

WHERE HAS THEORY GONE? SOME QUESTIONS ABOUT GLOBAL JUSTICE

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INTRODUCTION

Global justice has become a remarkable issue in legal literature,¹ and a plausible goal for academic and nonacademic organizations.² In these discussions, global justice has been related to poverty,³ health,⁴ and the establishment of international criminal tribunals.⁵ Thus,

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1. See, e.g., Frank J. Garcia, *Three Takes on Global Justice*, 31 U. LA VERNE L. REV. 323 (2010); Gary Chartier, *Peoples Or Persons? Revising Rawls on Global Justice*, 27 B.C. INT'L & COMP. L. REV. 1 (2004).

2. See, e.g., *Program on Global Justice*, PROGRAM ON GLOBAL JUST., <http://globaljustice.stanford.edu/> (last visited Feb. 18, 2012); THE HAGUE INSTITUTE FOR GLOBAL JUSTICE, <http://thehagueinstituteforglobaljustice.org/> (last visited Feb. 18, 2012).

3. See, e.g., CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, N.Y.U. SCH. OF LAW, CASTE DISCRIMINATION AGAINST DALITS OR SO-CALLED UNTOUCHABLES IN INDIA (2007), available at <http://www2.ohchr.org/english/bodies/cehd/docs/ngos/chrgj-hrw.pdf>.

4. For some scholars, a historical injustice must be repaired. It would permit talk of universal duties on the part of current Northerners to assist current Southerners. To them, this situation is closely related to the manifestations of imperial and colonial coercion and post-colonial relations of power. See William W. Fisher & Talha Syed, *Global Justice in Healthcare: Developing Drugs for the Developing World*, 40 U.C. DAVIS L. REV. 581, 598 (2007) (“For example, a number of historians of political institutions in Africa have insisted on the colonial past’s significant causal role in handing down a disfiguring legacy of barriers to the development of political institutions that are well-suited to the ethnocultural, geographic, and factional contexts of many jerry-built African ‘nation-states.’”).

5. See Mba Chidi Nmaju, *The Role of Judicial Institutions in the Restoration of Post-Conflict Societies: The Cases Of Rwanda And Sierra Leone*, 16 J. CONFLICT & SECURITY L. 357 (2011) (describing the need to restore a destroyed legal system

global justice is part of or involved with many human rights. The variety of subjects involving global justice shows the importance she has acquired in recent decades. But though there is a general acceptance of her relevance, her meaning is most fully comprehended when we place her as part of the capitalist mind, the capitalist *koinōnia*. Consequently, she is a relevant constituent in the process of the capitalist power-building process. This is the objective of my inquiry: to discover who global justice is and what it means according to the transnational ruling class's ideology.

THE MEANING OF GLOBAL JUSTICE

Global justice is a comprehensive concept. A quick glance shows justice is a universal subject of interest. This is partially true. Justice, like democracy or human rights, might mask the formation of a new society, a society ruled by some kind of ideology soft and oppressive at the same time. This needs to be explained.

The principal perspective commonly adopted by social scientists to observe man and society is mainly phenomenological. At first, there is no problem with this point of view. The difficulty lies when the analysis is focused only on the phenomena. I suppose there is an ontological background which founds what kind of society and human being the dominant ideology requires to exist and to be accepted by different societies. It is not open for discussion that capitalism is the dominant ideology. So what I will try to state is that capitalism has the power to recycle himself across the ages, and that global justice is the contemporary form he takes to survive, despite the harmful consequences he imposes on mankind. Thus, the values, ideas, and current thoughts are part of his actual form. This matter must be explored.

When justice is said to be global or thought to be a relevant issue for international policy, it means she is a value to be imposed for the benefit of modern capitalism by a combination of central state action and private action, including foundations and international governmental organizations. It is an example that legal reforms in

and educate the citizens on the rule of law in order to ensure sustainability of the legal system).

