The ***International Journal on Responsibility*** (***IJR***) is an international, peer-reviewed, interdisciplinary forum for theoretical, practical, and methodological explorations into the various and complex issues of responsibility, animated by the question, "Who or what is responsible to do what for whom?" ***IJR*** is a broad-ranging journal that incorporates insights from the full range of academic and practical inquiry from the humanities and the social and natural sciences related to addressing the diverse aspects of responsibility.

IJR publishes papers, comments, and other writings on responsibility. The contents examine intellectual, practical, policy and ethical issues relating to responsibility. In addition, the journal encourages research and reporting on ways in which responsibility relates to issues ranging from individual to broad public concern, past, present, and future. Topics in ***IJR*** include the use of responsibility in academic and nonacademic settings; structural and ideological dimensions affecting the development of new perspectives on the topic of responsibility; the ethics of research, teaching, and practice of responsibility; the application of a focus on responsibility in practical problems; the historical and interdisciplinary roots of responsibility; and the contributions of a focus on responsibility for interpersonal, policy and public issues.

The journal accepts submissions on the full range of topics related to responsibility as well as special editions dedicated to one topic. Manuscript submission guidelines for authors appear on the final page of each issue.

~ The Editorial Board of the *International Journal on Responsibility* gratefully acknowledges the generous gift provided to the journal by the Redekop Family Endowment ~

ISSN 2576-0955
Volume 1, Issue 1.1 (October) 2017.

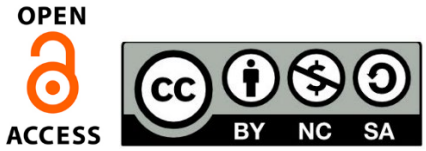
A publication of the *Mahatma Gandhi Center for Global Nonviolence* at James Madison University

***International Journal on Responsibility*, Vol. 1, Issue 1.2., May 2018**

All articles remain the copyrighted work of their respective authors, and are published in this issue of the *International Journal on Responsibility* under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Public License.

Library of Congress Subject Headings for Vol.1, Issue 1.1:
Social Sciences – Periodicals
Responsibility
Gandhi, Mahatma, 1869-1948
Government accountability
Political rights
Criminal liability
Restorative justice--Cross-cultural studies
Law--Study and teaching
Prisoners--United States
Education--Kosovo (Republic)

International Journal on Responsibility, Vol. I Issue 1 (May) 2018



Contents:

1 – 4 Terry Beitzel, *Who is Responsible to do what for Whom? A letter from the Editor-in-Chief.*

5 – 20 Arun Gandhi, *What Does Responsibility Mean to Me?*

21 – 42 T.Y. Okosun, *Political Flip-flopping, Political Responsibility, Current Governance, and the Disenfranchised.*

43 – 54 Hal Pepinsky, *Resolving the Paradox of Holding People Responsible.*

55 – 66 Kendra A. Hollern, *Dying with Dignity: Where is the* Compassion in *Compassionate Release Programs?*

67 – 82 Sabiha Shala & Gjylbehare Muharti, *Who is Responsible for Ethical Legal Education, for what and to whom? Case of Kosovo.*

83 *Acknowledgments.*

84 – 85 *Call for papers for forthcoming issues of the* International Journal on Responsibility *and instructions for authors.*

International Journal on Responsibility, Vol. I Issue 1 (May) 2018

Who is Responsible to do what for whom?

A Letter from the Editor-in-Chief

It gives me immense pleasure to write this Inaugural Editorial. The *International Journal on Responsibility* has been in development for over three years. With the publication of the first issue, the journey continues. The goal of this multi-disciplinary journal is to explore the practical and theoretical issues involved in the concept of responsibility to ourselves and to others as we navigate a complex social environment.

The focus on responsibility developed initially as a response to the prevalence of John Burton's Human Needs Theory in conflict and peace studies and to the focus on human rights more generally; might humans also have Basic Human Responsibilities that complement Basic Human Needs and rights?[1] If so, what might constitute such responsibilities? Responsibility lies somewhere between freedom and obligation: somewhere between the freedom to do whatever an individual pleases to do and the obligations to perform certain tasks or behaviors. The goal is to promote inquiry into a full range of areas (from interpersonal, institutional, policy, social systems and structures, and global governance) in which humans might incur responsibilities through their actions or inactions and to explore ways to ameliorate human suffering and oppression. Whether explicit or implicit, intended or unintended, our thoughts and social actions have consequences. The scope of the possible topics of the journal is purposely broad, covering all fields of human inquiry.

Thinking and writing about responsibility is inherently tricky. To illustrate, in the 1964 production of *Beyond the Fringe*, the following discussion of responsibility occurs in a segment dubbed the "Great Train Robbery." "When you speak of a train robbery," the Scotland Yard Inspector explains to the reporter, "This in fact involves no loss of train. It is merely what I like to call the *contents* of the train [that] were pilfered." Following further humorous elaboration, the interview continues:

Reporter: Who do you think may have perpetrated this awful crime?
Inspector: We believe this to be the work of thieves…The whole pattern is extremely reminiscent of past robberies where we have found thieves to be

[1] For a more detailed discussion of responsibility as initially addressed by the Editor-in-Chief, see, *Dissertation:* "From Freedom to Self-Governance: Complementing Human Needs with Responsibilities, A Critical Appraisal." 386 pages. George Mason University, Institute for Conflict Analysis and Resolution (2010); Terry Beitzel "The Process of (Nonviolent) Revolution and Weber's Ethic of Responsibility" *International Journal of World Peace*. XXXI, 2 (June) 2014: 11-34; Terry Beitzel, "Living with Ambiguity, Risk and Responsibility: Ethics and Agency in a Nonkilling Future." *Nonkilling Futures: Visions*. Edited by Joam Pim. Honolulu. University of Hawaii. 2012: 55-96; and, Terry Beitzel, "Virtue in the Nonviolence of William James and Gandhi" in *International Journal of World Peace*. XXX, 3 (September) 2013: 55-83.

Published by JMU Scholarly Commons, 2017

involved—the tell-tale loss of property, the snatching away of the money substances. It all points to thieves.
Reporter: You say you feel the thieves are responsible.
Inspector: Good heavens, no! I feel the thieves are totally *ir*responsible, ghastly people who go around snatching your money.
The very word responsibility, as humorously portrayed above, reflects a linguistic irony as well as evoking contradictions, paradoxes, and confusions in describing human agency in relation to circumstance.

The above illustrates the most straightforward modern understanding of responsibility as *criminal* responsibility for our direct actions in violating specific laws. However, a question I always ask of students adds complexity: "When might we be acting responsibly when we disobey unjust laws, such as laws enforcing slavery?" Therefore, responsibility can be formulated in numerous ways and in other contexts —political, metaphysical, moral, command, communitarian, proximal, capacity, and future[2]—that we might incur. How, then, should we think and act in the social world? The world's great religions provide variations on a general theme of responsibility. For example, what Christianity refers to as the "Golden Rule" is found throughout sacred texts:

Buddhism: Hurt not others in ways that you yourself would find hurtful (Udana-Varga 5, 1)

Confucianism: Do not do to others what you would not like yourself. Then there will be no resentment against you, either in the family or in the state (Analects 12:2)

Hinduism: This is the sum duty; do not onto others what you would not have them do unto you (Mahabharata 5, 1517)

Islam: No one of you is a believer until he desires for his brother that which he desires for himself (Sunnah)

Zoroastrianism: That nature alone is good which refrains from doing another whatsoever is not good for itself (Dadisten-I-dinik, 94, 5).

Given the historical and global reach of these simple principles, why does so much suffering and oppression exist today?

The most obvious answer is that we do not follow the above principles. A more nuanced and complex answer might be that the pretence of doing good—believing that we are being responsible—for others often ignores, obstructs, or masks critical reflection on the motivations, means, and ends of social action. Said another way, in a sermon at Harvard's Memorial Church, the Reverend Professor Peter Gomes stated bluntly: the devil does not bother

[2] See Terry Beitzel, "Building Peace in the Process of Restoring Justice: A Conceptual Framework for an Inclusive Approach to Peace and Justice in Northern Uganda" *West Africa Review*, 19, 2011: 85-109.

to tempt us in areas of our weakness, we are perfectly human to sin there all by ourselves. It is in our righteousness, in our virtues, where we believe we cannot possibly be wrong, that we are most easily deceived. If that includes too much in terms of religious overtones, atheist Clarence Darrow also claimed: "It is not the bad people I fear so much as the good people. When a person is sure he is good, he is nearly hopeless, he gets cruel." These statements reflect the ambiguous and paradoxical dimensions of responsibility.

The goal of the *International Journal on Responsibility* is to go beyond the above cursory thoughts and statements about responsibility by extending, examining, and debating what responsibility means in numerous disciplines and practices. *IJR* is a forum for theoretical, practical, and methodological explorations into the various and complex issues defined and animated by the question "Who or what is responsible to do what for whom and why?" *IJR* is a broad-ranging journal that incorporates insights from the full range of academic and practical inquiry from the humanities and the social and natural sciences related to addressing the diverse aspects of responsibility.

Now I turn to you, dear colleague, to examine and explore what responsibility means in your field or practice. The exemplary contributors to this first issue come from a range of life, professional, and scholarly experiences. This is expressed from their own unique practitioner-scholarly point of view. I wish to thank them for contributing to the inaugural issue. I should also like to acknowledge the work of Howard S. Carrier, Managing Editor, JMU staff, and numerous others.

Dr. Terry Beitzel
Editor-in-Chief,
James Madison University.

International Journal on Responsibility, Vol. I Issue 1 (May) 2018

What Does Responsibility Mean To Me?

Arun Gandhi

Arun Gandhi is grandson of Mohandas Karamchand Gandhi, co-founder (with Sunanda Gandhi) of the M.K. Gandhi Institute for Nonviolence based at the University of Rochester, Rochester, New York, USA.

It is safe to say that not many people in the 21st Century are as committed to responsibility as my grandfather, Mohandas K Gandhi, was during his life time. As we all know responsibility is a very broad term, almost without limits, and requires a genuine desire to practice. It begins with the self and radiates outward to encompass as much of the world as one wishes.

If we examine Gandhi's life we will see that like all children his early life was full of irresponsible behavior. One could say he was a thief because he stole money and a bit of gold to pay for cigarettes and meat; he was a liar because he lied to his parents about his nefarious activities. While most of us would slide into irresponsible behavior using "peer pressure" as an excuse, Gandhi heard his conscience and decided lies and betrayal were not the road maps he wanted for his life. He took the responsibility of confessing his crimes and sought forgiveness.

As a young Indian man in the 1800s he was among the very few privileged to study law in England. This was reason enough for an inflated ego. In Gandhi's case, however, he wanted acceptance by the "Whites". Gandhi was aware of the prejudices that the whites harbored against people of color. He was appalled, he writes in his autobiography, to hear white priests denounce Indian culture and the Indian way of life on street corners as he walked to school. As a young man in England he thought if he adopted British culture and customs he might be accepted by the whites. Thus, when he returned from England, he was what Indians derisively called a "brown Englishman," with a highly inflated ego.

Although the responsibility of paying back the loan the family had taken for his education in England and the fact that his extended family depended on him for economic sustenance were issues of which he was aware, his priority was to anglicize the Indian culture in their joint family home. He demanded a change in dress codes and dining habits. No more squatting on the floor for meals; a dining table and chairs were introduced. He was so obsessed with this reform that his wife Kastur had to remind him that his first priority should be to earn money. All of these changes you want are costing money that your brothers don't have.

His older brothers, Gokuldas and Laxmidas, decided to have a frank talk with him about his responsibility to the whole family. In the Indian joint family system all the brothers and family live together in one large home and all income is pooled together. It was only when he was chided by his wife and brothers that Mohandas realized his responsibility and began to set up a legal practice. At some level are we not all guilty of this behavior?

In spite of his educational qualifications Gandhi could not overcome stage fright. The first time he appeared in court to defend his client he could not utter a word when it was time for him to get up and build his case. He refunded his client's fees and walked out in shame. While he was conscious of his responsibility towards his family, he just could not overcome this weakness. It seemed as though he was destined to fail as a lawyer. In desperation he started doing clerical work of writing briefs and petitions for a nominal fee. During this period in his life, when he was expected to shoulder the responsibility of the entire family, he became so desperate to earn a steady income that he applied for a position as an English teacher. The British administration said he was not qualified enough to teach English and rejected his application. Perhaps it was just as well that he did not get the teaching job because he would have opened himself to a lot more ridicule. If he could not speak in front of a judge in court how would he have fared in front of a class full of students?

The point of this reflection on Gandhi's life and travails is to see how his sense of responsibility was honed by circumstance and grew from the self to the family. It is difficult to say what would have happened to his life if he had not received the fortuitous invitation to South Africa to be an interpreter for an Indian merchant who was embroiled in what seemed to be an endless legal battle. The problem was the Indian merchant could not read or speak English and the only lawyers qualified to take the case were white Englishmen. There was a major communication problem. It was certainly a professional step down for a lawyer to take the job of an interpreter but his sense of responsibility forced him to accept, even though the job paid far less than a British qualified lawyer should receive. It was his sense of responsibility that made him swallow his pride and grab any opportunity he could get.

Gandhi's visit to South Africa turned out to be another nudge towards greater responsibility. In the first week of his arrival Gandhi became a victim of brutal racial prejudice when he was literally picked up and thrown off a railroad carriage because a white man refused to share a compartment with him. As it turned out this was a major turning point in his life. When he shared the experience with other Indians he was appalled to learn that they had all accepted injustice quietly. The general refrain was: "If the whites don't want us to travel first class we should not go." If we examine our lives we will find we often do the same thing. Find an easy way out because the responsibility of taking action could jeopardize our security.

Gandhi thought about this attitude and concluded it was not responsible behavior. Gandhi was faced with quietly submitting to racial injustice and pursue making money and supporting his family, or sacrifice security and take a stand against injustice and face the consequences. He was finally able to convince the Indian community that the alternatives they had were either to sink deeper and deeper into the pit of apathy or to stand up for their rights whatever the consequences. This was the birth of nonviolent political action.

At first, the struggle took the form of legal action and petitions and only when this did not seem to work he decided on launching protest

movements by defying unjust laws. This marked the expansion of his sense of responsibility from the needs of his family to the needs of the community. Often, in our daily lives, we are called upon to make similar decisions but more often than not we make excuses and confine our sense of responsibility to the needs of our families. Gandhi realized injustice against one is eventually injustice against all and, what was worse, injustice had the tendency to multiply if not nipped in the bud.

Obviously Gandhi's struggle was confined to injustices against the Indian community. This was not because he was a racist and did not care about the Native Africans as some historians have recently suggested. The fact is at this point in his life he was still somewhat naive and uncertain about the philosophy of nonviolence. He was naive because in the early years he referred to the Native Africans as "Kafirs," a term used by the whites and everyone else in South Africa. When he realized this was a derogatory term he stopped using the term. It must be admitted that although he had ample opportunities in succeeding years to erase such remarks and clean up his writings he did not do so because he was wedded to Truth and because he wanted people to see the conscious changes that took place in his life. All the negativity that historians are now bringing out to demean him and besmirch his reputation they have found in his writings. When he said, "My life is an open book," he really meant it. He kept the good, bad and ugly for everyone to see as evidence that anyone could achieve what he did if they have the commitment and compassion to raise oneself higher up the ladder. It is not enough for one to rise up materially. Gandhi chose to go up the moral ladder because he was convinced materialism is the road to corruption, hate, prejudice and violence. This is an indication of yet another aspect of shouldering his responsibility by recognizing his weaknesses and making changes to become a better human being.

What did Gandhi mean by becoming a better human being? And why do we need to do this? Scholastic education alone does not make one better, nor does it result in a society becoming civilized. Education takes us halfway to civilization by giving us knowledge; the other half of the way can be traversed only when we figure out how to use the knowledge to become morally upright human beings. I have often heard people say: "Oh well, I was born that way and will just have to live with it." That is not true. No one has to live with weaknesses. We have to learn to recognize the weaknesses and do something to transform them into strength. The ultimate goal of every human being should be to make an individual effort to build a cohesive society living in harmony and wedded to positive attitudes like respect, understanding, acceptance, appreciation and compassion instead of all the negativity that dominates our thinking and attitudes today. This is the only way to build a peaceful society.

Gandhi believed what he did can be done by any one of us if we take the responsibility of making ourselves better than we were when we were born. Gandhi saw his life as a vast "experiment with Truth" and his writings were in the form of scientific notes for subsequent generations to follow and grow upwards. But our responsibilities anchor us to material pursuits and individualism which is why we don't create communities but rather a

collection of individuals. To get into the question of what is a community or a nation will detract from the present subject so I will leave it for another occasion.

But, of course, it must be said that humanity survives and thrives only when individuals expand their sense of responsibility to include building a cohesive community and nation. When we have disparate individuals doing their own thing and pulling in different directions it only tears the people apart giving rise to violence, hate and prejudice.

