership of a superior natural system is hardly compatible with a view that makes these insights dependent on the choice of individual preferences, as would be the case in a pluralistic society. One cannot freely choose one’s natural status (autonomy, interdependence, etc.), nor can one freely choose one’s responsibility or determine the intrinsic value of natural phenomena. This implies that there is no pluralistic or decisionistic interpretation of eco-centrism.

The RMA includes passages that support a strict eco-centric interpretation. According to “resource consents,” most uses of land, air, and water are prohibited unless they are explicitly permitted. Although permissions are easily obtained from consenting authorities, it generally holds that every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of that person. This is directly enforceable through the enforcement provisions of the Act. Furthermore, the adoption of reasonable procedural measures secures a wide scope for environmentalists to raise the political profile of a particular consent application. There is a major difference between an attitude that conceives of natural phenomena as resources to be consumed unless the consumption may cause some trouble, and an attitude that makes the consumption of natural phenomena dependent on good reasons. Eco-centrism is normally committed to the intuitive or rational administration of a radical precautionary principle of this kind and the RMA is constructed with this consideration.

The question of how to balance socioeconomic and ecological values or of the anthropocentric or eco-centric character of the principles has no clear answer at the very general level of the RMA. It has to be tested for every particular situation on the basis of some general moral duty to avoid, remedy, or mitigate any adverse effect on the environment arising from human actions. Depending on the concrete interpretation and application of this general duty, there might be a chance of promoting ecological management.

While the controversy about anthropocentrism and eco-centrism remains within a Western cultural paradigm, the real challenge for the New Zealand legislative power concerned Maori customs. The major historical event in this process of intercultural communication was the 1840 Treaty of Waitangi. Since the treaty, where the British

Crown received state sovereignty over New Zealand and the Maoris were assured of their traditional land rights, Maori interests have actual legal and political significance. Yet, the legal basis of Maori rights and the legal status of the treaty are still highly contested. The transfer of unconditional sovereignty to the Crown that in the English version of the treaty was an established fact has never been acknowledged as such by the Maori. The Maori translation of the treaty, provided by missionaries at that time, talks of a transference of authority to governing settlers (i.e. “those who came after”) and foreign affairs, (called *kawanatanga*), and a right to purchase land held by the tribes, while the original tribal authority handling own affairs (*rangatiratanga*) was supposed to remain unaffected. Of course, giving the notion of sovereignty, a very weak interpretation smoothed the path for the consent of the Maori chiefs. Under Maori law it was impossible to give away the *mana* or sovereignty of the tribes. No attack on the rights or soul of the Maori was permitted or even contemplated and a treaty demanding unconditional transfer of sovereignty would have been impossible for the chiefs to sign. Much indicates today that the Treaty of Waitangi if not legally invalid is at least morally contestable. But this is true only for the English version. Referring both to the Treaty of Waitangi and its Maori equivalent, Te Tiriti o Waitangi, the 1991 RMA is clear evidence that legally (and morally) both versions—though they are to a certain degree incompatible—should be applied; if both version are not applied, the Maori text should be treated as the primary reference, because it was this text that was signed by the chiefs and Hobson.

Most interpreters hold that the Treaty of Waitangi is not a final contract, but the foundation for a developing social contract to act towards each other with the utmost good faith. In practice this implies that the more consultation there is, the less likely a local authority or government agency will be found to have breached its statutory obligations to comply with the principles of the treaty. Although consensual mediation has attained increasing importance in Western jurisprudence, the reliance on kinship relations in Maori legislation is obviously incompatible with a legal system established on individualistic jurisdiction and a rhetoric of impartiality and equality. In this respect, the integration of Maori culture in the New Zealand system of law must presumably fail.

While some legal issues have been settled by redefining and misinterpreting Maori tenets, others have just been excluded, as was the case with property rights. The main reason for avoiding the issue of property or land rights in the RMA was to avoid fatiguing conflicts between the historical interests of the white people (called pakeha) and Maori. This was made possible by a recent change in emphasis from “land use regulation” to the administration of “the adverse effects of activities on the environment.” It has been stated that not even the implementation of the polluter pays principle necessitates an identification of property rights. The question of moral and legal responsibility may be settled relative to the actor and independently of the owner (although the owner will normally be an important actor). At this point, the Maori concept of collective responsibility for natural assets (land, flora, fauna, ecosystems, etc.) must be dealt with.

