The Subjective Dangers of Projects of World Community

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SUMMARY

One should be careful with those who speak in the name of humanity and try to impose any particular blueprint on the world. Proposals for the legal-institutional architectures for the government of the whole world and other designs may seem appealing when stated in the abstract. However, their concrete realization always involves some distribution of power, and with it, some privileging of preferences and values. Claims to humanity are always infected by the particularity of the speaker, the world of his or her experience, culture and profession, knowledge and ignorance. A realistic utopia can only begin with the critique of present institutions. It is a mindset and an attitude that seeks to highlight the contingency and contestability of global institutions and their distributionary consequences.

1. Community through hierarchy

At the beginning of Civilization and Its Discontents, Freud tells the story of an ‘exceptional individual’ (from Freud’s biography we know that this was Albert Einstein) who had commented on Freud’s studies on religion by speculating that the source of religious faith is a ‘peculiar feeling’—namely ‘a feeling of something limitless, unbounded—as it were “oceanic”’. Freud admitted that he could find no such feeling in himself but that he could understand it as an intellectual perception, accompanied by a ‘feeling of an indissoluble bond, of being one with the external world as a whole’.¹ Under Freud’s cold eye, this feeling was part of what he considered the illusion of religion while its psychological source lay in an effort to perpetuate the life of the ego by lifting the wall between the self and

the external world. We need not, indeed cannot, examine the psychological origins or the reality of the ‘oceanic feeling’ here. Instead, there is reason to accept that something like it has frequently received expression in ethical, religious, and legal doctrines that emphasize altruism, love for one’s fellow men or indeed humanity as a whole as the basis of ambitious intellectual and political agendas for world government. The desire for universal brotherhood or sisterhood is first translated into descriptive theories about how all humans depend on each other and share fundamentally similar hopes, fears, and objectives. Such descriptions are then invoked to provide support to blueprints of political unity, the effort to govern all humanity within a single structure of hierarchical rule. Surveying the chaos in northern Italy in bitter exile from his native Florence, Dante Alighieri had already made the familiar point that ‘unity seems to be the root for what it is to be good, and plurality the root of what it is to be evil’. But although unity was good, it did not emerge automatically. In De monarchia, written sometime between 1312 and 1314, Dante expressed his conviction that there was only one way to attain it. For, he argued:

mankind is most a unity when it is drawn together to form a single entity, and that can only came about when it is ruled as one whole by one ruler.²

The philosophical promise was supported by a historical observation. The presence of two or more leaders on the world scene will automatically produce conflict. And when there is conflict, judgment is needed. In other words, and as international lawyers have written ever since, ‘there must be a third party of wider jurisdiction who rules over both of these’.³ Like most of the writers of this period, Dante regarded monarchy as the best expression of this unity and the perfect image of God’s rule over the earth. In Dante’s ideal, the represented—humanity—and the representative—the emperor whose return to Italy he was advocating—could not really be separated at all:

the whole of mankind in its ideal state depends on the unity which is men’s wills. But this cannot be unless there is one will which controls and directs all the others towards one goal, since the wills of mortals require guidance on the account of the seductive pleaser of youth, as Aristotle teaches at the end of the Ethics. Nor can such a single will exist, unless there is one ruler who rules over everybody, whose will can control and guide all the other wills.⁴

World government, for Dante, was necessary. But it required a unity imposed on ‘men’s wills’ from above. It presupposed hegemony—which is why it has always been opposed by critiques of universal empire. The history of Western international political thought is a narrative about the clash of ambition and critique, hegemony and counter-hegemony as these have appeared in debates about the institutional form of world community.

2. Origins: the role of providence

There is no other (Western) tradition of political and legal thought that would more consistently seek to translate the ‘oceanic feeling’ into proposals for world government than the law of nations, today’s international law. Generations of religious, political, scientific, and legal thinkers, politicians, and diplomats from Western Antiquity to the founding fathers of the United Nations and the modern technicians of global governance have translated the oceanic feeling in themselves into theories of human unity, interdependence, world economy, the global environment, and so on in order to propose legal-institutional architectures for the government of the whole world. These theories often associate history with the tragic separation of humans, in the Christian narrative captured in the fall occasioned by original sin. Redemption, under this narrative, would mean the re-establishment of the once broken unity. Something like this inspired the first institutional proposals for a world governed by a universal natural law and *jus gentium* in the early sixteenth century, put forward from the University of Salamanca at the time of the worldwide expansion of the Habsburg Empire. How should Castilians think about the alien communities they encountered in the New World? Who had the rightful power to govern those communities? What about ownership over the resources that were found there?