Latin America have as the principal intention to reform the judicial systems according to the wants of the capitalist system:

[E]conomic reform requires a well-functioning judiciary which can interpret and apply the laws and regulations in a predictable and efficient manner. With the emergence of an open market, there is an increased need for a judicial system. The transition from family run businesses—which did not rely on laws and formal mechanisms to resolve conflicts—to an increase in transactions with unknown actors has created a need for formal conflict resolution. These new business relationships need impartial decision making within more formal institutions. However, the current judicial system is unable to satisfy this demand⁶

This is the first element we meet when we want to expound what global justice is. Her main concern is with open market, business, and economic transactions.⁷ This clarifies the problem inside the concept. On the other hand, have open market, business, and economic transactions been important to justice without a key reference to the capitalist mind? Examining the emergence of capitalism in the Late Middle Ages shows that the answer is no.⁸

A more comprehensive approach might be seen when we revise what Joshua Cohen points out. He says global justice comprehends three significant elements: human rights, just governance, and just distribution. Though distinct, they have one thing in common: “they all start from the idea that each person matters, that everyone counts for something. In short, global justice is about *inclusion*: about

6. MARIA DAKOLIAS, WORLD BANK TECHNICAL PAPER 319, THE JUDICIAL SECTOR IN LATIN AMERICA AND THE CARIBBEAN: ELEMENTS OF REFORM 3 (1996), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1996/06/01/000009265_3961214163938/Rendered/PDF/multi_page.pdf.

7. “[B]y freedom is meant, under the present bourgeois conditions of production, free trade, free selling and buying.” KARL MARX & FREDERICH ENGELS, THE COMMUNIST MANIFESTO (Joseph Katz ed., Samuel Moore trans., Washington Square Press 1964) (1848).

8. See JACQUES LE GOFF, YOUR MONEY OR YOUR LIFE: ECONOMY AND RELIGION IN THE MIDDLE AGES (Patricia Ranum trans., 1988); JACQUES LE GOFF, MEDIEVAL CIVILIZATION, 400-1500 (Julia Barrow trans., 1988); JACQUES LE GOFF, THE MEDIEVAL WORLD (Lydia G. Cochrane trans., 1990).

making sure that no one is left behind.”⁹ This describing notion has five separate issues that should be explained.

First, global justice embraces a wide range of subjects: human rights, just governance, and just distribution. The relation between human rights and global justice seems to fit well. Also, the link that relates global justice with just governance implies some relevant subthemes: (i) that capitalism needs to achieve an extended market to establish a universal peace,¹⁰ as the problems that arise are related to market failures; (ii) just governance is required in order to support the general conditions of world trade,¹¹ but principally to deal with the economic and financial crisis, which is now interstate; and (iii) global justice is related with just distribution. Perhaps this is the most crucial issue. Just distribution can only be obtained if capitalism breaks with most of his aims, principally those that appeal to egoism and the accumulation process. If we are naturally self-centered, then it is natural to be selfish. Thus, Rousseau is correct when he states:

This common liberty results from the nature of man. His first law is to provide for his own preservation, his first cares are those which he owes to himself; and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master.¹²

Consequently, we have a serious problem with egoism. To be just implies some limitations to human action. Then what kind of limitation do we need to be just? Some would answer that legal and social norms are enough; others would argue in favor of legal coercion—mostly physical. In any case, this shows the necessity of establishing social controls, and capitalism knows that to preserve

9. Joshua Cohen, *Global Justice*, Address to National Convention, Democratici di Sinistra, Florence (Dec. 3, 2005), available at http://iisdb.stanford.edu/pubs/21330/global_justice.pdf.

10. See IMMANUEL KANT, *PERPETUAL PEACE: A PHILOSOPHICAL ESSAY* (Lewis White Beck trans., Macmillan 1957) (1795) (describing the idea of universal peace through commerce).

11. “The bourgeoisie has through its exploitation of the world market given a cosmopolitan character to production and consumption in every country.” MARX & ENGELS, *supra* note 7, at 16.

12. JEAN-JACQUES ROUSSEAU, *OF THE SOCIAL CONTRACT OR PRINCIPLES OF POLITICAL RIGHT 2* (G.D.H. Cole trans., Dover 2003) (1762).

himself, he must sustain, through cultural means, an extended idea of the pursuit of personal welfare.¹³ In other words, capitalism must make acceptable the concept that egotism is a good and proper conduct.

