

Global Justice and the Failure of Deliberative Democracy

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Later in his life, Pablo Picasso would say that he had long tried to convince his public about the truth of his lies.

I read the Documenta11 endeavor as a precious opportunity to begin exploring the multiple truths of the singular lie of "democracy," that is, the lie that democracy constitutes self-governance, governance by, for, and of the people. Even if this may seem partially true of nation-societies, it is unlikely ever to be the case with a society of states. In what ways, then, may we speak of *global* "democracy" and "justice"?

Democracy "unrealized" is perhaps not the same sort of happening as may be described under the rubric democracy "betrayed." Either way although the differences in these two ways of expressing the situation do matter, I am not sure that it is anything but bad news for the deprived, dispossessed, and disadvantaged peoples of the world. The number and generations of such people, and the intensity of their suffering, provide a rough indicator of the state of the world, regardless of the appellation democracy "unrealized" or "betrayed."

I must confess that I have begun this discourse already rather badly, though not for want of good faith. I have used two terms — *suffering and peoples* — that, for a variety of reasons, do not characterize the discourse of democracy or the approaches to global justice.

Notions of social/human suffering are rarely foregrounded in the discourse on deliberative democracy. Perhaps Richard Rorty is not too far wrong in suggesting that literature (in particular, fiction) rather than high democratic theory is more attuned to the reality of suffering.¹ Theological discourse inaugurated by a Gautama Buddha or a Thomas Aquinas, I believe, provides an even more munificent source of meditation on the sufferings of the just because it encourages reflection on the contradiction between piety and justice; the resulting "argument from evil" is empowering for its interlocution of the ways of the Divine, with tremendous spillover effect on the legitimacy claims of mere earthly power. The questioning of the injustice of gods raised in the discourse on theodicy remains an important resource for envisioning better human futures under the conditions, circumstances, and conjunctures of humanly ordained sovereign power and resistance. But this is a theme beyond the bounds of my current agenda.

I do not wish to suggest that contemporary forms of discourse on deliberative democracy altogether ignore the fact of human/social suffering, or its causative structures. I do wish to suggest that the discourse remains, on the whole, sanitized and bloodless. Even when concerned with catastrophic practices of cruelty, representations of terror and violence, in the main, provide adornments for the domain of high political theory. On these registers, human/ social suffering features abstractly as a question of justifications for inequalities or for the universality of human rights. The voices of human suffering, the power of lamentation of the violated, their creative critiques of global domination, and ways to transcend these, do not simply emerge in this discursivity.² When the figure of human/social suffering emerges, it ultimately does so in discursively instrumental ways. One often feels, with Ulrich in *The Man without Qualities*, that all "that finally remains is formulas. What they mean in human terms is hard to say; that is all there is."³

The question always is: whether a fuller advertence to the voices of human suffering enables any different kind of theorizing concerning democracy or justice. Is the Rawlsian difference principle just a formula, devoid of "meaning in human terms"? Would taking suffering seriously produce a new episteme for the production of knowledges concerning "democracy" and justice in ways that generate an ethic of fiduciary thinking oriented toward the transformation of structural causes of global injustice and human violation? Epistemic theories concerning democracy are not conative; they do not carry — unfortunately for the suffering humanity — any obligations for thinkers to intervene, so as to enact their beliefs concerning justice in real-life situations. The theoretic hope, at its very best, lies in the potential for construction of realistic utopias, in spite of the persistence of "dreadful evils" and the "demonic possibility" of Holocaustian political practices.⁴ This hope is also at the same time a repository of human hazards for peoples living under actually existing theories about "democracy," "rule of law," and "good governance." One has only to revisit the recent histories of the Cold War and of contemporary globalization to grasp the problem of the social costs (in terms of hurt and harm, sorrow and suffering caused to peoples) incurred by some performances of "democratic" theorizing.⁵

The very conception of "people" or "peoples" has become increasingly problematic. In these post-modern times, we now ask: Do "peoples" exist as such? Do they exist as amorphous "multitudes"?⁶ And, if so, when under the contexts of doing high theory do they somehow aggregate into "human-kind"? Is the concept "peoples of the world" viable or useful? What then follows? Are there classes/clusters of people, some of whom may be said to owe duties to past and future generations? Do present generations owe duties of reparation, rehabilitation, and restitution to those whom previous generations so severely, and so savagely, colonized? If so, how may one conceptualize the "contemporaneity of the non-contemporaneous"? What ethic may, indeed, justify the imposition of these duties on successor noncomplicit generations? Is the category "peoples" so radically heterogeneous as to forfeit all claims to any sensible acts of global justice theorizing? Does the notion of being "citizens of the world," divided as it is into so many orders of sovereignty, make any sense? These are not idle questions, as anyone, for example, concerned with issues of self-determination or the definitional movement in the Draft Declarations of the Human Rights of Indigenous Peoples surely knows.