According to the Maori, it is impossible to possess land in any familiar legal sense. The Maori call themselves *tangata whenua*, “people of the land” or “natives” (i.e. born of it,

their generations buried in it, and attached to it by indissoluble spiritual ties in a way that the pakeha, who regarded land simply as a commodity, never could be). Their land was their sphere of *mana* (authority), which also was their sphere of accountability. Something happening within one's sphere of accountability, whether one was causally responsible or not, was nevertheless accepted as something one was blamed for. This sphere of accountability or *mana* could not be legally determined by a contract or treaty but was, historically, genealogically ascertained (*whakapapa*). This identification of spheres of accountability is far from a Western concept of individual liability. The Maori idea of collective responsibility is a major challenge to traditional European legal systems in general and the implementation and administration of the RMA in particular. The problems of reconciling the concept of individual liability with that of collective accountability are a serious obstacle to a coherent legal system and tend to suppress minority views. A closer look at the RMA reveals the extent that Maori values may nevertheless have some legal force.

All persons exercising functions and powers under the RMA are under a duty, as a matter of national importance, "to recognize and provide" for the relationship of Maori to their ancestral lands, water, sites, *waahi tapu* (sacred places), and other *taonga* (treasures, including language and culture); have "particular regard" to *kaitiakitanga* (guardianship of resources); and "take into account" the principles of the Treaty of Waitangi. Furthermore, all local authorities, when preparing or changing plans or policies, are under an additional duty to "consult" with *tangata whenua* (local natives, or people of the land) and to "have regard" to any relevant planning document of an *iwi* (tribe) authority. Now the interesting question is: does the absorption of Maori concepts do justice to the original meaning and intentions of Maori values or will they, conceptually or in fact, be mistreated when implemented in a totally different framework of European ideology and institutions?

The concept of *kaitiakitanga* emphasizes "humans as guardians," which, in relation to natural phenomena, implies the protection and cherishing of their true nature or life principle (*mauri*). The term *mauri* has no exact equivalent in English and was, therefore, consciously taken over in its Maori form. Humans as guardians are spiritual (or enlightened) beings. Should guardians perceive anything in their world (i.e. their natural sphere of accountability) going wrong, or changing its purpose, its life, its form, or its proceedings they need to stop it. One has a responsibility for the *mauri* of any natural phenomena. Accordingly, essential "food resources" are to be approached with care and used with respect, taking only what is needed and ensuring that the use to which it is put is worthy of the material. This ethics of respect and care may be traced back to the cosmological principle that everything in the natural world is related to everything else, in the same way as the members of a family are related. The principle of guardianship as expressed in *kaitiakitanga* is basically a moral principle or, rather, a cultural attitude that is not necessarily incompatible with a Western legal system, although conflicts with right-based claims can be expected. *Kaitiakitanga* cannot be treated adequately as a legal concept.

With regard to the relationship of Maori to their ancestral lands, water, sites, *waahi tapu* (sacred places) and other *taonga* (treasures, including language and culture), a protection of these values seems more fit for legal treatment than the Maori attitude to

nature. The Maori share with Australian Aborigines the phenomenon of sacred places, *waahi tapu*, that is land of special, spiritual, cultural, or historic significance that are candidates for becoming historic places to be protected by registration and classification and later application for a heritage order. But here the RMA may have some serious problems with the identification and treatment of spiritual values. *Taonga*, for example, means more than just objects of tangible value; it includes the Maori language, a river, the *mauri* or life force of a river or a harbor. To give these values legal status will not only affect their original meaning but also be very difficult to reconcile with Western legal conceptual traditions.

Finally, some see a clear connection between the concept of sustainability, as accepted in the RMA, and the Maori worldview, at least insofar as obligations to future generations are concerned. Western civilizations still lack a consistent and clear theory and understanding of alleged obligations to future generations. The Maori, however, have a very long and firm tradition of, and conceptual clarity about, such a concern for the future. Their starting point is their concept of collective responsibility. This concept implies that a collective persists through time and is not dependent for its existence on the existence of particular individuals. As a consequence, this collective responsibility involves ancestors and future generations as much as the presently living. While accountability and duty is transcending the presently living, the implementation of this duty and responsibility will always rest with the living members. This conceptualization is interesting, but essentially dependent on collective responsibility, which is obviously in conflict with the concept of individual liability in European and American jurisdiction.

The New Zealand experience with the RMA has revealed a number of serious obstacles both for bicultural jurisdiction and legal theory and for ecological reforming generally. The challenge is to turn these experiences into constructive new institutional experiments (see *Indigenous People and Their Communities*).

