Today’s symposium marks four decades since New Zealanders received the much celebrated Woodhouse Report. During this time they may not have been actually reading the Report, but they have been referring to it throughout. To be fair, it is hard to read a document when you cannot even find a copy; but as of today, at least, the Report has been awakened from its archival slumber.¹ Now that we have it available, what better time than this morning to take a fresh look—for there is much life left in this historic treasure.

In celebrating this important document, my plan is to downplay the history, for the most part, and to talk more about the future. Back in 1967, the futuristic elements of the Report were truly breathtaking, but they are scarcely less so today, especially after so many elements of the ACC scheme have now entered into conventional wisdom.² The Woodhouse Report reveals a deeper vision that was only partly implemented in that scheme, and today the Report is striking for its trove of provocative ideas waiting to be recovered. It is entirely possible that this Report, so widely honored in relation to the past, may turn out to be even more useful over the next four decades.

In recovering these themes for the future, let me depart somewhat from the usual ACC script. Of course, it was Sir Owen himself who taught us the importance of going outside the terms of reference.³ If he had not had the courage to do so some 41 years ago, none of us would be here today.⁴ So I’m putting aside the brief that was handed to me this morning. Despite the sponsorship of today’s event by faculties in both law and economics, let me give my view that most experts in these two fields have regarded the Woodhouse Report in overly narrow terms (present company excepted, of course).⁵ The Report states several times, in clear language, that it is not trying to solve a legal problem, but rather a social problem. As for economics, the Report invokes administrative efficiency as one of its core principles. But the meaning of efficiency here follows from the specific social goals embraced by the Report, unlike so many economic pronouncements in more recent times, which treat “efficiency” as some neutral or technical criterion. For Woodhouse, efficiency is a means to a desired social end, and not the end itself.

In the various presentations yet to come today, I’m sure that both legal and economic perspectives will be put to good and proper use. (I see able lawyers and economists in the room, all ready to defend their professional honor—and I’m sure they will do so.) But my contrarian message this morning points to different perspectives that need to be taken seriously in future debates. The futuristic aspects of the Report are closer in spirit to these other fields, three in number, which were either emerging or maturing at

² ¶33.
³ Terms of reference page.
⁴ Terms of reference page, revised.
⁵ ¶157.
the time the Woodhouse Report was written. These three are the fields of public health, environmental policy, and social network theory, all of which share the basic vision that was most distinctive within the Woodhouse Report. That vision, which was expressed in some of the most frequently quoted but least understood parts of the Report, had a prophetic quality. It placed the injury problem into a wider social environment for personal risk, where the risk of harm is at once statistically inevitable and randomly assigned. Such harms arise from the matrix of community activity, in which all participate, but where the harms are distributed unevenly across individuals and families. As we’ll see in a moment, this condition is precisely the same insight that led to important breakthroughs in the fields of public health and environmental policy. The key point is the description of a new social condition found in affluent post-War societies, a condition marked by interdependence in society and in industry, by causal complexity, and by uncertainty or randomness in negative consequences. As described in the Woodhouse Report, this important new social condition calls for rethinking our older ideas about risk and responsibility.

Before saying more about this central vision, we must first put aside some more familiar readings of the Report, which, not surprisingly, reflect the mainly legal and economic preoccupations of the last four decades. Let me break with those prior discussions by invoking various “myths” that have surrounded the mainstream ACC debate as conducted by lawyers, economists, and others.

(1) legal crisis: the myth that the Woodhouse Report was a response to some acute breakdown in the common law system. The truth is far more interesting than this, as the Report suggests in defining its topic as primarily a social concern, following a long decline in the legal system.

(2) social contract: the myth that sees the statutory scheme envisioned by Woodhouse as a metaphorical contract, in exchange for the loss of common law rights. The image of a binding contract or bargain does figure in early political debates on ACC, but it was not part of the original Woodhouse vision, which has a far more positive sense of social equity, replacing a moribund common law.

(3) compensation: the myth embedded in the very name ACC—that its primary purpose is to compensate injury victims. Woodhouse certainly had much to say about compensation, but he treated it as only one element in a broader community response to personal injury. His framework makes compensation a tertiary concern, after prevention and rehabilitation.

(4) litigation: the myth that fearless litigators will help rescue ACC from the predations of heartless bureaucracy and cost-cutting legislators. Whatever fleeting truth might attach to this idea, it requires us to ignore the main thrust of the Report, and to risk substituting the disease for the cure.
(5) markets\textsuperscript{11}: the myth that has come to dominate the law-and-economics literature in the four decades since Woodhouse, based on the hope that safety and prevention can be addressed by turning them into market commodities. Today the Woodhouse Report represents one of the strongest counterarguments to this vain and misguided hope.