What is poignant about our times/spaces of understanding is the fact that at a historic moment when the notion of "peoples" has become at last more inclusive, it has also lost its vibrancy and vitality. Hostile discrimination in state and civil society manifested in violent social exclusion (whether on the basis of race, descent, caste, gender, religion, attributes of physical/psychic impairment or disability, and sexual orientation) stands delegitimated by the endless explosion of human rights⁷ and the fecund notion of crimes against humanity.⁸ This represents, to be sure, an enormous advance in the global moral sentiment. But does it at the same time mark the advent of even an emerging global ethics of interstate relations and movements of human solidarity across the world, an ethics that marks the rejection of what Emmanuel Levinas called the "traumatism of the Other"?⁹

At the same time, practices of global and national politics — even in Euro-American states and societies, but surely not only there — as well as normative theories about deliberative democracy, result in a deep suspicion of the very notion of "peoples." The discourse on *Volksgeist* becomes catastrophic with the emergence of Holocaustian forms of politics. The replication of these forms in the post-colonial and now postsocialist killing fields makes the notion ethically suspect. No doubt, the practices of catastrophic cruelty in the many phases of the Cold War led to a deepening of this theoretical suspicion. Contemporary economic globalization has rendered obsolete/incomprehensible the languages that described, in complex and contradictory modes, the division of peoples into "classes" and "masses" that so decisively guided political destinies of the "people" just a few decades ago. What we do understand are statistical notions of "population," "persons," "citizens," "migrants," "asylum

seekers," and the languages of "interpellation" and the various modes of the constitution of "subject-positions." We also understand the languages of critical race and feminist theories that situate the self very differently from, if I may so name these, the "classical" conceptualizations of "peoples."

The moral universe animating approaches to global justice, whether liberal or cosmopolitan, is "peopled," as it were, by individuals or citizens endowed with ethical visions of social cooperation that provide, as it were, a philosophical insurance cover against predation and underwrite the justice of the basic structures of human societies, national and emergently global. It is in this context that one acclaims John Rawls' recent valiant moral endeavor at the rehabilitation of the notion of the law of peoples.¹⁰ In the standard discourse on global justice, however, "peoples" stand reconfigured along the axis of the ethic of duties of care owed to co-nationals as against, or at least very differentially, the nonnationals. Indeed, much contemporary discourse concerning global justice remains insensible outside the arc of this distinction.

Anticipations of Justice in International Law; or, What We Might Mean by Global Justice

Having thus begun in the middle, that uneasy space that defies the canons and marks the place between "beginning" and "end," allow me to plunge into perhaps the only space that remains sensible to begin "unpacking" these dense and somewhat polemical observations — namely, that "middle," innocent as yet of the "beginning" and "end," furnished by some contemporary approaches to "global justice."

But this task entails attention to some of the following issues: Is the concern with global justice unique to the moral and political theory of Western liberalism? Or does it have a prehistory? How far back in antiquity may we go in tracing the emergence of approaches to global justice? And how do we periodize the different itineraries of ideas concerning global justice? In what ways does discourse concerning justice within nation-societies shape approaches to global justice? How were the spheres of global justice delineated? These and related questions are important; in what follows, I touch briefly upon a couple of issues.

The evolution of "classical" international law was marked by a concern for justice in relations among European, or "civilized," states. It sought to provide for conditions of peace and justice within the "civilized" community of nations, no matter at what exorbitance of costs to the "barbarians" and "savages." Its doctrines of "just war" provided a framework of justification for recourse to interstate aggression; the Grotian *temperamenta belli* spawned notions about just conduct of just war, forbidding disproportionate violence and constructing sharp lines between combatants and noncombatants.

The normative history of international humanitarian law is, indeed, rich in its creation of standards of justice amidst the clash of arms. *Pacta sunt servanda* legislated an inner morality of international law of promissory relations. The doctrine of sovereign equality of states fostered some notions of egalitarian interstate relations. The Grotian doctrine of the freedom of the seas marked the beginning of the enunciation of international commons in ways that limited the arrogance of even imperial orders of sovereignty. The international law of peace concerned itself with the morality of civilized relations between states, especially felicitating conduct of international trade and commerce. The notion of *jus cogens* enacted norms of international law that marked the beginning of an enunciatory enterprise limiting powers of sovereignty; nations, free and equal, may not, even by agreement among themselves, seek to legitimate certain forms of human violation such as slavery. And (without being exhaustive) Vitoria's defense of the rights of indigenous peoples of the New World remains a fecund

source of thinking about the rights to self-determination of the First Nations and human rights generally. Vitoria also embodies the power of ethical articulation, a power he deployed against the laws of treason against the Emperor and heresy against the Church.¹¹

Contemporary discourse on global justice remains shy of acknowledging these classical enunciations of global justice. There are some good reasons for this, the foremost being the grounding of these enunciations in the tradition of Natural Law. The languages of Natural Law have long since become suspect, almost dying a "natural" death. Yet much that gets said today concerning global justice is indeed not far removed from the discursive tradition of secular natural law. "Classical" approaches to global justice, moreover, are regressively Eurocentric and deny equal human worth and dignity to "uncivilized"/"colonial" peoples. Indeed, they often justify a Divine Right to Empire. These furnish good reasons to handle with care the approaches to global justice developed by the founders of modern international law. I am not quite sure that these reasons are *sufficient* to justify wholesale rejection of the classical anticipations of global justice. I also believe that such a rejection may deprive us of an understanding of the moral architecture of interstate relations envisaged by earlier doctrines of the international law of peace and war and even prevent us, at times, from grasping continuities between classical and contemporary acts of theorizing global justice.