3. Models for Institutionalizing Ethics and Justice

From the point of view of ethics and justice, there are two means of institutionalization: one focuses on procedures, the other on material claims. Procedural solutions insist that fundamental ethical concerns, including concerns about matters of justice, should be addressed when the terms for negotiation are settled. Procedural aspects deal with ethically adequate forms of communication. Material claims for ethics and justice are claims that represent substantive moral principles, values, and norms. Parties with different interests and cultural backgrounds who seek agreement on policies and actions demand respect in virtue of being moral subjects. This respect implies that the parties comply with certain shared rules for interaction. To institutionalize ethics and justice, the conditions for communication have to be classified. One can imagine two procedural conceptions: pragmatic and interaction theories.

3.1. Pragmatic Theories

Terms for interaction are determined in each case separately and anew. This model has the advantage that the necessary consensus can be restricted to the parties who are

involved and that rules evolve from the particular historical circumstances by which abstract, irrelevant considerations are excluded. Quite a few international negotiations are based on pragmatic deliberations of this kind. The basic epistemic assumption is that it is futile to try to reach a global consensus across different interests and cultural values. A common denominator on a global scale would presumably be too abstract to have any practical significance. Therefore, the argument goes, one should give up any ambition of global agreement and instead built up cooperation in a piecemeal fashion: negotiating with a restricted number of parties, with a restricted time horizon, and varying objectives. Theories of human nature and other abstract concepts are neither epistemically nor ethically defensible in a postmodern society.

While postmodernists will abstain from universalistic moral claims and instead trust in the guiding force of narratives, this is not the only way of defending pluralistic “ethno-ethics.” One may appeal, for example, to the democratic ethos of tolerance (i.e. the acceptance of divergent approaches to action to solve problems of cooperation). In this respect, local interpretations of sustainability, although sometimes incompatible, may nevertheless promote sustainability (in any interpretation) better than could minimalist global agreements based on the lowest common denominator. A third way to avoid problematic universalistic assumptions is to replace ethics by “practical compromises,” not in general but in connection with the formation of cooperation. Such compromises can be built on competence and participation. Yet, whether it is possible to use these concepts without implying shared ethical standards (e.g. those specified in Habermas’ theory) is questionable.

3.2. Interaction Theories

The other model for determining rules for adequate communication implies a global consensus based on what is currently believed to be and accepted as reasonable conditions for human interaction. Shared standards for social activities can be identified as those that are constitutive for interpersonal relationships. K.E. Løgstrups’ concept of spontaneous manifestations of life in his *The Ethical Demand* is an attempt to identify the basic phenomena that characterize adequate forms of communication. Without confidence, the openness of speech, love, and mercy the social life of human beings would vanish. Ethically appropriate institutions are those that promote and do not impede or counteract the development of these basic human and social qualities. Although what is ethically right has to be distinguished from social norms, the latter are historically evolved from considerations of ethical rightness.

John Rawls’ *Theory of Justice* is another source of probable candidates for global standards, but with quite different ambitions and dissimilar philosophical assumptions. Firstly, it is not a theory of ethical demands but of justice, more precisely of the fairness of basic institutions in society. It is, therefore, not as comprehensive as Løgstrups’ phenomenological anthropology. Secondly, although the principles of justice are chosen behind a “veil of ignorance” to ensure impartiality with respect to social status, class, race, generations, etc., they have no universal application but are valid only for people with a Western cultural heritage. With these important reservations in mind, Rawls’ theory specifies what should be considered fair conditions of communication: mutual disinterestedness (self-interest), rationality, and the free determination of one’s good.

Obviously, in spite of the popularity of Rawls' theory, few actual negotiations would take these premises as adequate standards for morally legitimate agreements. This affects finally the acceptability of institutions based on a particular interpretation of economic rationality.

Rawls shares Jürgen Habermas' Kantian heritage. However, they disagree with regard to one essential characteristic of ethically adequate communication. Habermas stresses the importance of the actual dialogue in contrast to Rawls' hypothetical, unanimous pseudo-negotiations. Habermas' concept of morality is not based on impartiality obtained by hypothetical abstraction from empirical differences, but is represented by a framework for discourse based on rationality and freedom from suppression. Here, actual differences in values and interests are dealt with by formulating the necessary conditions for successful and meaningful discourse. However, Habermas' theory is also heavily dependent on the concepts and values of modernity and might be challenged by people from different cultural environments. Although discourse ethics states that all participants have the right to bring forward their interests for rational investigation, this criterion follows a Western logic by presupposing a universalistic concept of ethics.