Although we have learned to see nonviolence as "a pursuit of peace" or resolving conflicts amicably, Gandhi saw it as a way of life. Unless we live it in thought, word and deed we cannot practice it effectively. What we see today as glorious examples of success achieved through nonviolence Gandhi would say are neither glorious nor successes. What we achieve most of the time is to talk down people from a position of violence while not always addressing the problem. One widespread example of the inadequate resolution of a conflict is the crime situation that plagues every society on earth. The widespread assumption is that the world is made of good people and bad people and if we can control the bad people we will have goodness all around us. Nothing could be more ridiculous. What makes people do bad things in society are the problems that they are not able to resolve. For example a homeless person is hungry and has no means to buy food. He walks past a store and sees fruit displayed in boxes outside and sees an opportunity to steal some. He may get away once but at some stage he is likely to get caught. When he is arrested he is punished with imprisonment, but society will do nothing to address the issue of homelessness and hunger. All we do is dehumanize people as criminals and deserving of what they get. If living in peace is the ultimate goal of any society then it is the responsibility of every individual to build it brick by brick by becoming morally and ethically aware of one's responsibility towards the society in which we live.

We have ignored the core of Gandhi's philosophy of nonviolence -- the concepts of Swaraj (freedom); Trusteeship; constructive Action and, above all, Sarvodaya. Let me explain each of these briefly. Although we have interpreted Swaraj to mean freedom as in independence from political oppression, to Gandhi Swaraj meant "individual freedom". As long as we remain enslaved by material and physical attachments we can never be free. How many times do we turn a blind eye to injustice simply because we are too afraid to lose our jobs or suffer financial loss? It is that chain of thought that forces us to live in bondage.

Trusteeship is the Gandhian belief that no one "owns" the talent he or she possesses or acquires. We are trustees of the talent and should therefore be willing to use it to help less fortunate members of society as much as we are willing to use the talent for ourselves. It means we give up our greed and selfishness that a material society encourages, and be more respectful and compassionate towards those who have nothing. It means giving, sharing not out of pity but out of compassion. There is a significant difference between the two, the same as giving a man a fish and teaching him how to fish. It is simple and effortless to just give someone some money or food and walk away. This only increases dependence. Giving out of compassion takes more effort

and resources but it helps a person become a worthy, contributing citizen and, what is more, it helps rebuild the person's self-respect and self-confidence - the two valued assets that are crushed by poverty and/or oppression. This is also constructive action.

Which brings us to the concept of Sarvodaya (welfare of all). Materialism has led to greed and selfishness and getting rich at any cost, which, in turn, has led to the creation of a Culture of Violence that is now so deeply rooted and pervasive that it dominates all aspects of human life from sports and entertainment to relationships, education, and religion. Our only moral guiding principle in a Culture of Violence is the good of a majority of the people, which has resulted in 51% of the people of the world enjoying all the benefits and more and 49% languishing in poverty and starvation and ignorance. And we are happy with this situation. Gandhi said true happiness, peace and freedom will come only when we work for the good of all people. In fact the following paragraph from his writings is significant:

"I will give you a talisman. Whenever you are in doubt or when the self becomes too much with you, apply the following test.

"Recall the face of the poorest and the weakest person whom you may have seen and ask yourself if the step you contemplate is going to be of any use to her. Will she gain anything by it? Will it restore her to a control over her own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions?

"Then you will find your doubts and yourself melting away." (Paraphrased)

The essence of Gandhi's philosophy of life and teaching was responsible behavior, responsible actions, responsible relationships and responsible citizenry. My parents - Manilal and Sushila - and my grandfather taught me well and I have been attempting to live up to their expectations.

A long time ago my mother said to me: "You have tremendous responsibility on your shoulders which will not be very easy to carry. Just remember this simple advice: You may not be able to enhance the glory of your grandfather's name, and that is fine. But please don't do anything to bring dishonor to his name."

On another occasion she also told me: "Don't see this Legacy as a burden because it will just become oppressively heavier as the years go by. Instead see this Legacy as a light that is illuminating the path ahead and keeping you on the right course."

My father, Manilal, the second of four sons that my grandparents had, was also wise and compassionate. They practiced at home what they preached outside. Both my parents were convinced that the first seeds of violence are planted in the minds of children when they are punished for misbehavior. The message the children get is when someone misbehaves or does something bad they must be punished and, of course, in modern jurisprudence punishment is always violent whether at home with children or in the courts of law. The cycle of violence begins in childhood at home.

It is scientifically proven that children learn from what they see at home rather than what they hear from their parents. Gandhi's constant refrain was: "Live what you want others to learn." This is as true of children at home as it is for adults outside. In other words what we need is responsible parenting and responsible living.

Responsibility covers all aspects of human life. One might say that every step we take has to be thoughtful and responsible or we can end in a total mess. Responsibility transcends the self and flows into societal behavior. Is there a role that all of us need to play in order for the better functioning of society and, if yes, what is the extent of our responsibility? Coming from the Gandhian perspective our responsibility to society is equal to our responsibility for self-preservation.

When I was growing up in Phoenix Ashram near Durban in South Africa I was taught to respect all life - human and animal - and nature. My sisters Sita and Ela and I were never allowed to indulge in classification of human beings especially the concept of master-servant relationship that still persists in human society. Everyone was simply human whatever their race, religion or economic standing, and they had to be addressed with respect. They also taught us our responsibility towards others and they displayed this through their own actions. My parents believed in living simply, so that others could simply live. In Phoenix we were surrounded by very poor African families who barely sustained themselves on the pittance they were paid as farm laborers. We had cows that gave us more milk than we needed and our farm produced more vegetables than we could consume. My mother ran a little shop where she sold the excess milk (some of it was converted to yogurt because the African natives loved yogurt), vegetables and old clothes that she picked up from friends in the city. The prices for these items were ridiculously low. Pennies for a pint of milk or a pound of vegetables, and a shilling or two (less than a dollar) for a coat or trousers or dress. One day I asked my mother why she charged such ridiculously low prices, why not just give it away free? "Just because they are poor," she said, "We should not disrespect them by giving handouts. Even the poor have pride and when they pay for what they need they feel proud and respected." In a materialistic world we are taught just the opposite. Individual success is measured in terms of income and possessions which leads to greed and selfishness. Consequently, those who are marginalized are considered incapable and unmotivated. In a subtle way society relegates them to the status of working class people.

In significant ways we have reduced poverty to modern day slavery. The exploitation of the poor in all parts of the world is widespread and inhuman. They are made to work with no benefits, at the lowest possible wage for the longest number of hours.

In the United States, for instance, our farms and much of the service industry would not function without "illegal" Mexican workers. The operative word is illegal because the employers do not wish to pay benefits nor be governed by the labor laws that a legal immigrant would be entitled to. So, employers seek out the illegal immigrants, pay them as little as they can get away with and offer them no benefits whatsoever.

It is this loving, compassionate, respectful upbringing that instilled in us the importance of a value-based life. Most importantly, what I learned from my parents and grandparents is that life is not about living for the Self but that our existence should enrich the community and thereby the world. In keeping with this philosophy I have attempted to mold my life according to the respect and responsibilities instilled in me since childhood.

For the first 23 years of my life I lived with my parents in the Phoenix Ashram in South Africa helping my parents with the administration of the Ashram community and in their defiance of the policies of apartheid. In 1956 my father died and I carried his ashes to India for immersion in the River Ganges. While I was consulting with my uncles and aunts about my future course I met a young Indian lady, fell in love and later we decided to marry. Since South Africa under the oppressive apartheid regime did not allow non-white citizens the privilege of marrying abroad and bringing home their spouses I was destined to live in India.

I saw a great deal more poverty and oppression in India, especially in the city of Mumbai and the legacy of responsibilities nudged me towards constructive action. I knew I could never have eliminated poverty and oppression even with a team of dedicated and committed workers but I also knew, in good conscience, that neither my parents nor my grandparents would want me to turn my back and pretend it did not exist.

I remembered the story of the starfish. One morning a man went to the beach just before dawn for a walk. In the dim light he could see someone near the shoreline picking something and releasing it into the water. Intrigued, he went closer to find the man was picking up stranded starfish and putting them back in the water one at a time. There were thousands of starfish all along the shore so the walker said: "Why are you wasting your time? Look at all the starfish all along the shore. You are not going to be able to save all of them, so what difference is it going to make?" The Good Samaritan continued picking up the fish and releasing them. He turned to the walker and releasing a starfish into the water, he said: "It makes a big difference to this guy." The moral of the story is because you cannot solve the whole problem not doing anything should not be an option. I got a few friends together and we discussed our responsibility to do something to help as many people as we could using the "trusteeship and constructive action" aspects of my grandfather's philosophy of nonviolence.

After months of speaking to groups of homeless destitutes we were able to assemble almost 800 people who were willing to participate in our cooperative experiment. They were all so desperate to improve their economic standing that they agreed to whatever we suggested. Since we wanted to simultaneously help rebuild their self-respect and self-confidence we suggested that we register them as a cooperative entity. What helped this process was the fact that poverty had compelled them to find their own entertainment outlets that did not cost any money. Some local person would take the initiative to form a hymn singing chorus, or, if they were more talented, a stage group. They would then have competitions between different localities. They performed out in the open and mostly the poor people

assembled for some moments of joy in their otherwise dreary life. This kind of internal leadership helped us reach out to them.

We could have sought a grant from a foundation or donations from some rich industrialists for the economic program we had in mind, but that was rejected by us because we did not want the poor to feel that they could ask for anything they needed and we would find ways of providing them. Since they were the problem we wanted them to be a part of the solution. So, we convinced them that as a cooperative they should collectively decide to save some money every day to build a corpus fund.

It must be remembered that these people were so poor that many of them lived from meal to meal. It was therefore all the more laudable that they decided they would put aside a half rupee (about 5 cents in 1967-68) each and every day. They worked harder, longer hours, scrimped and saved and shocked us with a collection of Rs.110,000 (approximately $10,000) at the time. A Kranti Weavers' Cooperative Society was formed, with ten reconditioned power looms to weave cloth. These machines were installed in a modest tin shed in a village south of Mumbai. The group selected 50 people who would go back to the village and run this cloth making unit so that it could become profitable.

These were ignorant unlettered people who had no idea how to run a business but they were intelligent and willing learners. We had to spend time with them and teach them about money management, production, marketing etc. As they became confident we handed over charge to them. Over the years they kept expanding and by 1976 they had three units working and many who had contributed to the initial fund were able to move back to the village and live a decent life with their families. In 1978 through the small savings habit that we instilled in them they were able to open the Kranti Weavers' Cooperative Bank in Mumbai which now has seven branch offices and total assets worth around $1,000,000. Through the bank they are helping other poor people get micro-loans to start their own enterprises.

Over the years hundreds of thousands have benefitted economically and now live a decent life. Their children have gone to schools and colleges and become professionals. They opened their own schools to teach successive generations and in tangible ways their lives have changed forever. What we are grateful for is that they have not yet succumbed to greed.

While we were engaged in this economic revolution we also came across many newborn babies who were abandoned on the streets. We realized these babies were born to unwed mothers and this is something that society frowns upon so the pregnancy is hidden; mostly through malnourishment the baby does not grow much; at the last moment the girl and her parents would go somewhere to quietly deliver the baby and leave it in the streets for someone to find. Over a period of a dozen years we found and rescued 129 babies and found homes for them - some in countries like Sweden and France - and others in India.

While they are all well settled, there are some poignant stories that are heart-wrenching. In the late 1990s many who were given to loving families in Sweden wrote to me with a request to organize a reunion. My late

wife Sunanda and I were their only link to their motherland, and since we had given them in adoption they were eager to meet us. We went to Sweden in 1999 and spent a weekend with some 30 of the adopted children, teenagers by then, with their adoptive parents. We had several discussions to share their lives with us and it seemed they were all very happy except in one respect. They were all very eager to find their biological parent and wanted our help. They explained that ever since they started going to school they heard all the children talking about which parent they looked like and whose eyes and hair they had inherited. These adopted children did not resemble either of their adoptive parents. They were also eager to know the medical histories they had inherited from their biological parents.

I considered myself responsible for the lives of these children because I was the one who had to decide where and to whom the baby would be given. I am grateful that I have not yet come across any who blame me for destroying their life. I asked the group why were they so eager to find their biological parent. I explained that in the Indian culture it is rare that a mother would give her true identity when abandoning a baby. All the babies that we gave in adoptions were found on the streets without any documentation of their birth or parents. In a country of 1.2 billion it would be difficult to find their parent. I concluded my explanation with an apology: "I thought I was doing the right thing by giving you to Swedish families who appeared very loving and caring," I said. "However, if you now feel that I made a mistake and that you would be happier living in the orphanage in India then please forgive me." For several moments there was pin-drop silence in the room and then they all got up in unison and proclaimed: "You have resolved our problem. We resemble you so we are just going to consider you to be our parents." That was one of the rare moments when I sobbed tears of gratitude and relief. Now sometimes to befuddle people when asked how many children I have I proudly say 131. Then I explain that I have 129 adopted and 2 biological children.

Finding Indian families to adopt was much more challenging. They feel if they are going to adopt then they have the right to shop around for a baby. They would come to us with specifications for the kind of baby they wanted and we generally rejected such applications. Once we had a request from an Indian Airlines pilot. He and his wife had no children. While the pilot was quite happy living a childless existence his wife was not. When she realized babies could be adopted she pleaded and persuaded her husband to adopt. He finally gave in and said he would adopt only a boy with fair complexion. Because he was a friend I said I will see what can be done but the chances were slim. Boys were not often abandoned and for some reason, when abandoned, the mortality rate among boys was higher than girls.

A few weeks after this discussion I went one lunch hour to visit a baby that was hospitalized because she was severely malnourished. While I sat by the bed playing with the little girl a nurse came to me and asked: "What do you do with these abandoned babies?" "Find loving homes for them and give them in adoption," I explained. "We have a baby girl who was abandoned in this hospital and for the past six months we nurses have been pooling our

money to take care of her. Can you find a home for her?" "Yes," I said. "But, we would have to go through a legal process. Can I see the baby?" I asked.

We went upstairs to a special room and the moment the nurse opened the door I saw this beautiful six month old chubby baby girl standing up in her crib with a wide smile on her face. She just clung to me and wanted to play. That evening when I got home I told my wife about this baby and said: "I have a feeling we should persuade our pilot friend to see her." My wife reminded me that he wanted only a boy. Nevertheless, I called him and asked him to come with me the next morning just to see the baby. It took me an hour to convince him that he did not have to take the baby but just as a friend come and see her. He finally broke down and said he and his wife would swing by the next morning and pick me and my wife and we would go to the hospital together.

What I suspected happened. The moment we walked into the room the baby giggled with laughter and wanted to be picked up. The pilot and his wife melted like butter in a sizzling pan. They wanted to take her right away. I said they couldn't because the legal procedure would take at least a week. The pilot and his wife went wild. They shopped for baby clothes and toys to fill a couple of suitcases and every day until the legal procedures were completed they went to the hospital and spent the whole day with the baby. I wondered what would happen if the judge ruled against giving the baby to them. For their sake I prayed that all would end well. They did get the baby and she became the princess of the household.

Another Indian couple that approached us were eager for a baby. They did not mind taking a girl. We were told that the wife was informed by doctors that she would never get pregnant. We found a baby girl for the couple and they were overjoyed. Some months later we were informed that the wife had miraculously become pregnant and that she would be delivering a boy. The couple, understandably, were in ecstasy. My wife and I, of course, were very concerned when we heard this knowing that in Indian society a girl was relegated to second place and an adopted girl would fall even lower. One day we visited the couple and suggested that since they were expecting a biological son they may want to consider giving the adopted girl back so that we could find another home for her. Of course, they would have none of that. "She is our princess and has brought good luck to our home, we will not part with her. If you wish we will abort the baby boy but please do not take our princess from us," they wept.

It was a very poignant moment that deeply touched our hearts. The reason I share these stories is because I feel life gives us opportunities to realize our responsibilities and we can either shirk them or shoulder them. Turning away from poverty or from abandoned babies is normal and society is not going to castigate anyone who does. What is one's understanding of responsibility and to what extent one wishes to shoulder them is ultimately one's own choice. One can show you or one can teach you about responsibility but ultimately it is like the proverbial horse that is taken to the pond but he won't drink if he does not want to.

International Journal on Responsibility, Vol. I Issue 1 (May) 2018

Political Flip-flopping, Political Responsibility, Current Governance, and the Disenfranchised

T.Y. Okosun

Dr. T.Y. Okosun is Associate Professor of Justice Studies at Northeastern Illinois University, Chicago, Illinois, USA.

Introduction

This article discusses the implication of political flip-flopping which directly diminishes political responsibility. Political flip-flopping requires the incorporation of amnesia (deliberate forgetting) to simultaneously sustain dominance, privilege, and advantages on the one hand, while apportioning violence and disadvantages to already vulnerable citizens on the other. There is clearly an agitation around the U.S. regarding where almost everything stands. Positive precedence regarding rights, justice, and fairness appears to have little or no effect on current practices of political governance. Whereas election promises in 2016 spoke of re-enlivening specific versions of the American experience, the actual current governance posture in the U.S. appears to dismantle reasonable programs that were to guarantee rights, health, environmental protection, and other safeties. The 2016 elections re-divided the nation along bitter racial, economic, political, and religious lines. While vulnerable and disadvantaged populations received open threats and negation, the promises made to poor Whites, who for years believed they are not poor, vulnerable, or comparable to traditionally poor groups (Native and African Americans, and Latinos and Asians), were instantly reneged as the current administration assumed office. The administration flipped from promises to instantly empower billionaires and powerful corporate groups in its attempt to consolidate absolute control of economic and political advantages. In the tradition of neoliberal capitalism, the empowered billionaire class, now fully in control in Washington, DC, makes it possible for powerful corporate groups to demand control by way of privatizing everything, even including the Federal Aviation Authority (FAA) Air Traffic Control (ATC).