This last theme is, to my mind, of some importance. Were we to ask what distinguishes classical from contemporary approaches to global justice, it may be said fairly that while the former are *regressively* Eurocentric, the latter remain, at best *progressively* Eurocentric. This, if the distinction were granted at all, constitutes indeed some considerable advance. But even progressive Eurocentrism does not acknowledge the ethical creativity of the non-Euro-American world.¹² It does not fully acknowledge the *creationist* power of theory and practice of the right to self-determination, the ways in which these exposed the poverty of moral justification for colonialism and imperialism. Nor do progressive Eurocentric approaches cognize the ways in which non-Euro-American peoples modified colonial liberal conceptions of rights in some basic ways.¹³ For example, the Indian Constitution innovates, inaugurally for postcolonial constitutionalism, the liberal theory of rights by specifically recognizing that assurances of rights should avail against rights-violative civil society formations; it provides a mandate for amelioration, even elimination of rights-violative aspects of the majority Hindu religion; it innovates affirmative action programs not just in relation to education and public employment but in the composition of its federal and state legislatures. India's great constitution-maker, and thinker, Dr. B. R. Ambedkar, raised the most powerful critique of classical liberal theory of human rights.¹⁴ Mahatma Gandhi's notion of *just* freedom, not just *freedom*, articulated the distinction between the exercise of freedom and predation; he insisted that only those forms of freedom may be just that can be exercised in ways nonthreatening and noninjurious to the Other; he provided a thoroughgoing communitarian critique of Western liberal forms of parliamentary democracy and emerged as a founder and forerunner of realistic utopias for a postindustrial society and world. One of the most lamentable features of current theorizing on deliberative democracy and global justice consists in cultivated ignorance concerning ways in which decolonizing nations enriched and extended human discourse.

Let alone at the level of history of ideas, this creativity in its concrete forms through global diplomacy does not find a mention. Contemporary discourse on global justice does not pause to consider the specific contributions of the Third World such as the notion of "the common heritage of humankind" (first developed in the context of the law of the sea conventions), the United Nations Declaration on Social Progress and on the Right of States and Peoples to Development, the Declaration on the New International Economic Order, and the struggle over a just World Information Order. These articulate alternate conceptions of global justice in ways that raise considerations of a modicum of equity in international economic relations.

I mention all of this to signal legitimate anxieties concerning the inherently inegalitarian ways of articulation of visions of global justice that deny the dignity of discourse to the Other of Euro-American thought. With this caveat, I now address the moral universe of some eminent articulators of visions of global justice.

The Second Original Position in the Construction of the Law of Peoples

An important way of constructing notions about global justice is to extrapolate the conceptual repertoire of doing theories of justice in nation-societies to international contexts. This is no doubt a complex and often daunting task, but one that minimizes cognitive dissonance, the trauma of moving from singular ethical theory habitats to a pluriverse of conflicting conceptions of the good life and multiple positive and critical moralities. The epistemic economies of scale that such acts of theorizing yield are not to be ignored. At the same time, I suggest that we think of these endeavors as an ineluctable consequence of globalized knowledge production, that is, the universalization of the Euro-American habitus/doxa of doing moral and political philosophy. Let us first approach this transposition on its own terms.

Many attempts have been made to extend John Rawls' maxims of justice and prescriptions for a just basic structure of society to the international arena. Foremost among these are the pioneering works of Charles Beitz and Thomas Pogge.¹⁵ Invoking an extension of the Rawlsian original situation to international society, Beitz proposed two major principles of global justice. The first, called "the resource distribution principle," addressed resource-impooverished societies in ways that suggest/impose distributive obligations on the resource-rich societies such that these provide "assurance to persons in resource-poor societies that their adverse fate will not prevent them from realizing economic conditions sufficient to support just social institutions and to protect human rights."¹⁶ Crucial to this view is the moral insight that the "appropriation of scarce resources by some requires a justification against the competing claims of others."¹⁷

Beitz's second principle, called the "global distribution principle," extends the famous Rawlsian "difference principle" to the community of nations. A global difference principle ought to exist in a now globalizing society, with its highly complex divisions of labor in an international post-Fordist system of production. On this version, global inequalities are just only insofar as they work to the advantage of the worst-off peoples. For reasons of space, I do not address here Pogge's broadly similar conclusion animating a proposal for a Global Resource Tax;¹⁸ nor do I address Martha Nussbaum's "capability thesis,"¹⁹ which entails an important notion that all citizens of the world are entitled to the free and equal exercise of their basic capabilities.

I am aware that ethical intuitionism is never enough and, further, that any elaboration of these moral insights forever remains problematic. I ought however to point out that contemporary international law stances on sustainable human development and human rights do in fact concretize, even validate, these insights. For example: the Law of the Sea Convention (1982) takes special account of the resource-impooverished landlocked states, as does, in a vastly different context, the UNESCO Declaration on the Human Genome and Human Rights (1999), which asserts the immorality of privatizing for profit the results of various human genome projects. So do the working arrangements now in place following the Rio principles of sustainable development, or treaty regimes concerning

peaceful uses of outer space and celestial objects. The inner morality of positive international law treaties and related enunciations of newly emergent human rights in the global commons seems to me to respect Beitz's crucial insights.