In conclusion, the attempt to formulate procedural standards for institutionalizing the concern for ethics and justice on a global scale is probably unsuccessful if the anthropological assumptions can be challenged or if it can be shown that criteria like rationality or disinterestedness lack intercultural meaning. Even if one ignores the fact that the field of ethics and morality is not universally shared, as shown before in the case of Japan, the interpretation of ethics as found in Rawls and Habermas represents only one of several competing expositions. In the process of massive Westernization, the export of ethical concepts to other cultures has suppressed the need to work for an understanding of how existing cultural differences may contribute to the development of a transcultural code of communication. Furthermore, the call for global ethics could be interpreted as a diversion from one's own responsibility. As Michael Meyer-Abich has expressed convincingly in *Eine Welt—eine Moral*: "We need no universal morality. It would be sufficient, if we wouldn't all the time violate our own ethnic moral standards by living at the expense of third parties—the third world, posterity, and the natural environment."

3.3. Material Claims

Few would claim today that it is possible to agree on material claims with respect to the ethics and justice of transnational institutions. However, hardly anybody will think that they can be dispensed with altogether. One institution that relies heavily on material claims is human rights. Theories of needs are designed to make these rights possible. Yet, it is obvious that human rights do not receive the general adherence that they claim. This is due to rights claims belonging to Western culture and disregarding the specific circumstances that make them appropriate and acceptable. One exception to this categorical denial of the possibility of universalizing the code of human rights is the duty of the state to abstain from transgressing the rights of its citizens. However, even this rather familiar claim makes controversial assumptions that are not shared by all societies: the assumption that individual citizens have rights and that these rights are inviolable and can never be surpassed by demands from a higher institutional or social

level. Given this lack of agreement on material claims, international negotiations often focus on the lowest possible common denominator.

4. What Kind of Institutions Do We Need?

The concern for ethics and justice as implied in the definition and agenda of sustainable development is culturally biased. Not only is this clear from comparative studies, but it is also indicated by the failure to identify universally acceptable procedural and material criteria for ethically adequate institutions. However, this does not entail that the call for ethics and justice is beyond practical and political significance or even beyond meaning. Instead, it calls for a more dynamic, open strategy that satisfies at least two criteria (1) The concern that ethics and justice is not restricted to a particular philosophical conceptualization but can be expressed in different ways on the basis of existential concerns that give meaning to “ethics and justice.” (2) Material claims and procedural requirements should be considered in a continuous process of looking for a more adequate framework for institutionalization.

This implies that the kinds of institutions needed are those that promote an open, dynamic learning process of inter-cultural understanding. What is demanded in the name of ethics, justice, and equivalents for encouraging sustainable development in any socially and ecologically acceptable interpretation is something that has to be worked on continuously and is not a fixed set of procedural or material standards. Social innovators who create new contexts for interaction among different social groups are an essential driving force for the development of new and more sustainable institutional arrangements. With this in mind, we can begin to identify appropriate institutions basically on three societal levels: socioeconomic, political, and legal institutions. Cultural institutions are included partly in the socioeconomic, partly in the political domain (see *Building Ethics into Institutions*).

4.1. Social Institutions

Evidently, there is no final number and specific quality of social institutions that matches the suggested criterion of an open, dynamic institution concerned with matters of ethics, justice, or equivalents. Below, three examples are chosen on the basis of what has a fair chance of being successfully realized.

4.1.1. Political Consumer Networks

The catchword “political consumer” indicates the double point that individual values can attain political force and that public values can be expressed and established through individual consumer behavior. The emergence of political consumers is a manifestation of how political power in market-based societies has a tendency to decentralize. Although political consumers are not particularly concerned with ethics and justice, it is easy to imagine that ethical considerations and motivations may constitute informal and formal networks of consumers. There are already numerous examples of such “ethical consumerism” in the developed and occasionally also some developing countries. When particular ethically sustainable lifestyle movements

generate informal or formal networks, then ethical consumerism is institutionalized and attains political force.

Political consumerism has developed (and been partly organized) within the food and clothing sector. Elements of attitudes connected with animal rights movements and with issues discussed in various forums dealing with environmental ethics have found their way to self-conscious political consumers. The dissociation from unethical forms of production is no longer an attitude among a few individual consumers, but a social fact that manifests itself in various informal and formal networks and organizations. Much less progressive are ethically motivated institutionalizations of choices of leisure activities, among them sustainable or ethical tourism. As far as tourism is concerned, some interest groups and nongovernmental organizations (NGOs) have, together with some travel agencies, shown the way to what could be termed sustainable traveling, a concept where the fair treatment of the hosting people and respect for nature have a central place. With respect to leisure activities, similar ethically motivated reorientations are still in the future.