Nestled under the aggressive moves of massive and super-powerful corporations to take over the nation and turn most citizens into slavish, subservient, low paid laborers, is the 33% disapproval rate of the current president's leadership (Stafford, 2017). However, the interactive dynamics of such low quality leadership implicates policies and political responsibility which most citizens find distressing. This means that most citizens are aware of the negative impact of the current political and economic configuration driven by the political class. Moreover and unfortunately, the traditional

Published by JMU Scholarly Commons, 2017

racial group that has been disadvantaged since its coerced economic service as slaves, and its suffering under old and new Jim Crows laws (Alexander, 2012; DeVernay, 2016), is now being re-forced to accept insecurity, fear, and augmented insignificance. Because the U.S. positions itself as the global beacon of justice, the political class maneuvers under the complex radar of political flip-flopping and amnesia to empower specific groups over and against others. Political flip-flopping is a multidimensional tool used by the powerful and political class to accomplish a desired subjective agenda. In the 2016 elections, it was used to coerce votes from vulnerable and often less historically compromising citizens. Defined by minimal education, increasing poverty, as well as immutable religious, political, and economic positions, this group of citizens succumbed to electoral violent language and directed its anger (as they were told) on their fellow vulnerable citizens. Tricked to expect guaranteed change in their condition, the group overwhelmingly flooded the polls. Oddly, the covert use of political flip-flopping sustained by amnesia appears to also marginalize this group. Though white, in the eyes of the political class this group is after all just poor mass laborers with low skills and minimal education, who know no better. The implications of the indiscriminate uses of current federal powers appear to trump all poor citizens, empower specific groups over others, remove achieved and natural rights, dismantle environmental rules, and cause the re-initialization of incivility, racial and religious divisiveness, as well as empower harming behaviors that sow discord in the overall American experience.

Political Flip-flopping

Political flip-flopping and political responsibility are governance behaviors locatable within the history of U.S. political culture. Both practices have been mainstream within the dimensions of federal and state governance for years. However, both practices are consistently opposed to each other. Whereas political flip-flopping seeks constant social dissonance, political responsibility seeks social harmony in diversity. In the course of political experience, political flip-flopping has come to dominate social arrangements, while political responsibility has been weakened. Somehow, an oath taken to protect citizens' rights, dignity, and liberties, appears to endear the political class to mostly the group of citizens that guarantee their current and future economic survival. The political class realizes the power and privilege of holding political office in the U.S., so it uses political flip-flopping to delicately maneuver between the constituents who vote them into office and the super PACS and the extremely economically powerful corporate community who demand higher allegiance. Flipping from one group to the other when convenient is part of the increasing political prostitution that engages in the high appreciation of, and high respect and interest in, extremely powerful groups who supply monetary advantages, while encouraging the political class to pay minimal attention to the constituents who sanctioned them into political office. All of this makes political flip-flopping extremely advantageous.

Political Responsibility

Conversely, political responsibility is the cornerstone of democratic behavior, protecting all citizens by guaranteeing equal access to all common resources (including law and policing), protecting economic behaviors and public spaces, and ensuring equal uses of public and natural resources (land, water, air, etc.). Political responsibility is not only a governance behavior, it is also a civil behavior nestled within citizens' interactive engagement with each other. Political responsibility, as Young (2011) understands it, is also part of the foundation of the responsibility for justice. This means that citizens and their political class are always focused on protecting each other's rights and securities while guaranteeing the framework upon which human solidarity is built. Unfortunately, the increasing disadvantageous nature of political responsibility is anchored in the fact that its practice and benefits yield no substantive monetary advantages to political practitioners other than what is due each citizen, and guarantees that adverse conditions that affect disenfranchised groups are resolved. In the U.S., the "elected" political class just keeps doing "its thing" without any attention to the cries and challenges of disadvantaged fellow citizens. The questions of redress of the justice and prison systems, reparations to Native and African Americans, inclusive and compassionate economics, and responsible just and fair labor laws are all echoes of the transformative justice initiated by Dr. Martin Luther King, Jr., and for years the efforts of Dr. Chomsky. Ironically, these massive concerns are mostly academic discussions rather than efforts taken up by the political class to engage them as actual political practices in view of positive changes. In this scenario, citizens constructed as insignificant and undeserving are assigned minimal or no space in terms of distributive justice, or even the basic practice of political responsibility. Moreover, specifically for the political class, the practice of political responsibility has no high compensatory value to fill subjective coffers which the political class saves for rainy or retirement years.

The Implications of Political Flip-flopping

There is an interesting definition of political flip-flopping from Liasson (2008), which includes the simple behavior of politicians changing views. However, political flip-flopping is an ideological tool that is used to pursue subjective advantages while simultaneously rejecting disadvantages. In the hands of the political class, it is a much more powerful tool that is used to maintain continued social control with the sophisticated use of amnesia. More perniciously, the political class employs political flip-flopping to promote deliberate inclusive exclusion. Inclusive exclusion is the interplay between amnesia, posterity, and selected memory which guarantees rewards and benefits for some citizens and not others. In other words, linking political flip-flopping and amnesia generates obsessive and deliberate remembering of some citizens and the things relevant to their progress, while simultaneously and deliberately forgetting specific groups of citizens and anything relevant to their advancement. The political class, mostly members of the dominant group, is always aware of the harms its past and current behavior have wrought on vulnerable groups (Native Americans, African Americans, Latino Americans, some poor whites, and other minorities). To protect itself and its

posterity, the political class continues to flip-flop, also cleverly inserting amnesia at different points of U.S. history to guarantee against accusations of improprieties in the past, to sustain current advantages by insisting that it is evolving (Leibovich, 2015), and to secure future benefits. For instance, the political class and the dominant group fall silent as past and current textbooks limit or show no presence of U.S. diverse groups and their contributions to the American experience. Even though a few scholars try to reconstruct the contributions of various groups in the U.S., the damage has been done. Within the general population, the presence of amnesia is so widespread that it allows the political class, and those it chooses to protect and who choose to deride others, to flip-flop on any issue whenever they choose. Flip-flopping allows interminable and inaccurate statements about everything, including the U.S. Constitution, U.S. history, and socio-cultural contributions (inventing alternative facts) to justify all kinds of subjective interests and positions. Simply inventing alternative facts is one thing, but using them to exclude fellow citizens from opportunities, benefits, and quality of life is destructive but part of the continuing legacy to diminish resistance (see Fraser, 2015) and maintain political and economic flip-flopping in view of sustaining subjective advantages.

It follows then that political flip-flopping is characterized by several dimensions, the most obvious being the ability to evade conditions that put the dominant group and its political class in awkward positions, while simultaneously allowing them to slide into subjective advantages to protect themselves and their selected populations. A good example of a sophisticated flip-flopping is characterized by the behaviors of the current administration. The deliberate daily Tweets and construction of impossible and trauma-inducing scenarios are the classic flip-flopping away from actual political responsibility to all citizens. These specific flip-flopping actions detract from the responsible effort to focus on the crucial issue of racial divisiveness increasingly impairing the U.S. As media systems focus on the daily behaviors at the presidential office, they are less likely to pay attention to the efforts of well-meaning citizens to bring about respect, dignity, security, and equal treatment first to those massively disadvantaged, and then to all citizens. Consider that since the processes of creating adjustments and inclusion are legislative directives, which require Congressional debates in view of actions, racial profiling, racial harming, police brutality, mass incarceration specifically of African Americans and Latinos, and discriminatory hiring practices, are shoved onto the back burner.

Flip-flopping, Subjectivity, and Violence

Whereas political responsibility is action that is tied to positive and inclusive results for the sake of citizens' well-being, political flip-flopping is a tool used at the politician's discretion to determine the best subjective condition for the self and those closest to the self. In 2016, the U.S. experienced a bitter reminder that race, class, gender, religion, and the strange admiration of exclusive nationalism were alive and well. The elections of 2016 showed the characteristic nature of flip-flopping. Politicians who

furtively signed up for the advancement of all citizens regardless of race and gender in previous years, suddenly flipped to side with a political party, a race, nationalism, and pretend religiosity. They conveniently flipped scripts in every community they visited to maneuver in such a way that protected their subjective interests in view of whoever won the election. Suddenly, the phrased code "make America great again" emerged to openly suggest that all citizens were not equal. In other words, certain citizens were not "real" Americans. President Obama was the leader of those individuals masquerading as Americans, and so the end of his presidency was a chance to shut down any progress those socially constructed undeserving groups had made. As well, President Obama (the first U.S. African American president) became the central figure of electoral vilifications. His tenure as U.S. president and all his work on national diversity and advancement were cast as African Americans and minority groups attempting to destroy the legacy of white rule and white control across the nation. In the early days of the current administration, using the best of the flip-flop ideology, it was quite clear that it thought, using the New Jim Crow (Alexander, 2012), it could discredit one specific African American super-star team member of President Obama's administration, quickly falsely incriminate, and then take her out of political and social circulation.

Moreover, President Obama's presidency was used to find fault with everything that has gone wrong in the U.S. since President Nixon's administration. President Obama, an African American president, was now the "catch anger" used to agitate the poor and mostly under-protected and minimally educated white citizens, literally coercing them to head to the polls to re-enthrone a wealthy white male who flipped the script to promise jobs, better conditions, and control at all cost. The public policy and manifesto were the promise to repeal "Obama healthcare" and to build a wall to resolve U.S. immigration issues. That manifesto brought out massive, negative nationalism sentimentalized by addiction to segregation, racism, and homophobia. It is interesting that when Europeans migrate in droves (some documented, others not) into the United States, the immigration system is just fine, but when individuals other than Europeans (some documented, others not) migrate to the United States, calls by European Americans who feel threatened draw out political flip-flopping in both the political class and the dominant public.

Conversely, the pompous ideologies of the 2016 election campaign assumed incorrectly that good governance is the function of specific kinds of wealthy, white males, always in control of the United States. Good governance is actually the function of any ethical leader-human being who seeks the collective well-being of all citizens. "Make America great again" was the code for all who cared about a specific kind of wealthy whiteness and its political views to rally for action. Political responsibility was then flipped to carry a very different meaning (alternative facts). The new "political responsibility" presented to poor white citizens coerced them to vote a wealthy white male back into the presidential office for their own sake, safety,

and protection. The call was unequivocally clear, and the votes were not to be for a white woman or just any white male linked to President Obama's administration. During the 2016 elections, political flip-flopping also emerged as an enhanced tool linked to violence, social manipulation, and social control.

Flip-flopping U.S. Greatness

The election of 2016 and the political elite sanctioned into the federal presidency and other federal spaces stand contrary to true political responsibility. The United States is "already great" and does not need to be "great again," but rather needs to be better by being creative, inclusive, and protective of all of its citizens and external populations that need helping hands. The "make America great again" phrase suggested exclusion exemplified by election promises to extremist nationalists incorrectly informed that they have been betrayed by poor and disadvantaged citizens and/or poor immigrants. Because flip-flopping eroded true political responsibility, dislocated white citizens were never told the truth that the political class and corporations' unbridled quest for profit by all means caused all of their misery. Poor and disadvantaged citizens, as well as undocumented immigrants, do not own institutions or the massive corporations and the lobbyists working on their behalf that plague the federal offices in Washington, DC. All poor people are at the mercy of these massive corporations, who shift and slide from one place to another to increase profit. When corporations shift and slide, people get laid off, and sometimes an entire community is abandoned because they see no value in hanging around there. The only "saving grace" corporations in poor rural white communities are Wal-Mart, McDonald's, and private prisons. The private prisons hire locals as wardens to guard poor and disadvantaged folks like themselves. The only difference is that the anger of their destitution and other illusions are transferred to the prisoners who are mostly African Americans, Latinos, and some whites.

In addition, the idea of greatness is eternally linked with political responsibility to all, and not specifically to some citizens. It is useful to point out that by the last quarter of the 1800s the U.S. began its gradual assent to greatness. The U.S. Constitution was already 100 years old. The Buffalo Soldiers (African Americans) made a mark on the nation. The civil rights activists of the 1950s through the 1960s undergirded the U.S. with a responsible conscience to pursue the right justice. On the technological and economic realms, the Direct Current (DC) and Alternating Current (AC) war between Edison and Tesla raised the nation's profile on creativity. The development of the railroad system, the oil system, the Sears order catalogue, product manufacturing, the amazing massive armada (weapons, planes, ships, trucks, etc.) developed between 1942 and 1945 to stem Hitler's menace in Europe, the highway systems across the nation, and electronics and computing systems, all point to a nation of creative citizens who had finer tastes for constructive, political responsibility. That form of political responsibility which was aimed at liberating people from darkness

(electricity), from tyranny (allies against Hitler), gaining civil rights for all citizens, and making communication and transportation possible were the highlights of constructive, national transformation.

Despite these positive constructive changes, there were still individuals within the political class flip-flopping and instigating and insisting on the ideologies of difference, racial segregation, and dominance. Instead of seizing the opportunity in the 1800s of science and technology to construct a new society that was inclusive of all U.S. citizens, the U.S. unwittingly allowed itself to be steered in a dark direction where federal monies were used to shore up Jim Crow laws and racial segregation. These laws and ideologies were so addictive and blinding that, even though members of all racial groups in the U.S. contributed to the construction of the overall American experience (science, technology, war efforts, education, space, creative arts, music, etc.), the political class flipped the scripts and insisted that only white males were singled out as the quintessential doers and achievers. Despite these blinding ideologies, some citizens in the U.S. upheld a brilliant sense and version of political responsibility which was inclusive of seeking liberty and security for those oppressed, and encouraging of human solidarity among everyone. It is this version of political responsibility that realigns with the nature of human responsibility to each other.

Human and Political Responsibility

Responsibility to one individual or a specific group, though a form of responsibility, is nonetheless an incomplete notion of responsibility. Most people would argue that responsibility is an acknowledgement of an interest and action with regard to the things that are within one's power and to be accountable to them. This notion of responsibility also makes it possible for subjective and relative understanding of responsibility to accrue, insisting that responsibility is only to one's sense of interests and positions. For instance, in this sense an environmental activist would only be responsible for a particular interest and position and would not consider the connection of that issue to other humanity or the global context. This is also often common when considering police brutality. The police across the U.S. insist on the moto "to protect and serve" (unless this is yet another code for something else), but some police members, relying on the protection of the larger police system, brutalize the most vulnerable citizens they are supposed to serve and protect. When confronted with this deliberate harm, they flip the script and insist that they are carrying out their responsibility. So there is a disconnection in terms of assuming responsibility as a protector and servant of all citizens, but subjectively brutalizing some citizens by failing to equally include them in the universal experience of service and protection of everyone. Such understanding of responsibility is so limited that it drives a wedge through the efforts of human and political responsibility which calls for ethical behavior and solidarity with fellow human beings (Burggraeve, 1985; Chomsky, 2017; Young, 2011). The nature of human and political

responsibility is much broader and encourages individuals to interact positive knowledge across contexts so that the human experience as well as journey is not isolated, brutal, and miserable. Human and political responsibility shapes inclusivity, diversity, as well as constructive responses for human and even non-human affairs (other animals, the environment, and so on).

As well, the expansive and transferable nature of human responsibility begins within the family, but does not prevent anyone from protecting a stranger's child about to unwittingly cross the street with on-coming vehicles speeding past. This same responsibility is important when thinking about the violence in some of abandoned U.S. urban communities. Imagine, for a moment, a street intersection with an adult individual standing next to a three-year-old and her 15-year-old brother who is distracted in a conversation with his peers. All of a sudden, the three-year-old sees her mother on the other side of the street. In that child's mind, all that matters is getting to her mother, and the danger of speeding cars is insignificant. Two clear choices are available. If the adult individual is not mentally and physically challenged, the first choice is to prevent the child from dashing onto oncoming traffic (protect and serve a fellow human being) until either the mother crosses over or the individual personally walks the child over to her. Consider the political responsibility lesson the child and everyone else watching the scenario unfold at that intersection learns and may eventually manifest later in life.

The second choice is to assume self-responsibility and simply let the child dash across (tough luck, the child is learning the hard way). The child may or may not get hit, but either way, the adult individual walks away satisfied that staying away from other people's business is the best option. If the child were actually hit by an oncoming vehicle, no one can accuse the individual of a crime or for not taking action. This is where human and political responsibility become confused with subjective preferences that detract from protection and service. This is similar to the behavior that led to the abandonment of inner city residents. Instead of protecting and serving them, empowered by the dominant group and political class, the criminal justice system singles them out as the architect of their own problems. The political responsibility script is flipped to now signify that inner city violence and behaviors warrant massive incarceration as a form of responsibility to the larger society. Flip-flopping scripts to codes such as "war on drugs" and "three strikes and you're out" blames disenfranchised victims and will, of course, never resolve the larger problem of hate, negation, hideously unethical behavior, citizens' mistreatment of each other, gun proliferation because no one trusts anyone, and violence of all varieties in the U.S. Oddly enough, subjective and relative responsibility also allows corporations to increase their profit seeking behaviors by moving to privatize everything including public spaces and prisons, deregulating environmental protection rules, and simply never agreeing to be responsible for all citizens but themselves and those who play along with them, the political class. The end result of subjective and relative responsibility dislodged from human

solidarity is that citizens abandon each other, and profit-seeking outmaneuvers human quality of life and experience. In profit-seeking scenarios, only mass menial labor and suffering (teaching, factory workers, lawyers, technologists, military, police, prison guards, etc.) would exist to sustain and furnish insatiable all capitalist agendas (Leech, 2012) and revenues, leading to the complete erosion of human and political responsibility.