Beitz's (and Pogge's) principles and proposals are based on an extension of Rawls' original position in which rational individuals, under a veil of ignorance, arrive at a certain rational and reasonable consensus on specifically "fair terms of cooperation for regulating the basic structure of ... society."²⁰ In *The Law of Peoples*, Rawls constructs a second original position in which free and equal peoples, representing liberal societies, under a veil of ignorance, rationally and reasonably (for the right reasons) choose "ideals, principles, and standards"²¹ for the law of peoples. What guides peoples in the second original position are "the fundamental interests of democratic societies, where these interests are expressed by the liberal principles of justice for a democratic society."²² The actors in the second original position are liberal peoples possessed of a "moral nature," bound by "common sympathies," and living under a "reasonably just constitutional government that serves their fundamental interests."²³ The principles of justice, rights, and social cooperation that peoples form comprise the following assemblage: "1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and understandings. 3. Peoples are equal and are parties to agreements that bind them. 4. Peoples are to observe a duty of non-intervention. 5. Peoples have a right to self-defense but no right to instigate war for reasons other than self-defense. 6. Peoples are to honor human rights. 7. Peoples are to observe certain specified restrictions in the conduct of war. 8. Peoples have a duty to assist other people living under unfavorable conditions that prevent their having a just or decent political regime."²⁴

There is not a great deal to distinguish these principles from the standards already obtaining in positive international law. Indeed, the latter seem to be more liberal than Rawls' law of peoples would seem to allow; for example, he narrows the range of human rights to basic rights: the right to life (viewed as the right to the means of subsistence and security); to liberty (freedom from "slavery, serfdom, ... forced occupation" and liberty of conscience "to ensure freedom of religion and thought"); to property ("personal property"); and to "formal equality as expressed by the minimal rules of natural justice."²⁵ His law of peoples thus reinvents human rights, at least from the perspectives of international human rights law and jurisprudence, or the "living law" of human rights.

On the other hand, the principles of the law of peoples reinvent human rights far beyond the international law norms summated in Principles 1, 4, and 5. Rawls suggests that peoples in the second original position would not "tolerate outlaw states" and would be justified in using force, if necessary, against these, for such states are "aggressive and dangerous; all peoples are safer and more secure if such states change, or are forced to change, their ways."²⁶ It must be noted that Rawls is here guided by a rather complex understanding of toleration, and the law of peoples prescribes active intolerance for the category "outlaw" state. Apparently, the law of peoples differs from positive international law in classifying the "political and social world" within which tasks of global justice have to be performed. There are

five types of domestic societies: the first of these is *liberal peoples* and the second, *decent peoples*. The basic structure of one kind of decent people has ... a "decent consultative hierarchy" and these people I call "decent hierarchical peoples"; the other kind of decent people is simply a category I leave in reserve. ... In addition, there are, third, *outlaw states* and, fourth, *societies burdened by unfavorable conditions*. Finally, fifth, we have societies that are *benevolent absolutisms*; they honor most human rights, but because they deny their members a meaningful role in the making of political decisions, they are not well-ordered.²⁷

Global justice, then, may not be conceived by the law of peoples on the horizontal formal principle of the sovereign equality of all states. The law of peoples is the law of the society of peoples, well ordered and not so well ordered; liberal and not so liberal, well endowed and burdened by unfavorable circumstances.

I must say, though here only in passing, that I find worrisome and perplexing the constant shift from *people* to *states* and to *societies*. Clearly not equivalent, the relation among the three categories remains undifferentiated. The phenomenon of so-called puppet or vassal states, especially during the Cold War (but not only then), for example, raises intractable ethical questions concerning the rights of states as "political communities" and the rights of political communities within, and against, the "state"²⁸ that remain undifferentiated in the Rawlsian typology. It now adds to the burdens of ethical theory the problematic of the "outlaw" states/societies/peoples. *Are outlaw states also exemplars of outlaw peoples?* The moral difficulty thus posed is immense, as such equivalence will end up justifying the ethnocide of outlaw peoples! That difficulty scarcely vanishes when prescriptions of global justice are construed as to covertly endorse tyrannicide (recall the justificatory statements concerning attempts and designs of assassination directed against President Gaddafi or Saddam Hussein). The difficulty with tyrannicide is that if states, or groups of states, are allowed this privilege, so must peoples. For that to happen in real life, the laws against treason and sedition would have to be characterized as inherently unjust and the acts themselves worthy of justifications available to forms of civil disobedience. Understandably, the Rawlsian presuppositions concerning global justice do not go this far!

Nor do I address here Rawlsian prescriptions concerning intolerance of "outlaw" states, especially his explication concerning the "well-ordered peoples' right to war,"²⁹ except to say that the ideal criteria constructed by Rawls to define outlawry — whether in terms of human rights or "meaningful participation" in governance — are scarcely an all-or-nothing type of attribute; outlaw configurations characterize all states and societies, even when they may be said to be, and in fact are, writ large on some pathologies of political power. This does not diminish the gravity of the situation everywhere, including especially the "well-ordered societies," in which the rule of law and reign of terror (or as Karl Marx put it, the "force with phrases" and "force without phrases"³⁰) permeate, at least from the perspective of the violated, the rule of law with aspects of the gulag state. I also remain unconvinced concerning the imagination of global justice that measures people's struggles and aspirations within the prison house of conceptions of liberally well-ordered societies, constituted by a terminal view of human history, a worldview bereft of any suggestion concerning alternatives to global capitalism, a worldview that undergrids the privileged discourse on democracy and justice. These are issues that require careful elaboration, a task surely for another day.