In the eyes of people outside these special lifestyle networks, the insistence on ethical choices is sometimes regarded as fanaticism. However, this is certainly a misunderstanding because each attitude and action expresses an ethical stance. What create diversions are differences in ethical attitudes and values and different degrees of making these values conscious. The important question is not whether one should choose an ethical perspective, but to what degree ethical attitudes should be transformed into strategies and policies through institutionalization. To ensure an open, dynamic structure, social institutions for ethics and justice must display a low degree of bureaucratization and a decentralized power structure, as exemplified in consumer networks.

4.1.2. Citizen Participation

Another well-known example of social institutions that seems to fulfill this description is the institution of citizen democracy in community planning. Experimenting with public participation in land use and traffic planning is an excellent example of how concerns of ethics and justice and equivalent concerns can be effected in a non-dogmatic way. Experiences up until now have shown that citizen participation brings many moral feelings to light. What has mostly prevented fruitful discussions and satisfactory solutions is that participants have perceived themselves as private, autonomous consumers, pleading individual rights. As a consequence, decisions are based on poor compromises and optimal social solutions are precluded. Firstly, the concepts of individual rights and personal autonomy are clearly misconceptions that ignore the interdependencies and implied responsibilities of the social world. Secondly, the perspective of private consumers is particularly inadequate when related to plans and projects of public interest demand a citizen perspective. To see public participation as an example of institutionalization of ethics, justice, and equivalents, one must observe that these misconceptions are ruled out and that the dynamic, experimental character of these practices is preserved.

Local *Agenda 21* activities are experimental, horizontal networks that seem to fit the picture of open, dynamic institutionalizations. However, not every initiative and activity stems from empowered citizens. The danger is that too much is done to show that it is “participation by mandate.” Even if this is largely the case, participation by mandate may be innovative in several respects. An example is the development of grassroots indicators for sustainable development. In contrast to standard indicators used in national reporting systems, grassroots indicators are culturally specific, learned through experience, and often qualitative and anecdotal. They tend to be holistic, participatory, based on highly detailed observation over a long time, and directed towards action. This transforming knowledge is a source of new institutionalizations.

4.1.3. Business and Work Ethics

Finally, a third and very important area of social activity has to be discussed, where moral considerations have already gained a firm footing. This is the area of business and workplace activities. Since the 1960s, business and work ethics have emerged and challenged economic reasoning. Environmental considerations did not enter the agenda until the 1980s and 1990s and could make use of the social climate, corporate procedures, formal, and informal networks that were more or less established. For sustainable development, the organization of production and distribution, and the workplace, are of utmost importance. To the degree that moral (and equivalent) concerns are reflected and incorporated in business and workplace activities, a considerable part of social institutionalization is carried out. Again, it is important to preserve the open texture of business and work ethics to be able to handle new specific challenges in the most appropriate way.

4.2. Political and Legal Institutions

Turning from social to political and finally to legal institutions, the character of institutionalization changes according to the need of fixed, codified principles for regulation. Matters of ethics, justice, and equivalents express themselves, politically and legally, in recorded norms. This is not without problems, as the former discussions have revealed. However, there are two ways of dealing with codified norms that would make these forms of institutionalization more acceptable. One has to do with the utilization of divergent cultural traditions, the other with the form and intentions of political and legal prescriptions. Not only social but also political and legal norms must ultimately be traced back to social experiences that have given rise to widespread co-existential deliberations. The exact conceptual form of these deliberations and the character of the norm-generating process vary between cultures and ethnic context. Different histories, different conceptualizations, and different institutionalizations may obstruct cross-cultural understanding and international cooperation, but this is not necessarily a problem. The challenge is to utilize these different experiences and practices for an improvement of human and non-human relations. This is the case (a) where different codifications contribute to the treasure of global social experiences while respecting the particular historical, demographic, and geographical circumstances that entitle them to prevail and (b) where the codifications are regarded as provisional arrangements to be tested and learned from and as a jumping-off point for improvements.

It has repeatedly been emphasized that diversity is an important condition of a system's development, flourishing, and survival. This is true not only of biological systems, but presumably of social and cultural systems, too. As a consequence, any endeavor to harmonize and unify political and legal activities implies a risk of degeneration of biological, social, and cultural conditions. This affects also the character and quality of the political system.

