

The Nuclear Age & the Entry in the Transgenerational Legal Era

A pledge for legislations stipulating transgenerational responsibilities



UNIVERSITÉ
CAEN
NORMANDIE

Emilie GAILLARD

Université de Caen-Normandie

INTRODUCTION



- (XVIIIth) Enlightenment = limited temporal matrix (social contract)
 - Article 6 DDHC 1789:
« *Law is the expression of the general will* »
 - Article 5 DDHC A789:
« *The Law has the right to forbid only actions which are injurious to society* »
- => Paradigm of juridical reciprocity**

- **XIXth & XXIst centuries :**

Actions of humankind harmful for future generations
=> legitimate to take the future into account ?

= **entry in a new era**

- environmental awareness

- transboundary & transtemporal pollutions

= **Antropocene**

= Humankind has acquired an unprecedented power on the Earth, on the conditions of the livings and of those to come.

= **a profound metamorphosis => deeply questions the foundations of Law**

- **Concept of Future Generations**

= part of the definition of **sustainable development**

= **has the power to disclose our way of thinking in law on issues which happen presently but also in the long run.**

« *common heritage of humanity* »

« *sustainable development* »

« *Future Generations* »

⇒ ***Emergence of a LAW OF THE FUTURE***

⇒ ***Transgenerational analysis of Human Rights?***

I. WHY ? OVERVIEW OF ETHIC RATIONALES STIPULATING TRANSGENERATIONAL RESPONSABILITIES

1°) HANS JONAS

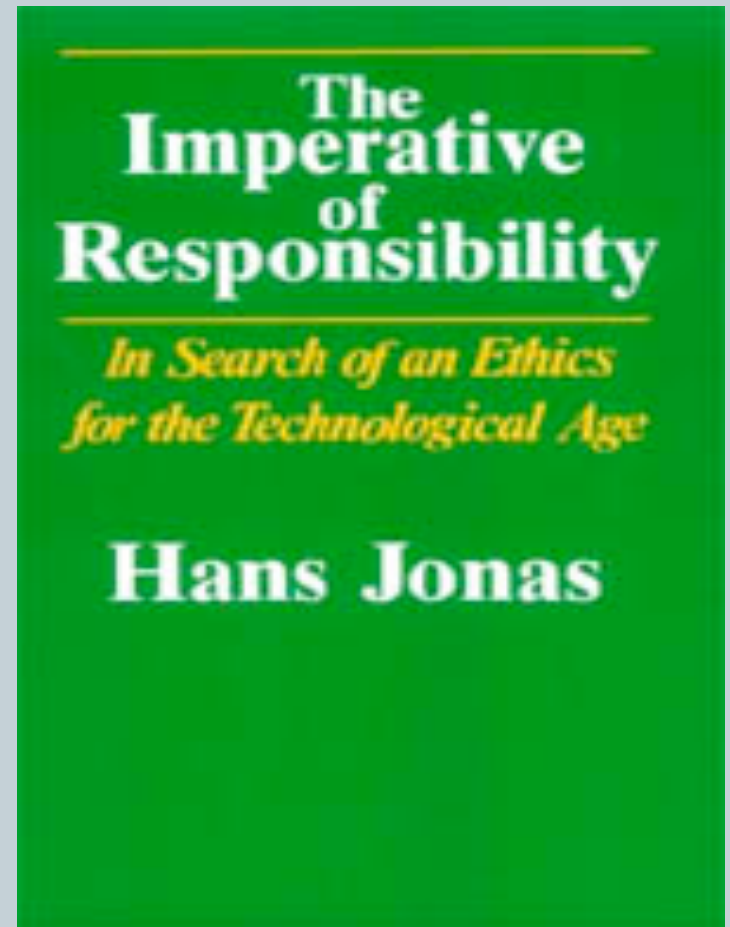
- **Entry into the technological**

Age demanded an ethical theory

Capable of instituting respect

For the future

« *Humanity has no right to
suicide* »



2°) GÜNTHER ANDERS

Nuclear technology introduces
a disruption in the history of

Humankind

& has the potentiality to
introduce a disruption in the
very concept of History:

- *nuclear tech. prevails on Human morality*
- « *changes the very foundation of our moral existence* »
- *Promethean gap between actions & abilities of imagination*



II. HOW ? PLEDGE FOR LEGISLATIONS STIPULATING TRANSGENERATIONAL RESPONSABILITIES

- **Paradigm shift** to realize if we want to integrate a law protecting Future Generations

1°) Principle of temporal non-discrimination
= the non existence of FG can no longer be
synonymous with an absence of juridical
protection

=> Abuse of power by present generations over the future

2°) Principle of dignity of future generations

- **Descriptive** principe (evolution in law)
- **Normative** principle (matrix of a law giving respect to FG)

III. WHEN ? At any time, nuclear technologies are a transgenerational & transpatial threat

- **Concept of Tragedy of Human Rights**

= whenever a return to the status quo is impossible, **i.e. whenever conditions for life are adversely affected, the very concept of Human Rights makes no more sense!**

- > **Before choosing nuclear technology**
- > **Uranium mining & transgenerational threats**
- > **Building nuclear powerplants**
- > **Dismantling & burying of nuclear wastes**

J-P. Dupuy, *Pour un catastrophisme éclairé*, Seuil
2002



« Catastrophes are characterized by this **temporality that is in some sense inverted**.

As an event bursting forth out of nothing, **the catastrophe becomes possible only by "possibilizing" itself** and that is precisely the source of our problem.

For if one is to prevent a catastrophe, one needs to believe in its possibility before it occurs.

If, on the other hand, one succeeds in preventing it, its non-realization maintains it in the realm of the impossible, and as a result, **the prevention efforts will appear useless in retrospect** »

Uranium mining & transgenerational threats to health and to environment



- Forbidden places (Tchernobyl / Fukushima)

- Uranium mining

- French TV

Documentary:

Uranium: le scandale de la France contaminée



Problems with nuclear powerplants

- **During the bulding:** Non sense of nuclearisation of Africa (IPPNW, 2015)
- **Lies : EPR in Flammanville 6 =>12 billions !**
 - = complex mix Military, States & companies interests
= RDV with History
- **Facing new dangers DRONES**



Dismantling & burying nuclear wastes



- Failure = we decided to invest in a technology with a blind Faith in the paradigm of Progress
- Tremendous costs!
For the first time,
La Cour des comptes
has pointed out these
tremendous costs



Nuclear Disasters => Duties of States to protect



IV. IMPLEMENTATION OF TRANSGENERATIONAL HUMAN RIGHTS RECOGNITION OF CRIMES AGAINST FG?

- There is an urgent necessity to give respect for the future a legal framework and implement it
- **Principle of non harmful use of the national territory** = no State shall authorize the exploitation of any activity on its territory which can cause a damage to the environment of another State
- **Japanese Constitution** : offers a transgenerational definition of Human Rights (constitutional basis)
- **New pressure ?** Germany asking to France to close Fesseinheim

Crimes against Future Generations



- **When actions endangering the environment are taken in a context of certainty = crimes against Future Generations**

= NUCLEAR TOTALITARIM (Anders)

- **In a context of uncertainties = Precautionary Principle => anticipating**

= Towards the recognition of AN ENVIRONMENTAL AND HEALTH OBLIGATION OF DUE VIGILANCE ?

CIVIL SOCIETY



- **END ECOCIDE ON EARTH**

= AMENDMENT to the Rome Statute

⇒ **Recognizing ecocide as a new international crime against the environment, peace and future generations**

WHAT ABOUT STATES ?



- New claims : C. LEPAGE => claim for the « canton » of Geneva against France (about one of the eldest nuclear Powerplant)

= > legal basis = endangering the lives of others and water pollution

- New juridical humanism ?

DECLARATION OF RIGHTS OF HUMANKING

OFFICIAL REPORT



CONCLUSION



- **DEFENSE OF CIVILIZATIONAL VALUES**

= keep the horizons of future opened

“Because our actions can have apocalyptic consequences (...) our epoch, which is crying out for an ethical theory, seems suspect to many by appearing to want to reach for the moon. But we have no other solution apart from trying to act”

(HANS JONAS)