If the Woodhouse Report deals with a fundamental social question rather than a legal question, how does it define that social question, and how does it resolve it?\textsuperscript{12} A small historical digression may help set the stage. We need to remember that the 1960’s were also a time when the field of public health was making significant progress, particularly through new statistical approaches to understanding chronic diseases with multiple, interacting causes. During this same decade the environmental movement gained new political strength, after publication of Rachel Carson’s \textit{Silent Spring} in 1963. Finally, there were important changes in thinking about social welfare, as noted in the 1970’s by Sir Geoffrey Palmer (then Professor Palmer), who was teaching and writing on the subject of social welfare legislation.

In the past five years public health approaches have taken on greater relevance to the ACC scheme, particularly with the introduction of a National Injury Prevention Strategy—which is a vital first step toward moving ACC into the future.\textsuperscript{13} Public health, in its impact on public policy, treats prevention as the central pivot; it treats rehabilitation and even compensation as derivative forms of prevention (“tertiary prevention”). Public health brings a unified research perspective to the study of injuries and disease alike, using one set of terms and methods to cross the old barriers between accidents and sickness. Public health has more sophisticated tools than either law or economics for exploring the complex social interdependence emphasized by the Woodhouse Report.\textsuperscript{14} It deals routinely with complex causes, multiple agents and dynamic environments, all of which present insuperable challenges for the old common law categories, and all of which ensure the imperfections of real markets. For public health, the search for causes is not a retrospective process of attributing blame, but rather a search for strategies to reduce future harms, using a range of initiatives from collective action to individual action. Finally, public health is increasingly sensitive to structural changes in economy and society, as seen for example in its emphasis on the so-called “health transition”: that important shift in disease profiles in developed societies, as chronic diseases become more pervasive than infectious diseases.\textsuperscript{15} A public health approach to personal injury would note the comparable transition from traumatic injuries with simple causes toward more complex injuries, which emerge over long periods of time from multiple, overlapping sources—the more chronic forms of disability that have confounded injury systems around the world.\textsuperscript{16} Putting all these themes together, the boundary between injury and illness becomes every bit as artificial as the Woodhouse Report originally insisted. If both kinds of incapacity stand on comparable social and moral ground, as Woodhouse suggests, the public health perspective provides a unified framework for

\textsuperscript{11} ¶491.
\textsuperscript{12} ¶140.
\textsuperscript{13} ¶318.
\textsuperscript{14} ¶97.
\textsuperscript{15} ¶58.
\textsuperscript{16} ¶17.
responding to injuries and illness, aimed primarily toward prevention and rehabilitation.17 If there are reasons to hold off on extending compensation to both groups, the same cautions may not apply to rehabilitation, as Woodhouse clearly indicates.

Shifting now to the perspective of environmentalism, we have come a long way from *Silent Spring* in the 1960’s to the current climate discussions in Bali. We are certainly more aware today of the challenges to social governance that come from taking an ecological point of view on human problems, perhaps overwhelming challenges.18 In the 1960’s this ecological perspective showed the same concern for interdependence, complexity, and uncertainty that were taken up by public health. Whether the issue was health concerns from pesticides, the ecological effects of acid rain, or the loss of biodiversity, one can see these emerging problems from the 1970’s as revealing a new pattern of interdependence, similar to what Woodhouse had found in the distribution of social risk. Given that interdependence, we must somehow balance the benefits of modern progress against the inevitable costs to the human and natural environment.19 Those costs may be statistically inevitable, but their distribution will appear quite random, based on our limited knowledge of underlying causal forces. These key terms from the Woodhouse Report find a natural home in describing the main themes of second-wave environmentalism. The ethical parallels are equally striking, as Woodhouse concludes that “the inherent cost of these community purposes should be borne on a basis of equity by the community.”

In the past twenty years, New Zealanders have brought environmental logic into the injury debate through the concept of “system accidents.” This odd-sounding expression has gained acceptance in the international literature as well, ranging over topics like nuclear safety, toxic pollution, and medical injuries (what New Zealanders call “treatment injuries”). For ACC and many other compensation schemes, system accidents are often located at the margins of “normal” injury claims. As with that other marginal category, “gradual process,” system accidents are regarded as rare exceptions to more conventional cases of personal injury, which are said to follow linear paths of causation and to reflect individual lines of responsibility.