Of What Remains in Global Justice: Duties of Assistance

What I must address here is the severity of Rawls' conceptualization of duties of assistance arising out of his preferred conception of global justice. On his conception, with which it may be reasonable to agree, the law of peoples "holds that inequalities are not always unjust"³¹ and that it does "not matter how great the gap between rich and poor may be" so long as "the least advantaged ... have sufficient all-purpose means to make intelligent and effective use of their freedoms and to lead reasonable and worthwhile lives."³²

Similarly, in the basic structure of the Society of Peoples, once the duty of assistance is satisfied and all peoples have a working liberal or decent government, there is again no reason to narrow the gap between the average wealth of decent peoples.³³

This view then leads to a rejection of the strong versions of global distributive justice. Rawls insists that for peoples in the second original position, the Beitz-type formulations will lead to "unacceptable results."³⁴ The duties of global justice should be minimal and extend transitionally ("not continuously without end"³⁵). The duties in any case are owed "until all societies have achieved just liberal or decent basic institutions."³⁶ They cease thereafter, for to extend them would amount to an interminable and paternalistic denial of, and affront to, the dignity of the law of peoples. The duties, such as they are, extend only to peoples of "burdened societies" to enable, even empower them to "become full members of the Society of Peoples and to be able to determine their own future for themselves."³⁷ Thus, duties of assistance have as their *target* the "raising of the world's poor until they are either free and equal citizens of a reasonably liberal society or members of a decent hierarchical society." Duties of assistance also have a cut-off point "since for each burdened society the principle ceases to apply once the target is reached."³⁸

Given all this, I find it difficult to understand Rawls' rather summary dismissal of Beitz's "global distribution principle." He acknowledges that if "a global principle of distributive justice for the Law of Peoples is meant to apply to our world as it is with extreme injustices, crippling poverty, and inequalities, its appeal is understandable."³⁹ His concern, rightly, relates to the persistence of such a principle, when "applied continuously and without end — without a target ... — in the hypothetical world arrived at after the duty of assistance is fully satisfied."⁴⁰ That theoretical assumption here marshals the might of a counterfactual, the assumption that the "well-ordered societies," in the first place, would have followed the duty of assistance with an unwavering fidelity. It is this that then enables him to distinguish his conception of global justice from the one advanced by the "cosmopolitan view," which remains concerned with the "well-being of the individuals, and hence with whether the well-being of the globally worst off person can be improved."⁴¹

The law of peoples, however, remains concerned not so much, or at any rate directly, with the "well-being of the globally worst off person," but rather with the concern to elaborate "the foreign policy of liberal peoples" in ways that "act gradually to shape all not yet liberal societies in a liberal direction, until eventually (in the ideal case) all societies are liberal."⁴² Relating foreign policies of Euro-American societies to tasks of justice in this way is an inherently unenviable enterprise. Rawls writes in the aftermath of Operation Desert Storm, and we read him now in the midst of Operation Infinite Justice/Enduring Freedom. These horrors, now "promising" a second round of performances of military prowess by the so-called Global Coalition against Terror aimed at the "outlaw" societies, describe our "international political world."⁴³ At the end of the day, then, if according to Rawls the cosmopolitan view of global justice stands faulted in terms of its purported failures in limiting the scope of intervention by "well-ordered societies" in the pursuit of global egalitarianism, his own perspective now seems to encourage, contrary of course to his original intention, limitless use of force against "outlaw" societies, in ways that render the globally worst-off even more destitute, disadvantaged, and deprived.

From their perspective, the discursive careers and futures concerning global justice remain rather exotically fungible in very much the same proportions as their lives and human rights remain altogether defeasible/sequestered at the altar of the Great March to Progress of the "as yet not liberal societies" toward the eventual global cloning of all human societies into the liberal mold. The ethical agonizing of would-be theorists of global justice remains, then, impervious to their extraordinary here-and-now immiseration, which is relevant only as "raw" material ready at hand for conversion, by feats of sanitized thought, into designer goods of ethical theorizing in globalized epistemic markets. This is, undoubtedly, a harsh thing to say. But then the authentically subaltern utterance has no other language

that would enable the violated to express this violence. It summons, with Karl Marx, that order of combinatory "theoretical" praxis which makes possible the emergence of the capability of *suffering humanity to reflect and thinking humanity to suffer*.

"Burdened" Societies and Tasks of Global Justice

In the abstract, this endeavor concerned to avoid global moral paternalism appears morally sensible, at any rate until one seeks to unravel the question of how societies came to be "burdened." Rawls is too astute a thinker to overlook the ambiguity of the notion of "burdens"; he simply constructs it with much ethical theory severity. He is concerned with "targets" and "cut-off points" for the amelioration of burdens, however defined or described. On this register, Rawlsian global justice stands conceived in, and universalizes, the paradigm of the American understanding of constitutional affirmative action. Despite this, we still need to acknowledge the point that affirmative action programs, indicted often at the national level as constituting forms of reproduction of ethnic feudalism, may also replicate subordination and subjugation in interstate relations. John Rawls is concerned to avoid this happening.

The "burdens" arising out of "arbitrariness" of natural resources do not daunt Rawls "because ... the crucial element in how a country fares is its political culture — its members' political and civic virtues — and not the level of its resources."⁴⁴ This is an important Gandhian insight. But the notion of "burdens" creates, in turn, a whole lot of special burden of explanation! Duties of assistance will vary fundamentally, even radically, depending on the ways in which the notion of burdens is constructed. The narrative constructions of how societies of the global South come to be burdened carry profound implications for any integral enunciation of visions of global justice.

