

Souriez, il existe désormais une revue juridique du bonheur !

Smile, from now on there is a Happiness Law Review

Par Carine David, Professor of Law, Université des Antilles (Martinique – France)

Editorial Director

Here is a newborn in the landscape of legal journals: the Happiness Law Review. Finding a way in to introduce this birth was not easy as the announcement of the creation of this journal has aroused various reactions, which were sometimes ambivalent. To name only the most recurrent, the feelings expressed were surprise, rejoicing, enthusiasm, satisfaction, gratitude, mockery, interest, disdain or distrust ... but never indifference!

From this multitude of reactions - whether positive or negative, but at no time neutral – we came up with something obvious: the parallel that can be made in many respects with the controversial feelings aroused by the emergence of the right to environment a few decades ago now. In this respect, the quite ironic definition of Michel Prieur as to the subject of this discipline, which has become unavoidable today, as an introduction to his textbook on environmental law, is uplifting.

Qualifying the notion of environment of “chameleon concept”, he defines as follows the subject of a discipline to the emergence and evolution of which he has largely contributed: *"Environment is a word that at first expresses passions, hopes, misunderstandings. Depending on the context in which it is used, it will be understood as being a fashionable idea, a luxury for rich countries, a myth, a theme of protest from hippie and May nineteen sixty-eight protesters ideas, a return to a candle-lit era, a new terror of the year 1000 linked to the unpredictability of ecological disasters, flowers and small birds, a cry of alarm from economists and philosophers on the limits of growth, the announcement of the depletion of natural resources, a new anti-pollution market, a contradictory utopia to the myth of growth"*¹.

Many of these ideas about environment are transposable to those encountered with respect to happiness. The forerunners of environmental law have been confronted and still are today with incomprehension, opposition, circumspection, even disdain. These same feelings seem inspired by the existence of a right to happiness, as if a serious scientific journal could not be related to such an object, too utopian and idealistic, disconnected from a necessary legal realism.

Yet, as mankind has disrupted the climate and caused irreversible damage to Nature, which becomes his main enemy (apart from himself), Man has not ensured the equal distribution of wealth and has left behind on the side of the road a large part of humanity.

While states have laboriously realized the need to protect the environment from the 1970s, some precursor States intend today to seize the issue of happiness. Indeed, we can find today this same latent urgency in the need to recognize a right to happiness and this same

¹ M. Prieur et al., « Droit de l'environnement », éd. Dalloz, 7^{ème} édition, Coll. Précis, 2016, p. 1.

ineluctable and hopeless slowness in the evolution of conceptions and the management of conflicting interests.

And what if the UN General Assembly resolution of 19 July 2011 on "Happiness: towards a global approach to development" turns out to be to happiness what the Stockholm Declaration of 1972 is to environment?

But what is happiness? And how can this notion be captured by the law? As a polysemic, subjective and protean notion, happiness as an object of law questions in many ways. It first questions about its material scope. It also forces oneself to shake up some legal conceptions in order to allow it to be more than a mere objective of public policy, i.e. a subjective right. It imposes to question oneself about its vectors and its recipients.

If happiness is difficult to define, as David Annousamy analyses, the links between happiness and law can be discussed in various ways. Marc Dupré calls on Aristotle to renew the link between law and happiness, while Dorine Van Norren uses three traditions of the Global South to reveal this same link: Buddhist Happiness, African Ubuntu, and indigenous American BuenVivir.

In any case, we cannot deny the timid emergence of this right which is brought to light in different legal instruments at different levels around the world: UN General Assembly resolution², Constitution of Bhutan³, reform of the public policy elaboration initiated by New Zealand Prime Minister Jacinda Ardern⁴, decisions of the Colombian Supreme Court⁵, customs of indigenous peoples⁶ or soft law tools are all supports that are put forward to promote the happiness of people across the planet.

230 years ago, as the United States Independence Declaration already did a few years before⁷, had not the preamble of the French 1789 Declaration of Human and Civic Rights proclaimed this right to happiness as the ultimate objective for public authorities, all other rights being recognized to strive for that right to happiness?

*“The representatives of the French People, formed into a National Assembly, considering **ignorance, forgetfulness or contempt of the rights of man to be the only causes of public misfortunes** and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, unalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be continually compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the*

² Resolution of 19 July 2011, already cited.

³ Happiness is included in the preamble of Bhutan's Constitution, but also in Article 9 as a principle governing public policies, in Article 20 among the Government's missions and finally in the national anthem (2nd Schedule).

⁴ <https://www.youtube.com/watch?v=BZIEtr5zAY>

⁵ Sala de Casacion Civil, Colombia, 10 novembre 2016, T-622/1626 juin 2017, AHC4806-2017 ; 5 avril 2018, décision n°STC4360-2018. See Franck Laffaille's contribution in this volume.

⁶ See Dorine Van Norren contribution.

⁷ *“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”.*

citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all."

As the drafters of the Declaration pointed out, would not our representatives today have forgotten, ignored or despised the right of everyone to happiness?

Here again, the parallel with the right to environment is tangible. Forgotten, ignored, despised, sacrificed in favor of economic development, Nature and Society have grabbed the attention of political leaders in recent years, through natural disasters for the first one and by demonstrations⁸, even revolutions⁹, for the other.