We find a different view, however, in the 1967 Report, which sees virtually all personal injuries through the prism of the systems model.20 In a radical departure from older private law assumptions about causation and responsibility, the Report describes individuals, in their everyday activities, as participants in complex networks of production and consumption. This level of interdependence brings us to the key Woodhouse principle of community responsibility, which calls for a public response no matter which causes may contribute to incapacity. Take, for example, the driver of a car who falls asleep at the wheel. Even this event may be seen as part of a “system” or network of causal relations, which includes road design, automobile safety devices, work pressures, community development, and many other considerations. This orientation to complexity has never fit easily with the compensation scheme that came to be known as ACC, which in many respects is still rooted in the simpler causal

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17 ¶360.
18 ¶89.
19 ¶68.
20 ¶56.
models of an earlier day. The basic logic of complex networks, causal webs, and interactive systems fits quite well with the public health perspective, but it cuts against the entire legacy of common law, which is far more comfortable with single lines of causation, with discrete connections between plaintiff and defendant, and with a short list of interpersonal duties, whether based on doctrine or on moral philosophy. In the Woodhouse Report, where the purpose is said to be social rather than legal, the basic vision points us in a different direction, different from private law concepts of causation and neo-liberal moral theory. Over the past four decades, one of the tensions between ACC legislation and its founding vision has been the desire by some lawyers and economists to shift the compensation scheme back to those older patterns of individualism borrowed from common law and market models.

The Woodhouse Report points to the future by describing the fate of each and every one of us, taken together and separately, as we face inscrutable risks that are endemic to our modern environment. We may be fully autonomous actors, but our choices are shaped by opportunities and risks that are determined in part by larger economic forces, by public policies and agencies, by our cultural institutions, by community networks, by family support systems. Within this dense web of actors and structures, our society must learn to manage complex risks through a wide range of methods. We will never abandon the practice of holding individuals accountable, both legally and morally; but that narrow focus is no longer sufficient in our interdependent world. Indeed, it may even be harmful for promoting effective prevention. The older individualism of common law and market economics is a poor guide to our current condition, when it obscures our relation to structures and systems. A clear example of the need for system change can be found in the area of treatment injuries, and the broader effort to limit preventable injuries in medical settings. In 2005, ACC legislation was amended to achieve better coordination between compensation payments and risk reduction, where the prior emphasis on medical negligence was standing in the way of improving patient health and safety. Pursuing safety at the level of systems is counterintuitive for most of us; when things go wrong it is natural to place blame on individual actors—a practice widely encouraged by individual victims, by plaintiffs’ attorneys, by champions of market economics, and by readers of the Sunday newspapers.

Pursuing health and safety at the level of system design is never simple. Sometimes the risk of injury is not entirely eliminated but rather displaced from one group to another. An effective vaccine for controlling influenza will be much in demand in coming years, should the bird flu ever arrive; but with all such measures there is a risk of harmful side-effects for a random but statistically inevitable number of participants. Causal complexity and uncertainty make it difficult for institutions to govern in a completely neutral way. Based on four decades of environmental thinking, we must allow that the risks of injury, disease, and environmental loss can be reshaped, perhaps reduced, but never eliminated. The endemic nature of risk calls for a new kind of response from the community as a whole, as the Woodhouse Report went to great efforts to describe.

\[\text{\textsuperscript{21}}\textsuperscript{52.}\]
\[\text{\textsuperscript{22}}\textsuperscript{89.}\]
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\[\text{\textsuperscript{24}}\textsuperscript{68.}\]
The ethical dimension of these social challenges plays a central role in the 1967 Report, with its principle of community responsibility. While the Report gives several distinct meanings to this phrase, there are two main ideas that follow from the basic vision of complexity and social interdependence. First is the idea that the community as a whole must respond to risks faced by random individuals caught in the web of complexity. Second is the obligation of that community to restore the individual victim to the social networks from which he or she has fallen, both for the benefit of the individual and for society. One can describe community responsibility as a type of social welfare; but this is not “welfare” in the traditional sense of 1967, and certainly not in the pejorative sense of 2007. With the hindsight of four decades, it seems clear that Woodhouse was pointing in new directions, even though the ACC scheme has come to be associated with the “old” welfare state that now lies deep in New Zealand’s past. Later Royal Commissions on Social Security and on Social Policy seemed to miss the radical implications of community responsibility, as the winds of neo-liberalism were sweeping through the New Zealand political landscape. From our perspective in 2007, we can now see that “community responsibility” anticipated the 1980’s concept of “sustainable development,” and also the more recent philosophy of supporting human “capabilities,” both of which are now established in international discussion. In the Report itself, the principle of community responsibility is the foundation for two companion principles of “real compensation” and “complete rehabilitation.”