Societies are not only burdened by asymmetrical natural resource or social talent distribution. Burdens also arise from "histories" of colonial/imperial domination, as well as from many catastrophic histories of the various phases of the Cold War/post—Cold War formations; these, even when short of genocide of whole peoples, distort forms of associational and communal life, corrupt the very bases of cooperation and social trust, arrest social and economic development, and destroy major natural resources. Wasting whole nation-societies and peoples in ways that, often obscenely, benefit the metropolis was the motto of colonial administration. To be sure, colonial predation followed different paths, but the ultimate burdens on the colonized peoples were colossal. What kind of duties of assistance would a Rawlsian perspective on the law of peoples prescribe? It does not help to speak of "targets" and "cut-off points" when we stand confronted with issues of restitution, rehabilitation, and reparation arising from centuries-long colonial occupation and subjugation of "decent peoples." Much the same must be said concerning the horrors of the Cold War, during which you were either an "enemy of the people" or a "defender of the Free World," and, regardless of your perception, were always liable to be labeled thus according to the needs of the regime or world "leadership."

When we marshal the organized impunity and irresponsibility of transnational corporations (to evoke Ulrich Beck's phrase regime),⁴⁵ and assorted regional and global financial institutions as well as governmental aid agencies, the burdens — despite Rawlsian enunciation of the duties of assistance arising from global justice values — remain immense.

I for one am unable to share Rawls' faith in "political cultures," especially of the well-ordered societies, when confronted with the interminable suffering inflicted on more than 200,000 human beings in Bhopal, who still suffer, seventeen years later, from the aftermath of 46 tons of methyl icosynate released by acts of willful mismanagement by the Union Carbide Corporation. The creation of

hazards, converting human lives and futures into global wastelands, is evident in the processes of globalized economic development and many Green revolutions. "Political culture," now more than ever before, remains complicit with the contemporary forces of economic globalization, which insist that trade-related, market-friendly human rights take precedence over the universal human rights of individual human beings.⁴⁶

Without, and outside, a sense — really *senses* — of the histories of catastrophic practices of politics of cruelty, the genocidal practices that "facilitated" colonization and the neo-imperialism of the Cold War, the law of peoples that defines ahistorical "targets" and "cut-off points" remains ethically insensible. Why is the language of reparations and reconstruction sensible for postwar Europe but not for postcolonial Asia or Africa? How are we to measure for the future the burdens of the Palestinian peoples? What duties of reparation stand owed for the enormous cruelty of colonization and neocolonization? What do the French and American "well-ordered liberal" peoples owe to the peoples still recovering from incredible human violations in the former "Indochina"? Do the structurally adjusted peoples of the Third World have any title to redistribution justifiable on the Rawlsian elaboration of global justice? Are the apartheid-violated masses of South African people owed any duties of global justice? Is the archaic United States Helms-Burton legislation against trading with Cuba still justified under the law of peoples?

It is on this kind of contested terrain that current conceptions of global justice founder, at least at the level of "nonideal" theory. The law of peoples, as it were, lets globally dominant states off the ethical hook. They owe *no intergenerational moral duties of reparation* to peoples whom their acts of foreign policy have destroyed through performances of neocolonialism/imperialism. The United States does not even acknowledge any duties of resourcing the United Nations and its specialized agencies except on the unilateral terms dictated by Jesse Helms! One would have thought, assuming the United Nations is a sort of example for social cooperation sustaining the law of peoples, that such duties uncontroversially ensue! Is it *unethical*, by the standards of the law of peoples, to postulate even a very minimal duty of assistance prescribing that the overdeveloped societies/peoples owe a dedication of at least one percent of their GNP, as a matter of nonnegotiable international law obligation, to the "developing" and "least developed" societies?

Patriotism and Global Justice

But the law of peoples shifts (to borrow the evocative title of Salman Rushdie's recent book) the ground beneath their feet. Liberal and decent peoples have everywhere special responsibilities to family, friends, and disadvantaged groups in their own society, and arguably to the "nation" as a whole. These special responsibilities may be said, for some eminently good reasons, to conflict with the demands of global justice, which establishes general responsibility for respecting/affirming the equal worth of all human persons everywhere, especially those "whom the movement for global integration has left behind."⁴⁷ But as Samuel Scheffler⁴⁸ demonstrates, the conflict between justice and responsibility is acute but not irreconcilable. Nor, as has been argued, does an increase in one's "special responsibilities result in a weakening of one's general responsibilities";⁴⁹ and surely we ought not to allow "unlimited claims on people for the sake of global justice."⁵⁰

It has also been argued that special responsibilities created by patriotism may not be ignored by any notion of cosmopolitan, international, or global justice. It is not sufficient to say that patriotism is morally indefensible because it privileges duties toward compatriots over those owed to nonnationals.

As especially Charles Jones has recently shown, certain forms of patriotism remain ethically sensible.⁵¹ Let us follow his analysis somewhat closely before we revisit the notion of "patriotism" in relation to global justice.

"Patriotism" defines the moral universe by a "them" and "us" divide. The "us" are citizens of a "nation-state" bound by obligations of fidelity to the "nation" as a whole and to one's fellow nationals. The justice/rights claims of the Other (noncompatriots) remain of lesser relevance, if relevant at all, to similar claims within the "nation" society. Certainly, during times of conflict, patriotism offers a complete moral code that privileges the claims of co-nationals over nonnationals.