A different, more sustainable approach would be to respect, support, and challenge decentralized political and legal experiments as contributions to the development of public institutions, not in the sense of an indifferent pluralism, but in the spirit of responsible local communities who are concerned about and try to examine critically not only their own political and legal institutions but also those of different geographical and ethnic backgrounds. It is not presupposed here that different communities commit themselves to a global, unified code of ethics or rationality. The interpretation of "concern" and "critical examination" is open and put in the hands of each community respectively.

One way of dealing with the problem of institutionalization in a global perspective, and in particular with the problem of fixed, codified principles for regulation, is by utilizing the advantages of diversity (i.e. of different cultural traditions). Another way is by reflecting on the proper form and intentions of political and legal prescriptions. The objective of political and legal institutions is to provide a predictable and efficient foundation for the regulation of social interactions. Furthermore, as public institutions, they require acceptance and recognition by citizens. Apart from the problem of attaining the agreement of all citizens, ethical principles and norms are seldom flexible enough to be able to respond properly to changing normative challenges. Therefore, the most important characteristic of political and legal institutions is not their foundation in normative principles, but their ability to function as a flexible, adjustable framework for ethical decision making. The basic task is not to create a tight system of norms that is supposed to regulate almost any approaching challenge in an unambiguous, predictable way. It is to establish an institutional framework that motivates all relevant parties to cooperate in an endeavor to meet actual challenges in the most appropriate way.

What qualifies an institution to cope with ethics, justice, and equivalents is its power to identify and deal with upcoming challenges in a way that is appropriate from the perspective of all potential moral subjects involved (including human and other living beings, systemic phenomena, and non-living matter). Ethical principles and norms are badly suited to respond properly to all potential challenges. Therefore, institutions have to be open frameworks for participation and learning rather than complex systems of formal and material rules. This is reflected in the concept of social capital, which is a central feature of sustainable institutional development. Social capital is based on trust, rules, connectedness, and exchange, each of which must be traced back to the empowerment of the subjects of institutionalization. This implies that no externally prescribed rules can guarantee morally legitimate compliance. This must come from empowered and connected citizens. Political and legal institutions that make it possible for citizens to use and develop their moral capacities are institutions of ethics, justice, and equivalents in the proper sense (see *International Cooperation and Organizations Involved in Ethics, Justice, and Human Rights Issues*).

5. Conclusion

In the 1990s, many pieces of national legislation included a new or revised corpus of environmental law that adhered to the general concept and objective of sustainable development. In most cases, however, there is a conspicuous gap between the rhetorical declarations and legal implementation and political action. This gap can be interpreted as inconsistency and given various explanations. And it can express the view that what sustainability really means must be interpreted in a specific national or local historical context and that apparent inconsistencies can be explained in terms of the mistake of ascribing the general objective of sustainability a specific, globally shared meaning.

In many Western societies, the meaning of sustainability is pretty clear. What creates the clash is partly the commitment to a traditional legal system that badly fits the new intentions, and partly because conflicting political interests and economic power relations obstruct and hinder sustainable solutions. In the context of a non-Western society, the exact meaning of sustainability may be more obscure. Normally it will be determined by the particular historical context. As this context varies considerably, identical objectives will be interpreted and realized quite differently. This is not necessarily a drawback. On the contrary, it is quite often an acknowledgment of the relevance of particular circumstances for the determination of ethically adequate policies and legislation. The institutionalization of ethics, justice, and equivalents cannot be judged on the basis of general objectives as expressed in national and international agreements. What must be attended to is how particular social, political, and legal institutions cope with actual challenges. The existential concerns implicit in such investigations are the most important control measures for assessing the quality and legitimacy of existing and planned institutions.

Glossary

Anthropocentrism:	The view that people and human-centered values are the measure of all things.
Coexistential deliberations:	Deliberations that take place between human existences and focus on fundamental existential matters.
Ecocentrism:	The view that things should be interpreted from an ecological perspective (in contrast to anthropocentrism).
Intrinsic values:	Things have intrinsic value if they have value in themselves, independent of who is valuing.
Phenomenology:	Philosophical theory that insists that the phenomena of this world are meaningful.
Spontaneous manifestations of life:	Aspects of social life that have intrinsic value or are unconditionally valuable.
Universalism:	The view that it is possible to identify values that are globally valid.

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Biographical Sketch

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