

LAW IS NOT JUSTICE

It is my conviction that as long as there is economic inequality among nation-states, tremendous apartheid in access to soul-making – as opposed to only income-producing -- education on a raced-classed-gender basis; and, given the world's wealth of languages, within which the legal entity understands itself variously – and the Abrahamic, polytheist, henotheist, animist, and non-theist varieties of religious intuitions; there is no possibility of a universal law. (And, of course, constitutions so far work only in terms of nation-states. I am thinking of the predicament of the European Constitution.¹) Yet we must want something like a universal "language" or idiom of law that can circulate among all humans. Generally, we – whoever "we" are -- tend to think of our own sense of the law of human relations, of the relationship between humans and nature, and the relationship between the sacred and profane, as de facto universal. It is a commonplace to say that for various different kinds of reasons given, Northwestern Europe's sense of its own laws of self, world, nature won out because of its history of conquest and the location of the Industrial Revolution. (Today in the upsurge of white supremacy in Europe and the United States, Aryanist supremacy in India, Han supremacy in China, ethnic Buddhist supremacy in Thailand, Sri Lanka, Myanmar, and so on – we have to complicate the narrative.) In a somewhat idiosyncratic book called *The Law of Nations in Global History*, C.H. Alexandrowicz has given us an account of how Christian/European control happened.² I don't think I am quite ready to accept simply putting other universalizations together with the European, or claiming priority. I think we should realize, that although we might want the universal "language" or idiom of the law, we must organize our behavior -- institutional and individual -- in the awareness that that is impossible. And if you're thinking of how to treat migrants in Europe from within European countries and the United States, that crucial problem is more limited and I think we should look more towards humanitarian intuitions and redistribution rather than a universal law.

A little over 30 years ago, I wrote a piece where I attempted to demonstrate how British colonialism flattened out the multiple discontinuities in Hindu law in order to have something "universally Hindoo" to refer to in their own practice of civil and penal law.³ Examples of these kinds of uniformization in law and currency are common in the history of conquest and can be multiplied. But that is more a matter of anthropological history than something to be undone, once again, in order to address an effort to universalize a rule of law. To repeat, our feeling, from outside the discipline of the law, is to suggest that a universal law is impossible, just as it is impossible for us to imagine universal justice; yet all our actions, and not just in the sphere of law, bear an indirect relationship to justice. As I've often said, more recently, it is just that there is law, but law is not justice.

Therefore, the idea of a "rule" of law is unacceptable to some of us. Since the law can be and should be revised, one cannot use a thing impermanent in content to serve anything universal. And this also shows how hard it is to be de jure universal. De facto, our laws are of course universal.

It has been my long-held conviction that redistribution would go a long way "toward" solving these problems. If there is free class mobility, the cultural software that makes "the other" work can become performance (included in curricula, exhibitions, celebrations) rather than a performative (the principles, values and assumptions that shape "the other's" life).⁴ In such a case different kinds of codeswitching, on both sides, work as exchange, often unacknowledged, and coexistence at least seems

¹See Etienne Balibar, "Difficult Europe: Democracy under Construction," in *We, the People of Europe? Reflections on Transnational Citizenship*, James Swenson, trans., (Princeton: Princeton Univ. Press, 2004), pp. 155-179.

²(New York: Oxford Univ. Press: 2017).

³"Can the Subaltern Speak?" Cary Nelson and Larry Grossberg, eds. *Marxism and the Interpretation of Culture* (Urbana: Univ. of Illinois Press, 1988), pp. 271-313.

⁴For further elaboration, see Spivak, *A Critique of Postcolonial Reason: Toward A History of the Vanishing Present* (Cambridge: Harvard Univ. Press, 1999), pp.27-8; and *An Aesthetic Education in the Era of Globalization* (Cambridge Univ. Press, 2012), pp. 244-7 and passim.

to become easier. The only way that this will not be resented by the “racially superior” gendered underclass is by way of a persistence in the soul-making education of which I spoke above. I must dare to insist on this to all the people who have been invited by our brilliant editor, Barbara Faedda, and who are all better qualified than I to speak and implement the law: listen to me as you would to those who bear what you impose and see if that imaginative shift is possible. For ruling is, in actual practice, enforcement. And those of us who think about these things as having human purchase – teaching in the humanities beyond the disciplines -- think, perhaps somewhat idealistically, that one must persistently, generation after generation, work towards acceptance of the other as agent rather than victim, so that enforcement is not the main method. The desire for social justice is to want the law – and the goal of the general humanities education is to work at the impossible task of producing a general will for social justice, which can be minimally defined as the willingness to turn capital away from *capitalism* to diversified social good.