Claims of universal lordship were made both by the emperor (who at this time was also the king of Castile-Aragon) as well as the pope. They were opposed by Dominican scholars such as Francisco de Vitoria and Domingo de Soto. God had created the world to be enjoyed by all humans in common, these scholars wrote, and even as the original commonality had been replaced by sovereign states and private property, this had taken place universally by human beings themselves as a realistic response to their circumstances. Sovereignty and private property arose under the *jus gentium* as necessary aspects of a functioning legal community among sinful humans. They did not contradict the idea of a single humanity, only gave institutional expression to its management by free individuals and discrete communities. Neither the *Respublica Christiana* nor myths of Roman power and glory could override the division of the world into separate communities and private properties that had arisen as an effect of God’s will.⁵

Now the Dominicans did not leave it at that. They still accepted that the world was united by a right of everyone to travel and trade and that Christians (but not others) had the right to evangelize all over the world. To prevent this would be a cause for just war.⁶ A humanity (tragically) separated by sovereignty and property would be united in a community of religion and economics. This image was immediately seized upon by Hugo Grotius who used it to argue against Iberian

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⁶ de Vitoria, n 3, 278–286.
trade monopoly in the East Indies in his youthful apology for the activities of the Vereenigde Oostindische Compagnie (VOC) written in 1604–06. Grotius agreed that the golden age had been one of freedom and common ownership and that this had been historically transformed into sovereignty and private property.⁷ And yet, this separation was now being overcome by the universal right of navigation and trade.

For God has not willed that nature shall supply every region with all the necessities of life; and furthermore, he has granted pre-eminence of different arts to different nations. Why are things so if not because it was His Will that human friendship be fostered by mutual needs and resources, lest individuals, in deeming themselves self-sufficient, might thereby be rendered unsociable? In the existing state of affairs, it has come to pass, in accordance with the design of Divine Justice, that one nation supplies the needs of another, so that in this way . . . whatever has been produced in one region is regarded as a product native to all regions.⁸

Providence, in other words, pushed human beings to exchange goods in their own interest and so to create a community slowly, almost imperceptibly out of their separateness. And providence was now represented by the trading activities of the Dutch. Moreover, 'anyone who abolishes this system of exchange, abolishes also the highly prized fellowship in which humanity is united . . . In short, he does violence to nature herself.'⁹ The Dutch war in the East Indies may have been in the immediate interests of the shareholders of the VOC. But as the Portuguese were ‘impeding] the progress of international commerce’, it was also waged on behalf of humankind.¹⁰

The universal laws put forward by Vitoria or Grotius emerged from the encounter by Europeans of peoples and cultures who, until then, had had little or no presence in the European imagination. After the regularization of those relations by colonization, the law of nations limited itself again to a ‘public law of Europe’. Abbé de Saint-Pierre, for one, published his famous Projet de rendre la paix perpétuelle en Europe (1713) so as to decry the ‘ineffectiveness’ of present European diplomacy, advocating a ‘Traité d’Union’ and a perpetual Congress of European states. In 20 articles his Traité was intended to freeze the territorial status quo and to set up a system of arbitration and free trade in Europe. Even if the proposal received no diplomatic support whatsoever, it was still a useful reminder for Europeans of the awkwardness of agreeing to a federal union under absolutist monarchies. As Rousseau later observed, a federal arrangement could only take place on this basis by revolution—but in that case, ‘who among us would dare to say whether such a European league would be more to desire or to fear? It might perhaps do more evil in a moment than it could prevent in centuries.’¹¹

⁷ H. Grotius, Commentary on the Right of Prize and Booty (edited and with an introduction by M. van Ittersum, Indianapolis: Liberty Fund, 2006), on the origin of private property ch. XII, 315–18.
⁹ Ibid, ch. XIV, 449.
3. ‘Europe will probably lead the way’?

But cosmopolitan thought received one famous expression during the European enlightenment in the notion that all the nations of the world were naturally part of a *Civitas maxima*, put forward by the Professor of Philosophy from the University of Halle, Christian Wolff.¹² With characteristic optimism, Wolff assumed that ‘law and politics were essentially concerned with the perfectibility of human nature as part of the general system of the world’.¹³ Perfection, for him, meant participation in the pre-established harmony that arose from the creation of the world and could be grasped by reason itself—especially as expressed in the thick volumes of Prussian philosophy that would help us to see clearly how to calculate at each moment the maximal good that can be attained by a maximal number of human beings on earth.