The nature of human and political responsibility is inclusive, and does not set aside one group to be unduly vilified and punished while another group hides behind and rejoices in the pain of those driven to oblivion. It is specifically unethical to assume that subjective responsibility is actual political responsibility by any governance group in the U.S. or any nation for that matter. At the national context, the nature of human and political responsibility becomes a universal process, where everyone is held and treated at the same level. It is contrary to the nature of human and political responsibility to use the color of skin and/or ethnicity under similar conditions, to apportion longer or shorter penal sentences. That legal behavior (which has been ongoing in the U.S.) shuts down the inclusive benefits of political responsibility. Even when conditions cause most people to want to treat an individual differently because of an actual violation of a social norm, such treatment ought to be proportionate and equalized under the rules of universalizability (Benn, 1967; Pojman, 2006). This means that responsibility to citizens in a society is premised under the U.S. Constitution with the promise of equal treatment under just laws. In the condition where the violation of social peace occurs, just or fair sanction is only directed at the individual or individuals specific to the issue or incident, and not a recipe to continually punish an entire group. For instance, after the Second World War, the Germans were not and are not today being continually punished for the behavior of Hitler. Conversely, African Americans who fought to help shut Hitler down were subjected to Jim Crow laws then, and are still continually brutalized, harmed, excessively incarcerated, and denied fair and equal opportunities in the U.S. (DuVernay, 2016).

Interestingly, the nature of human and political responsibility has several elements: awareness of the self in a social context and in the world, awareness of the other, admiration of the other, seeking solidarity with the other, contribution to the other's well-being, cautioning of the other, positive collaboration with the other, sanctioning the other (holding each other accountable), and grieving with the other. Each of these elements allows for a wider and a more healthy sense of solidarity within the context of political responsibility. Despite the incidentals of skin colors, gender, and religion, human and political responsibility is usually connected to work and actions that are liberating and supporting of each other. This means that no one is to be omitted or excluded from local, national, or international benefits.

Political Responsibility to Citizens

Positive political activities are acts of courage. Political representatives serve all citizens and not only those who elect them, or worse,

the corporate lobbyists who exercise power and control over them. Occasions of flip-flopping occur because there is a severance of political responsibility to citizens, and an alliance of politicians with the interests of powerful corporations. This alliance is precisely what Chomsky (2017) speaks about in the principles that point to corporations making and dictating national policies. Increasingly, the political elite get into office with the knowledge that they are not going to fully represent the citizens who elected them or the interest of all citizens across the board. The political class acts as if they are responsible for the people's mandate, even using codes phrases such as "the American people" and "my constituency", while only really being beholden to powerful corporations who paid for their elections, pay for their posterity, and who now want something in return. This is the classic flip-flop, where citizens are fooled to think that these individuals have their agenda at heart. Unfortunately, once in political office, the political class flips to follow only the subjective rules of the powerful corporations who drive policies (Chomsky, 2017) in ways that fit their whims, leaving some people better-off, and many others worse off.

Thus, after years of economic appropriation by the wealthy class (Chomsky 2017; MacLean, 2017; Mayer, 2016), it is now clear that political responsibility to citizens has been driven out of the federal capital and its legal institutions. In the place of political responsibility, cunning tactics diminish citizens' democratic rights and privileges. Citizens are coerced to constantly negate each other, and are inundated with "alternative facts" indiscriminately constructing alienating scripts to diminish the larger pursuit of justice and fairness. In normal circumstances, the political class's mandate is to work against such national negativity, driving an agenda of political responsibility for all citizens. That effort includes the basic practice of ensuring that political representation always sustains impartial application of all just laws and rules of engagement so that all citizens equally receive common opportunities, rewards, and benefits. In the aggregate of all things considered, responsibility to being just and fair to all is actually a vibrant part of political responsibility (Young, 2011).

Amnesia, its Use, and Insertion

The history of slavery in the U.S., its harms, and its unidirectional benefit to its perpetrators/offenders is an excellent example of the power of flip-flopping and amnesia combined. Those responsible for slavery in the U.S. refuse to apologize for all the harms they caused. When those harmed complain and seek justice in the form of reparation, perpetrators and generations after them remember one thing, they remember to forget. They remember amnesia which was inserted at the very beginning of slavery. The slave owners understood that their use of Africans was someday going to create a problem for them and their posterity, so as they fought against abolitionist; they also insisted on denying that what they did was a crime against humanity. They guaranteed within the structure of flip-flopping and amnesia that since all whites benefited from slave labor, they must protect themselves against future demands for reparations and incrimination. Any

demand or charge must be denied on the basis that "Negroes" must always in posterity be considered inferior to whites. It is customary to hear current generation of whites say that slavery occurred because of the time in history, and that Africans sold themselves into slavery, and that Africans would have enslaved whites were the script reversed. The current generation always concludes that it is not responsible for something that happened long ago, and neither should it be blamed or held accountable for the behaviors of their forefathers. Ironically, the same current generation enjoys tremendous benefits from the massive systems that were first initiated through unpaid slave labor.

After 1865, with the abolition of slavery in some parts of the U.S., many freed slaves who were now the descendants of hundreds of years of slavery found themselves without resources and access. They had been estranged from their homes in Africa, and could not get back there even if they wanted. A few compassionate members of the political class championed discussion that led to the enactment of a subsistence process where freed slaves would be anchored by land agreement. Eventually, this federal designation of 40 acres and a mule would slide and be flip-flopped into sharecropping, tactically violating their right to even the smallest resource that may have made their lives self-sustaining.

That notwithstanding, some African American free slaves who received land became very self-sustaining and successful, but some elements within the political class poisoned the direction of progress and forced onto the scene a set of laws, the "Jim Crow laws" that would begin in 1868 all through to 1968 to curb such progress and integration. In some very direct ways, the political class had flip-flopped to reverse the gains of African Americans at this time. It remembered to keep them down as "Negroes" but forgot (constructed amnesia) their role in having helped build the economy of the U.S. They were dumped as low class citizens in separate but equal conditions. The dominant population was empowered by the political class to focus on the separate rather than the equal aspect of the laws, preventing access, increasing legal and other consequences, and sanctioning lynching, incarceration for fictitious crimes, and exclusion from shared public and private spaces.

Moreover, Hitler's war of death to many and promise of enslavement to those who survived brought out the worst and the best of the European populations. As for the U.S., the call for action against Hitler was answered by all citizens, whites, blacks, Native Americans, Asians, Latinos, and all other Americans. Whereas these groups all served distinctly and helped to end the war, African Americans specifically distinguished themselves in several theaters, including the battle of the Bulge, and spectacularly as the Tuskegee Airmen. Oddly, their survival of the war and return home was a different matter as they were still subjected to various harms and abuses under Jim Crow laws. Flip-flopping and amnesia allowed the political class and the dominant population to refuse to recognize their war efforts. Instead, they

were subjected to exclusion, dehumanization, lynching, and lesser jobs and other opportunities.

There are so many other examples of flip-flopping and amnesia (too many to list here) that harm the vulnerable and disadvantaged populations of the U.S. Consider the era of the space race. It was not widely known, if know at all, that the "human calculators," a group of African American women who were segregated from their white colleagues (mostly men) made it possible for the U.S. to enter the space race (Shetterly, 2016). However, the dynamics of flip-flopping and amnesia tipped the scale so that nothing these women did was openly available to the public. It was clear that publicizing that African American women helped pave the way for the space race would have been tragically embarrassing to the white male ego. A previous public humiliation of Hitler and his Arian sprinters by Jesses Owens, An African American, in the 1936 Olympics in Berlin was enough. NASA at the time, sustained by the political class, swept the achievement of these African American women under the rug, and promptly forgot about them, but remembered to flip scripts which excluded them and elevated white males (Shetterly, 2016). Over the years, except for a recent movie and one or two mentions, no effort for actual public recognition or remembering occurred, all in an effort by the political class to exclude them as visible role models for African and other Americans that may have found them inspirational.

One final example of vicious flip-flopping and amnesia comes from the Reagan era where specifically African Americans were denied as legitimate citizens, and incarceration penalties were increased just based on any insignificant behavior. As if whites were not heavily on drugs, the "war on drugs" was reserved for African Americans and "just say no" was supposed to be the key for survival. In the meantime, white drug-takers, or whites who possessed and sold drugs, never received the kinds of brutal and harsher sentences that African Americans experienced. Once again the political class forgot that this is a vulnerable population that needs protection and genuine political service; instead, it remembered the inferiority model (Negroes must always be inferior to whites) and flipped the script to unleash the newly empowered law enforcement on African Americans. From the Reagan era through the first Bush era (war on drugs), the Clinton era ("three strikes and you're out"), through the second Bush era (war on drugs and terrorism), the increase in amnesia against African Americans, and other minorities created direct increased benefits for whites (ownership and work in private prisons, police jobs, lawyers, court judges, probation and prison workers, and many of the corporations that use prisoner labor) (DuVernay, 2016). Each of the successive administrations empowered law enforcement and judges to be less compassionate. They were coerced to adapt more destructive options specifically against African Americans. Forgetting (amnesia) that African Americans are fellow citizens, flip-flopping scripts to redefine "law and order" and "war on drugs" focused on harming them and increased their prison population to close to half of all those incarcerated in the U.S. (DuVernay, 2016; Alexander, 2012). Ironically, as academics present the issues of police

and court brutality and mass incarceration to the government, proponents of flip-flop and amnesia ideologies defend this behavior and the current status quo as responsibility to the larger communities and to the nation.

Current Federal Powers, Flip-flopping, and Amnesia

There are several flip-flopping activities occurring within the current governance system (see Klein, 2017). It is common knowledge that powerful corporations moved jobs overseas or to places they felt would better sustain profitability (see Fraser, 2015; MacLean, 2017; Mayer 2016). Throughout, 2016 election scripts insisted that Mexico, China, and then immigrants (documented or not) take U.S. jobs, and that China, Mexico, and a host of other nations were taking advantage of the U.S. in terms of trade. Relying on the power of amnesia, the political class, undergirded by powerful corporate groups, flipped the minds of poor and out-of-work whites to look elsewhere for the cause of their misery. Though made poor and jobless by the one to two percent of the wealthy who own close to 50% of all U.S. assets, poor whites were flipped against all minorities and immigrants, some of whom were also painted as terrorists. Here, flip-flopping with amnesia neglects the multiple internal terrorisms of home-grown and disenchanted individuals (racist and hateful groups, open and subtle racial discrimination with regard to jobs, promotion, etc., law enforcement and court brutalities, and the flight and abandonment of fellow citizens in decrepit urban and rural communities). Instead of engaging in the best practices of ethical political responsibility to all citizens, the current political class flipped the national script to shore up more adverse conditions for already vulnerable populations. Policing is an excellent social service and protective occupation, but when the political class flips the script and shores it up with violent/militaristic language, it encourages some of its hateful members to hide under policing protection and engage in abusive practices while blaming vulnerable citizens for barbarism. Adding amnesia to flip-flopping, the political class easily forgets about the history of the dominant group's violence in the U.S. Instead, it encourages the continuation of blaming and harm of the same vulnerable populations who were injured and damaged in the past.

Also, when Barack Obama was president, he was criticized for using executive orders to do positive things, such as the DACA protection. But now, the current uses of federal powers to enact Executive and other orders appear designed to create more destructive impact on vulnerable minority communities. Travel bans, the order rescinding environmental laws, and pulling out of the Paris accord are all direct flip-flops that carry more harm for disadvantaged populations within and outside of the U.S. (see Klein, 2017). Some responsible judges, as well as other politically responsible individuals who stand up against these orders, are either publicly dehumanized and ridiculed or fired from their jobs. Within this context, the deliberate refusal to accept individuals who focus on political responsibility, and minorities and international partners as legitimate human beings allows the uncanny flipping of scripts to favor the agenda of the ruling and political class (see MacLean, 2017; see also Lofgren, 2016).

Other flip-flop scenarios receive brief mention here because of their impact on political responsibility. For instance flip-flopping on NATO, Syria, Russia, North Korea, and China are impractical for cohesive national governance. Cutting deals, before and after elections, with foreign entities, and flip-flopping to deny these interactions call into question a deeper concern about enacting useful political responsibility. Trusting that amnesia will do its job and that most citizens will promptly forget election promises and all past and current destabilizing behaviors, federal political positions are tactically filled with wealthy and specific kinds of individuals (the environment, education, justice department, etc.) who are skilled in flip-flopping on promises to poor citizens.

The rules against nepotism have also been flipped so that no one can do anything about it. The flipped script makes it okay for wealthy and powerful white males to behave as they wish. Ironically, President Obama never flipped any rules to bring his family members into the mix of politics, business, and government. More disturbing is the further flipping of scripts away from anyone focusing on nepotism. Instead, citizens are being misinformed and coerced to accept that dismantling President Obama's health care system is an actual national priority. In this regard, alternative facts have become a way of delegitimizing the truth and any media group that does not play ball and agrees with current governance agenda. Flip-flopping with regard to the media is used in two ways. It is used to discredit minorities, specifically African Americans, so that they are portrayed to the nation as dangerous entities. But when the media goes after wealthy and powerful white male behavior, then the media is a problem and the script is flipped to discredit it, and in some cases interaction with certain media groups is shut down. The most disturbing flip-flopping occurs when considering federal and Supreme Court judges. Always flipped along partisan lines, the political class focuses not on judges who stand for justice for all, but nominates individuals whose practice and behavior align with their partisan, ideological, and subjective interpretation of the law. They use scripts like "the best", "impeccable credentials", and so on to entice citizens, but these are flipped scripts to disguise the underlying subjective agenda.

Implications on Race and the Disenfranchised

Racial intolerance is, of course, the nemesis of the United States. Since the nation's early beginning, one group has basically insisted that its humanity is more valuable than that of others. It is not clear why this group behaves this way, but its past is packed full of abuses, violence, harms, and dehumanization of its fellow citizens. Today, those in current federal political power appear to exhibit the same abusive and dehumanizing behaviour by continuing the legacy of harming their fellow citizens. Somehow this behavior is viewed as something good that requires celebrating. It is unfortunate that the unnecessary insistence in 2017 on re-enlivening racial animosity, which also impacts hiring, housing, police interaction with minorities, promotions, healthcare, and educational and other opportunities, is a hindrance to the

progress already made on race relations and overall political responsibility across the nation.

Conclusion: Lessons of History, Carelessness, or Transformation

Based on this discussion of political flip-flopping and amnesia in U.S. and its intersection with current governance behavior, two directions of transformation are possible but may not guarantee the elimination of flip-flopping and amnesia. The pervasiveness of amnesia and the massive discriminations across the U.S. documented by various research groups are part of the lessons that ought to be considered in view of national transformation. Generally, when these facts are revealed, the political class and many members of the dominant group always act surprised and pretend that they have no knowledge of such discriminatory practices in their workplaces. The current administration has simply strengthened this behavior and may have shifted the U.S. backwards a few decades. Of course, even though flip-flopping is widespread, the nature of amnesia as the attendant element of flip-flopping is much more hidden, and requires more historical and critical works to unmask its pervasive and harmful nature. Snyder (2017) points to the problem of tyranny and some significant lessons that may be useful from the 20th century. The usefulness of these lessons connects the subjective to the collective in view of human solidarity.

The other more interesting concern for collective political responsibility is throwing the requirements of justice back at those white folks who claim that they are all for diversity, inclusion, the protection of rights and dignity, and the advancement of all citizens. African Americans paid with their lives and blood on several levels—first as slaves to jump-start the economy of the U.S., then as abandoned individuals who were re-enslaved as sharecroppers or domestic and field hands during Jim Crow (1986-1968), and then as death and prison commodities picked off at the will of the dominant population to fill up private prisons. Through some of their leaders, young, daring African American men, they gave the U.S. civil rights, affirmative action, and American conscience, redefined justice to embrace its impartial nature, and paved the way for countless other minority groups to have voices to seek and appropriate their own liberations while celebrating the freedoms of others. If white folks who claim to be compassionate, generous, and true justice lovers are genuine in their interests, then they need to start a massive civil rights movement to liberate their own people from the negative behaviors that have consistently driven the flip-flop and amnesia ideology for decades, and the persistent automatic default that consistently dehumanizes African Americans, and all other minorities that have really done no harm to them, but seek only to live in a nation where justice and peace is the premise of political responsibility to all citizens.

References

Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness.* New York: The New Press.

Benn, S. (1967). Punishment. In P. Edwards (Ed.), *The encyclopedia of philosophy* (pp. 29-35). New York: Macmillan.