Jones distinguishes between two kinds of patriotism: the crude "blanket" kind and a more refined version of what he calls "compatriot favoritism," both of which he finds ethically untenable against the claims of global justice. "Blanket" or "exclusionary patriotism" claims that "non-patriots fall outside the sphere of ethical concern altogether."⁵² All of us may agree that this form is simply not "ethically defensible" for the reasons Jones offers and related grounds that one may further furnish. A "better conception" is that of "compatriot favoritism," which, in effect, says, "compatriots take priority."⁵³ This is a better conception at least in the sense that it implies noncompatriots "must also be subjects of moral consideration."⁵⁴ But as Jones so abundantly indicates, the problem of "compatriot priority" remains difficult of sustained ethical resolution. Contemporary Euro-American justice theory does not, at the end of the day, furnish any "good" grounds "for setting up a distributive scheme in such a way that the strength of a person's legitimate claims depends on that person's citizenship."⁵⁵

I accept Jones' conclusion and applaud the careful reasoning informing it. The difficulty I have with all this is twofold. First, this sort of analysis ignores altogether the fact of *amoral* entities, national and transnational corporations, to whom the very notion of "patriotism" does not quite apply, if at all, as it does to "citizens." If by "patriotism" one means (in any event, a deeply ethically problematic) "love for one's country," by definition, transnational corporations remain incapable of meaningful forms of patriotic affection or fidelity. Second, the enterprise of their subjection to a minimal code of morality entails a very different order of ethical reasoning than available in forms of ethical individualism; it is doubtful whether a naive disaggregating of corporate collectivities into individual citizens imbued with attributes of "patriotism" will help us toward this goal.

Even Rawls permits himself a footnote acknowledgment of the power of corporations to subvert the notions of deliberative democracy:

When politicians are beholden to their constituents for essential campaign funds, and a very unequal distribution of income and wealth obtains in the background culture, with the great wealth being in the control of corporate economic power, is it any wonder that congressional legislation, is, in effect, written by lobbyists and Congress becomes a bargaining chamber in which laws are bought and sold?⁵⁶

This insight concerning "background culture" seems relevant to Rawls' conversation about "political culture," referred to earlier. It is equally applicable to the making of international ideals, standards, and values. Like the laws and policies of well-ordered societies, many international regimes are increasingly sculpted by multinational corporate lobbyists in near total disregard of the logics and paralogics of expansive human rights. The WTO agreement on Trade Related Intellectual Property Rights (TRIPS) testifies to the power of culture industries as well as of emergent global strategic biotech industries.⁵⁷ The temporarily shelved OECD draft of the Multilateral Agreement on Investment (MAI) is so obscenely solicitous of the rights of the foreign investor as to require state parties to openly

suspend the application of human rights and environmental standards! We all know that BENGOS (business environmental nongovernmental organizations) exceeded in number and influence the ENGOs (environmental nongovernmental organizations) at the Kyoto Conference on Climate Change.⁵⁸ (This entire discourse constitutes a requiem for the emergent global "civil society"!) And now with the UN-corporate Global Compact firmly in place, the commanding heights of human rights development seem already to have been captured by the very transnational corporations known to be egregious offenders against those rights. Even the privatization of the United Nations system now seems an acceptable goal.

Transnational corporations, with all their mass disaster—constituting proclivities and potential, constitute the gravest danger to conceptions of global justice and human rights. The arguments of special responsibility and patriotism have prevailed among American national adjudicators confronted with claims for relief and rehabilitation against mass disasters caused by American transnational corporations domiciled in the United States and denying any jurisdiction at the site of disasters. American courts have almost consistently held that foreign plaintiffs do not have standing to sue, as this will confiscate precious adjudicatory time and talent and ill-serve the special responsibilities courts have toward co-nationals for the administration of justice.⁵⁹ This represents a state-managerial type of exclusionary compatriot patriotism, ethically suspect, even outrageous, in that it promotes (in Ulrich Beck's felicitous terms) "organised immunity" and "organised irresponsibility" for global capital.⁶⁰ Global justice discourse has yet to tackle this most formidable challenge of constructing the justice-responsibilities of global corporations, foreign investors, and international financial institutions.⁶¹

Norms and standards of global justice are undermined when these forces are able to constantly redraw the boundary between *injustice* and *misfortune*, to which Judith Shidar sought to draw our attention.⁶² To convert, for example, Ogoniland and Bhopal into "misfortunes" (side effects of progress, development, and whatever!) is to deny these critical events the languages of "justice." The global corporate switch in the phrase-regimes articulates a new globalizing secular cosmology of the Hindu doctrine of *karma*, which encourages fatalism and disempowers human rights and peoples' activism. For, the languages of misfortune mystify its perpetrators and divest them, singly and in concert, of any and all justice responsibilities.

Approaches to global justice need to shrink to a moral minimum the notion of "misfortune" and thus expand the bounds of responsibility. The challenge reminds us of the great message of Emmanuel Levinas:

The Torah demands, in opposition to the natural perseverance of each being in his or her own being (a fundamental ontological law) concern for the stranger, the widow and the orphan, a *preoccupation with the other person*.⁶³

It is this preoccupation with the misfortune of, and injustice to, the overwhelmingly non Euro-American Other that, in my view, furnishes manifold ethically fecund sites for inaugural labors for discourse on global justice. Like states (or well-ordered liberal peoples), transnational corporations — these enormous concentrations of techno-scientific prowess (the combinatory power of digital capitalism and biotechnology) in these halcyon days of headlong and heedless globalization — ought to be subject to duties arising from conceptions of global justice.⁶⁴ The present labors toward the construction of realistic Utopias for a more just, and even a deeply *caring*, world surely remain incomplete without an articulation of the ethical responsibilities of transnational actors, institutions, and globalizing mentalities.

Upendra Braxi. *Global Justice and the Failure of Deliberative Democracy*. In: Okwui Enwezor, Carlos Basualdo, Ute Meta Bauer, Susanne Ghez, Sarat Maharaj, Mark Nash, Octavio Zaya (ed.): *Democracy Unrealized. Documenta11_Platform1*. Hatje Cantz Verlag, Ostfildern-Ruit. 2002, pp. 113-132.