Yet such harmony was hardly forthcoming. Wolff felt it himself as he was banished from the university after a public talk in which he had openly celebrated the enlightenment of Chinese society. His most important follower, Emer de Vattel, famously discarded the idea that the nations of the world were joined in a ‘great state’: this was pure fiction. On the contrary, all nations were equally directed by the law of nature to look out first for their own good. They were free and equal just like individuals were in their mutual relations.¹⁴ No doubt in the ears of this Huguenot enlightener *civitas maxima* sounded too much like the ‘universal monarchy’ that everyone understood as a code word for the hegemonic pursuits of the most Christian (French) king. Vattel did accept that there existed a type of natural society of humankind. But he thought that the ‘only means of securing the condition of the good, and repressing the wicked’ lay in the organization of that society into separate, free, and equal nations.¹⁵

Something like this also underlay the opposition of German jurists at the beginning of the nineteenth century to French revolutionary universalism. While the National Assembly in Paris declared universal rights and freedoms, and even at one point debated a proposition on the universal rights of nations, the leading German internationalist, Georg Friedrich von Martens, writing in a Göttingen occupied by Napoleon’s forces, repudiated such ideas as utopian nonsense. With the excuse of planting the trees of liberty they continued with their conquests, he wrote in a French preface to a work from 1801—‘it is no invention of our day that the right of the most powerful has overridden all other considerations’.¹⁶

¹⁵ Ibid, 15.
The vocabulary of cosmopolitanism, including that of ‘world community’, was revived towards the end of the nineteenth century as the international law profession organized itself. Liberal lawyers from Europe, the United States, Latin America, and even from China, Japan, and Egypt, began to advocate the expansion of liberal legislation in Europe as well as the civilizing of what they called the ‘Orient’. The ambivalence of their project was expressed in the way the members of the Institut de droit international celebrated what they felt to be a humanitarian impulse behind the establishment of the Congo Free State by King Léopold of the Belgians.¹⁷ No doubt an ‘oceanic feeling’ was inspiring their imagination about what European law might accomplish in their ‘Orient’. No doubt that feeling was part of their liberalism, their concern for domestic progress, equality of men and women, the advocacy of decent prison conditions, and the spread of liberal constitutionalism. And no doubt they saw all this as underwritten by a historical logic such as that sketched in Immanuel Kant’s famous essay from 1784—‘universal history with a cosmopolitan purpose’. The optimism of the international lawyers was built on the (Christian) myth of lost unity as the hidden object of a teleological history. Until the early years of the twentieth century no shadow hung over their assumption that their Europe and their civilization would represent history’s avant-garde. As Kant had written, in progressive history, ‘Europe will probably lead the way’.¹⁸

4. Into ‘realism’?

After two world wars, genocide, and the final demise of formal colonialism, international lawyers became more careful in translating their oceanic feelings to institutional proposals of world government. Of course, some of the leading members of the profession, such as Hersch Lauterpacht, were quite open in their advocacy of world federalism, insisting nevertheless that this would have to come about through a long series of intermediate steps. Lauterpacht regarded the Covenant of the League of Nations as ‘Higher Law’, though he was very conscious of its imperfections.¹⁹ In a famous piece on the ‘Grotian tradition’ published right after the Second World War, he restated his optimistic faith in the coming of world government through international law sometime in the future.²⁰ No doubt, after 1989 many lawyers felt this objective nearer than it had been in their lifetime, and their easy resort to the vocabulary of the ‘international community’ to justify fighter planes over Kosovo and Belgrade in the spring of 1999 testified to a change in the ideological atmosphere.