Second, to be “global” does not clarify the significance, unless we talk of the outcome of a process named Globalization: a complex historical process which tends to embrace national societies on behalf of a renewed capitalist hegemony.¹⁴ Santos notes:

Whether new or old, the processes of globalization are a multifaceted phenomenon with economic, social, political, cultural, religious and legal dimensions, all interlinked in a complex fashion. Strangely enough, globalization seems to combine universality and the elimination of national borders, on the one hand, with rising particularity, local diversity, ethnic identity and a return to communitarian values, on the other. In other words, globalization appears to be the other side of localization, and vice versa.¹⁵

Although Globalization can be characterized as a multifaceted phenomenon, there is an underlying reason that I want to expose: the formation of a global *koinōnia*. *Koinōnia* is a notion known in Ancient Greece to express the things that could be shared or common; later, in Christian theology, this word meant and was used as *communio* or creed.¹⁶ During the Middle Ages, this notion signified the fellowship of people that live and act in a common unity.¹⁷ These

13. “The bourgeoisie has stripped of its halo every occupation hitherto honoured and looked up to with reverent awe. It has converted the physician, the lawyer, the priest, the poet, the man of science, into its paid wage labourers.” MARX & ENGELS, *supra* note 7, at 16.

14. See, e.g., IMMANUEL WALLERSTEIN, *THE MODERN WORLD-SYSTEM: CAPITALIST AGRICULTURE AND THE ORIGINS OF THE EUROPEAN WORLD-ECONOMY IN THE SIXTEENTH CENTURY* 231 (1974) (“We have insisted that the modern world-economy is, and only can be, a capitalist world-economy.”); Cohen, *supra* note 9, at 5 (“Economically, globalization means that the world is more integrated, with reduced communication and transportation costs, an increased flow of goods and capital across borders, and a dispersion of production.”).

15. Boaventura de Sousa Santos, *Globalizations*, 23 *THEORY, CULTURE & SOC’Y* 393, 394-95 (2006).

16. See 1 JOHANNES QUASTEN, *PATROLOGY* 28 (1987).

17. See OTTO VON GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE* (1913).

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three meanings comprehend the underlying foundations of capitalism—the search for unity through a common culture, whose elements are provided by the capitalist class’s ideals, attitudes and values. In fact, this search for unity is required by the transnational class to rule without the need of military occupation as in past centuries. A common global culture clarifies the roles of international financial and economic international organizations as relevant international actors, especially in educational and cultural programs.¹⁸ It tells us that we face another ontological difficulty: *koinōnia* needs to be founded in a set of values and ideals embedded in goodness and justice. How can they be defined without considering the problem of their objectivity or subjectivity? Though the commonly accepted answer is that the legislature defines the values, the problem still exists as long as we take part in the philosophical debates concerning the limits and the powers of the legislature.¹⁹

Third, to be global involves the imposition, or at least the transplant of an occidental perspective. Whether it is the result of an accepted cultural transplant or the outcome of a political decision, this point of view replaces other frameworks. Globalization is mostly founded in the Anglo-American culture, whose ideals, attitudes, values, and organizational systems are models for remaining states’ cultural systems. It does not matter if there is an imposition or an exportation. In either case, Globalization occurs through a complex, two-faced process: (1) a nonviolent mode: made through a circuit of interstate cultural exchanges shaping states’ internal life; and (2) a violent mode: the well-known binary of imperialism and colonialism.²⁰ On this subject Sachs and Warner write: “The first episode of global capitalism, of course, came about as much through

18. See WORLD BANK GRP. EDUC. STRATEGY 2020, LEARNING FOR ALL: INVESTING IN PEOPLE’S KNOWLEDGE AND SKILLS TO PROMOTE DEVELOPMENT (2011), available at http://siteresources.worldbank.org/education/Resources/essu/Education_Strategy_4_12_2011.pdf.