Burggraeve, R. (1985). *From self-development to solidarity: An ethical reading of human desire in its socio-political relevance according to Emmanuel Levinas*. Leuven, Belgium: Peeters.

Chomsky, N. (2017). *Requiem for the American dream: The principles of concentrated wealth and power*. New York: Seven Stories Press.

DuVernay, A. (Director). (2016). *13th* [Documentary film]. United States: Kandoo Films.

Fraser, S. (2015). *The age of acquiescence: The life and death of American resistance to organized wealth and power*. New York: Little, Brown and Company.

Klein, N. (2017). *No is not enough: Resisting Trump's shock politics and winning the world we need*. Chicago: Haymarket Books.

Leech, G. (2012). *Capitalism: A structural genocide. London*: Zed Books.

Leibovich, M. (2015, March 10). You and I change our minds. Politicians 'evolve.' *New York Times Magazine*. Retrieved from https://www.nytimes.com/2015/03/15/magazine/you-and-i-change-our-minds-politicians-evolve.html

Liasson, M. (2008, July 10). How do we define a political flip-flop? [Radio broadcast]. In M. Norris & M. Block (Hosts), *All Things Considered*. Retrieved from http://www.npr.org/templates/transcript/transcript.php?storyId=92426950

Lofgren, M. (2016). *The deep state: The fall of the constitution and the rise of a shadow government*. New York: Penguin.

MacLean, N. (2017). *Democracy in chains: The deep history of the radical right's stealth plan for America*. New York: Viking.

Mayer, J. (2016). *Dark money: The hidden stories of the billionaires behind the rise of the radical right*. New York: Doubleday.

Pojman, L. P. (2006). *Justice*. Upper Saddle River, NJ: Pearson.

Shetterly, M. L. (2016). *Hidden figures: The untold story of four African-American women who helped launch our nation into space*. New York: Harper.

Stafford, D. (2017), Poll: Trump's approval rating down to 33%. Retrieved from: http://www.cnn.com/2017/08/02/politics/trump-approval-new-low-quinnipiac-poll/index.html

Snyder, T. (2017). *On tyranny: Twenty lessons from the twentieth century*. New York: Tim Duggan Books.

Young, I. M. (2011). *Responsibility for justice*. New York: Oxford University Press.

Hal Pepinsky, *Resolving the Paradox of Holding People Responsible.*

International Journal on Responsibility, Vol. I Issue 1 (May) 2018

Resolving the Paradox of Holding People Responsible

Hal Pepinsky

Dr. Hal Pepinsky is Professor Emeritus of Justice Studies at Indiana University Bloomington, Bloomington, Indiana, USA.

Abstract

Regardless of justification, it is commonplace throughout the U.S. criminal justice system as in everyday life to teach our offenders and children alike that wrong actions "have consequences," namely, those authority figures promise to impose upon them. We do so in the name of holding people responsible for their actions, or in legal parlance in civil law, holding them accountable or liable. I noticed that in Norwegian, responsibility, accountability and liability translate into one word, *ansvar*, which I have translated from Germanic to Latin roots as "responsiveness." In practice, the state of being responsive to others with whom one conflicts occurs when empathy moves one to recognize and accommodate the interests of others, in Roger Fisher's terms, to shift focus from position to interests, a shift I observed as a victim-offender mediator. When we hold people responsible, we dictate rules to replace rather than invite and encourage assumption of responsibility for how ones' actions affect others; we require obedience in place of building capacity for self-control. In legal terms, we adjudicate rather than mediate our differences. I turn from the paradox to identifying ways in which responsibility is also engendered rather than taken in our relations, inside and outside the criminal justice system, in our daily lives. I seek to recognize and encourage transition in our political culture from control by power over others to control by sharing power with others, in moments of conflict as in all our moments of cooperation.

Giving or Taking Responsibility

If you are hiring someone, you may well ask of references: Is s/he responsible? Implicitly, can s/he be trusted if given the power to make decisions that affect others? That is what my parents wanted to trust in me, that I would prepare and go to bed responsibly if they left me with a babysitter. Or when they asked me to repeat after them when I was spending time with my first cousin, two years my junior, "I will be a responsible leader." Implicitly, putting people in positions of responsibility implies trust that they will notice and be respond empathically, acknowledging both what works for others, and especially, acknowledging one's harms and mistakes, adjusting one's own agenda or course of action accordingly. People requite, foster or earn trust by learning how not to repeat their mistakes, including pain and fear they cause in others. This is a world in which people assume responsibility for the consequences of their own actions, including redress or remedy for consequences of their own actions.

Published by JMU Scholarly Commons, 2017

Contrast this to the common-law notion of responsibility: Because I find you responsible for injury or damage you have done, I will GIVE you adverse consequences, to teach you a lesson and to make you suffer in retaliation for the suffering you have caused. You will pay a penalty, you will be punished. Now, do as I say because I say so. Instead of asking you to be moved by your feeling for those who suffer your harms, I demand your obedience to my commands, because I find you irresponsible.

Bottom line: I can try to enable you to exercise responsibility—give you responsibility—or I can take it away and dictate your choices, orders to follow, lest I make you suffer further. Giving responsibility offers actors a chance to respond empathically to those one's actions affect; responsibility is taken when obedience to power is commanded (Pepinsky 1998). If you want people to be responsible, you have to give them room to exercise it.

My quest has been to understand how to invite and welcome assumption of responsibility, especially in matters of crime/violence—of harm one causes others. Globally among groups and nations, it is a foundation for "peace" or "trust-building," "reconciliation," "conflict resolution." In and around criminal justice, acknowledgment of responsibility for one's actions is a fundamental requirement for "restorative justice." Richard Quinney and I (Pepinsky and Quinney 1990) have examined work by criminologists who do and study the process that includes victim-offender reconciliation "peacemaking" (Pepinsky and Quinney 1991; Pepinsky 2013). Peacemaking takes hold as we somehow acknowledge and try to help clean up messes we have made, with one another as in our ecosystem.

Responsibility, Accountability, and Liability

I often find it informative to translate ideas and concepts from one language to another. The mediator's practice of "reframing" what someone says is a form of translation, ostensibly within a single language. When I returned to Norway in 1986 on a Fulbright to spend time especially with Nils Christie and to study Norway as a relatively "peaceful society," I prepared a colloquium presenting the idea of the class bias in applying the law to those who have harmed others: Criminal prosecution concentrates on holding underclass people "responsible"; civil litigation holds predominantly higher-class people "liable"; people who betray trust from positions of power over others are held "accountable." In Norwegian, responsibility, liability and accountability translate into one word, "*ansvar*." In its Germanic roots, *ansvar* means "answer toward," which in Latin translates more clearly in English as "responsiveness," that is, shifting one's idea of what's at issue to accommodate the meaning or concern underlying others' conflicting issues (Pepinsky 1988), manifestation of empathy. Action driven by empathy is responsive, also known as being or becoming responsible, assuming responsibility, for the consequences of one's actions for others. We know "responsibility" in many terms, in many ways, as attitudes or motives we impute to what we do. Among practitioners and theorists of restorative justice,

bringing offenders' attitude of *shame* out into the open is a vital part of offenders' assumption of responsibility for harm they have done.

Apology as Acceptance of Responsibility

It is often a requirement of formal victim-offender mediation that offenders apologize for the harms they have done. Writing as an experienced Mennonite facilitator of victim-offender mediation between Canadian prisoners who have committed serious violent offenses including rape-murder, and victims or their loved ones, Gustafson (2017) recognizes offenders' apologies as a condition necessary to making meaningful amends to their victims which at least partially relieve their fears, pain and suffering: *acknowledgment* of harm done, displayed in *affect* as well as in words, making oneself emotionally *vulnerable*. Whatever words offenders use, these are the elements which when combined signify "apology" to victims.

Releasing Shame or Shaming

The most powerful way to shame anyone is by means of violence, just as the most powerful way to provoke anyone into committing violence is by shaming him. Our language itself tells us this.—Gilligan (1993)

James Gilligan wrote this from his experience as a psychiatrist treating those confined as violently, "criminally" insane. Meanwhile, the version of "restorative justice" known as "conferencing," with police officers functioning as well-scripted facilitators, was first introduced in Australia, based on Braithwaite's (1989) theory, inferred from Japanese mediation practices, that transformation of offenders' behavior entailed their being shamed by their victims' pain and loss. This process is illustrated by an award-winning documentary, "Facing the Demons" (Australian Broadcasting Corporation 1999) of a conference in prison between two men who participated in a robbery of a Pizza Hut in Canberra in which an employee was shotgunned to death; one accompanied by his mother, the other by a chaplain; the since-divorced parents of the victim; and the victim's co-workers and close friends. The video is available together with ensuing interviews with participants. In the reception after the conference, the father of the victim recruits one of the offenders to join the work of the non-profit he has formed to oppose gun violence. In the follow-up interview, he reports feeling "lighter" after unburdening himself of the pain he felt for what he had done. The mother of the victim now remembers him as he lived rather than being haunted by identifying his body in the morgue, and generally, as the victim's girlfriend reports, emerge "happier." Healing appears to happen for all concerned.

If the conference in "Facing the Demons" represents Braithwaite's shaming process in action, I find it equally plausible to infer that the process enabled the offenders to release the sense of shame they brought into the conversation. There is no indication that the facilitator has done any shaming himself, let alone asked victims to do anything other than to tell the offenders what they have suffered and how else it makes them feel—anger, questions and all; in litigators' terms, he leads none of the witnesses. The crucial point is that

insofar as shame emerges, it is elicited simply by hearing the fear, pain and anger—the harm—straight from those you have hurt, and having the chance to respond, to offer to make amends, to respond to need, to assume responsibility. It is for social phenomenologist Alfred Schütz (1970) a matter of "apperception," attribution of motives we feel or impute to others for our actions and theirs, which Schütz divides into "because" and "in-order-to" motives—what makes us do or say what we do, and what we are after. As a matter of social control, I see this as the distinction between our understanding of forces that restrain us, and how we pursue honest self-interest, self-expression, accomplishment…again a case in which we have many words for a similar attitude. I owe it to my mother, Pauline Pepinsky's (1970) insight, to have laid out what became to me as I entered law school the underlying model for distinguishing whether responsibility is assumed or one is being held responsible, whether shame is released or imposed, and more broadly, to distinguish the attitudes toward social control I have called "warmaking" and "peacemaking."

Loci of Impulse Expression and Impulse Control

From social science to fiction to everyday life as reported in the news and as she otherwise encountered it as among newly made friends, my mother (P. Pepinsky, 1970) inferred that the prevailing political formal and informal culture of social control in the United States and in Norway differed in one key respect: In the United States, people typically saw control coming from outside, implicitly, from the top down; while "impulse expression," creativity, achievement and failure thereof, was seen to be in the individual, which she (a social psychologist by training) called "Mode A" of social interaction, or as I came to see it, as a paradigm for trying to achieve social control. In Norway, "Mode B," by contrast, achievement and failure were gauged by what the group achieved together (as in reducing economic inequality), and controlled by people containing themselves from "sticking out," whether by hurting others or by displaying wealth, who thrived on cooperation, as in substantial representation of labor required on corporate boards, and from my later point of view, dropped to one of the world's lowest incarceration rates by the end of the 19th century, where it very nearly remains. The locus of impulse expression is the group; the locus of impulse control rests predominantly in the individual.

There are many stories about coming home from a foreign culture and seeing one's homeland in a new light. I began to see many instances of "Mode B" ways people had, especially in the supposedly politically conservative Midwest, in which I grew up and to which I returned for most of my teaching/learning career. Consider for instance the idea of training for and promoting "teamwork" in U.S. daily life, from competitive sports to private enterprises and formal organizations of all sorts. Ideally, you listen and learn as freely as you participate in creating a group product or idea, measuring success and failure by what the group accomplishes together, acknowledging self-discipline in contributing rather than inhibiting the collective enterprise. Ideally, each member becomes responsible for controlling his or her actions, over which impulses to restrain (anger? distrust? retaliation? competition?), and which to offer as one's own contribution to the common good one

expresses, in words and in other action—which impulses to express to accommodate and contribute to the needs and interests of others.

Perhaps Howard Zinn (2015) is best known for pointing out, in the United States, the usual descriptions of political culture we receive are from a literate elite, while if we pay attention, "the people" who have inhabited this country have shown considerable variation, as among the aboriginal inhabitants of what became the Massachusetts colony, or on the island that became Hispaniola. From (trans-)national to our personal relations in daily life, the "modes" of social control we adopt vary considerably, if only we notice. Mode A and Mode B represent the attitudes toward one another we adopt in moments of difference including conflict, whether we assume responsibility for hearing, expressing and addressing consequences of one another's behavior we have given and received; or seek to have responsibility imposed or taken by an outside, superior authority, as by law enforcement and prosecution or parental discipline.

As in writing social history, we tend to overlook routine ways we resolve differences in our daily relations, as in conflicts and wanting to do different things with close and trusted friends, companions and confidants. For many of us, we respond so habitually with those we trust that we become scarcely aware, whether or not we find it easy to say "I'm sorry," that when we notice our friend's hurt or anger, we are motivated to change course and do something to help make it better, to go through steps of acknowledgment of responsibility and shift course toward trying to repair any hurt or offense, rather than persisting or ignoring the harm done. It is when our conflicts are with strangers, or with those we fear and don't trust, that the elements of the process of transforming our relations from conflictual to cooperative become severable as stages of acknowledgment of personal responsibility and accountability for harm done, to assumption of responsibility for doing something to relieve the psychic, physical or material damage on one side, and letting go of the fear and pain one has suffered, a "forgiveness" that transforms one's status from victimhood to survivorship, an expression of impulse or release from inside oneself rather than feeling imposed from outside. In this paradigm of eliciting rather than imposing responsibility, victims' forgiveness (and potentially, collateral victimization suffered by those labeled offenders too) implies that they throw off something of the control fear and anger has held over their ensuing lives, while offenders are relieved of being controlled by shame.

If the process results in resolution of conflict, it is because all parties' social reality has shifted from one of being controlled by circumstance to having agency in their relations—to having self-control and the opportunity to be appreciated and accepted by others for one's social belonging as one emerges from the process. For the group in these circumstances, the locus of control has shifted to each individual, the measure of accomplishment the sense of safety, security and trust they have achieved together. It is the challenge of those of us who seek to facilitate this transformation of our conflicts to identify and create the social conditions under which parties to conflict feel safe enough

to share the pain and loss, and to assume responsibility for one's actions and feelings and their consequences to others, and gain recognition of consequences one has suffered, to the point at which what has led them to the present turns focus to discussion of where we go next.

Balancing the Yin *and* Yang *of Social Control*

In the West, Lady Justice holds a scale, a balance. Likewise, the basic Chinese character for "peace," is a balance, with a people on each side, tilted at the top to symbolize that dynamically, the balance always tilts between human forces one way and another. And in classical Chinese cosmology, those social forces are known as *yin*—the womanhood, the moon, the silver, creative, receptive, tacitly cohesive force, and *yang*—the manhood, the sun, the golden, dominant, both constructive and destructive force. Justice and peace entail balancing our dependence on participating in an established social order; and accommodating and embracing individual and social change—a balance between accommodating diversity and depending on conformity to social expectations, between adapting to chaos and imposing order: in Pauline Pepinsky's (1970) terms between modes of action in which we control ourselves to produce results for a common good, or simply live by the rules of feeding, sheltering, of who's in charge, and of performing what legal or customary duties are laid down for us. In everyday life from personal to organizational levels, we co-exist in a balance between living within imposed order, and accommodating and embracing change.

Consider the process of successful victim-offender mediation Gustafson (2017) describes. Participants enter the dialogue speaking for themselves alone—describing what they have done and what has happened to them, controlled only by rules upheld by the mediator. When the process works, the focus shifts toward mutual acceptance of responsibility for creating a way forward, where the tangible product is an agreement the parties have created together, where parties have become self-controlled in the process of creating a joint product.

In turn, terms of agreement are themselves accommodations to established social and material order. What can offenders reasonably be expected to do to make amends? Practically speaking, what result can victims reasonably expect offenders to accomplish, and how can they help it happen rather than standing in the way or having unreasonable expectations, that really makes a difference to you? A settlement becomes a synthesis of change and acceptance of what over time can become a shifting societal balance, as reflected for instance in sustained decarceration. Occasions for restorative justice arise when conflict, or social disorder or entropy, becomes heated within the parameters of established order, and ideally, cools or synergizes the conflict or chaos into cooperation. As between victims and offenders, it transforms pain, fear, anger, guilt and shame and distrust into trust and mutual liberation…for the moment at least—where irresponsibility and its consequences are replaced by assumption of responsibility by all concerned going forward. It is just that in the political culture of the United States where the dialogue of control by

power over others prevails in public discourse, the ways we resolve conflict by mutual accommodation in our institutions as in everyday life remain *yin*, unnoticed, unconscious, so that when conflict becomes overt, we tend to resort to the *yang* of assigning blame and holding those blameworthy responsible for their actions, subjugating them to the will of others by negative and positive reinforcement, by punishment and extrinsic reward. We all live some balance of both. In a political culture where the *yang* of holding people responsible by reward and punishment (as by incarceration) prevails in public discourse and action, denial of personal responsibility for one's actions becomes the overriding generator of social conflict and disorder. The challenge of transforming the damage we do each other out of selfish interest and disregard for those harmed is to set conditions which enable people to acknowledge freely harm they have done and suffered to one another, and to assume responsibility for coming to terms which leave everyone involved feeling safer and more secure—to move from competing to mutual interests. Identifying and creating processes which enable people to become responsible/liable/accountable for deciding and doing what it takes to relieve the pain, loss, fear, and distrust at hand—to become mutually empathic, responsive to one's another's needs and interests. In Norwegian Nils Christie's (1981) terms, it is a matter of giving parties ownership of their disputes, disrupted by modernized police failure to know those they police in many respects. Today it remains manifested in Norway where mediation mechanisms and boards are available for every level conflict and dispute in the private and public sphere, from personal to the corporate levels. For international conflicts, the process of process why which conflicting groups undertake joint responsibility for coming to terms is described by Fisher et al. (1992) as *Getting to Yes*. It is a process of balancing accommodation to structure as it is, and creative, adaptive response to emergent social need and circumstance, for the sake of social safety and security, built on trust, embracing diversity, and assuming ownership of, responsibility for, conflict management. Holding people responsible for wrongdoing impedes the process.