5. Community as hegemony

It is hard not to have sympathy with the representatives of the global South—as articulated by India as a member of the UN Security Council in 1999—when they expressed scepticism about the ease with which the West was ready to proclaim its preferences as those of an ‘international community’. Equally, it is hard to blame the African countries for their recent insertion of the question of universal jurisdiction into the agenda of the UN General Assembly, suggesting that the practice of some (especially European) states to extend the application of their criminal laws to crimes against humanity or other serious violations of human rights irrespective of where they have been committed was a de facto attempt to discipline their former colonies.²¹

Such controversies especially between the developed North and the global South point to a continuing dialectic in the efforts to translate the oceanic feeling for humanity, felt by well-placed professionals travelling across cosmopolitan spaces, into institutional projects or policy programmes within such international institutions as the UN or the European Union. There is no genuinely or intrinsically universal position from which such proposals could be made. Every institutional proposal or policy initiative will always appear in the shape of some particular agenda, proposed by a particular actor in reaction to a particular situation. And the suspicion remains that it is the makers of those proposals that would be their designated beneficiaries as well. The ‘war on terror’, for example, may have been designed to counter a global threat—but despite the universal values it invokes, it is hard not to notice the way it has shifted institutional priorities in favour of the developed world. The same logic affects our understanding of human rights or environmental agendas, too. Even as they are formulated in universal terms, their implementation will require decisions on allocation of scarce resources that will necessarily favour some at the cost of others. Within the broad terms of universal languages, struggle continues about what they should mean, and whose preferences they should advance.²² How then to traverse the gap that separates the inevitable particularity of any such institutional proposals, on the one hand, and the ideals of universal humanity and world community, on the other?

5. Community as hegemony

In the process of thinking about this, one might do worse than inject the question of power into the equation. The claim made by someone—the representative of a country, say, or a profession (such as international law)—to represent the universal


²² This is the key point in M. Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument (reissued with a new Epilogue, Cambridge: Cambridge University Press, 2005).
position (eg the world community) is also a claim to be taken as an authority, as someone with the capacity to speak in a voice that transcends the particularity of one's country or profession. It is a claim of objectivity and neutrality, a claim of occupying no particular viewpoint but the viewpoint of 'all'. This is what grounds the speaker's claim for institutional power: after all, he or she is not speaking only for themselves, but for everyone. Irrespective of the genuineness with which the speaker actually feels that he or she has reached such a viewpoint—that is to say, whether or not it arises from a genuinely 'oceanic feeling'—it is usually very hard for others to take it as such. This is so because for those others, the claim is always infected by the particularity of the speaker, the world of his or her experience, culture and profession, knowledge and ignorance.

For an analyst (such as Freud) this in itself is not a problem, merely a mark of the speaker's humanity. Grasping the particularity of the speaker is a necessary step towards understanding what the speaker is in truth proposing. But for those who are called upon to assent to that statement—diplomats in the UN, for example—this means giving the speaker the authority to occupy also their voice, to become the representative of their experience, to speak in their name. If the representative of a Western nation now makes that claim of universality, it is hard to see why the non-Western world would see it differently than when it was made in the languages of Christianity, civilization, 'modernity', or 'development' (among others). The claim to speak in the voice of the 'world community' is not only an innocent statement about how the world is (or what I happen to 'feel'), but also contains the implicit claim for special authority that belongs to the one who can speak on everyone's behalf.²³

Political theory and international relations sometimes use the vocabulary of 'hegemony' to highlight the process whereby a powerful actor starts to speak in a universal voice without encountering serious opposition. It is common for political actors to try to do precisely that. In revolutionary history, Abbé Sieyès' 'third estate' once proclaimed itself as the representative of the 'nation' and, for a moment, was successful. In Marx, the 'working class' became the 'universal class' whose interests and history had an objectivity that transcended the interests and history of the bourgeoisie. With these proclamations, everyone was called upon to join the 'oceanic feeling' of being part of the third estate or the working class, and the representatives of the third estate and of the working class were no longer speaking just for themselves, but for everyone.

But history did not stop with liberal revolutionaries or with communism. Universal vocabularies proliferate. The language of Western 'modernity' once became a political Esperanto that lifted Western political and technical experts into positions of authority. Today, vocabularies of 'globalization', 'development', 'market', 'human rights', 'free trade', 'environment', 'fight against impunity', and so on each seek to become the new universal language of international law. They present themselves in universal terms so that their experts, their 'native language-speakers',

6. Utopia as critique

would become authoritative in the world community and would thus legitimately take over the government of the world. For surely only those who possess a universal language (who truly share an ‘oceanic feeling’) ought to guide the government of all. But as Freud knew, the fact that one has an ‘oceanic feeling’ is not proof of the truth of religion. The clash between the various universal languages is a political clash that plays with different, indeed contested, ideas of what the ‘world community’ should be like, how we should be governed. Today, that problem is addressed by the ubiquitous theme of international law’s ‘fragmentation’. That the International Law Commission proposed to address that problem through the complex construct of fragmentation—diversification—expansion is another expression of the ambivalence of ideas about world community.²⁴ We oscillate between joining Dante in desiring world unity and our historical experience that advocates of such unity have so far not only failed, but also usually wreak quite a bit of havoc on the rest of the world before failing or giving up. Diversification, separation, and distinctness are often at least as important as unity and community, and often more intensely felt. Not everyone may experience the ‘oceanic feeling’ as pure enjoyment.