19. This discussion can be traced from Socrates to contemporary philosophy.

20. “The first globalization ended in the blood of 1914; the second globalization will come to an equally bloody end.” Cohen, *supra* note 9, at 9. Some scholars and political activists hope the new globalization will develop in a less bloody process. Seeing current events, I cannot share this view.

the instruments of violent conquest and colonial rule as through economic reform and the development of international institutions.”²¹

The new kind of governance is a gentler version of the capitalist imperialism. An innovative colonial rule²² replaces, in most situations, the military occupation of colonial dominions with an informal colonial rule.²³ This is a partially decentralized form of government,²⁴ where the crucial decisions concerning legal systems,

21. Jeffrey D. Sachs & Andrew Warner, *Economic Reform and the Process Of Global Integration*, BROOKINGS PAPERS ON ECON. ACTIVITY 1, 5 (1995).

22.

Alternatively, the United States has largely refrained from seizing overseas territories during its comparable period of hegemonic maturity and decline. Since WWII, the United States has established bases around the world but not long-term colonies. It has sent its military to intervene into the affairs of weaker countries but quickly cut and run (making for temporary occupations rather than sustained colonial rule). It has cultivated a network of client states using covert operations, threats of force, embargoes, and economic leverage (often propping dictatorial regimes friendly to U.S. interests), but it has not annexed them as colonial domains.

Julian Go, *Global Fields and Imperial Forms: Field Theory and the British and American Empires*, 26 SOC. THEORY 201, 202 (2008).

23.

To be sure, the United States like all great powers has varied and vital economic interests, ranging from access to raw materials to export markets. But to assert that these interests foreordain wars of conquest is contrary to the evidence, and indeed confuted by the writings of Marx and Engels, who in this matter were hardly as Marxist as their disciples. Of course we enjoy an informal empire—military bases, status-of-forces agreements, trade concessions, multinational corporations, cultural penetrations, and other favors.

Arthur Schlesinger, Jr., *The American Empire? Not So Fast*, 22 WORLD POL’Y J. 43, 45 (2005).

24.

Politically, there are new forms of governance that operate outside the state. These new forms of governance are especially important in the arena of economic regulation—the WTO is the most prominent. But they also have a role in areas of security, labor and product standards, environment, and human rights. The results are new forms of global politics, with important consequences for human welfare.

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public policies, and economic/financial matters are made in predetermined global cities²⁵ in the northern hemisphere. Along with this emerges a set of gross inequalities that benefits the wealthy class. So it is not strange that the major economic benefits of this situation are earned by the central states and, in particular, the transnational ruling class.²⁶ This dilemma demands justice: global justice.

Fourth, the variety of severe inequalities previously mentioned exist within and among the states. In this context, I refer to the *vertical* and *horizontal exclusions*.²⁷ Vertical exclusions are established as a result of the capitalist economic relations, like the one produced between the prevailing position of a corporation and a small company; horizontal exclusions are caused by individuals within their own community, such as what occurs in the poor quarters of a city where the poor struggle amongst themselves to survive. The conflicts derived from these inequalities can generally be settled through legal and social institutions. Nevertheless, the inequalities are not confined

Cohen, *supra* note 9, at 5.

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The bourgeoisie has subjected the country to the rule of the towns. It has created enormous cities, has greatly increased the urban population as compared with the rural, and has thus rescued a considerable part of the population from the idiocy of rural life. Just as it has made the country dependent on the towns, so it has made barbarian and semi-barbarian countries dependent on the civilised ones, nations of peasants on nations of bourgeois, the East on the West.

MARX & ENGELS, *supra* note 7, at 17.

26. Robinson and Harris state that:

One process central to capitalist globalization is transnational class formation, which has proceeded in step with the internationalization of capital and the global integration of national productive structures. Given the transnational integration of national economies, the mobility of capital and the global fragmentation and decentralization of accumulation circuits, class formation is progressively less tied to territoriality.

William I. Robinson & Jerry Harris, *Towards A Global Ruling Class? Globalization and the Transnational Capitalist Class*, 64 SCI. & SOC'Y 11, 11 (2000).

27. The concept of *horizontal exclusion* emerged from debates with colleagues of the Department of Philosophy of Law, when we considered the outcomes of the social interchanges and the structure of hierarchy in the poor quarters of inner cities.

within the state's borders. The interdependence between states helps extend the inequalities across the states' frontiers. For example, the recent financial crisis caused severe damage outside the state where it was born. Violence among the poor is a major problem. *Horizontal exclusions* increase the struggle for life in the poor quarters. This violence asks for sound public policies. But, are local legal institutions prepared to deal with this? Is global justice the best solution?