References

Australian Broadcasting Corporation
1999 "Facing the Demons" and Commentary.
http://store.iirp.edu/facing-the-demons-commentary/ .

Braithwaite, John
1989 *Crime, Shame, and Reintegration*. Cambridge: Cambridge University Press.

Christie, Nils
1981 *Limits to Pain*. Oxford, U.K.: Martin Robertson.

Fisher, Roger, William L. Ury, and Bruce Patton

1992 *Getting to Yes: Negotiating Agreement Without Giving In.* Boston/New York: Houghton Mifflin (2nd edn.).

Gilligan, James
1993 Gilligan on Shame, at http://internationalpsychoanalysis.net/wp-content/uploads/2009/02/shamegilligan.pdf .

Gustafson, David L.
2017 "Thoughts on the Impact of Apology: Lessons from Prisons, Politics, Transitional Societies and the Personal Sphere." Leuven, Belgium: University of Leuven, Faculty of Law (February 10) Available from the author at helmsmand@gmail.com .

Pepinsky, Hal (or Harold E.)
2013 "Peacemaking Criminology." *Critical Criminology* 21(September, no. 3): 319-339.

1998 "Empathy Works, Obedience Doesn't." *Criminal Justice Policy Review* 9 (no. 2): 141-167. Reprinted at pp. 275-300, in W. Gordon West and Ruth Morris (eds.), *The Case for Penal Abolition.* Toronto: Canadian Scholars Press (2000). Revised and reprinted Hal Pepinsky, *A Criminologist's Quest for Peace.* Chap. 4, at http://critcrim.org/reading-room/criminologists-quest-peace .
1988 "Violence as Unresponsiveness." *Justice Quarterly* 5 (December): 539-563. Revised and reprinted at pp. 8-33, in Harold E. Pepinsky, *The Geometry of Violence and Democracy.* Bloomington: Indiana University Press (1991).

Pepinsky, Hal and Quinney, Richard (Eds.)
1991 *Criminology as Peacemaking.* Bloomington: Indiana University Press.

Pepinsky, Pauline
1970 *Worlds of Common Sense: Equality, Identity, and Two Modes of Impulse Control.* Westport, CT: Greenwood.

Schütz, Alfred
1970 *On Phenomenology and Social Relations.* Chicago: University of Chicago Press.

2015 Zinn, Howard (intro. by Anthony Arnove)
A People's History of the United States: 1492-Present. New York: Harper Perennial Edition.

International Journal on Responsibility, Vol. I Issue 1 (May) 2018

Dying with Dignity: Where is the *Compassion* in Compassionate Release Programs?

Kendra A. Hollern

Abstract

The prison population in the United States is on the rise. The fastest growing population in prisons are those who could be considered elderly. With the graying of our prison population comes many diseases of aging that will wreak havoc not just on the inmates, but on the costs of incarceration. Prison inmates cannot acquire their own medical care; it is the responsibility of society and hence the prison system itself. If the prisons cannot adequately care for terminally ill or elderly inmates then compassionate release should be considered. Compassionate Release Programs are designed to allow those inmates who are terminally ill or elderly to apply for early release. But it is very hard to get such petitions approved, much less understand who is truly eligible. Thus, very few inmates are being released to spend whatever time they have left with loved ones. Not only would Compassionate Release Programs save money but they would allow those inmates at the lowest risk of recidivism to die with dignity.

Introduction

What does compassionate release mean? According to Black's Law Dictionary (2014), compassionate release means: "[The] release of a terminally ill prisoner to a hospital, hospice, or other healthcare facility." What does responsibility mean? Also according to Black's Law Dictionary (2014), responsibility means: "[That] for which one is answerable or accountable; a trust, duty, or obligation." Where do compassionate release and responsibility intersect? In the U.S. prison system. There is a steady graying of the prison population in the United States (Lee, 2010). This graying stems from modern medicine greatly increasing the life expectancy of many in our nation - which can be a blessing and also, at times, a curse. Longer life expectancies have resulted in reduced resources for the elderly who do not live behind prison bars. The resources are even more reduced for those elderly who happen to be incarcerated. This graying also stems from the increasing number of elderly inmates in the prison system itself (Linder & Meyers, 2009; Habes, 2011). Prison life is not easy and can age an inmate 10 to 15 years, particularly if the inmate has a history of substance abuse (Habes, 2011; Granse, 2003; U.S. Dept of Justice, 2015). Depending upon the definition, what constitutes "elderly" can range from 45 to 65 years (Linder & Meyers, 2009; Lee, 2010; U.S. Dept of Justice, 2015). The diseases of aging are much more pronounced in the elderly prison population (Linder & Meyers, 2009; Habes, 2011). Prisons are not designed to accommodate the increasing elderly inmate population, nor are they adequately equipped to deal with terminally ill inmates (Linder & Meyers, 2009; Habes, 2011; U.S. Dept of Justice, 2015).

Based on the nature of incarceration, the responsibility falls squarely on the society, and the prison system in which the society has created, to medically care for inmates (*Estelle v. Gamble*, 1976). Prison inmates must rely on prison authorities for their medical care and treatment (*Estelle v. Gamble*, 1976). Since inmates cannot acquire their own medical care, if that medical care is not provided, this represents an unmet need (*Estelle v. Gamble*, 1976). An unmet need that is the sole responsibility of the

prison system (*Estelle v. Gamble*, 1976). Furthermore, the Eighth Amendment guarantees that inmates should receive "adequate care for a serious medical need" (*U.S. v. Dimasi*, 2016, p. 194). If the prison system cannot give an inmate adequate care for their serious medical needs, whether it be due to terminal illness, or even just old age, then perhaps allowing a compassionate release is the humane thing to do.

It's not that Compassionate Release Programs are new in the state or federal prison systems (Linder & Meyers, 2009; Habes, 2011; Berry, 2009; Beck, 1999; Murphy, 2012; U.S. Dept of Justice, 2015). Compassionate Release Programs are for inmates who meet certain criteria (terminal illness, age, or other extraordinary circumstances) to petition for early release (Linder & Meyers, 2009; Habes, 2011; Beck, 1999; Murphy, 2012; U.S. Dept of Justice, 2015). Although these programs are present, they are not being widely utilized (Beck, 1999). Concerns regarding the safety of the general public with early release, as well as inconsistent administration of the programs, have led to this underutilization (Habes, 2011; U.S. Dept of Justice, 2015). However, with the value that society places on individual autonomy, particularly when it comes to healthcare and dying, why are inmates being deprived of the right to die with dignity? Underutilization has turned into non-utilization of Compassionate Release Programs, thereby violating basic human rights.

An Aging Prison Population

Our prison populations are quickly aging (Lee, 2010). The number of elderly inmates is on the rise both in the state and federal systems (Linder & Meyers, 2009; Snow, 2009; U.S. Dept of Justice, 2015). In the federal system, there has been a 25% increase in inmates aged 50 or older from 2009 to 2015 (U.S. Dept of Justice, 2015). In terms of prisoners sentenced to a year or more in state or federal prison, 11% were aged 55 or older by the end of 2015 (Carson and Anderson, 2016). With this corresponding increase in elderly inmates comes a corresponding increase in the cost to house these elderly inmates. On average it costs 8% more to incarcerate an elderly inmate as compared to a young inmate (U.S. Dept of Justice, 2015). The increased costs can be attributed to the increased costs of medical care (Habes, 2011; Murphy, 2012; U.S. Dept of Justice, 2015). Additionally, prisons are insufficiently equipped to handle not only elderly inmates, but also those inmates who are terminally ill. Inmates who are elderly and/or terminally ill are therefore lacking in proper care.

What Contributes to the Increased Number of Elderly/Terminally Ill Inmates?

There are a myriad of reasons why the number of elderly inmates is on the rise. The first being sentencing reforms beginning in the 1980s (Habes, 2011; U.S. Dept of Justice, 2015). These reforms included elimination of federal parole, implementation of minimum mandatory sentences, as well as use of determinate sentences (Habes, 2011; U.S. Dept of Justice, 2015). The end results of these reforms were longer prison sentences (Habes, 2011; U.S. Dept of Justice, 2015). The second reason is an increased number of aging offenders who happen to be first time sex or white collar offenders (U.S. Dept of Justice, 2015). Additionally, there is an increase in the number of younger inmates who will be 50 or older upon their release (U.S. Dept of Justice, 2015).

Defining who is considered an elderly inmate is also instrumental in the determination of the number of elderly inmates. The Federal Bureau of Prisons does not have a set age for when inmates are considered aging or elderly (U.S. Dept of Justice, 2015). Some states set the age at 50 or above, some 55 or older, some 60, some 62, and some 65 (Lee, 2010). Some agencies go so far as to define "elderly" based on "degree of disability" (Lee, 2010, p. 89). Regardless of the chronological age, prison ages an inmate 10 to 15 years on top of their chronological age (Habes, 2011; Granse, 2003; U.S. Dept of Justice, 2015). This aging is due to "adjusting to prison life, financial stress

related to an inmates' family, lack of medical care, and withdrawal from substance abuse." (Lee, 2010, p. 89). With this accelerated aging comes significant health and medical issues in this population (Habes, 2011; Granse, 2003; Murphy, 2012; U.S. Dept of Justice, 2015). It is the significant medical issues, as well as costs of medications, that lead to increased costs of care (Habes, 2011; Granse, 2003; Murphy, 2012; U.S. Dept of Justice, 2015).

Prisons Are Not Equipped to Handle the Needs of Elderly and Terminally Ill Inmates

Regardless of the number, the prison system is simply not designed to hold these elderly or terminally ill inmates (Habes, 2011; U.S. Dept of Justice, 2015). Elderly inmates have different needs than their younger counterparts. Elderly inmates have physical, as well as psychological limitations that are not seen in younger populations (Granse, 2003; Murphy, 2012; U.S. Dept of Justice, 2015). Older inmates need more nutritional food options as compared to younger inmates. Older inmates need greater medical care than younger inmates (Granse, 2003; Murphy, 2012; U.S. Dept of Justice, 2015). Older inmates suffer from such diseases of aging as: hypertension, gastrointestinal disorders, diabetes, emphysema, strokes, and forms of mental illness (Lee, 2010). A review of the literature on aging and mental health in the criminal justice system points out that serious mental illnesses such as dementia are more prevalent amongst older inmates compared to older non-incarcerated individuals (Maschi, Suftin, and O'Connell, 2012). Alzheimer's disease is the major cause of dementia in the general population, which extends to the prison population (Feczko, 2014). Prisons will need to be able to detect, and treat, this disease of aging (Feczko, 2014).

Programs in prison are designed to rehabilitate younger inmates, which does not benefit older inmates. The types of programs elderly inmates need are simply not offered (Granse, 2003; U.S. Dept of Justice, 2015). Programs related to aging and medical care would be beneficial to the elderly inmate (U.S. Dept of Justice, 2015). Programs related to available public benefits, if and when these inmates are released, would also be beneficial (Granse, 2003; U.S. Dept of Justice, 2015).

However, even if such programs were offered, the prison itself would need to be physically accessible for these inmates to be able to participate. Prisons are not designed for wheel chairs or walkers. Funding the costs involved in making the prisons accessible is simply not available (U.S. Dept of Justice, 2015). Elderly and terminally ill inmates need to be on lower floors in bottom bunks. But with prison overcrowding, this is simply not an option for all the inmates that require these accommodations (Habes, 2011; U.S. Dept of Justice, 2015).

Furthermore, there are staffing issues that contribute to a lack of proper programming and care of elderly and terminally ill inmates (Habes, 2011; U.S. Dept of Justice, 2015). Correctional officers do not have the training to successfully deal with this population of inmates. Social workers are sorely lacking in the prison system, yet would be the most equipped to deal with the needs of elderly and terminally ill inmates (Granse, 2003; U.S. Dept of Justice, 2015). Therapists who specialize in working with the terminally ill would also be helpful in the prison context (O'Connor, 2002). Therapists who understand the dying process, and the prison process, would be the best equipped to assist those inmates who do not secure some sort of conditional release as their time comes to an end (O'Connor, 2002).

Increased Medical Costs

The diseases of aging will have a much greater effect on the elderly inmate (Habes, 2011; Granse, 2003; U.S. Dept of Justice, 2015). Since elderly inmates have greater medical needs, this contributes to an increased cost of incarceration (Habes, 2011; Lee, 2010: U.S. Dept of Justice, 2015). The Federal Bureau of Prisons spent "$1.1 million

on inmate medical care, an increase of almost 30% in five years" (Horowitz, 2016). A major factor in this increase was the increased growth in elderly inmates (Human Rights Watch, 2012; Horowitz, 2016). For the elderly inmate, the costs of incarceration are three times those of a younger inmate, again contributing to the overall cost of incarceration (Williams, Sudore, Greifinger, and Morrison, 2011). Inmates over the age of 50 tend to have more serious health problems, as well as an increased need for medication, than younger inmates (Lee, 2010; U.S. Dept of Justice, 2015).

The court in *Estelle* determined that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'" (*Estelle v. Gamble*, 1976, p. 104 (citing *Gregg v. Georgia*, 428 U.S. 153, 173, 1976)). Thus, "contemporary standards of decency" mandate that the public (i.e. prisons) are required to take care of the inmates who cannot care for themselves due to incarceration (*Estelle v. Gamble*, 1976). Therefore, if prisons fail to properly provide for medical care for their inmate population, they will run afoul of the Eighth Amendment's prohibition against cruel and unusual punishment (*Estelle v. Gamble*, 1976). Does this include compassionate release?

That may depend on how one defines "proper care?" The Eighth Amendment does not require optimal care (*U.S. v. Dimasi*, 2016). However, the care should be humane and perhaps better than what the prison system can currently provide (Lee, 2010; *U.S. v. Dimasi*, 2016). Medical care isn't always so readily available for the elderly or terminally ill inmate (Habes, 2011; Granse, 2003; U.S. Dept of Justice, 2015). Prisons do not have sufficient medical staff to deal with the number or needs of elderly or terminally ill patients (Habes, 2011; Granse, 2003; U.S. Dept of Justice, 2015). Elderly and terminally ill inmates wait weeks, months, and sometimes years for care (Habes, 2011; U.S. Dept of Justice, 2015). If they need medical care from outside institutions, the costs are greatly increased due to the necessity of having guards accompany the prisoners at all times, as well as increased travel expenditure (Habes, 2011; U.S. Dept of Justice, 2015). Thus, many older inmates wait to get needed medical care until their problem becomes critical (Habes, 2011). The more serious the medical condition, the greater the costs. At some point state and federal prisons will need to develop "nursing home environments to handle the influx of the elderly" (Lee, 2010). There will have to be money invested into palliative care for any terminally ill or elderly inmates by the prison system (Williams, Sudore, Greifinger, and Morrison, 2011). All of this comes at a cost. But there is a way to lower costs as well as show compassion to those who are elderly and/or terminally ill in prison waiting to die: increased utilization of Compassionate Release Programs (Murphy, 2012; U.S. Dept of Justice, 2015).

Compassionate Release Programs

Compassionate Release Programs are designed to allow inmates to petition for early release based on listed criteria (Linder & Meyers, 2009; Habes, 2011; Berry, 2009; U.S. Dept of Justice, 2015). The criteria differs slightly between jurisdictions, but generally speaking include being terminally ill, being elderly (with consideration for terminal illness), and having extraordinary and compelling circumstances (Linder & Meyers, 2009; Habes, 2011; Berry, 2009; U.S. Dept of Justice, 2015). Other criteria that are considered include the nature of the crimes committed as well as the length of time the inmate has been incarcerated (Linder & Meyers, 2009; Habes, 2011; Berry, 2009).

There seems to be a great aversion to Compassionate Release Programs. The biggest problem deals with consistency in the administration of these programs (U.S. Dept of Justice, 2015). When it comes to petitions for compassionate release, the potential releasee must survive differing levels of review (Berry, 2009). These differing levels of review give plenty of opportunity for denial, with inmates dying before

learning the outcome of their petitions (Berry, 2009; Beck, 1999). Furthermore, even the criteria are not clearly defined, thus causing confusion about who is eligible and who is not (U.S. Dept of Justice, 2015; Beck, 1999). Although the federal system has recently revised their Compassionate Release Program requirements to increase the number of potentially eligible inmates, there are still very few inmates being released to home confinement (U.S. Dept of Justice, 2015). The revised Compassionate Release/Reduction in Sentence statute can be found at 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g). Hence, there is an interesting intersection, or more like a dead-end road, where eligibility and approval meet.