6. Utopia as critique

Finally, it is important to note that to see the particular in the universal (to analyse the desires that give rise to ‘oceanic feelings’) is not entirely a criticism of the proposed universal. It does not even slightly suggest that what is being proposed is bad or unworkable or should be rejected. It is merely to make the point that the claim of the ‘universality’ of something goes nowhere as a justification of it. Although the ‘oceanic feeling’ may certainly be real to the extent that the speaker actually feels it, this is no proof of its universal reality, either in terms of it being available to others, or its having some objective presence in the world. It still needs a defence in moral, legal, or economic terms. The right response to those who speak in the name of humanity and on that basis advocate some institutional proposal is this: ‘Yes, you feel it. That is wonderful for you. But is your proposal right, is it useful, should we think of it as binding law?’

This is why a realistic utopia for world government should not consist of ready-made technical institutions for the management of this or that global problem or for the realization of some substantive vision about the way the world should be. It should not be a system of rule by academic, technical, or legal experts. In the modernist, functional consciousness utopias tend to be petrified into bureaucratic institutions and architectures, rules and procedures. That is one of their great weaknesses and the reason why they tend to seem unattractive, or outright harmful from the perspective of alternative institutional designs and values. For however

much such designs may seem appealing when stated in the abstract, their concrete realization always involves some distribution of power, and with it, some privileging of preferences and values. To dress utopian imagination in the straightjacket of such functionalism is already to have given in to a particular, and therefore contestable, idea about human relationships in the world.

I have often wondered why Kant in his *Perpetual Peace* and elsewhere carefully refrained from outlining the concrete features of the cosmopolitan federation he so clearly preferred. The above history should provide the beginnings of an explanation. For Kant, law, constitutionalism, and the cosmopolitan federation were all secondary to what he called ‘freedom’, envisaged as the ‘inner value of the world’.²⁵ This is a complicated idea but one of its illustrations lies in the transcendental character of Kant’s own utopian imaginary—his effort to keep history’s ‘cosmopolitan purpose’ open, to be constructed at each moment anew by real human beings themselves, as an offshoot of their freedom.²⁶ As such, it operated much more as a critical standpoint from which to attack any present (functional) architecture for falling short of the ideal of freedom than a constructive platform on which to impose any particular blueprint on the world. Instead of calling human beings to begin from scratch, with an ideal institutional project, it directs attention to the more humble (yet more realistic) avenue of working with institutions we have now—not because they are good, or because they already represent a utopian design, but because they are what real humans have to deal with when we try to make reality of our freedom now. Kant was critical of the lesson of the history of utopianism—namely, that it had always appeared necessary to break some eggs in order to make an omelette. For him, this undermined the effort to think of every human being as an end in himself or herself. To be faithful to the latter purpose, it was necessary to start from here and now, and to judge present institutions in view of the maximization of freedom tomorrow. This idea could not coexist with an arrogant functionalism, or any other view involving a conscious avant-garde pointing the way to what Vladimir Zinoviev once called the ‘radiant future’—a future that would never arrive but for which the present would nevertheless be sacrificed.²⁷

A realistic utopia can only begin with the critique of present institutions—the United Nations, the World Bank, the Kyoto Protocol, the operations of large multinational companies, the structures of public law and private ordering that decide on the distribution of material and spiritual values today. It is perhaps best seen not as an institution but a mindset and an attitude that seeks to highlight the contingency and contestability of global institutions and their distributionary consequences. To maximize freedom it would seek to invite the widest possible participation by everyone, but especially those in the global South, to reorient the


work of global institutions—including institutions of private law and ordering—so as to benefit those who have been deprived. It would seek to re-describe forms of global expertise as types of political power that are no less contestable than any other types of power. Participants in such re-politicization might well be inspired by an ‘oceanic feeling’ but that should not be necessary. After all, critique and contestation rarely fare well with that type of romantic sentimentalism.