The theme of social interdependence, so prominent in the 1967 Report, was pointing toward the future, but it has struggled against strong headwinds from the regressive tendencies within common law and market economics. For many legal and economic commentators on ACC, the older model of individualism raises doubts about the very idea of social interdependence. Even as the insights of public health and ecology have taken hold in international debate, the ethical implications of community responsibility have not yet found acceptance. When political controversies besieged the ACC scheme, especially at the time of benefit cutbacks in the early 1990’s, the battle over benefit levels was fought out between interest groups representing beneficiaries, on the one hand, and opponents of state entitlements, on the other. Proponents of market-driven policies argued that private insurance could better provide compensation for stated types of injuries; while proponents of personal choice argued that individuals should decide for themselves whether to purchase personal insurance for an array of potential injuries or diseases. Such arguments ignore the larger ethical principles at the heart of the Woodhouse vision. According to those principles, compensation benefits are not gratuitous welfare payments to needy individuals. Indeed, compensation is only one part of a broader response by the community as a whole, once the community has absorbed the facts of social interdependence.

One difference between 1967 and today is that ACC is now a going concern, with accomplishments and challenges that have to be assessed within the constraints of existing legislation and current political possibilities. Fixing problems within the current system must deal with some constraints that Woodhouse would not have

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25 ¶5.
26 ¶42.
27 ¶316.
28 ¶488.
accepted, including such matters as allowing employers to self-insure, and indeed the whole structure of levies, including the use of risk classifications for employers, which Woodhouse specifically rejected. In returning to the Woodhouse vision, I do not mean to suggest that today’s problems can be wished away; clearly they need to be discussed, and will be discussed in the course of the day. Reconnecting with the Woodhouse vision is important at a separate and overarching level, having to do with the long-term future of the system. If current problems need to be corrected, what should be the guiding principles? If the scheme itself needs to evolve, then toward what ends, and through which institutions? Two examples of broad change in the past five years suggest the influence of the Woodhouse vision: the adoption of a National Injury Prevention Strategy, and the 2005 amendment dealing with treatment injuries in medical settings. But larger scale change needs to be somewhere on the agenda, as we think about the coming years and decades, and not just the time period leading up to the next election.

Community responsibility is a future-leaning concept of social well-being. It does not refer exclusively to compensation payments, and indeed may point more immediately to prevention and rehabilitation. Community responsibility was a new concept of social solidarity, perhaps better suited to this new century, based on the diffuse but interdependent patterns of social relations. This most important Woodhouse principle anticipated a later trend in international discussion to conceive of welfare in terms of developing human “capabilities” rather than simply ensuring wealth and income. In the area of prevention, community responsibility is directed as much toward managing the social distribution of risk as it is to reducing the final toll of personal injuries. Public policies for managing risk distribution must be defined at the macro level as well as micro. They require us to integrate a dense web of institutions and behavior to build more sustainable economies, communities, and families, while also advancing the capabilities of individuals through rehabilitation, education, economic support, and other social strategies. Risk distribution as a social goal is not limited to the risks of physical incapacity, but can apply also to risks that threaten a person’s full participation in society, community, and family. In the twenty-first century, policies aimed variously at prevention, rehabilitation, and compensation presuppose a larger policy context that reaches into economic development, environmental control, and public health.

No matter how cautiously we develop this notion of community responsibility, we have to ask frankly how policies of such breadth can be planned out in today’s climate of political distrust and economic caution. It is not realistic to impose broad social engineering through a strong centralized state. But nor is it realistic to defer these various community responsibilities to the invisible hand of markets—not in today’s heavily networked economies. Forty years after the Woodhouse Report, the whole state-versus-market debate has outlived its usefulness, although it still figures heavily in partisan debates surrounding ACC. It clings to life especially in the controversy over how ACC benefits should be administered—by private corporations or by a single state agency. I realize that this choice may be very important for institutional reasons, as it may prove to be the tipping point in ACC’s whole future as a legislative scheme. But in the context of community responsibility, this question of private

29 ¶490.
30 ¶314, 467.
claims management remains on the surface of far deeper issues that New Zealand will need to face in coming decades.

My last slide is the only one that does not come from the Woodhouse Report. I cannot resist citing another great judge—this time the American Supreme Court Justice Louis Brandeis, writing 75 years ago. Boldness is what New Zealanders got 40 years ago, but it is also what we all need today as we look ahead to the next 40 years. My purpose this morning has been to urge you read the Woodhouse Report (or reread it if you are a veteran of these debates) with an eye to the future. As the morning speaker I have the luxury of raising broad questions to which I do not have to supply the answers. The way forward clearly includes making the right incremental changes to the scheme as we know it today. It includes examining critically some of the possible changes the scheme might face if there is a change of national policy. But above all it requires the same kind of creativity and analytic clarity that we rediscover in this remarkable Report. One can say that 1967 was not a propitious time for raising comprehensive policy initiatives, coming just one year after the “end of the golden weather” (to use Brian Easton’s chronology). But today the failure to think comprehensively may have serious costs of its own. So let us celebrate the revival of the Woodhouse Report as an inspiration for the next generation of thinkers.

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