Compassionate Release Programs are just not widely utilized. Only a small percentage of dying inmates are being approved (Williams, Sudore, Greifinger, and Morrison, 2011). For instance, "In 2008, 399 deaths occurred in the Federal Bureau of Prisons and 27 requests for compassionate release were approved" (Williams, Sudore, Greifinger, and Morrison, 2011, p. 123). Since the changes to the federal Compassionate Release Program in 2013, the Federal Bureau of Prisons only moved for the compassionate release of 11 inmates in the "Elderly with Medical Conditions" category according to the court in *U.S. v. Dimasi* (2016). For elderly inmates, the court noted that 216 inmates applied for compassionate release and yet none were granted (*U.S. v. Dimasi*, 2016). In 2014, there were 206 applications with only 16 being granted, four of which were "Elderly Inmates with Medical Conditions" (*U.S. v. Dimasi*, 2016), p.184). It is not as though there were thousands of inmates seeking and obtaining approval from the Federal Bureau of Prisons for early release under this program. Part of this could be a flaw in determining who is eligible (Williams, Sudore, Greifinger, and Morrison, 2011). Eligibility can depend on an inmate's prognosis (Williams, Sudore, Greifinger, and Morrison, 2011). Elderly inmates with dementia may not qualify for release due to not having a terminal illness with a short prognosis (Williams, Sudore, Greifinger, and Morrison, 2011). Therefore, more needs to be done to concretely determine who is eligible, so appropriate motions can be filed, given the unique circumstances of the prison system.

The U.S. Sentencing Commission has "encouraged the Bureau of Prisons to be more liberal in creating opportunities for judges to consider whether compassionate release is justified" (*U.S. v. Dimasi*, 2016, p. 183). The federal process requires the inmates to get approval from the Bureau of Prisons prior to petitioning the sentencing court (*U.S. v. Dimasi*, 2016). The sentencing court cannot examine the request for compassionate release and apply the statutory factors without that approval (*U.S. v. Dimasi*, 2016). Hence the court cannot evaluate whether or not the inmate would pose any further risk to society, and that the inmate has paid their debt to society. It is the court's role to determine any public safety concerns regarding early release of an inmate, regardless of whether or not they are elderly or terminally ill (Human Rights Watch, 2016). Denials by the Bureau of Prisons to file a motion for compassionate release is not reviewable by the sentencing court (*Engle v. U.S.*, 2001; *Hazel v. Ormond,* 2016; *U.S. v. Banda*, 2016).

Allowing those terminally ill and elderly inmates who meet the criteria to be at home with family and friends when their time of death is near should be the goal of Compassionate Release Programs (Granse, 2003). In this population of inmates, the rate of recidivism is very low (Human Rights Watch, 2012; U.S. Dept of Justice, 2015). Inmates who have secured an early, compassionate release have a "recidivism rate of 3.5 percent," whereas the recidivism rate for federal prisoners overall is estimated to be as high as 41 percent (Horowitz, 2016, p. 3). Therefore, this isn't simply a cry for open season when it comes to compassionate release. There should be clear-cut criteria

regarding who is eligible for the program. But there also needs to be an open-mindedness that there *are* eligible inmates for compassionate release.

Terminally ill or elderly inmates should not be allowed to die horribly alone as part of their "punishment" (Granse, 2011). Continuing to allow this to happen is cruel, and hence a violation of the Eighth Amendment (*Estelle v. Gamble*, 1976). There comes a point where it should be the responsibility of the prison system to re-examine its policies on compassionate release for the benefit of terminally ill and elderly inmates (Human Rights Watch, 2016). There comes a point where punishment needs to change to reflect terminal illness as well as old age (Human Rights Watch, 2012). Despite changes in the federal Compassionate Release Program, there remain eligible inmates who are not being considered (U.S. Dept of Justice, 201). Again, this is not a plea to open the doors of the prisons to release all terminally ill or elderly inmates; but the prison system needs to take a stronger approach to identifying those inmates who do qualify, filing the appropriate motions, and letting the court system make the ultimate determination as to whether compassionate release is justified. Consequently, responsibility has turned into inaction.

Conclusion

For those inmates nearing the end of their lives due to age or illness, dying alone in prison is an inhumane reality. Our society cannot continue to ignore the growing elderly population in our prisons. There is an inherent, increased cost with this elderly and terminally ill prison population that could be remedied by the consistent use of Compassionate Release Programs. "[An] efficiently-run Compassionate Release Program combined with modifications to the program's eligibility criteria could expand the pool of eligible candidates, reduce overcrowding in the federal prison system, and result in cost savings for the [Bureau of Prisons]" (Horowitz, 2016, p. 3). Compassionate Release Programs should be used to afford these inmates, if they are no longer threats to society, the opportunity to spend whatever time they have left with their families. Giving such inmates some aspect of control and autonomy over their end of life doesn't mean that prison doors should open and inmates be pushed out. The inmates that are to be released need to be given assistance so that they can function outside of prison walls. If not, those inmates would arguably be worse off than if they had remained incarcerated. To not allow these inmates to die with dignity is a violation of basic human rights, regardless of where those inmates die (Human Rights Watch, 2012). There needs to be an emphasis on compassion for those who are elderly and terminally ill, even if they have violated our laws. Thought must be given to assuming responsibility to care for those elderly and terminally ill inmates, even if that means releasing them to some sort of home confinement. Ultimately, let the punishment fit the crime.

References

Beck, J. A. (1999). Compassionate release from New York State prisons: Why are so few getting
out? *Journal of Law, Medicine & Ethics*, *27*(3), 216.

Berry III. W.W. (2009). Extraordinary and Compelling: A re-examination of the justifications
for compassionate release. *Maryland Law Review*, *68*(4), 850-888.

Black's Law Dictionary 1292 (10th ed. 2014).

Carson, E.A. and Anderson, E. (2016). Prisoners in 2015. U.S. Department of Justice, Office of Justice
Programs, Bureau of Justice Statistics. Retrieved from https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5869

Engle v. U.S. 26 Fed. Appx. 394 (6th Cir. 2001).

Estelle v. Gamble, 129 U.S. 97 (1976).

Feczko, A. (2014). Dementia in the incarcerated elderly adult: Innovative solutions to promote quality
care. *Journal of the American Association of Nurse Practitioners*, *26*, 640-648.

Granse, B. L. (2003). Why should we even care? Hospice social work practice in a prison
setting. *Smith College Studies in Social Work*, *73*(3), 359-376..

Habes, H. (2011). Paying for the graying: How California can more effectively manage its growing elderly inmate population. *Southern California Interdisciplinary Law Journal*, *20*(2), 395-423.
Hazel v. Ormond, 2016 WL 2354234 (E.D. Kentucky, 2016)
Horowitz, M.E. (2016). Statement before the United States Sentencing Commission hearing on "Compassionate release and conditions of supervision." Retrieved from https://oig.justice.gov/testimony/t160217.pdf
Human Rights Watch (2016). Human Rights Watch comments to the US Sentencing Commission in response to the Commission's January 16, 2016 notice of proposed amendments. Retrieved from https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20160321/HRW.pdf
Human Rights Watch (2012). Old behind bars. The aging prison population in the United States. Retrieved from https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf
Lee, T.P. (2010). Are we our brothers' and sister's keepers? The plight of elderly inmates. *Valley Voices*, 9(2), 87-104.
Linder J.F., & Meyers, F.J. (2009). Palliative and end-of-life care in correctional settings. *Journal of Social Work In End-Of-Life & Palliative Care*, *5*(1/2), 7-33.
Maschi, T., Suftin, S.L., and O'Connell, B. (2012). Aging, mental health, and the criminal justice system: A content analysis of the literature. *Journal of Forensic Social Work*, *2*, 162-185.
Murphy, N.M. (2012). Dying to be free: An analysis of Wisconsin's Restructured compassionate release statute. *Marquette Law Review*, *95*(4), 1679-1741.
O'Connor, M-F. (2004). Finding boundaries inside prison walls: Case study of a terminally ill inmate. *Death Studies*, *28*, 63-76.
Snow, T. (2009). Should dying prisoners be given their freedom for a more dignified end? *Nursing Standard*, *23*(51), 12-13. .
U.S. Department of Justice, Office of the Inspector General (2015). *The impact of an aging inmate population on the federal Bureau of Prisons*. Retrieved from https://oig.justice.gov/reports/bop.htm.

U.S. v. Banda, 2016 WL 4766479 (S.D. Georgia, 2016).
U.S. v. Dimasi, 220 F. Supp. 3d 173 (D. Mass. 2016).
Williams, B.A., Sudore, R.L., Greifinger, R., and Morrison, R.S. (2011). Balancing Punishment and Compassion for Seriously Ill Prisoners. *Ann Intern Med*. *155*: 122-126.

Sabiha Shala & Gjylbehare Muharti, *Who is Responsible for Ethical Legal Education, for what and to whom? Case of Kosovo.*
Recommended citation: Shala, S. & Muharti, G.B. (2017). Who is responsible for ethical legal education, for what and to whom? Case of Kosovo. *International Journal on Responsibility, 1* (1.1), 67-82.
Dr. Sabiha Shala and Dr. Gjylbehare Muharti are Assistant Professors of International Public Law at University "Haxhi Zeka" in Peć, Kosovo.

International Journal on Responsibility, Vol. I Issue 1 (May) 2018

Sabiha Shala & Gjylbehare Muharti

Who is Responsible for Ethical Legal Education, for what and to whom?

Case of Kosovo.

Abstract

Legal education continues to be one of the most demanded areas of study from the younger generation in Kosovo. As result, the number of law graduates is quite high. On the other hand, the rule of law sector is quite fragile, judges and lawyers are perceived by parts of the society to be ethically dysfunctional. The trust in judicial institutions is quite low. The debate which is going on now is whose main responsibility for such a situation that is. Is the duty of the higher education institutions providing legal education, or is it a responsibility of educational institutions at all levels? Or shall the government and judicial institutions be more responsible in this regard by developing and strengthening the implementation of value based policies? In order to better understand the responsibility in these terms, and to answer these questions, an analytical approach and comparative approach was applied. These research approaches and survey of opinions of professionals, officials and students, show that the ethical legal education is a shared responsibility between higher education institutions providing legal education, government officials responsible for diffing general principles of education, and, of course, primary, secondary schools. The role of judicial institutions is to put in place policies and mechanisms that ensure ethical reasoning of legal professional and decision making.

Introduction

"When we talk of ethics, the judges normally comment upon ethics among politicians, students and professors and others. But I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base…[2]" - **Hon'ble Mr. Justice S.H. Kapadia**, (Chief Justice of India)[3]

This article addresses the topic of ethical legal education in Kosovo, an issue which continues to impact upon the rule of law, functional aspect of independence to individual judges, and the equitable enjoyment of human rights. The focus is who is responsible for ethical legal education for judges since the judiciary in the Republic of Kosovo, like in most other countries facing after-war-effects, has been under tremendous heaviness. It faces a host of complex and serious challenges including enormous backlogs, complex property disputes, a legacy of executive influence, poor infrastructure, etc. These challenges have been noted by the OSCE[4] and number of them by the European Commission, which stated recently: *"Administration of justice is slow and inefficient, and there is insufficient accountability of judicial officials. The judiciary is still vulnerable to undue political influence and rule of law institutions*

[3] V.G.Ranganath, "Ethics of Judges & Judicial Accountability" June 2010. The Article is accessible online at: http://www.legalservicesindia.com/article/article/ethics-of-judges-&-judicial-accountability-214-1.html (accessed on 1 May 2017).

[4] OSCE Report on "Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions," June 2012. See http://www.osce.org/kosovo/87138?download=true for a collection of such reports (accessed 20 May 2017).

Published by JMU Scholarly Commons, 2017

suffer from lack of funding and human resource."[5] Despite the fact that the European Commission, and other international and national actors have recognized that there have been made efforts to address these challenges, there are still observers that consider that these efforts made so far are not moving the justice system in a desired path, as there is still a lack of confidence from the public in the judicial system.[6]

With respect to the independence of judiciary necessary to meet European and other international human rights standards, outstanding issues remain in legal education quality. On 3rd of December 2016, Mr. Aleksandër Lumezi, Head of the Kosovo State Prosecution Office, stated on the occasion of the IV Conference of Kosovo Judicial Council: *"Despite the work done in 2016, it does not mean that it has been done enough to restore the proper trust of citizens to the courts."*[7] He further stated that in the days to come judges and prosecutors will be facing even greater difficulties, and one of the many things to do is to restore citizens' confidence in the justice system. A similar conclusion was made by the Head of Kosovo Supreme Court, Mr. Fejzullah Hasani" *"Justice is not an end in itself, it is given to citizens and should be perceived by them as such."*[8]

Indeed, the society of Kosovo is now debating whose responsibility is the greatest for the current situation in this sector. Is it the duty of the higher education institutions providing legal education or is a responsibility of education institutions at all levels to ensure that law students are educated enough on ethical legal education? Or shall the government and judicial institutions be more responsible in this regard by developing and strengthening the implementation of vales based policies value based? So the main objective of such research is to find the main actor that is responsible for ethical legal education of judges as it is one of the aspects that contributes to the trust of citizens on the judicial system and functional independence of judges.

Methodology

The answer to the abovementioned research questions will be determined by applying qualitative analysis as the research methodology. The research methodology is focused on the analysis of survey results. The survey

[5] European Commission Kosovo Progess Report 2016, SWD(2016) 363 final, Brussels, 9.11.2016., p.5.
[6] See United Nations Development Programme (UNDP), Early Warning Report, Kosovo, for 2007, 2008 and 2009. However, the 2010 Report notes that while the judiciary remains the institution that people in Kosovoare "least satisfied" with, the polling figures indicate an increase in satisfaction over previous years. See UNDP 2010 Early Warning Report, Kosovo, for 2010 #28, p. 12, http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf (accessed 22 May 2017). See also a report by Freedom House on the category of Judicial Framework and Independence. Kosovo's judiciary receives a 5.75 rating on a 1–7 scale (7 being the lowest) http://www.freedomhouse.eu/images/Reports/NIT-2010-Kosovo-final-final.pdf (accessed 22 August 2016).
[7] Magazine article "Kthimi i besimit të qytetarëve në drejtësi, mbetet sfidë " (title in english: "Returning the trust of citizens to justice remains a challenge), Telegrafi.com, 03.12.2016. The Article is accessible onlin the following address: http://telegrafi.com/kthimi-besimit-te-qytetareve-ne-drejtesi-mbetet-sfide/ (accessed on 30.06.2017).
[8] See above, supra note 5.

method or research (observation) has been realized in an external field. The method contains access to survey data, information and opinions on the subject studied. This method is reliable and valid to the extent that the information collected is relevant. Shortcomings of the method arise if the subjects' disclosures are of a subjective or emotional character, or are not given by the respondent as true. In order to conduct the interview I have prepared a questionnaire with ten questions (see attached the questionnaire). The main format of this method is structured interviews with questions prepared ahead in a specific way. The questionnaire yielded responses by one hundred six (106) persons, with different ages and of both genders. Respondents that answered to this questionnaire were experts on legal affairs, academic staff, and students, officials from different institutions of Kosovo including judicial institutions and non-governmental organization, and ordinary people. The data collection was done through personal and direct interviews, in writing and by e-mail, so the data / resources are primary information.

Table 1: Characteristics of respondents in tabular form

Gender	**No.**	**Age**	**No.**
Female	51	Up to 30	54
Male	55	30-50	43
		50-75	9
Total No.	**106**		**106**

Results

Assessment and Trust on the work of judiciary in Kosovo:

Based on the answer given by respondents, 36 out of 106 surveyed respondents rated the work of the judiciary with mark 3 out of 5 (1-5 ranking). From the total number of respondents, 51 were women and 18 of them rated the judiciary with the mark 3, and 15 them with mark 4. While among the 55 men surveyed, 18 of them have assessed with mark 3 and 2. There is a gender difference as women evaluate the work of the judiciary better than men. Of 36 of those who have rated the judiciary with mark 3, 16 respondents hold a Master's degree, 12 of them hold Bachelor's degree, 20 of them are 19-30 years of age, 14 of them are aged 35-50 years, and two of them are aged 50-75 years.

Concerning levels of trust in a judge's independence, the results show that 75 of the respondents believe **moderately** on the independent work of judges. 26 of them are women and 29 are men. 41 of them are 19-30 years old, 27 of them are from 30-50 and seven of them are from 50 to 75 years old. Their level of education was: 26 of

them have their Bachelor's degree and 29 of them possess a Master's degree. 11 out 106 have **no confidence** in the independence of the judiciary, of which four are female and seven are male, seven of them are 19-30 years old, two of them are aged 35-50 and two of them are aged 50-75 years. Six of them hold a Bachelor's degree and five of them a Master's degree.