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- 1 Richard Rorty, "Human Rights, Rationality, and Sentimentality," in *On Human Rights: The Oxford Amnesty Lectures*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), p. 133.
- 2 The "voices" of suffering, we must recall, remains a thriving genre in official discourse of development assistance. But much of this literature is singularly appropriative. Thomas W. Pogge trenchantly observes: "The Bank recently interviewed sixty thousand poor people in the developing countries and published snippets of their responses, 'Voices of the Poor,' on its Web site ... the same World Bank also keeps the number of poor in check by quietly lowering the international poverty line." See his "Priorities of Global Justice," *Metaphilosophy* 32, no. 1-2 (January 2001), pp. 6-24, reprinted in *Global Justice*, ed. Thomas W. Pogge (Oxford: Blackwell, 2001).
- 3 Robert Musil, *The Man without Qualities*, trans. Eithne Wilkins and Ernst Kaiser (London: Mandarin Paperbacks, 1995), p. 65.
- 4 John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 21.
- 5 I translate here Thomas W. Pogge's indictment of international theory and practice of development in terms of these costs. Pogge reminds us that "Severe poverty is by far the greatest source of human misery today ... the few years since the end of the Cold War has seen over 200 million deaths due to poverty related causes." He directs our attention to the ways in which policy and mainstream political theory (barring a handful of exceptions) remains complicit: "our failure to make a serious effort toward poverty reduction may constitute not merely a lack of beneficence, but our active impoverishing, starving, and killing of millions of innocent people by economic means" (Pogge, "Priorities of Global Justice," p. 14).
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- 8 See Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (London: Penguin, 2000).
- 9 See Jacques Derrida, *Adieu to Emmanuel Levinas*, trans. Pascale-Anne Brault and Michael Naas (Stanford: Stanford University Press, 1999), p. 11.
- 10 See Rawls, *The Law of Peoples*.
- 11 But see Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001), pp. 152-156.

- 12** See Baxi, *The Future of Human Rights*, pp. 22-27, and *ibid.*, "Colonial Inheritance," in *Comparative Legal Studies: Traditions and Transitions*, ed. Pierre Legrand and Roderick Munday (Cambridge: Cambridge University Press, forthcoming 2002/2003).
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- 16** Beitz, *Political Theory and International Relations*, p. 141.
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- 20** Rawls, *The Law of Peoples*, p. 30.
- 21** *Ibid.*, p. 40.
- 22** *Ibid.*, pp. 32-33.
- 23** *Ibid.*, pp. 23-24.
- 24** *Ibid.*, p. 37.
- 25** *Ibid.*, p. 65.
- 26** *Ibid.*, p. 81.
- 27** *Ibid.*, p. 63.
- 28** Michael Walzer, "The Rights of Political Communities" and "The Moral Standing of States: A Response to Four Critics," in *International Ethics*, ed. Charles R. Beitz, Marshall Cohen, Thomas Scanlon, and A. John Simmons (Princeton, N.J.: Princeton University Press, 1985), pp. 165-194, 217-237.

- 29** Rawls, *The Law of Peoples*, p. 93.
- 30** See Upendra Baxi, *Marx, Law, and Justice* (Bombay: N. M. Tripathi, 1993), pp. 85-94.
- 31** Rawls, *The Law of Peoples*, p. 113.
- 32** *Ibid.*, p. 114.
- 33** *Ibid.*
- 34** *Ibid.*, p. 117.
- 35** *Ibid.*
- 36** *Ibid.*, p. 118.
- 37** *Ibid.*
- 38** *Ibid.*, p. 119.
- 39** *Ibid.*, p. 117.
- 40** *Ibid.*
- 41** *Ibid.*, p. 120.
- 42** *Ibid.*, p. 82.
- 43** *Ibid.*, p. 83. See Upendra Baxi, "Operation Enduring Freedom: Towards a New International Law and Order?" *Third World and International Law* 1, no. 1 (2002, forthcoming).
- 44** Rawls, *The Law of Peoples*, p. 117.
- 45** Ulrich Beck, *Risk Society: Towards a New Modernity*, trans. Mark Ritter (London: Sage, 1992).
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- 48** *Ibid.*
- 49** John Kane, "Who Is My Neighbor? A Response to Scheffler," in *Global Justice*, pp. 107-113 at p. 113.
- 50** *Ibid.*, p. 112.

- 51** Charles Jones, "Patriotism, Morality and Global Justice," in *Global Justice*, pp. 125-170.
- 52** *Ibid.*, p. 128.
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- 58** See Baxi, *The Future of Human Rights*, pp. 42-66.
- 59** See Upendra Baxi, "Mass Torts, Multinational Enterprise Liability, and Private International Law," *Recueil des cours* 276 (2000), pp. 305-423; *ibid.*, "Geographies of Injustice: Human Rights at the Altar of Convenience," in *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation*, ed. Craig Scott (Oxford: Hart Publishing, 2001), pp. 197-202. See, in a related context, Upendra Baxi, "Bringing Judas Back to the Last Supper? The Tasks of Republican Criminology in Service of Globalisation," in *Punishment and the Prison: Indian and International Perspectives*, ed. Rani Dhavan Shankardass (New Delhi: Sage, 2000), pp. 344-370.
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- 64** See Baxi, *The Future of Human Rights*, pp. 132-166.