Fifth, it should be recognized that to be global relates to common deep moral sources founded mainly in the Jewish and Christian traditions. I will not discuss here their role; I only want to suggest religion, as a whole, is a matter that still has a relevant place in collective and individual decisions. If religious sources are to be underrated, something must replace them. Modernity has solved this with the construction of a secular system of values whose central pillar is tolerance, and whose enforcement is guaranteed mostly by state constitutions.²⁸ We are before a new *koinōnia* that replaces the position religion once had in the Western political systems. Perhaps, the fundamentals of this new culture are human rights—human rights based on a secular and capitalist point of view. At this point, Cohen notes:

Human rights are also about health, about education, and political participation. The point of human rights is not simply to protect against threats, but to ensure social membership, to ensure that people are not excluded from society, to ensure that they are treated as if they count for something.²⁹

If human rights are the core of this *koinōnia*, the constituents of the Globalization are:

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[T]olerance should be given to all religions that tolerate others, so long as their dogmas contain nothing contrary to the duties of citizenship. But whoever dares to say: *Outside the Church is no salvation*, ought to be driven from the State, unless the State is the Church, and the prince the pontiff. Such a dogma is good only in a theocratic government; in any other, it is fatal.

ROUSSEAU, *supra* note 12, book IV.8 (emphasis in original).

29. Cohen, *supra* note 9, at 6.

i) social membership: membership in society illustrates the importance of the communitarian perspective, in this sense; the demands for new rights are principally collective, i.e., the indigenous claims;

ii) the nonexclusion principle: this principle can be understood as the need for the individual to be entitled to a certain right; for example, to live according to his or her own life plan balances the collective demands mentioned before;

iii) equality: the egalitarian principle is growing, along with the want to extend the opportunities society gives to a portion of the population, i.e. higher education for the elderly; and

iv) respect for every individual because everyone counts for something.

These are the guidelines of global justice, her limits and possibilities. In the next sections, I will discuss these guidelines more deeply.

THE PROBLEM OF GLOBAL JUSTICE

A question that is sometimes veiled is the one concerning the meaning of global justice. This is because global justice is easy to describe but difficult to define. Yet, it cannot be left without consideration. Garcia writes:

The term “justice” essentially describes a relationship between a society’s values and the results of its social processes Such values, when applied to the exercise of public authority, we call the principles of justice. The question of justice then, is whether people will judge a particular outcome consistent with core community values.³⁰

These paragraphs let me explore the contemporary characteristics of the notion of justice. First, we find out the modern association between justice and value: a community value. This kind of association is a remarkable sign that distinguishes this notion from the previous conceptions of justice. Justice was conceptualized—mainly in the Greek and Roman tradition, and also in the Christian thought—as a personal virtue. However, in recent centuries she developed a

30. Garcia, *supra* note 1, at 324.

new space of performance: society as a whole. In this way, social justice was born. A kind of justice commonly related to the well-known notion of distributive justice. Thus, for the contemporary mind, justice is the outcome of certain social construction. So her definitional problems are solved by those who are the subjects of the relation social justice establishes among the individuals. Under this consideration, justice is a non-essentialist concept. It does not depend on religious sources or objective morals. This tends to solve the problem I noted previously. As a community value, individuals considered as equal members of the society are entitled to contribute to the construction of a just society, an ideal whose roots can be traced back to the first French constitutions.³¹ From now on, justice is more than a theory or theories; she is *praxis*.

Second, justice conceived as *praxis* means that abstract thoughts or obscure theories or dogmas are left apart. As Cohen says, “global justice is not simply an abstract moral imperative.”³² Justice as *praxis* is a relevant instrument to the construction of a just society. Along with the legal system, both can change the values, the attitudes, and the opinions of a determined society. This empowers the role of the legislators, but first the social demands of the people. Nonetheless, social forces do not make law directly; they must pass previously through the screen of the legal culture.³³ This fact can be observed in the emerging new rights. Not all social demands create new rights. Most of them are deduced from the right to act on behalf of one’s own life plan. The diversity of personal plans does not enter into theories and abstract thoughts. Something else is required: justice as *praxis*. With her help, there is a legal capacity to transform the societies according to the awaiting *koinōnia*.

