

The law of the future

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How many times have you heard or read this in the past year? 'We live in an era of change'. As true as the observation may be, many of us would love to go back to 'normal'. And yet it has by now become abundantly clear that we are indeed in a transitional phase, so-called liminal times. A nice term that I encountered not long ago was 'trembling twenties'. And please decide for yourself, doesn't it regularly feel like everything is shaking and trembling? And, assuming you recognize this, what do you 'do' with it as a trained (legal) professional, board member or public domain official?

Social unrest

Everything is always in motion. From our body within which our cells are constantly renewing themselves, to nature in which things are sown, then grow, bloom and ultimately die. After which the cycle repeats itself. Nevertheless, this particular time in which we are now living is becoming very fluid. It is a time marked by increasing social unrest and discontent. Social unrest caused by the lack of balance in more and more things: (dis)balance between contact in the 'real' and virtual worlds, malnutrition in many countries worldwide versus large amounts of food in other countries that are being turned around. Imbalance because old systems no longer work and new structures and systems cannot yet be detected. Because of multiple outdated systems, people worldwide have been taking to the streets for a number of years already on the most diverse topics. Climate marches by our youth, worldwide Black Lives Matter protests and Dutch farmers heading to The Hague on the nitrogen problem. Worldwide social unrest and dissatisfaction, around themes such as climate, social and economic inequality, and failing education and healthcare systems.

Developments within the legal domain

And slowly but surely, the impact of social discontent is also becoming visible worldwide in developments around the law. In different jurisdictions we see similar groundbreaking court rulings being issued around 'duties of care' in relation to the environment. And slowly, but steadily, we see bills being passed that previously seemed unimaginable. Multiple developments in different jurisdictions. To make this a bit more concrete: the lawsuit won by Urgenda, in which the Dutch State was ordered to comply with the climate commitments contained in the Paris Agreement. Or the ruling against the Dutch parent company of Shell Nigeria early 2021, in which the corporate veil was pierced due to a breach in the duty of care. Prosecution and conviction for fraud by directors in the business world. The Dutch Central Bank that sounded the alarm in the financial sector on the major financial risks due to the large-scale global loss of biodiversity. A human rights law that was recently passed in Germany to combat child labour, modern slavery and environmental pollution. And a final example that you probably have heard of by now: a river that was granted legal personality. In New Zealand, this first happened in 2017 with regard to the Whanganui River after more than a century of negotiations between the Maori tribe and the New Zealand government. Nature, as a stakeholder, is increasingly finding a voice. Its own voice. And thereby an independent place within the larger legal system, where it was until recently merely weighed as an element in the assessment of interests. A

mere element without rights while the other elements could each rely on their respective legal personhood - the project developer (initiator), the government (competent authority), the citizen...

Fiction or reality?

And why not grant a river legal personality where companies have had these rights for centuries? While we can swim and sail on rivers and depend on them for our drinking water, the legal personhood that we grant to companies is merely a legal fiction. In short: an 'invention' of our imagination, a concept created by mankind. In this case, a concept, often used to facilitate the production or delivery of goods and services on a larger scale, to increase efficiency and corporate profit. Handy for sure, but very often not of vital importance in comparison with the role that rivers play within our global ecosystems.

The initial noise within the legal world around rights of nature, coincides with the publication of the 'Limits to Growth' report of the Club of Rome in the early 1970s. As a result, the importance of caring for and how to best make use of our living environment and raw materials suddenly was front and center in society. The impact of the report at the time was enormous. Unfortunately, the impact of not acting on it in a timely manner is painfully visible today. And the need for systemic changes to that what we call the capitalist neoliberal economy, and the principles that are at its fundament? This need has only grown since then.

From weak signals to new norms

Today, the so-called weak signals sound ever louder and clearer. The developments in the world around can no longer be ignored and are causing the necessary tumult, also in the legal space. And rightly so, I believe. After many decades of seemingly infinite growth, a climate, biodiversity and human rights crisis are receiving growing attention because of irreversible negative impact the existing rules (and/or the absence or misinterpretation thereof) are now increasingly being questioned. No surprise is it? After all, isn't our legal system simply a reflection of the zeitgeist? And perhaps we have now finally landed in a phase of redefining the concept of 'right & just', an emergence of the new zeitgeist? With growing global dissatisfaction around the systems that we as western society have created, it may just be the right time for designing a new game, with new rules. If this is a correct interpretation of the chaos and turmoil around us, then eventually the legal system will follow the changes that are becoming manifest in society. At last. As mentioned, first by means of legal proceedings where new standards will slowly but surely emerge. These new standards will then be anchored in new systems by replacing and modifying existing rules. Or, can we perhaps proactively support the emergence of the new zeitgeist? Can we consciously create new rules that facilitate and support the birth of a new system?

Future fit?