In order to understand if the opinions of respondents about their trust in the work of judiciary has been given based on their experience directly with the work of the judges or it is more of a perception, it is important to analyze the results on the question: "Did you ever face directly any court trial and court service?" 67 out of 106 of the respondents never faced directly the work of the court or a court trial, as they have chosen the option on the answer, "other capacity," which means they never faced directly the work of judges. 40 out these 67 respondents were women and 27 were men, of whom 46 were age of 19-30, 18 of them from 35-50 years old and three of them from 50-75 years old, of which 30 had finished a Bachelor's degree and 26 a Master's. 16 out of 106 of the respondents had access to the court trial as a witness (two of them were women and fourteen men). Five were 30 years old, nine aged 35-50 and two aged 50-75 years. Five had completed secondary school, six held a Bachelor's degree and three a Master's degree. 39 out of 106 respondents had directly experienced court work or a court trial in the capacity of an accused person, plaintiff, witness, or as an employee of the court.

It is important to mention that 33 out of 57 of the those respondents who assessed the work of judges moderately have faced directly the court trial or court services in different capacities as mentioned above. While 42 out of these 75 respondents had not faced directly the court trial in the capacity mentioned above. This result shows that there is no significant difference on the assessment of the court work from those that have faced directly the court trial and those that did not. So, the trust and the assessment on the work of the judges and judiciary in Kosovo is not a perception but reality.

Whose responsibility is to provide ethical legal education?

The results above show that the trust of citizens in the work of the judges needs to be further strengthened. It is important to emphasize that every advanced democratic country has in place its own procedure of judicial accountability. Some countries have developed such procedures through different mechanisms, as is the case in India, where such procedures have been developed through the constitution of a National Judicial Commission.[9] Strengthened mechanisms on judicial independence and judicial accountability that are neither incompatible nor mutually exclusive will contribute in this regard.[10] The functionalization and proper implementation of the judicial accountability concept depends on the ethic of judges or whether the code of conduct is followed by judges.

As the focus of this essay is the case of Kosovo, it should be clarified beforehand if the Kosovan judicial institutions have developed ethical codes. Even though Kosovo has enjoyed its statehood only for ten years, the legal infrastructure has been put in place quite well, but the main problem remains the implementation of

[9] See above supra note nr.1.

[10] Jaan Ginter," Judicial Independence and/or(?) Efficient Judicial Administration", JURIDICA INTERNATIONAL XVII/2010.

it. The same is true with the documents related to the ethics of the judge, prosecutor, and lawyers. The Kosovan judicial institutions have developed their Code of Conduct (Ethics) but the remaining challenge is its implementation by judges, prosecutor and lawyers.[11] Therefore, the following part of the essay will present the results of the survey on the question if the Judges in Kosovo do follow the code of conduct, and whose responsibility is the ethical legal education of judges?

41 out of 106 of the respondents think that judges respect the Code of Ethics in cases when they use competence to decide based on their conviction, of whom 21 are female and 19 are male. 19 of them are 19-30 years old, 17 of them 35-50 years old and four of them aged 50 -75. 14 of them have finished a Bachelor's degree and 13 hold a Master's degree. 25 out of 106 of the respondents think that judges do not follow the Code of Ethics, of which nine are female and 16 male and 17 are from 19-30 years old and eight are 35-50 years old. 11 of them are hold a Bachelor's degree and ten a Master's degree. From this result, it can be concluded that men and young people do think that judges do not follow the Code of Ethics.

The results show that the ethic of judges is a problem in and of itself; it is not enough to have only the Code of Ethics approved but it also needs to be implemented. If the Code of Ethics is not followed by judges, their decisions will be unethical, and, as a consequence, the whole sector suffers and the trust of citizens in their work will be low. One of the reasons for the non-implementation of such codes by judges is inadequately taught professional and legal ethics in law faculties/schools in Kosovo. Based on the research done by the American Bar Association, the public and some private law universities offer elective legal ethics courses, but many students graduate without taking these courses and it is not clear what subjects are covered in the courses.[12] According to the author of such a report, without a required ethics course for all law students, it will be difficult for law faculties in Kosovo to properly prepare their students for legal practice in countries that adhere to European standards for the ethical practice of law. Based on this report, one may conclude that the main responsible institution for ethical legal education is university.

However, the 106 respondents during the present research answered differently. As can be seen from the data presented below, more than 50% of the respondents answered that the institutions providing training for judicial staff are responsible for developing and providing ethical legal education to judges. As the respondents had to choose more than one option, it seems that the 34-38% of respondents considered that responsibility for ethical legal education is shared between universities, judicial institutions, and institutions providing training for judicial staff (for example, the Justice Academy). 31% of respondents think that the responsibilities of the legal education are shared among various institutions, such as the Ministry of Education,

[11] Lawyers Code of Professional Ethics, Kosovo Bar Association, Prishtinë, december 2012. The text is accessible on the following address: http://www.oakks.org/repository/docs/Code_of_Ethics_2012_(ENG)_(update_January_2014)_638576.pdf (Consulted on 07.13.2017).; Professional Ethic Code for Judges, Kosovo Judicial Council , 17.08.2016.; The Code of Ethics and professional conduct for members of the Kosovo Prosecutorial Council, July 2012. The code of ethics and professional conduct for prosecutors. The code of professional ethics for support staff. The text of all three codes are accessible online: http://www.kpk-rks.org/en/sistemi/121/kodi-i-etiks-profesionale-/121 (consulted on 13.07.2017), Kosovo Prosecutor Council, July, 2012.

[12] Legal Education Reform Index for Kosovo Report, American Bar Association, July 2010. The text is accessible online: https://www.americanbar.org/content/dam/aba/directories/roli/kosovo/kosovo_legal_education_reform_index_07_10_eng.authcheckdam.pdf (Consulted on 13.07.2017).

universities, judicial institutions and institutions providing training for court staff. There are only 9% of respondents that do consider the early education institutions as the only institutions responsible for legal education. These nine respondents do did not see the lack of courses in professional ethics as a major shortcoming.

The present research shows different results from the previous research done by the American Bar Association as most interviewees did not regard the lack of courses in professional ethics as a major deficiency.[13] This shows that the respondents of the present research appear to be more educated in this regard.

Table 2: Responsible institutions for ethical legal education

The ethical legal education of judges is responsibility of:	**Answers (%)**
Early Education institutions	**9.4**
Ministry of Education (that defines the education policy)	**1.9**
Higher Education Institution (Universities)	**34.9**
Judicial Institutions	**38.7**
Institutions providing training of judicial staff	**52.8**
All above institutions	**31.1**

The current research proves the hypothesis that ethical legal education is more a shared responsibility rather than a responsibility of one institution. The university is one of the institutions that should be more active in this regard. The professional ethics courses need to be included in the programs as obligatory courses, in order to be sure all law students have had information about the meaning and importance of ethics while practicing their legal profession.

Limitations of the study

Limitations of this study were the inability to get information from more respondents from judicial institutions and persons who do understand the essence of the Code of Ethics, as well as the non-inclusion in this questionnaire of international judges present in Kosovo. Having their answers would help considerably in observing variability of opinions from both sides, and nationally and internationally, despite the fact the present essay is based also on the reports of international actors present in Kosovo.

[13] See above supra note 10.

This study focuses on whose responsibility is to provide ethical legal education; therefore it does not embrace the full scope of the problem, which can also be seen in the content of material offered to those getting ethical legal education. However, the main question raised in these last ten years in Kosovo has been answered, whose responsibility is to provide legal education. It is clear that the University does share such responsibility also.

Conclusions

The research provides advice on responsibility to Kosovan institutions dealing with legal education and judicial institutions, and encourages such institutions to be more creative in providing such a piece of legal education that is very important for a successful judicial sector. It does not include an in-depth discussion of all the factors that impact the rule of law sector, but provides, as a useful recommendation, a basic knowledge of subject under discussion.

Upcoming research direction

This research may be extended to other countries in the region, especially in neighboring countries and beyond, by applying the comparative method. In future, research should expand the circle of respondents and increase their number so that the information collected would be more comprehensive. The next research should be focused on the content of the legal professional ethics course and methods of teaching such courses, in order to find the best modus for the knowledge transfer to the students but also to the legal profession. In addition, the future research will also study whose responsibility it is within the higher education institution to provide qualitative ethical legal education, and means that contribute to this direction. This will be done through comparative analysis.

Key recommendations

- Early education institutions, Ministry of Education, universities (law schools/faculties), judicial institutions, institutions providing training for court staff shall work further in executing the shared responsibility on ethical legal education:

1) Early education institutions shall make sure that ethical education is provided through education programs.
2) The Ministry of Education shall define policy that requires and promotes ethical education in all the study programs and in particular in law programs.
3) Universities shall first include the professional legal ethics course as a mandatory course and prepare the program of the course in such a way that the ethical legal education be provided as it should. It would be necessary that the course is taught by professors with an understanding of the legal profession.
4) Kosovan judicial institutions shall strengthen the implementation mechanism of the Code of Ethics.

5) Institutions that do provide training for judicial staff shall be careful in explaining correctly and practically the Code of Ethics.

- An awareness raising campaign on the ethics of judges should be organized by the above mentioned institutions.

References

V.G.Ranganath, "Ethics of Judges & Judicial Accountability" June 2010. The Article is accessible online at: http://www.legalservicesindia.com/article/article/ethics-of-judges-&-judicial-accountability-214-1.html (accessed on 1 May 2017).

Gunilla Lindqvist, "Who should do What to Whom? Occupational Groups´ Views on Special Needs," Dissertation No. 22, School of Education and Communication Jönköping University, 2013.

Karl S. Okamoto, "Teaching Transnational Lawyering," HeinOnline, Drexel L. Rev. 69 2009.

Edward Kuhn, "Improving Education for Advocacy"an ALSA Annual Meeting Address , Student Law. J. 7 1965-1966.

John Gamble, " Teaching or Get off Lectern: Impediments to Improving International Law Teaching," HeinOnline, ILSA J. Int'l & Comp. L. 379 2006-2007.

Frances Kate Marsh, "The Case for Imposing the Legal Duties on Educators in Education Malpractice in Actions: Improving Minority Education", T. Marshall L. Rev.295 1990-1991.

Catherine Mary Ann Mccauliff, "Trial Advocacy: Improving the Quality of Legal Services through Continuing Education Courses" Journal of Legal Education, Vol.30., 1979-1980.

Simon M. Mitchell, M. E. Occhialino, and Robert L. Fried, "Herding Cats: Improving Law School Teaching," J. Legal Educ. 256 1999.

"Kthimi i besimit të qytetarëve në drejtësi, mbetet sfidë " (title in english: "Returning the trust of citizens to justice remains a challenge), Telegrafi.com, 03.12.2016. The Article is accessible online the following address: http://telegrafi.com/kthimi-besimit-te-qytetareve-ne-drejtesi-mbetet-sfide (accessed on 30.06.2017)

Reports and Strategic documents:

Action Plan of Kosovo Education Strategic Plan 2017-2021, Ministry of Education, Science and Technology, 2016.

OSCE Report on "Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions," June 2012. See http://www.osce.org/kosovo/87138?download=true for a collection of such reports (accessed 20 May 2017).

European Commission Kosovo Progess Report 2016, SWD(2016) 363 final, Brussels, 9.11.2016., p.5.

Report of NGOs and , See United Nations Development Programme (UNDP), Early Warning Report, Kosovo, for 2007, 2008 and 2009.

UNDP 2010 Early Warning Report, Kosovo, for 2010 #28, p. 12, http://www.ks.undp.org/repository/docs/EWR_eng_web-opt.pdf (accessed 22 May 2017).

Freedom House on the category of Judicial Framework and Independence. Kosovo's judiciary receives a 5.75 rating on a 1–7 scale (7 being the lowest) http://www.freedomhouse.eu/images/Reports/NIT-2010-Kosovo-final-final.pdf (accessed 22 August 2016).

Appendix A

Survey instrument

1. Gender?

1) Male

2) Female

2. How old are you?

1) 30 years

2) 30-50 years

3) 50-75 years

3. Which is your highest level of education?

1) High school
2) Bachelor
3) Master
4) PhD
5) Exam of Jurisprudence

4. What is your profession?

1) Lawyer
2) Teacher
3) Judge
4) Attorney
5) Senior official in state institutions
6) Economist
7) Prosecutor
8) Doctors
9) Others

5. Did you face directly any court trial/service?

1) Yes
2) No

6. In what capacity did you face the court trial/service?

1) Accused
2) Plaintiff
3) Witness
4) Court official
5) Others

7. How do you assess the work of the judiciary? Rate from 1 to 5:

8. Do you think that judges respect the code of ethics in cases when they use the power to decide on their conviction?

1) Yes
2) No
3) Never
4) I have no opinion

9. Judicial Ethics depends on and develops from *(You can choose more than an option*):

1) Early education (primary, middle) institutions
2) Ministry of education defining education policy
3) Higher education institutions (Universities)
4) Judicial institutions
5) Institutions providing training on ethics for judges and judiciary staff in general
6) All (point from a-f)

10. How much do you believe in the work of the judiciary?

1) Very; 2) Not at all; 3) Moderately; 4) I no opinion

Acknowledgments

Serious work to bring the *International Journal on Responsibility* to life commenced during the summer of 2015. In the intervening period between conceptualization and publication, many organizations and individuals within James Madison University and the wider community have contributed enormously to bringing the journal to fruition. At this juncture, the Editorial Board wishes to acknowledge the tremendous efforts of the following:

- Faculty and staff within Libraries & Educational Technologies (LET) at James Madison University, including Grace Barth (Head, Digital Collections) and her predecessor, Laura Drake Davis (now Digital Project Specialist at the Library of Congress).
- The Madison Academic Libraries Associates (MALA) Program within LET at James Madison University. In particular, we would like to thank our dedicated MALA Associate, Liana Bayne, for all of her wonderful work on the project, and also acknowledge the support she received in that role from her MALA advisors within LET – Carolyn Schubert (Interim Head of Research & Education Services) and Lynn Eaton (formerly Head, Special Collections, now Director, Special Collections Research Center at George Mason University) – and to thank those MALA advisors for their efforts.
- The Center for International Stabilization and Recovery at JMU, in particular the staff of the *Journal of Conventional Weapons Destruction* for their endless patience and willingness to allow us to consult with them regarding the logistics of publishing a new journal at JMU.
- University Legal Services at JMU.

- The Redekop Family Endowment, whose generous gift will ensure the development and ongoing publication of the *International Journal on Responsibility*.

Howard S. Carrier
Managing Editor, *International Journal on Responsibility*,
James Madison University.

Call for Papers

In 2018 the *International Journal on Responsibility* seeks to publish three issues. At this juncture, the Editorial Board wishes to issue a call for papers for two of these issues. The third issue will be specially-themed issue of the journal; a call for papers for that special issue will be distributed early next year.

Issue 1 of 2018 will be a dedicated student issue. The journal welcomes submissions from graduate and undergraduate students in any academic discipline, addressing any theme of responsibility. A specially assembled review board will appraise student submissions. Submissions should be sent to both the Editor-in-Chief and Managing Editor by email (contact details below) by 10th January 2018 for intended publication in the spring of 2018.

Issue 2 of 2018 will be the journal's first, fully peer-reviewed issue, and the Editorial Board is pleased to open a general call for papers at this time. Submissions on any aspect of responsibility are welcome, and should be sent to both the Editor-in-Chief and Managing Editor by email (contact details below) by 12th February 2018 for intended publication in the summer of 2018.

Instructions for the preparation of manuscripts appear on page 92 of this issue. Thank you for considering submitting a paper to the *International Journal on Responsibility*.

Editor-in-Chief, Terry Beitzel, Ph.D. beitzetd@jmu.edu

Managing Editor, Howard S. Carrier, LL.M., M.S.L.S.
carriehs@jmu.edu

Instructions for the preparation of manuscripts for submission to *the International Journal on Responsibility*:

- Manuscripts may be up to 8000 words in length, submitted by email to beitzetd@jmu.edu and carriehs@jmu.edu as MS Word attachments.

- Documents should be double-spaced, and formatted and referenced in accordance with the Harvard System of Referencing. Authors may wish to consult the excellent, open access Guide to the Harvard System of Referencing provided by Anglia Ruskin University, available at: https://libweb.anglia.ac.uk/referencing/harvard.htm).

- Authors represent that any work that is not their own which appears in their submitted manuscript is either in the public domain, is included with the express permission of the copyright holder, or is reproduced in accordance with the doctrine of fair use.

- In submitting a manuscript to the *International Journal on Responsibility,* authors represent that the manuscript has not been previously published elsewhere (either in part or in its entirety), that the manuscript is not currently under review by any other publisher for publication, and that the manuscript will not be submitted to any other publisher for consideration if accepted for publication by the *International Journal on Responsibility,* or until notice of rejection has been provided to the author by the Editorial Board of the *International Journal on Responsibility.*

- The *International Journal on Responsibility* takes pride in being an open access journal. Authors retain copyright to their submitted work, and grant a non-exclusive Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Public License to James Madison University, in advance of publication, allowing the work to be published in the *International Journal on Responsibility.* Authors agree not to transfer copyright to their work to any third party post-acceptance for publication by the *International Journal of Responsibility,* and agree to indemnify James Madison University, the *International Journal on Responsibility*, their employees, agents and representatives, from any losses arising from a third party's claim against James Madison University or others listed on the basis of copyright infringement.