Third, justice determines the authority to decide the just action. Living in a community implies the acceptance of the existence of social controls. I might discuss their contents, but their presence cannot be put in brackets. Social controls have a set of rules of right conduct, but law does not have monopoly of the social control.³⁴

31. See generally 1793 & 1795 CONST. (Fr.).

32. Cohen, *supra* note 9, at 9.

33. LAWRENCE M. FRIEDMAN, LAW AND SOCIETY: AN INTRODUCTION 7 (1977).

34. *Id.* at 11.

There are other authorities besides the legal ones. This leads me to refer to the question concerning the fundamentals of authority. It must be remembered that modernity assumes the need for a democratic basis of government. It suggests that the lack of consensus is a heavy barrier in the establishment of states' authorities and in the acceptance of legal norms. This is a particularly important issue in post-dictatorial and post-war regimes, such as the recent political history of several Latin American states. So when we talk of authority, we refer to a democratically elected one.³⁵

At last, I note that those values, when applied to the exercise of public authority, are called the principles of justice. This characteristic enters into the known debate on the relation between principles and rules, or principles and norms.

A (moral) rule is based on an all-in, conclusive judgment about what ought to be done in a certain situation (more accurately, in a certain type of situation). One way that such a judgment can be justified is by reference to the balance of relevant first-order moral reasons, i.e., by reference to the balance of principles: the weight of the principles that argue for a given course of action is aggregated and weighed against those that call for the opposite course of action.³⁶

On the contrary, principles are metanorms. Metanorms are the sources of rules and legal and moral norms. They have an ontological foundation, once we realize metanorms are related with the notions of goodness and justice. Besides this, they are the source of the political authority.³⁷ Whether it is God or the rational legislator, metanorms do support the whole legal and political system in an all-inclusive ultimate principle. Thus, the relation between principles and norms is hierarchical. At large, the difficulty resides in determining the original or primary authority, because once that is determined, the legal chain of validity is settled. The answer is closely linked to the debate between the natural law conception and the positivist

35. This observation is useful when there is a tendency in political presidencies to enlarge their constitutional powers.

36. Stephen R. Perry, *Two Models of Legal Principles*, 82 IOWA L. REV. 787, 788-89 (1997).

37. See RICCARDO GUASTINI, *NORMAS SUPREMAS* 17-18, 257-70 (1995).

perspective. In fact, whether the original or primary authority is God or the human legislator, the boundaries of legal norms are not peacefully accepted in most of the societies. In summary, these annotations provide a broad comprehension of all global justice involves.

THE ONGOING PROBLEM OF GLOBAL JUSTICE

Globalization has enthusiastic supporters and passionate enemies. So then, everything that is global faces the same kind of support and hostility.³⁸ If Globalization is associated with colonialism because of the crucial role colonialism had in her development, it might be said that colonialism is a step towards Globalization. But it could be argued that this does not apply to central states that support Globalization for other reasons. I suggest that one characteristic of Globalization is her search of a common culture. Within the states, this search has resulted in the formation of a predominant culture—a mix of local and global culture—whose contents are similar among the nations.³⁹ But this dominant culture is neither local nor national—it is global. It means the transnationalization of local cultures, being the principal beneficiaries the ruling class' members. This helps to segregate what is not global.

Globalization moves in a circular fashion: she starts in the central states, and then goes to the peripheral ones, and then returns to the central states. This sequence is repeated to no end, for Globalization is a system that is always in action. For example, the social demand for transparency in governmental conducts has a model to follow in what central states establish as codes of conduct or legal norms that

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Many citizens in the advanced economics now experience globalization as a threat. Many see it as a threat to their jobs and their income; they see it as a threat to their ability to lead the kind of life that their parents led. Many citizens fear that a better life for billions who are now poor and destitute may mean a worse life for them.

Cohen, *supra* note 9, at 9.

