

SUSTAINABLE JUSTICE:

SOCIAL SUSTAINABILITY AS A KEY PRINCIPLE FOR LAW AND JUSTICE, IN ORDER TO IMPROVE SOCIAL HARMONY, QUALITY OF LIFE AND TRANSPARENCY

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Introduction

Good morning. It is an honor for me to present the Sustainable Justice Charter 1.0 to you. The Charter is the outcome of tenths of years of exploring, study, experience and preparations, and hard working in my practice as civil defense lawyer. I am proud that my business partner and I succeeded to describe the basic principles of Sustainable Justice in a short document of 1.212 words exactly. Thank you for coming to my presentation. I will tell you how I came to development of this concept, rather how I was 'forced' to develop it.

First steppingstones

In 1972 I started as civil defense lawyer in Rotterdam. One of my first cases was the case of a woman from Surinam, the former Dutch colony. She was unfairly dismissed, had lost her court case in first instance and asked me to lodge an appeal. She explained that she had always behaved correctly and could not live with slur on her person. She said that she was sent home after a problem with her employer that never had been properly discussed.

I won her case easily. The Court purified her reputation and gave my client the moral relief she needed. But there was a problem: The Court had condemned her employer to pay her salary for a long period of time. It concerned a considerable amount of money, which my client could use very well. But she was ambiguous about it. She said: 'I did not fight for money. I fought for my reputation. And now others can think that I fought for money. And this is slurring my reputation again.'

Her comment caused me a shock: I was touched by the purity of her intention and her unselfishness with regard to material interests. At the same time I was in shock as I realized that Courts admit cases only if there is a financial interest. So Court litigation would not meet my client's most pure, unselfish and morally superior standards. My lawyer's heart was broken. I could not live with this idea. This experience occurred to me in the first year of my career as an attorney and would lay the first stepping-stone on my way to develop Sustainable Justice.

In that time Judge Jan Reuder was the Chief Judge at the District Court in Rotterdam. He laid the second steppingstone. He conducted summary proceedings and was well known for almost never

making decisions. His Court sessions were open conversations with the parties about the problem. In these conversations he spurred lines and always a certain moment occurred that he concluded that there were enough reasons for the litigants to continue the conversation outside the Court session and negotiate further about an amicable settlement. He postponed the case, setting a reasonable date for the next Court session for if the litigants would not come to solution.

When the litigants came back as they did not settle, Judge Reuder continued the conversation in the next Court session, and always found easily new relevant reasons for the parties to continue their negotiations outside the Court. Sometimes Judge Reuder could postpone cases 5 times or more. In almost all the cases the outcome was that the litigants solved their problems themselves.

In fact judge Reuder was a judicial mediator long before mediation was invented. He 'managed' conflicts and in fact he unveiled to me an important difference between conflicts and legal disputes: conflicts are flexible and dynamic phenomena, quite different from legal disputes that are static.

Sustainability think-tank

Ten years later I was introduced in a Dutch think-tank for sustainability. I continued being a member during about 15 years. For long I did not understand what I was doing in this group of experts discussing the relationship between humans and the earth, a sustainable quality of ecosystems, and, their main concern: How can we change the human mentality so that sustainable behavior will become the 'new normal'. But then I discovered that my main reason to be a member was that I had to learn instead of contribute: I had to learn to apply values of sustainability on law and justice. I had to understand that law and justice are matters of social sustainability and that justice can prosper the quality of social networks (social ecosystems). Justice can bring balance and improve humane relationships and enhance social wellbeing. These principles are values of social sustainability, which are fully in line with the values of ecological sustainability and equally relevant. From the perspective of social sustainability conflicts and offenses are symptoms of a disturbed social network. Relationships ran out of balance. The main sustainable interest of either party involved can only be: restoring and improving the quality of the social network, finding a new balance in relationships.

Developing a socially sustainable legal approach

In 1993 I left a big law firm and started my own law practice, so that I could develop a socially sustainable legal approach for my clients. I was inspired to this by my Surinam client who had taught me about the importance of being respected, by the opportunities of judicial conflict management applied by Judge Reuder, and the inspiration about social sustainability from the Dutch sustainability think-tank. Many of my clients were top managers and middle managers. I realized that specifically this group of clients had long lasting interests in getting more respect from their employees, colleagues, bosses, directors and shareholders. Improvement of the quality of relationships and enhancing respect in relation to anyone involved in any problem became the basis of my legal approach. My focus was that my clients could always look others right into the eyes without any shameful feeling, regardless what had happened before. Therefore it was necessary that my clients would manage their problems themselves. I started supporting my clients to manage their conflicts themselves, being respectful to anybody, and getting the most respect in return.

