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Sharing responsibility and community resilience:
The role of law in converting policy to action

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National Strategy for Disaster Resilience

- The big ideas:
'shared responsibility' and
'community resilience'

- 'a resilient community recognises and accepts that resilience requires shared (but not equal) responsibility for decisions that impact upon an individual's and a community's ability to withstand the impact of those hazards'.

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Why we need the change

- Incremental change caused by climate change and changing demographics.

- Step changes such as 2009 Black Saturday fires and 2011 Queensland and Victorian floods.

- The community can't afford to maintain the capacity to respond to foreseeable events.
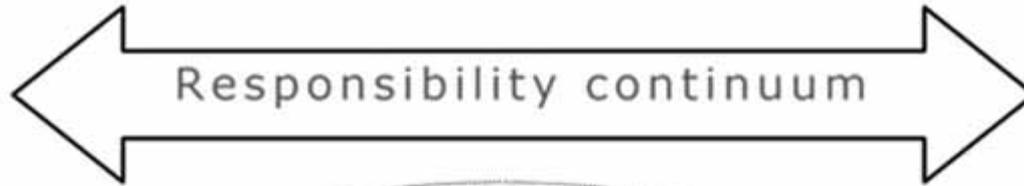
Self Reliance ← Responsibility continuum → **Central Authority**

Those at risk:
- Decide what to do
- Use own means

Risk management is:
- Informal
- Decentralised

Normative justification:
- "*Those who take the risk should manage the risk*"

Assumptions:
- Those at risk know about the risk, are capable of responding to it, and choose to take it

Domain of Responsibility-sharing

Risk management involves collective action
But
Ways of framing responsibility-sharing vary according to their position along the continuum

Those in authority:
- Direct what to do
- May provide means

Risk management is:
- Formal
- Centralised

Normative justification:
- "*Those with the greatest capacity should manage the risk*"

Assumptions:
- Those with authority have the greatest capacity to manage risk
- People trust authorities to take care of the risk

Blythe J. McLennan & John Handmer (2012): Reframing responsibility-sharing for bushfire risk management in Australia after Black Saturday, *Environmental Hazards*, 11:1, 1-15

How can law help

'… it is the mission of disaster law to increase the preparedness of all social institutions, including official and nongovernmental actors, to anticipate sudden, calamitous events, and to bring the optimal portfolio of legal rules to bear when such events occur.'

J. Chen (2011) 'Modern Disaster Theory: Evaluating Disaster Law as a Portfolio of Legal Rules' *Emory International Law Review*, Volume 25.

The role of law

- Other disciplines help explain human behaviour, how and why communities and individuals behave the way they do and how to encourage change.

- Law is unique because it can be used to compel others to act, and can authorise agencies and groups to make binding decisions for their communities.

Some fundamental legal issues will not change…

- Australia's federal structure, including local government.

- Competing values will be open to negotiation.

- The independent courts will stand between governments and citizens; not as a tool to advance government policy.

Some legal barriers

- The Commonwealth has limited capacity to direct policy.

- The federal structure can lead to inconsistencies, but also experiments.

- Local governments must implement State policy.

- 'Communities' lack legal standing – standing belongs to individuals, corporations, governments.

Who has legal obligations?

- Responsibility may be shared, but only states and agencies have legal obligations.

- Residents and individuals do have rights that they can enforce in the courts; (consider *Vaughan v Byron Shire)*.

Self Reliance ← Responsibility continuum → **Central Authority**

- Disputes are likely to end up before the Courts, where efforts by communities to 'share responsibility' and develop 'resilience' impose costs and burdens on individuals
- Are we prepared to let people stand, and fall, by their own or collective decisions?

Law could impose strict obligations:

- To maintain hazard mitigation zones;

- To impose obligations similar to work health and safety law;

- To impose costs for hazard response where people have not acted to mitigate their risk

Restricting liberty

- Are such options politically acceptable?
- How much is the community prepared to pay, both in dollar terms but also in terms of impingements on liberty, to achieve safety?
- How much responsibility are governments willing to share, and individuals accept?

Converting the high ideals into action

- Will require input from a number of disciplines of study and practice.
- The law is one tool that can be used to give effect, and in particular binding or obligatory effect, to these ideals but giving effect to these ideals through law is problematic.

Identifying necessary legal change

is only the first step; there needs to be the political will to make the necessary changes, supported by an electorate that is willing to support and accept the burdens that the law imposes.

Questions, comments, discussion?

Thank you.

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