39. "The bourgeoisie itself, therefore, supplies the proletariat with its own elements of political and general education . . ." MARX & ENGELS, *supra* note 7, at 19.

enforce transparency. Peripheral states see the example of the central states and replicate these same contents in local seminars with or without external financial support. Then, they bring the foreign experts to their countries. Finally, the local academia goes to the central states to describe what has been done in those countries in regards to transparency. In this way, central states—with the help of the local intellectual class—can rule peripheral states by creating transnational interests.

Consequently, Globalization handles a large number of affairs, with all of them being related to a growing common culture. This is why I cannot associate Globalization with exclusively economic or financial goals. The need of a *koinōnia* requires a cultural circulation on one hand to ensure the colonial informal ties, and on the other to generate colonial elites. The circulation is successful when colonial elites export some of their members to integrate into the transnational ruling class.⁴⁰ For these reasons, the process of safeguarding the capitalist dominion has the education system as a prominent instrument. In this manner, global justice is guaranteed through sound local or regional institutions.⁴¹ Only in rare circumstances is it accomplished through military occupation.⁴² Political, social, and economic reforms are the key to a successful imperial policy, and have global justice as a significant constituent. Global justice reflects the urgency for local legal and political systems to transform themselves, despite their political discourses against Globalization.

40.

Dependency theorists posited the notion of an international bourgeoisie formed out of the alliance of national bourgeoisies bound by their mutual interest in defense of the world capitalist system. In their landmark 1974 study, *Global Reach*, Barnett and Mueller argued that the spread of multinational corporations had spawned a new international corporate elite.

Robinson & Harris, *supra* note 26, at 13.

41. On this basis, conflicts of interest are solved with similar legal norms in different states. This is the political role of the World Trade Organization.

42. “The so-called American Empire is in fact a feeble imitation of the Roman, British, and French empires.” Schlesinger, Jr., *supra* note 23, at 46. “But the United States has long perceived greater advantages in informal and indirect imperialism as opposed to direct colonialism.” George Steinmetz, *Return To Empire: The New U.S. Imperialism in Comparative Historical Perspective*, 23 SOC. THEORY 339, 348 (2005).

This social transformation involves the creation of centralized structures of government, like Rome once did. Global institutions are the problem solvers of last resort, when conflicts of great magnitude arise. They set up the states' conducts and their boundaries. This explains, for example, why armed conflicts are strongly circumscribed, such as the conflict affecting the African horn. But this supposes another critical constituent: the *plenitudo potestatis*. Without the power to ensure the functions of the global institutions, capitalism cannot be preserved through the centuries. It is not something new. Such an extended power was known during the Middle Ages.⁴³ The core question is about who decides. In a few words, I am referring to power-building.

States allow global institutions to act in their own sovereign space due to the power-building process. The question concerning how community values are built can be appreciated upon explaining how imperial power-building has been performed. If it is done under the umbrella of imperial capitalism, the likely outcome of this change is capitalist friendly states: an informal commonwealth. With limited dissent, states do act (mattering little which ideology they support), backing capitalism. The problem arising is that there are no significant divergences amongst them;⁴⁴ the existence of a uniformed culture is the first step towards the acceptance of global institutions. The role once played by the Roman culture is now played by the Anglo-American culture. Consequently, the contemporary capitalist ideology has the answers and the means to justify global justice as a remarkable subject. In my view, the following principal undertaking is to look back.

Global justice has been said to be a moral standard, and at the same time, a moral imperative. How can these two viewpoints be integrated? Moral standards have been considered synonymous with moral principles. This categorization does not enrich the debate concerning their existence and importance. If we consider them reasons to act, we must note that in real life, individuals choose the right conduct among a variety of rational and nonrational motives. Though they are codes of conduct, people generally agree that to be

43. See generally VON GIERKE, *supra* note 17.

44. To the contrary, "[t]he bourgeoisie finds itself involved in a constant battle." MARX & ENGELS, *supra* note 7, at 19.

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just is good and proper behavior, despite what legal or ethical norms hold. The difficulty rests on what is determined to be good and proper behavior.