I was strongly inspired by the Chinese general and philosopher Sun Tzu's book 'The Art of War', which was translated in Dutch under the appealing title 'Winnen zonder strijd' (winning without fight), and followed Judge Reuder's example. His approach had shown that conflicts can be split into separate issues that can be solved separately. I supported my clients to manage each of the aspects of their conflicts themselves and let them make use of many opportunities that come up and can upgrade their moral position or relationships. My role was like a 'stage-director' taking care for

the respectful and effective communication by my client as the leading actor. This way I let my clients improve their relationships and gradually solve the different aspects of their conflict. This approach empowered my clients; they learned that they could manage the conflict.

It was always important for my approach to avoid court involvement as this results in legalization of a conflict, which reduces the 'resolution playing field' to mere legally relevant issues.

Legalization of conflicts does not contribute to improvement of respect and relationships in general. During 20 years I have continuously developed, refined and improved my socially sustainable legal approach. I used my law practice as my laboratory. My clients were very happy with my approach.

Going international

I wanted to bring my approach in the 'outside world', but I did not see opportunities to this. In 2007 I decided to take a sabbatical and to travel for several months to Australia, New Zealand and the USA. On this trip I came in intense contact with innovative movements in justice and legal theory that developed since the 80's in many Common Law countries. I discovered Drug Courts¹, Problem Solving Courts², Community Courts³, Unified Family Courts⁴ and Family Drug Treatment Courts, and Indigenous Sentencing Courts⁵, and in legal theory Procedural Justice, Therapeutic Jurisprudence, Restorative Justice⁶, and Non-adversarial Justice.

All of these innovations were meant to improve inter humane relationships and general societal wellbeing. In fact all these innovations were excellent examples of socially Sustainable Justice. I discovered that courts and legal theory had made a similar transformation of focus as I had made in my legal approach. Then I changed my focus from 'sustainable lawyering' into 'sustainable justice', as I believe that when Courts integrate values of social sustainability, attorneys and the legal system will follow immediately.

Critical remarks on Western justice systems

Here is an appropriate moment to explain why a number of principles of modern Western justice systems are not very beneficial to values of Social Sustainability. Although most jurisdictions have softened the harshness of some of these principles considerably, these principles are still cornerstones of Western justice systems causing harm to inter humane relationships, to social networks, and to the general quality of life. I make the following critical remarks:

¹ Drug Courts, developed in the USA since 1989, a court innovation program that places addicted repeat offenders in a treatment program under supervision of the judge who supports them to change their lives and become valuable law-abiding members of society and coordinates cooperation between social service providers in the program. Drug Courts are very successfully spreading in the USA and around the world.

² Problem Solving Courts, developed in the USA: Building on the success of Drug Courts these courts offer treatment programs for different specific offenders: Mental Health Courts for defendants with mental health issues, Reentry Courts for convicts returning to society, Veteran Courts for veterans who offended, to bring their lives back on track, solving all underlying issues, etc.

³ Community Courts, developed in the USA: Courts established in deprived neighborhoods where a community judge cooperates with the community, prosecution, the public defender, social service providers, and stakeholders in the area, in order to restore public safety in the area, resolving societal wrongs and fostering a general social upgrade in the neighborhood.

⁴ Unified Family Courts, developed in the USA: all issues in one family are treated by one Court, one judge and one team of Court officials who know everything happening in the family on the field of justice, so that a well-coordinated beneficial approach for everyone can be applied.

⁵ Intercultural criminal Courts (Indigenous Sentencing Courts), developed in Australia, Canada, New Zealand and the USA: in these Courts judges cooperate with respected representatives from the other culture involved in order to solve underlying issues that caused offending behavior, thus bridging and decreasing the gap between the cultures, while solving the problem sustainably.

⁶ Restorative Justice: modern forms of traditional collective conflict resolution through family- or circle conferencing.