But this is a desire for those who have access to capital outside of the possible practitioners of capitalism. This can translate into even a different attitude toward fiscal policy. And I think here, if we are thinking, as best we can, of the entire world, we must learn how to speak to the largest sectors of the electorate, in terms of what Professor Margaret MacMillan, great granddaughter of the British Prime Minister David Lloyd-George, would think of as a basic affect: “these affects, greed, violence, fear – do, of course, drive capitalism’s dark side, a side that most of us can afford not to notice.”⁵ Language becomes more parabolic to break down enforcement alone. We expand, we repeat with many acknowledgeable instances: One person’s profit brings death to many. Keep what you need but use the rest for greater good. Narrative as instantiations of the ethical is an altogether “universal” method with a millennial history. If some of us do not learn to use it in a hands-on intensive way for attempting movement from feudal loyalties and convictions to gendered democratic intuitions: namely, autonomy and equality for me and my group as well as other people, other groups, unlike us -- we are at best looking forward to a “democratic” world ruled by tyrants, where democracy is body count disguised as rule of law.

In the context of the older European and the immigrants, being reasonable about alien cultural practices, or alien convictions, or inclinations toward violence to protect belief – etc. can at best be acting rationally rather than with the deep sympathy of the ethical. Under those circumstances, our suggestion is what a potential supervisor in a subaltern training area called "equalism." In other words, even though the practices, the exercise of the beliefs, may seem intolerable, an attempt is to be made not to think of the spirit that can want these things as inferior.

Rather to think that the history and geography of beliefs and practices that are very unlike mine, might still be entertained by those whose situations have been very different from mine – and that, they are equal to me as human material. Unless we are able to practice this – I have called it imaginative activism – there may be tolerance but it will only be rational behavior calculated by a universalist, who is not able to imagine an equal with an unacceptable set of beliefs. Class helps here and a knowledge of code-switching into the others’ performative codes without being performed by them, as invoked above.

For the moment, I invite you to read Peter Dickinson’s *The Poison Oracle*, from which I quote at length to show how fiction stages the argument that I am trying to establish. In the novel, a chimpanzee trained by the visiting British anthropologist on a whim solves the murder mystery, which is the ostensible subject of the novel. The potential object of his anthropological investigation, the “native” girl, in a curious subplot that takes over, undoes the boundary between knowing and known and exits the book on a staging of the reader’s uncertain expectation that she will “get back into the machine” – the airplane, with “the

⁵ See Margaret MacMillan, *War: How Conflict Shaped Us* (New York: Random House, 2010), her Reith lectures in book form. The actual words were spoken in an interview discussing the Reith lectures in October 2019 with Christiane Amanpour on the US Public Broadcasting System.

pilot...ready to go.” But she has climbed up to the slab that the marshmen (the “natives”) called

the House of Spirits. Really, [Morris the anthropologist] thought with exasperation, she is worse than Dinah [the chimpanzee]...[N]one of the tribesmen moved, or even looked at the white men. They stared at Peggy, waiting. Morris couldn't believe that she had climbed up there for anything except adventure, with perhaps an element of scorn for superstitions which she had grown out of. But as soon as she saw that she was a focus of attention she accepted her role,...and at last began to dance. Now the marshmen crept towards her silently, and it seemed unwillingly, like birds or small beasts hypnotized by the coiling and writhing of a snake...she sang in English. She had insisted that Morris should teach her his own language, and what right had he to refuse? What property had he in her marsh mind? As a research tool, if she chose to put it away? Besides, her will was stronger than his. All he could do was tape the learning process, to record whatever problems she faced in adapting to alien modes of thought. The answer had been almost none. 'You are fools,' she sang to the marshmen...'You do not know cause and effect. Cause and effect.' It was Morris's own voice, piping triumphant and scornful through the steamy air.

The fiction makes it deliberately uncertain as to who speaks the final lines, as follows, the shared voice of the rule of law: “Soon all you fools will be dead. Cause and effect. Cause and effect. Cause and effect.”⁶

She has transformed the philosophy of the people who had come to her island to know her, into a repeatable formula, and here the writer paints in bold strokes the task of the imagination of the host. Peter Dickinson (1927-2015), a white Englishman educated at Eton and Oxford, worked in British counterintelligence, yet here shows us, as he dramatizes an anthropologist's experience, the possibility of the creative imagination grasping the peculiarities of the master-slave relationship with the other, whom we feel we are liberating by subjecting to the rule of law.

Indeed, this fiction stages the experience that would be impossible for the subject proposing a universal rule of law. If you succeed in putting it in place, the other would banalize that impossibility, slipping into your space, imitating reason. Accept the invitation to do likewise, and inhabit the banal impossibility together: the rule of law; turning the key that makes the cohabitation possible: redistribution rather than rejection, built by soul-making education, on both sides.

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⁶ Peter Dickinson, *The Poison Oracle* (New York: Pantheon, 1974), pp.190-1