Classical authors from antiquity generally agreed with this view. The controversy lies in defining what is to be performed here and now. From a contemporary standpoint, the answer is highly controversial. Who establishes what right conduct is? And, on the other hand, why should I act according to certain moral standards that were built without consent? Hence, it is not an easy job to set the foundations. Not only do ordinary individuals fall short of properly defining what it is to be just in real life, but philosophers also have such troubles. William James possibly gives a plausible answer when he writes:

A pragmatist . . . turns away from abstraction and insufficiency, from verbal solutions, from bad a priori reasons, from fixed principles, closed systems, and pretended absolutes and origins It means the open air and possibilities of nature, as against dogma, artificiality and the pretense of finality in truth.⁴⁵

A series of interesting notes can be drawn from this quote. First, James shares with Sir Francis Bacon the idea that idols are obstacles to scientific knowledge. Bacon once said:

The idols and false notions which have already preoccupied the human understanding, and are deeply rooted in it, not only so beset men's minds that they become difficult of access, but even when access is obtained will again meet and trouble us in the instauration of the sciences, unless mankind when forewarned guard themselves with all possible care against them.⁴⁶

This similarity reveals a philosophical tradition whose leading source is Plato.⁴⁷ In any case, all of them state that there are strong difficulties associated with human knowledge or understanding. Some argue it is one of the limits the legislator has, and maybe the

45. WILLIAM JAMES, PRAGMATISM 20 (1907).

46. FRANCIS BACON, NOVUM ORGANON § XXXVIII (1902).

47. See PLATO, THE REPUBLIC, Book VII (Allan Bloom ed. & trans., 2d ed. 1991) (discussing Plato's cave allegory).

most important of them. Second, James undoubtedly builds the constituents of modern thought and the death of the metaphysical inquiry. Third, James gives away the dogmas, the artificiality, and the pretense of finality in truth. If one were to look for a rule of conduct, one must consider the consequences of one's conduct. This is a subtle way to create one's own code of conduct, rather than merely follow an external one, unless he or she thinks the external code is good to follow. There is a critical issue when human nature is considered. For Plato, justice is associated with human nature, beyond any circumstantial opinion or *doxa*.⁴⁸ His theory relies on three concepts: wisdom, duties, and nature. Duties emerge from human nature. They have a relevant role in social life because they place each human being in a hierarchical society.⁴⁹ Plato wrote that the individual should practice one thing only: the thing to which his nature would be best adapted. For Plato, this is justice, for justice means to do one's own business, and not being a busybody.⁵⁰

But, if global justice must be accepted as a moral standard, transcultural arguments are necessary. According to Garcia, "[w]hen we speak of global justice we are arguing, in effect, that globalization is creating social outcomes and processes of the sort that make justice relevant at the global level."⁵¹ The fate of the Roman Empire is frequently before his eyes.

CONCLUSION

The aim of the ruling class is to transform the present state of affairs. Like Plato thought, philosophy can change the fate of cities, preserving them from decadence. The new ruling class considers the same—that capitalism as *koinōnia* can preserve her from decadence.⁵²

48. For Plato, *doxa* is the opposite of *aletheia*, being the former the opinion and the latter the truth. *Id.*

49. Plato notices he is talking of a State in which every man is expected to do his own work. *Id.* at Book III.

50. *Id.*

51. Garcia, *supra* note 1, at 325.

52. To Marx, morality and religion are bourgeois prejudices; they are the outgrowth of the conditions of the bourgeois production and bourgeois property, because the ruling ideas of each age are the ideas of its ruling class. *See generally* MARX & ENGELS, *supra* note 7.

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This issue is important when considering the aims of capitalist power-building. Global justice can act as an element of harmony in the construction of a capitalist transnational society. The question global justice must solve is how this society might be made, without taking into account the inequalities she allowed to grow and increase. The resolution of human conflicts is complex, and perhaps beyond existing theories and current thoughts.⁵³ This is why the concept of justice is close to the notion of *praxis*. The struggles in defining justice imply more than one conception of justice. Will capitalism really agree with one that harms one of his principal goals: the exploitation of a world market?

53.

The establishment of international criminal tribunals (ICT) form a crucial element of the nascent global state. While welcome in themselves, powerful states are unlikely to be the subject of their attention. A North-South divide characterizes the punishment of international criminal conduct. It is extremely unlikely that the leaders and armed personnel of Northern states would ever be dragged before the ICC.

B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, 15 EUR. J. INT'L L. 1, 13 (2004).