1. The adversarial system of justice:
Adversarial justice drives litigants apart and causes escalation of conflicts, which further harms the quality of relationships and social networks. Socially sustainable justice deescalates conflicts and prospers harmony between the litigants.
2. The focus of justice on material interests:
This limited focus of justice causes legalization of conflicts, which alienates conflicts from their psychosocial origin and eliminates this essential part of the conflict. This creates a schism between the 'real reality' and the 'legal reality', which is harming relationships.
This focus awakens negative attitudes and feelings in the litigants that often transform respect into distrust.
Socially sustainable justice relies on the litigants' highest humane qualities. Moral values and qualities need to be activated to enable litigants to overcome obstacles, improve relationships, and solve conflicts.
3. The judge as decision maker:
A judge who decides takes responsibility away from the litigants. This is rather dehumanizing and is not supportive to social sustainability.
A socially sustainable judge will keep litigants responsible. He can use judicial power to incite them to become wiser, more humane and socially more valuable people, which will enhance their capacity to solve and overcome their problems themselves.
4. The judicial focus on truth finding:
No one will become happy by focusing on negative occurrences that happened in the past. Instead this magnifies differences and negativity. Sustainable judges (like Judge Reuder continuously did) focus on present opportunities and possibilities for the future. The future can inspire litigants to achieve outcomes that are in their common interest. This will restore social harmony.
5. The principle of the passive judge and party autonomy:
This principle is counterproductive to social sustainability as (1) it attributes power to litigants who have proven to be incompetent to solve the problems, (2) it disempowers the judge, while (3) the litigants need the judge's unrestricted leadership and wisdom to (4) assist and support them to solving their problems soundly and harmoniously.
6. The principle of retribution in criminal law:
Retributive punishment causes long lasting social harm to offenders and to innocent members of their social networks, bringing harm to them often for the rest of their lives. These punishments are often disabling families from getting their lives on track, which cause long lasting harm to the quality the social networks involved and the quality of life in general.

Sustainable Justice Charter 1.0 (dd. 2015-12-10)

In 2015 I interviewed a number of officials who were involved with the establishment of a pioneer innovative court project, the Midtown Community Court in the Times Square District in New York City in 1993. I interviewed them as I want to feel the innovative spirit that has motivated them to make that change. The discussions I had with these people made me clear that there was a need of a compact document describing the concept of Sustainable Justice. My business partner, Jaap van Straalen and I needed nine months of writing and rewriting texts and drafts. We got continuous encouragement of professor Andrew Cannon, who is Deputy Chief Magistrate in Adelaide, and Senior Mining Warden of South Australia. Finally, on December 10, 2015, we completed the Sustainable Justice Charter 1.0 that describes in 1.212 words the basic principles of socially sustainable justice.

A few weeks later the Charter was co-signed by worldwide influential professionals and scholars

like professor David Wexler, the founder and director of the Therapeutic Jurisprudence network, professor Tom Tyler, founder of Procedural Justice, Jeremy Travis, president of John Jay College of Criminal Law, Kim Wright ABA bestseller author and legal rebel, professor Martine Herzog – Evans, president of the French Association of Probation, professor Tania Sourdin, now dean of New Castle Law School in NSW, Australia, and of course Professor Andrew Cannon from Adelaide who has been so supportive to us. Many of the co-signers responded very enthusiastically.

You can download the Charter on the website www.sustainablejusticecharter.org, and I took a lot of flyer-copies to this conference.

After completion of the Charter I asked myself what my next step would be. My intuition answered immediately and shockingly clear: 'You should be now the most influential lawyer in the world within the shortest possible time!'

This answer was pretty overwhelming. But then I had to realize that the concept of socially sustainable justice should be spread around the world in a powerful way, as justice needs to improve human relationships and social wellbeing anywhere in the world.

It was a great honor for me to present the concept and the Charter to you here on this conference. I thank you for your attention.

Sustainable Justice Charter 1.0

*Improving social harmony, quality of life, and transparency,
through integration of values of social sustainability into justice*

Introduction

Sustainable justice is the approach to justice that aims to improve social harmony, wellbeing, the general feeling of safety within society, and furthers personal and societal development, within a framework of human rights and principles securing legal uniformity and equality.

In order to enable the justice system to intervene effectively, justice is vested with power and independence and acts in the pursuit of social sustainability of society and its members.

Consciousness of sustainability is rapidly spreading around the world and gradually improving every sector of society. Social sustainability is nowadays interconnected with ideas like love, empathy and compassion.

In the recent decades criticism has been growing that existing justice systems do not appropriately and effectively meet societal needs. Many innovations have developed in justice and legal practice and theory aiming at serving values of social sustainability, like different forms of Problem Solving Courts, Restorative Justice, Intercultural Justice, Procedural Justice and Therapeutic Jurisprudence. These innovations have proven to be effective contributors to solving societal problems and seemingly unbridgeable intercultural gaps.

A justice system which acts on principles of social sustainability to guide its remedies for conflict resolution, will have a positive impact on conflict resolution outside the legal system.

Context of Sustainable Justice

Social sustainability

The main goal of Sustainable Justice is increasing the quality of life by improving the quality of relationships and social networks. This cannot be enforced by coercion, punishment or deterrence. Mature inter-humane relationships, mutual respect, empathy and understanding, and an ability to transform negative emotions into creativity and constructive behavior are essential requirements to improve the level of social sustainability.