In addition to a rapidly growing attention for rights of nature, human rights and systems that start showing cracks, there is also an increasing focus on the role that we as humans play within those different systems. As the 'Limits to Growth' report clearly stated a long time ago, infinite growth on a finite planet is an illusion. It is a dream from which we are now slowly waking up. And so, over the decades, the question of responsible behaviour by corporations, and of individual responsibility for the world around us, is being questioned ever more frequently and poignantly. Because although positive attempts for people and the environment have been made under the header of People, Planet & Profit, we can only conclude today that our collective efforts have so far fallen short. Without blaming anyone in particular, by the way. Yet with concern, and with the question as to how we can do it differently? How can we learn to respond and adapt more timely in response to signals from our

environment? How can you, as an organization, as well as on an individual level, be and remain future-proof? With care for yourself, the organization and the living environment? After all, we live in a time when continuous change is a given, where complexity prevails and adaptability is not a mere luxury but a necessity. And with the pace of adjustment that we have adhered to till now, we are guaranteed to hopelessly keep playing catch-up.

Technology as a lifesaver?

Although technology and digitalization have allowed for much human progress, technology alone is not going to save us going forward. It brought us faster cars, internet connections that allowed us to book weekends away with one-click, VR and AR, robots that took over mind-numbing labor (and that are slowly taking over more and more tasks that can be automated) all sorts of new apps to keep you busy 24/7 and new clothing collections in stores every so many weeks. However, it also brought us growing economic inequality, exploitation of children in factories in countries far from our homes as a result of fast fashion, growing rates of burnout and depression, pollution of our rivers, air and soil and a frightening decline in biodiversity that endangers our global ecosystems. The unabated growth and deployment of technology has brought us enormous monetary wealth and prosperity, and it has brought us to where we are today. And although technology is increasingly interwoven in our daily lives, it is a good time to ask ourselves whether technology is an end in itself, or a means that we as humans can use in the service of life. After all, isn't it up to us humans to program and apply technology in ways that support life? Are we willing and able to take the responsibility to determine how we want to live instead of AI increasingly deciding that for us? What goals do we wish to pursue? And, by use of which means? And, which outcomes do we consider 'right & just' for the benefit of the whole and which outcomes fall short on those parameters?

Head and heart

Despite many attempts to make knowledge and information about the misuse of our natural resources and about an 'appropriate' use of technology and AI widely available, such information generally does not move us humans. The explanation? Particular ancient parts of our human brain were not made to act on big challenges that seem far away and do not directly affect us. Even when we rationally know that things can go terribly wrong in the long term, acting with a focus on the short term remains our first human reflex.

The good news? In contrast to knowledge and information that generally hardly makes most of us move, the things that touch our hearts and souls generally do make us move. Because of the beauty, or the sadness, hope, wonder or indignation they evoke. Emotions — those which the business world mostly disregards and looks down upon — constitute our greatest wealth and source of wisdom. When we learn to listen to our emotions, we can become aware of what they are trying to tell us. What will help us learn to navigate towards the future? My guess? Our humanity. In addition to using our heads, let's also follow our hearts. Because the huge challenges we face will affect us all, sooner or later. My suggestion in learning to deal with a future where uncertainty is the 'new normal' and we will all be facing major global challenges? Let's look at the challenges as opportunities, and let our curiosity win out over our fears when making choices. Let's be inspired by the diversity of perspectives around us, postpone judgment and listen to each other. Listen curiously and deeply: listen to understand. Or do we want to apologize in advance to future generations as Nynke Laverman sings in 'Your Ancestor'? <https://m.youtube.com/watch?v=5FazTkue0rl>
Listen carefully. How does that feel? Far away? Overwhelming? Activating? Shameful? Maybe none of these? Or all of them? Can you bear the discomfort? Can you endure it?

New rules

Playing catch-up, stretching the limits of or acting at the minimum threshold of what is morally acceptable, will increasingly turn out to be a gigantic risk for the long-term survival of organizations. Both because of the negative impact on reputation, and the way in which it negatively impacts employee motivation and the ability to attract a sustainable client and supplier base. And, if you are not yet convinced by all of the above, also because of increasing legal risk. After all, the standards in our society are shifting: from barely meeting the lowest threshold to the question of what positive contribution you can and are expected to make as an organization. The game is changing, and it is changing fast now. This new game requires a new set of rules. And where there are rules, there are lawyers. Both in the adaptation and replacement of existing rules, as well as in the application and interpretation of new rules, lawyers can be of service. Lawyers who can help develop new rules, after analysis of the existing rules and after obtaining a proper perspective of the changing world around them in dialogue with other people and professions. Lawyers who can help the people/groups concerned to evaluate whether the new rules are aimed at producing outcomes that can be considered 'right & just' in the particular context. Lawyers who can help remind the actors in the system of what is no longer considered acceptable and how it can be done differently, in line with where the world and the rules of the game are heading. And we can definitely use lawyers who can apply the new rules in a way that does justice to the individual circumstances of the case.

Courage and imagination

Hereby my heartfelt support for all lawyers who are preparing for the future. The future that will inevitably present itself: let's find hope in Bob Dylan's 'The times they are a changin'; move in alignment with the changing world around you and read Roman Krznaric's 'The Good Ancestor', in which he outlines our moral duty of care towards future generations. Go outside and marvel at the beauty of nature. Play with your children and be surprised by their imagination and the simple yet future-proof solutions they may offer. And last but not least: breathe in...and breathe out. Do you dare entertain the thought that the rules surrounding the legal fiction of the company as a legal entity may need an update? An update in which a duty of care and responsibility for the whole are embedded as the norm, as advocated by a large group of Dutch professors. Will we, move beyond our shame and develop the courage to really start having those much-needed dialogues to create a better world together?