With the right to wellbeing, evoked by Marta Torre Schaub in her contribution, it is as if the third pillar of sustainable development finally emerged, thus underlining both the need for a balance between the three dimensions of the Bruntland Report's concept and their interconnection. It is saying yes to economic development, but not to an economic development that would be detrimental to the planet and to the well-being of a large part of the world's population. If with the emergence of the right to environment, the need to move towards "better having" rather than "having more" has emerged, the spawning of the right to happiness calls for an additional stage: the stage of "wellbeing". In accordance with this, the right to happiness could be the keystone of fundamental rights, a matrix from where proceed and where come back all the other rights, that have to be understood in interdependence and mutually enlightened.

And contrary to the recurrent criticisms made to the concept of sustainable development, has having become an overused and outdated notion, it appears in this perspective totally in its place: the triptych combining economy, environment and society is self-evident and it appears more obvious that capital stocks described in economic theories of sustainability are certainly interdependent but not substitutable. There is a need for balance between them because we see today that any imbalance can only lead to the implosion of the system. The cries of alarm of Nature are in this respect eloquent and Man, having no hold on Her, begins to understand that he must maintain this balance. The cries of alarm of some men to other men are not sufficiently heard and the inequalities in the world are widening. The Millennium Development Goals, and then the "17 Goals to Save the World", the Sustainable Development Goals (SDGs) are there, pointing to the road ahead to rebalance the system from both an environmental and social standpoint. It is no coincidence that half of the SDGs are about protecting Nature and the other half about social concerns. The right to a healthy environment is to Nature what the right to happiness would be to society.

This special link between happiness and environment is the subject of two contributions in this issue. Franck Laffaille discusses the innovative solutions of the Colombian Supreme Court which is particularly attentive to the need to integrate an ecocentric perception in the implementation of the Constitution, by referring more specifically to a judgment of 2017 recognizing to a Bear, Chucho, some subjective rights, to guarantee him a right to happiness,

⁸ On pense bien entendu s'agissant de la France aux « gilets jaunes », mais bien évidemment au-delà, aux manifestations des « jeunes pour le climat » qui s'étendent progressivement à de nombreuses régions du monde, mais aussi pour ne citer que les plus récentes les manifestations en Algérie ou au Vénézuéla.

⁹ Le printemps arabe en est une illustration évidente.

to live in the best conditions. Marta Torre-Schaub emphasizes the emergence of well-being as a legal concept, which could be exploited for a better preservation of the environment.

It is voluntarily that the first issue of the Happiness Law Review does not focus on a particular theme and the contributions of this edition reveal the scope that covers the right to/of happiness: vectors to promote the emergence of this right are multiple, just as are the recipients of this right: men, the women, children, animals, Nature, employees, entrepreneurs, pupils, students, citizens, indigenous peoples, the minorities, parents, volunteers, the unemployed, the disabled, persons in social and / or economic difficulty, the rich, the healthy, the sick, the dying, the sportsman and more fully all manifestations of life...

A vector, as Linda Atton points out, can be education. Her advocacy for a holistic vision of education to integrate the right to happiness into school curricula and, beyond that, into the very design of the education system is both a source of hope but also highlights the long way still to go. Another vector is Bhutan's Gross National Happiness, the apprehension of which can go far beyond a simple indicator, as Karma Tshering shows us when it comes to the administration of criminal justice. Another vector, finally, alongside the law, can be the economy, as Ines Hammadi suggests to us, in a section reserved for undergraduate and Masters students who would like to express their point of view.

Do we talk about a right of happiness or a right to happiness? As the right of happiness is the legal arsenal to achieve the consecration of a right to happiness, as a fundamental right, which is the ultimate goal, the Happiness Law Review will evoke both: the tools and the aim.

The tools can be a recognition of new rights as well as the prohibition of practices that constitute obstacles to happiness. Thus, Isabella Micali Drossos evokes the practice of excision as a violation of the right to happiness of many women, its prohibition constituting a legal act of recognition of their right to happiness.

Some sorrowful minds will see in the stammering of the right to happiness the fact that forgotten, ignored, despised by our political representatives, it must now be erected as a binding norm to be protected and that, as the right to the environment, its emergence attests in fact the critical fate of its object.

Others will see the glass half full and backed by the positive charge of this notion, which cannot be ignored, will tend to highlight the solutions invented around the world to strive towards this ideal and make sure that reality gets close to it at last. These same optimists will propose the necessary legal concepts evolutions so that the law is not an obstacle to the recognition of a right to happiness, but provides the tools in order for the public policies to be able to relay the revolutionary ideal of 1789: that the satisfaction of citizens' claims always revolves around the search for the happiness of all.

To close this first editorial, I wanted to express my thanks to the International Observatory of Happiness, and more particularly to Yamouna David and Patrice Tachon, for having had the idea of the creation of this journal and for the confidence they showed to me by entrusting me the mission to give life to this project. I also express my gratitude to the members of the editorial board who have all agreed to be part of the adventure with great enthusiasm.

Finally, my thanks to the contributors to this first issue of the journal for their confidence in the viability and usefulness of this journal.

So, YES, you can smile, the Happiness Law Review now exists! It will be serious, scientifically based, certainly original, obviously open, resolutely optimistic but always (or almost) realistic, because dreaming contributes to happiness!