Values of social sustainability complement judicial values and contribute to the effectiveness of judicial systems.

Conflicts, criminal acts, and social networks

Sustainable justice sees conflicts and criminal acts as opportunities to restore and improve social harmony. These incidents can occur easily as people and society develop and are seen in the broader context of an individual or societal problem, abuse or wrong. Conflicts and criminal acts not only affect the people directly involved, but also their relatives. They pervert and destroy more than one relationship and social network.

Socially sustainable conflict resolution solves the problem of the people directly involved in a way that benefits all the other stakeholders involved. The individual case is seen as a vehicle to reduce the individual and societal burden of these problems.

Sustainable judicial toolbox

Judicial power is given by society to the justice system on the assumption that this is beneficial to society. Judicial officers using judicial power are societal change agents, who can act as a catalyst for a better society.

Prestige, independence, and the position as ultimate decision maker drapes judges with a kind of magic that enables them to accomplish outcomes that others cannot achieve. Judges have the potency to change mindsets and behaviors that were interfering with the resolution of problems.

Postponement of the judicial decision opens a rich array of opportunities for sustainable intervention by judges to effectively make use of their transformational magic. This quality grants to judges a key position to procure socially sustainable outcomes.

Socially sustainable outcomes are achieved by using a minimal, but effective, dose of power. Any unsolicited exercise of power breaks down the balance in social relationships and networks, but a well-chosen and well-directed slight corrective impulse of power can restore and heal harmony that has been disturbed.

Judicial systems and regulations, including budgeting rules can either support or impede the opportunities for the justice system and for judicial officers to achieve socially sustainable outcomes.

Application of Sustainable Justice

The general principle of sustainable judging is to turn bad into good, contributing to social harmony and personal and societal development. This asks for reconsideration of some basic principles of law and justice concerning the function of judicial decision-making and punishment.

Sustainable intervention and decision-making

Judicial decision-making often removes responsibility from a person, which does not support social sustainability. The passive decision-making judge focusing on what went wrong in the past gives perverse incentives to the litigants to play games with their responsibilities.

From the perspective of social sustainability people should not escape responsibility but rather accept personal responsibility and learn from that process. Societal wellbeing and sustainable interests of the parties are served if the judge actively confirms the parties' responsibilities, strokes up mutual respect, enhances mature behavior and the parties' capacity to deal with their problems constructively, focusing on the best sustainable future for all, including society. Sometimes it can be useful to involve other stakeholders and social service providers in the process of conflict resolution in order to achieve socially sustainable outcomes. Restorative practices can be applied which bring the parties and other stakeholders together into a collaborative process that aims to restore harmony in affected social networks.

Sustainable punishment

Sustainable punishment aims to bring or restore harmony in socially valuable networks, including those of victims, offenders and their relatives. It enables offenders to become valuable members of society, stimulating and supporting them to develop constructive pro-social behavior, and to reduce unhealthy and anti-social behavior.

Punishments that include a form of social isolation are breaking down social networks which often causes severe, sometimes lifelong irreparable harm to relatives of the offenders who are innocent.

Punishment that harms socially valuable networks should be avoided whenever possible.

Social sustainability does not reject the principles of retribution and deterrence if the results of the application of these principles support values of social sustainability for society and those involved.

Great difficulties that ex-prisoners and people with a criminal record experience in getting socially accepted again contribute to their return to criminal behavior.

Judicial officers using therapeutic techniques and assisting other stakeholders to bring about constructive behavioral change in the offender make use of judicial power as a catalyst to build a socially sustainable society. This method of 'punishing' is sometimes honored with the nickname 'Smart sentencing'.

Accountability and Transparency

The contribution of the justice system to the quality of life and social sustainability of society should be clear, transparent and measurable from a material, social, and psychological point of view.

A system for measurement with solid parameters should be scientifically developed, concerning the structure of the justice system and the contribution of individual judicial officers.

The changing perspective of Justice

Social sustainability provides valuable guiding principles to justice systems encouraging them to gradual change so that they contribute to social harmony more effectively. Conflicts about material interests and criminal behavior should be used as a vehicle to foster improvement of relationships and social networks, realizing the best sustainable future for everybody involved. This can be realized by enhancing responsibility and accountability of those involved, improving their capacity to manage conflicts and problems in socially constructive ways. This way of working avoids legalization of conflicts and an adversarial attitude.

A starting point for the whole of the system should be an indissoluble interconnectedness between law and interpersonal respect. This will result in less victimization and less escalation of conflict, less imprisonment and less bankruptcy.

Justice systems based on principles of social sustainability are role models guiding people in the best ways to manage conflicts and other challenges constructively without harming others.